LEGISLATIVE COUNCIL

Thursday 27 February 1986

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

OTTOWAY FOUNDRY

The PRESIDENT laid on the table the following report by the Parliamentary Standing Committee on Public Works, together with minutes of evidence:

Ottoway Foundry (Electric Induction Melt Furnaces).

PAPER TABLED

The following paper was laid on the table:

By the Minister of Health for the Attorney-General (Hon. C.J. Sumner)—

Pursuant to Statute—

South Australian Ethnic Affairs Commission—Report, 1985.

MINISTERIAL STATEMENT: LYELL McEWIN HOSPITAL

The Hon. J.R. CORNWALL (Minister of Health): I seek leave to make a statement.

Leave granted.

The Hon. J.R. CORNWALL: Earlier this week the Hon. Mr Cameron announced he had received a number of confidential leaked documents which, he said, dealt with 'financial mismanagement at the Lyell McEwin Hospital'. I indicated yesterday that I would make a detailed statement to the Council in order to deal with the matters he raised. It is essential that his irresponsible fabrication of charges against the Health Commission and senior officers is refuted. In particular, I reject his statement that the documents give rise to grave concern about the competence of the Health Commission and the Minister in adequately monitoring the expenditure of taxpayers' funds. In fact, they illustrate exactly the opposite. They demonstrate the commission's determination to ensure that funds are spent properly and that hospitals account for their actions.

It is quite clear, Mr President, that Opposition members do not understand the health portfolio or the mechanics of a health budget which is currently running at about three-quarters of a billion dollars (in other words, approaching $750 million a year). If they did understand they might stop making wild and harmful allegations about budget blow-outs. I hope that they will peruse the contents of this statement, digest the information and behave in a more constructive and helpful manner in the future. Certainly, that would be in the best interests of South Australians.

Hospital accounting systems produce monthly financial reports to the Health Commission's various sector offices. They contain information on the current budget situation of the hospital, together with a projected result for the end of the financial year. Any sensible analysis of performance to a given point in the financial year and the likely outcome by the end of that year must recognise that these projected results are simply preliminary estimates used as a guide to enable both the Health Commission and the hospital to develop budget strategies for the remainder of the year. The hospital's estimate is generally adapted by the relevant sector office to take into account a number of factors which cannot be reflected in the hospital's calculations. For example, this budget variation system, in which funding allocations may be adjusted by the commission month by month, allows the sector office to make allowance for extraneous factors such as award changes, which obviously affect salaries and wages costs. Similarly, variations must be made to acknowledge new services introduced as a result of community need or Government policy, alterations because of specifically funded items, such as workers compensation payments, which are the subject of negotiations between the Health Commission and Treasury.

The essential problem for Mr Cameron and his colleagues is that they treat projected variations, that is, estimates, as actual results. It was this trap which led the Hon. Mr Davis to insist in the Legislative Council in October last year that the Royal Adelaide Hospital budget had blown out by $2 million to $3 million in the first quarter of the financial year. Mr Davis then jumped in with a personal projection of a budget deficit for the hospital of $8 million by 30 June 1986. Although this is clearly a ludicrous proposition, it produced the desired short-term headline for the Opposition. Members will appreciate what a silly exercise that was, if they care to examine previous projected variations for the Royal Adelaide Hospital and measure that estimate against the actual performance at 30 June of the same financial year. For example, in August 1982 the projected deficit for 1982-83 was $2.4 million and in September this figure had grown to $4.6 million. This is 1982-83. A month later—that is in October 1982 at a time when the health portfolio was held by Mrs Jennifer Adamson in a Liberal Administration—the projected deficit was $6.9 million. In fact, the monthly projection then progressively decreased during 1982-83 as a result of the budget variation system which I have outlined. The actual result for that financial year was a balancing of the books. Using the crude arithmetic of Mr Davis, the October projected variation figure should have produced a deficit of something in excess of $20 million. That of course, is a ludicrous proposition.

It would be an unnecessary and time-consuming process to prepare detailed tables on these matters for tabling in the Council. However, I intend to provide a few more examples to illustrate the futility of the Opposition's silly 'blow-out' tactics, but I give an assurance that anyone who remains unconvinced can have full access to the figures if they want to pursue these matters further. If we delve further back into the period of the Tonkin Administration, we can see that in December 1981 the projected variation for Flinders Medical Centre was a $7 200 deficit—mark that figure. In January 1982, one month later, the estimate had increased to $1 027 000. Are members expected to believe, by virtue of the weird logic of Mr Cameron and Mr Davis, that the hospital had suddenly and literally overspent by more than $1 million in a single month? Did that sudden escalation—which is what occurred if you consider only the bald figure—produce a multi-million dollar deficit by the end of 1981-82? Indeed it did not. In the final analysis, there was an unfavourable variation for the year of just $162 000.

I am sure that members will recall that the Hon. Mr Cameron seized on the leaked documents and trumpeted that an internal memorandum from Mr Des McCullough, Acting Executive Director of the Central Sector, to the Chairman of the Health Commission on 4 February 1986 (and I quote from *Hansard*) 'indicates that the Lyell McEwin is headed for a budget overrun of at least $500 000 despite the Minister's claim that financial management is much improved'. In fact, Mr McCullough's memorandum informed the Chairman that the Chief Executive Officer of the Lyell McEwin Health Service had advised by letter dated 23 January 1986 an estimated overrun—and I repeat estimated—in payments for 1985-86 of $500 000. It was quite

misleading for Mr Cameron to base his ongoing, unwarranted criticism of the Health Commission on a document which proves that the sector director was concerned about the projected variation, had identified some of the causes, was critical of the financial management and control of the hospital and proposed specific corrective actions. It should be abundantly clear to honourable members that Mr McCullough's memorandum was part of the very process I described earlier when I outlined the principles of the budget variation system.

There never was any question that the hospital would have been allowed to continue without corrective action to rein in the anticipated over-expenditure. The budget variation system inevitably results in exchanges between the Health Commission and hospitals and health units determined to maximise their chances of additional funding. That is part and parcel of the democratic process. In the course of each financial year it is not unusual for a hospital, for example, to encounter unforeseen circumstances which produce cost pressures and which lead to representations to the Health Commission for additional funds. In cases where the commission is satisfied that the need and the expenditure is justified the amount of over-expenditure is validated and the hospital budget adjusted accordingly. Not surprisingly, there are occasions when sector offices believe hospitals are trying them on and, I have no doubt, there may be occasions when hospitals resent the apparent hard line by the central bureaucrats in turning them down. This has been the traditional process of negotiation in the hospital system for a very long time.

In my response to Mr Cameron's questions on Tuesday I made the point that what matters is where our hospitals stand on 30 June, not what projected variations show before corrective actions are taken or adjustments are made. I also said that if one cared to count the number of hospitals which had projected overruns at 31 December 1984 one would have quite a lengthy list. It may be instructive for members to know that I have followed up my own suggestion and, of course, I was quite right. An examination of the projected budget variations by each of the 11 largest public hospitals in South Australia at 31 December 1984 shows a total estimated deficit by the end of the financial year of $6.4 million. In fact, at 30 June 1985, the end of that financial year, their combined results showed an actual unfavourable balance of a little more than $271 000. Since the Adelaide Children's Hospital alone in that year accounted for a deficit of $282 000, the remaining 10 hospitals (the other 10 major hospitals in the State) had an overall favourable result! So much for the Opposition's technique of gloom and doom, using projected variations as the basis for wild and woolly warnings of blow-outs. I can also indicate, by the way, that the Adelaide Children's Hospital will balance its books this financial year.

Ms President, as I explained earlier, although Health Commission officers sometimes have to counter the inflated estimates of health units seeking additional funds, there are certainly occasions when calls for funding supplementation are quite legitimate—a perfectly legitimate part of negotiations within the system. These generally result from circumstances over which a hospital cannot have control. Such a circumstance is the devaluation of the Australian dollar, which has caused significant cost pressure on our major hospitals which purchase a considerable amount of equipment and supplies from overseas. Neither the Health Commission nor the State Government can control the impact of currency devaluation on the cost of essential imported goods which are needed by our hospital system. This fact is well recognised by Treasury and negotiations are already underway between the hospitals, the Health Commission and State Treasury concerning the impact of devaluation on hospital funding.

The projected budget variations for major hospitals—and I stress that these are subject to corrective measures along the lines indicated at some length earlier—estimate a funding shortfall by 30 June 1986 of $8.5 million compared with $6.5 million or $6.8 million and so forth in previous financial years at this time. Although no precise figure can be provided for the devaluation element of this projected deficit, we can anticipate Treasury agreement to recognise about $3 million in round terms. The final figure negotiated between Treasury and the Health Commission will, of course, reflect the amount available to supplement funding allocations for the hospitals. On paper, that leaves a projected shortfall of about $5.5 million. That figure will however, as in other years, be substantially reduced by a number of corrective strategies either already implemented or in the process of being implemented by individual hospitals in association with the Health Commission sector offices. That is the normal way the system operates. In other words, based on the experience of past years, which I have already outlined, it is entirely possible, indeed probable, that the public hospital system will 'come in' very close to budget again in 1985-86.

The overall financial management performance of the Health Commission has been excellent over the past three years. Its gross budget was overspent by $1.5 million in 1981-82, the last year of the Tonkin interregnum, which can hardly be viewed as disastrous when you take into account the size of the budget—that is, the amount of the figures, not the Tonkin interregnum. In 1982-83, the total budget was $533 million, which was underspent by $89 000. That is a remarkable performance by any standards.

The following year, the budget of $580 million was overspent by $200 000. In 1984-85, the last full financial year, with a budget total of $694 million, the commission brought in a result which saved the taxpayers of South Australia $5 million. In other words, in 1984-85, the last full financial year for which figures are available, the budget came in $5 million on the favourable side. It is unfortunate that the Opposition has ignored the potentially adverse effect of their ill informed attack upon health services and has sought to denigrate the Health Commission and its officers for political purposes.

In closing, I appeal to Mr Cameron and his colleagues to reconsider their tactics and act more responsibly and more constructively. The debacle at the Lyell McEwin Hospital in 1981-82 and 1982-83 was caused by the supply of false and misleading information to the Health Commission by two employees of the hospital. The commission was given details of phantom nurses in an attempt to generate extra funding for the hospital. I have condemned that action, which was irresponsible and reprehensible, and I have declared that action must be taken to deter others from attempting to deceive the commission and the Government.

Mr Cameron and his colleagues used the Lyell McEwin fiasco of that time to pursue Health Commission officers, falsely accusing them of being engaged in a cover-up. They have refused to apologise despite the fact that the Auditor-General, who conducted an extensive review of the hospital's financial management at my specific request, exonerated them because there was no evidence of a cover-up. Nevertheless, Mr Cameron's misguided attempts to exploit the situation have again emphasised the need for the Health Commission and the Government to have access to accurate financial and management information. He has succeeded only in helping me in my recent attempts to focus attention on the need to make significant improvements in the flow of information.

As members are aware, I have already held talks with chairmen of boards, chief executive officers and medical superintendents of our seven major public and teaching hospitals in the metropolitan area to set the reform process in motion. That process should be continued in a calm and cooperative atmosphere and not against the hysterical remarks of a cynical Opposition.

QUESTIONS

PERFORMING ARTISTS

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before directing to the Minister assisting the Minister for the Arts a question in relation to the income of performing artists.

Leave granted.

The Hon. L.H. DAVIS: This weekend marks the commencement of the fourteenth Adelaide Festival of Arts. The festival and the festival fringe attract strong community support and play host to musicians, singers, dancers, actors and writers from interstate and overseas. The importance of the festival to South Australia is underlined by the fact that motor vehicle plates in South Australia proudly proclaim 'The Festival State'.

The widespread acclaim for Adelaide's festival is an important ingredient in the argument that South Australia should be regarded as the arts State of Australia. A recent publication 'Culture and the community; economics and expectations of the arts in South Australia' by Peter Brokensha and Anne Tonks, emphasises that the arts are not only entertaining and good for the soul but also have a significant economic impact.

In 1983-84 total expenditure on the arts in South Australia was $43.3 million, according to Brokensha and Tonks, and this generated an economic impact on household income of $104.5 million. In fact, 2 747 people were employed for varying periods to provide the equivalent of 1 055 full-time jobs for the full year. The economic impact of arts expenditure added a further 2 958 full-time job equivalents. There is now general appreciation of the need to recognise and support visual arts, community arts, crafts, multi-cultural arts, and the performing arts.

The performing arts play an important role in the Festival of Arts. However, before people settle too comfortably in their seats at a festival production they should spare a thought for the performers and those supporting them behind the scenes.

There are several performing arts organisations in South Australia which are funded by the State Government, with support in some cases from the Australia Council. They include the State Theatre Company, the Australian Dance Theatre and the State Opera of South Australia. They are regarded as flagships for the performing arts in South Australia; and they employ highly trained and professional performers and supporting staff. Sadly, their remuneration is remarkably low.

In the State Theatre Company, the Magpie Theatre retains six actors and actresses. Magpie plays in schools and theatres in Adelaide, South Australian country areas and interstate. The performers each receive $320 per week—or only $16 640 per annum. The Playhouse Company (which is also part of the State Theatre Company), under the invigorating leadership of John Gaden, has 12 to 14 actors and actresses under contract on incomes ranging between $350 and $450 per week—an annual income range of $18 200 to $23 400. In addition, the Playhouse employs other persons with highly developed skills—carpenters, costumers, secretaries—all on incomes well below what could be earned elsewhere. The Australian Dance Theatre employs 14 dancers on annual incomes ranging between $12 500 for first year dancers to $20 500 for dancers with 10 years experience or more. Unlike singers or actors, the working life of a dancer is comparitively short, with most Australian dancers retiring in their mid 30s. Technical and other staff at the Australian Dance Theatre are also poorly remunerated.

The State Opera of South Australia does not employ singers on a yearly basis, although music staff, wardrobe and set workers are contracted. The story with State Opera is much the same.

Therefore, it is clear from these figures that highly professional and trained singers, dancers and actors receive far lower remuneration than many unskilled or semi-skilled workers in the community. Certainly, most performers would participate for love of their profession rather than for the money. Quite clearly, there are no easy answers and I am not seeking to lay blame at the State Government's door. However, it seems that the community generally would support the need to encourage excellence in the arts in South Australia.

My question to the Minister is as follows: will the Government consider the possibility of establishing a foundation funded by the State Government, with perhaps private sector sponsors also, for the purpose of ensuring that South Australia's top performing artists and their support staff are more adequately remunerated?

The PRESIDENT: Order! Before calling on the Minister of Tourism to reply I point out to the honourable member that his explanation took nearly four minutes to deliver. I think the first half of the explanation was totally irrelevant to the question in relation to the income of performing artists. I concede that certainly the second half of the question was extremely relevant. I suggest that in future the honourable member limits his explanation to what is strictly relevant to the question that he is about to ask.

The Hon. L.H. Davis: I was just setting the scene before the curtain rose.

The PRESIDENT: I realise that the honourable member was setting the scene. However, he need not treat us all like a mob of schoolchildren who need to have the scene set for us. Many of us are aware of the situation and it is quite unnecessary to take the time of the Council on a matter which is not relevant.

The Hon. BARBARA WIESE: I thank the honourable member for his question, which raises some very important issues about performers in the arts field. I am aware that many people in the performing arts are paid relatively very low salaries indeed.

However, as far as I am aware, in almost all—if not all—cases people are paid according to appropriate award rates. I am also aware that, particularly where arts bodies are being funded with State funding, where it has been brought to the attention of the State Government that people are not being paid award wages, the Government has sought to rectify that situation.

Nevertheless, it is true that there are people within the arts who are paid relatively low salaries. I am pleased to hear that the honourable member is not suggesting that the State Government should be trying to provide more in the way of assistance in order to raise the salaries of some of these people, because I think the record shows that, certainly within South Australia, the State Government—and particularly Labor Governments in South Australia—have a very fine record with respect to the funding that we have provided for the arts, certainly far and above the sort of efforts that have been made by Governments in other States—and the Federal Government, for that matter—on a per capita basis.

One of the points that needs to be introduced in an argument like this—not only when we are thinking about salaries for people in the performing arts but also with respect to funding of the arts generally—is that we tend in this State (and in this country, I think) to rely too much on Governments for funding. It may well be that as time passes, and particularly as times are getting tougher in this country, we are going to have to look at other ways of funding organisations and companies in the arts. Private organisations and private individuals may have to bear a much larger responsibility for providing adequate funding for those bodies in the future.

Whilst I can see some merit in the sort of proposal that is being put forward by the honourable member, to set up a foundation which may be able to concentrate on lifting the amounts of money that can be paid to people in the performing arts, I am not sure that I am particularly attracted by the idea that it ought to be Government funded. There may be some scope for a foundation of that kind to be funded through private sources, through corporate sponsorship and sponsorship of individuals. However, that is not my decision to make. I am not the Minister for the Arts, and I shall refer the honourable member's proposition to my colleague in another place and bring back a reply.

JUSTICE INFORMATION SYSTEM

The Hon. K.T. GRIFFIN: I seek leave to make an explanation prior to directing a question to the Attorney-General on the subject of the justice information system.

Leave granted.

The Hon. K.T. GRIFFIN: Last year, the Attorney-General told the Budget Estimates Committee that the Government was in fact proceeding with the justice information system to provide an integrated system involving the police, the Attorney-General's Department, the Department for Community Welfare and the Department of Correctional Services. In the original concept of the justice information system, the courts were to be involved in transmitting information as well as receiving information, but at the Budget Estimates Committee the Attorney-General indicated that that was no longer to be the case. According to the Auditor-General's report, the cost of implementing the justice information system is $14 million, but there is a cost penalty in the order of $3.5 million if the Courts Department does not participate in the system.

I understand that the Chief Justice has taken the strong view that it is not possible for the courts to be part of the justice information system, notwithstanding that adequate safeguards can be installed in the computer to ensure that the independence of the courts is not prejudiced. Considerable concern was expressed to me last year and has been expressed to me again recently about the refusal of the Courts Department to be part of the justice information system when, in fact, the part which the Courts Department plays in the criminal justice system is critical.

There have also been concerns expressed to me about the quite significant additional cost of $3.5 million being incurred because the Chief Justice will not allow the courts to participate—a cost which will ultimately be borne by the taxpayers of South Australia. My questions to the Attorney-General are: does the Chief Justice still insist that the courts will not be part of the justice information system? Is the additional cost as a result of that attitude still $3.5 million? Will the Attorney-General indicate whether an alternative system is available which would equally make the courts part of a justice information system? If the Chief Justice maintains his insistence that the courts will not be part of the justice information system, will the Attorney-General stand up to the Chief Justice on this issue with a view to the courts becoming a part of the integrated system so far as the transmission of information is concerned?

The Hon. C.J. SUMNER: The answer to the first question is 'Yes.' The Chief Justice does insist that it will be incompatible with the separation of powers and the independence of the judiciary for the courts to participate in a fully integrated justice information system with the executive government. That is a view that—in light of the Chief Justice's opinion—has been accepted by the Government.

Obviously, it would not be possible to proceed with the justice information system if the Chief Justice insists—as he does—that the courts not be part of an integrated management system involving the executive arm of government and the other government departments. If the honourable member is asserting that, if that is the case, the courts could be forced to participate, then of course he would be provoking a constitutional difficulty of some considerable significance. The only way in which it could be done, in my submission, would be by way of legislation in Parliament.

I do not believe that that is a course of action that should be adopted. I think that the judiciary's views on this topic ought to be respected, and the views are arrived at in accordance with the principles of judicial independence—of which, I am sure, the honourable member is very aware—and the fact is that the Chief Justice and the courts—judges generally—take the view that it is incompatible with judicial independence to have the courts involved in an integrated computer system which is managed—in part, at least—by the executive arm of government.

There is some difference of view about the cost penalty that is involved in this decision of the courts not to participate in the justice information system, and I know the figure of $3.5 million was mentioned at one stage. I think it is now accepted, however, that that is not the cost penalty, and the decision that has been taken is to proceed without the courts' involvement and for the courts to develop their own computer system, which will involve the use of computers for their own internal purposes—court cases and the like—and will also be compatible in terms of transmission of information from the courts' computer system to the JIS, and of course the court system will be able to receive information from the JIS.

The Chief Justice is of the opinion that there is no difficulty with that proposition. Obviously, the courts may make whatever information they consider appropriate available to the JIS for distribution throughout the agencies of Government that might be concerned. Those matters which are now transmitted from the courts to Correctional Services, police, etc., with respect to court orders and the like would still be transmitted by way of a compatible computer system from the courts to the JIS.

The JIS is proceeding and it is still considered cost beneficial to proceed with the JIS for those departments of executive government that are involved. The courts will proceed with theirs on a compatible basis but, before they proceed with their own computerisation, they will have to establish cost benefit savings in their own department to justify the computerisation which they propose. The courts are now involved in a program of ascertaining what savings would be made by computerisation and, in due course, a proposal will be put to the Government for the computerisation of court records which will then be considered by the Government, taking into account the cost benefit that is involved in that proposal for computerisation.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: There is some argument as to the penalty and the view of the courts is that there is no cost penalty. The courts were in fact a net drain on the JIS and, if you remove them, there is no cost penalty provided

that you do what the courts agreed to, that is, to proceed once the cost benefit analysis of their computerisation can be established. I am prepared to say that there is some difference of view as to whether there may be a cost penalty. In the end, because of the views of the Chief Justice, the Government accepted that we could not proceed with the JIS with the courts in it, but it was still cost effective to proceed with the JIS with those departments involved, excluding the courts, and that the courts could proceed with their computerisation once they had established the cost benefit of doing so. I therefore believe that the figure of $3.5 million mentioned is not one that represents an accurate cost detriment (if you like) to the overall scheme but, even if it did, there seems no alternative, in the light of the attitude of the courts, but to proceed as the Government has done.

BILL OF RIGHTS

The Hon. J.C. IRWIN: I seek leave to make a short explanation prior to asking the Attorney-General a question about the Bill of Rights.

Leave granted.

The Hon. J.C. IRWIN: There is growing concern in the community about the Bill of Rights which has passed the House of Representatives and is now before the Senate. Apart from the fact that the Bill, if passed, will undermine the powers vested in elected Parliaments and has the potential to subvert the federal system of government, the Bill does specifically deny important and fundamental rights such as the right to own property, the right not to join a union, and the right to send one's children to a school of one's choice. While some generally understand that the Crown is the ultimate owner of land, most people believe that, if they 'own' land for their suburban house or land used for farming, they have the right, for all intents and purposes, to say that that land is theirs. Can the Minister assure the House and the people of South Australia that, if the Bill of Rights passes in its present form and does not specifically protect the right to own property, suburban house owners and rural landholders will have nothing to fear in the long term and, in fact, nothing will change as far as property ownership is concerned?

The Hon. C.J. SUMNER: I do not envisage the proposed Bill of Rights being discussed at the federal level impacting or impinging upon the right to private property beyond the qualifications that already exist to that right. I am sure those qualifications are well known to the honourable member. In the public interest if there is a need for the community to possess property for public purposes such as roads, north-south corridors or whatever, then there are procedures in our law for acquisition of that private property and for appropriate compensation to be given to the landowner. Those laws have existed in our community for very many years and I do not envisage them changing, and I certainly do not envisage the Human Rights Bill which is currently being debated at the federal level impinging on property rights or altering the law with respect to property rights which currently exist.

BARTON VALE HOUSE

The Hon. M.J. ELLIOTT: I seek leave to make a short explanation prior to asking the Minister of Community Welfare a question about Barton Vale House.

Leave granted.

The Hon. M.J. ELLIOTT: I have been approached by some residents in the Enfield area concerning Barton Vale House, which used to be known as Vaughan House. Apparently, there was some understanding at the time that Yatala A block disappeared that Barton Vale House would be protected from further encroachments or be protected for evermore. Barton Vale House is the only large historic building in the Enfield council area, an area of 22 square miles.

The person who approached me informed me that he had tried to arrange a meeting within Barton Vale House and, after some days, the inquiry had gone to the Minister's office and the opportunity of a meeting to take place was rejected. He later made further approaches to see whether he could look through the building in its present state and, after some time, that was granted. He said that the place was in a rather advanced state of disrepair and heavily vandalised. He suspected that the Government in fact wanted that to happen so that it would have an excuse at some later stage to bulldoze it.

The PRESIDENT: Order! That is an opinion and not a fact.

The Hon. M.J. ELLIOTT: I apologise for that. On Wednesday last and on the previous Wednesday there was an advertisement placed by the Enfield City Council on the back page of the *Advertiser* where PMA Projects Proprietary Limited intends to erect 16 single storey residential flats for the aged at the corner of Box and Ellis Streets in a special use zone which is a prohibited development. By consulting the appropriate street directory, that turns out to be the land surrounding Vaughan House or, should I say, Barton Vale House. It would appear to me that, if building continues around Barton Vale House encroaching through those grounds, then it is further at risk of eventually being pulled down. I ask the Minister the following questions:

1. What long-term plans does the Government have for Barton Vale House?

2. Is it the Government's intention to primarily concentrate on preservation of historic buildings within the central city regions only?

3. Why has the Government been reluctant to allow groups of persons to use Barton Vale House and also reluctant to allow interested persons to inspect the building?

4. Would the Government be willing to spend the necessary money to at least prevent the further deterioration of Barton Vale House and what would be the cost of restoration of Barton Vale House?

The Hon. J.R. CORNWALL: To answer the last question first, it is my information (although this is very much a preliminary estimate) that the cost of the restoration of Barton Vale House would be about $1 million. Secondly, with regard to groups wanting to use it, the only group that I know approached my office wanting to use it was the Democrats. Knowing the way in which Mr Sanctimonious and Mr Parsimonious have performed in this place in the past, my opinion was that it would be politically unwise to allow the Democrats to use Barton Vale House in its present condition. Let me assure the Hon. Mr Elliott at once that there is no intention of demolishing Barton Vale House, presently known as Vaughan House. Barton Vale House is a truly historic home.

The Hon. C.J. Sumner: Which is the correct name?

The Hon. J.R. CORNWALL: Barton Vale House is correct. It was built around 1850 by a gentleman by the name of Barton. It has significant historical links with the area. At this time—and remember that I have only been Minister for a few short months—

The Hon. M.B. Cameron interjecting:

The Hon. J.R. CORNWALL: No, that is the honourable member's caper—struggling with the portfolio is his caper: getting on top of my second portfolio is mine. It takes three shadow Ministers to mind me, Ms President: the Hon. Mr

Cameron tries to look after health; Ms Laidlaw looks after welfare; and Mr Legh Davis, the Deputy Leader of the Opposition, tries to mind both of them.

To revert to the questions, the Enfield Historical Trust certainly has an interest. The building was built around 1850 by a Mr Barton. It has strong historical links with the area. It became Vaughan House, 'a home for wayward girls', as it was known for very many years, in 1922. It has not been used for quite some time and has been badly vandalised. It is very run down and has substantial salt damp, as have so many of the early residences in Adelaide.

I have had the whole of the land in question examined. We have had the Valuer-General put a valuation on the five lots into which it was broken down for convenience. That five lot breakdown also, of course, allows us access to SAYRAC, which is immediately contiguous with the property. Various values have been put on those five lots, and I am not about to divulge them to the Council as that would be commercially irresponsible. Suffice to say, however, that the combined value of the land, in ball-park figures, is probably not much more nor less than what might be required to restore Barton Vale House. The house is on the heritage register and it would be unthinkable to even contemplate in anyone's most irresponsible moments its demolition. It would also be politically extremely foolish.

The Hon. L.H. Davis: Especially after seeing what happened to you with Yatala.

The PRESIDENT: Order!

The Hon. L.H. Davis: And the Grange Vineyards.

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: Long-term plans are at the moment under consideration by my department and me. No proposition has been put to the Government because at this stage there is nothing ready to present to Cabinet, but a number of propositions have been put to us and they range from selling those lots to a private developer (whether by tender, treaty or normal processes that prevail in these circumstances). One would have to look at the commercial aspects of that and whether enough money would be generated to restore Barton Vale House.

There are options through to asking the Housing Trust to take it over as manager. All of them, let me say, at least in the preliminary sense, envisage raising enough money to restore Barton Vale House. The question that arises as to what one does with it. We could give it to the Democrats to meet regularly. I do not think that they would be able to meet the annual cost of upkeep.

The Hon. L.H. Davis interjecting:

The Hon. J.R. CORNWALL: I am not sure that he is a Democrat—he is a very sensible, elderly gentleman in retirement. Many of us, no doubt, will go and sit at his feet to get his pearls of wisdom from time to time (and maybe drink a little of his scotch).

The Hon. M.J. ELLIOTT: I rise on a point of order, Ms President. The answer being given has become totally irrelevant to the questions first asked.

The PRESIDENT: There is no point of order. Standing Orders insist on relevance when asking a question, but do not insist on relevance in answering one: they merely indicate that a Minister may not debate the issue.

The Hon. M.J. Elliott: I sit corrected.

The Hon. J.R. CORNWALL: Ms President, a very earnest young man is Mr Elliott. However, I think that I have covered most of his questions. In summary, we are actively looking at ways in which we can preserve Barton Vale House for posterity. Once it has been restored the question arises as to who will be responsible for maintenance, upkeep and so on: should it be available to community groups and, if so, are there community groups that would have the resources to maintain it?

One of the real problems when one gets into restoration of historic houses, particularly historic mansions, is that there is a huge maintenance bill. In that sense, there are very many of them. There is, of course, the most notable of all, which is to be opened shortly by Her Majesty the Queen, so in working out a strategy, and in devising a responsible plan, a series of options will be put to Cabinet in the fullness of time.

The Hon. C.M. Hill: Trying to put the boots in.

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: Certainly not, I am merely saying, and quite rightly, that once you restore these properties taxpayers are up for a large maintenance bill, potentially and actually. I am sure that the Hon. Mr Hill is a significant taxpayer and, as a citizen of very substantial means, shares my concern in this matter. In summary, that is the proposal and I would hope that the arrangements will proceed in such a way that at some time within the next few months I will have a firm set of options for my Cabinet colleagues to consider, every one of them, I assure the Council, envisaging restoration of Barton Vale House.

The Hon. M.J. ELLIOTT: As these options are being actively considered at this time, does the Minister consider it a good thing that flats may be built in the area immediately surrounding Barton Vale House?

The Hon. J.R. CORNWALL: He is an earnest young man: but he has something to learn. The fact is that planning approvals in the City of Enfield are very much a matter for the Enfield City Council, which in the past, as everybody knows, has expressed an avid interest in the preservation of historic buildings within its bailiwick.

The Hon. L.H. Davis: What about the Yatala Labour Prison?

The PRESIDENT: Order!

Members interjecting:

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: Ms President, let me hasten to assure the Council that I have never been embarrassed about Yatala in my life. It is very much a matter for the planning mechanisms of the Enfield council whether flats, or any other structure, should be built within its council area. It may be that, if the council is so acutely concerned with the amenity of the area, it will have to think very carefully about flats. Let me make clear, however, that in looking at those five large lots and their possible use it would certainly not be the intention that the entire property be preserved. It would certainly be the intention that that would be sold for a planning use appropriate to the area.

FALIE

The Hon. PETER DUNN: I understand that the Attorney has an answer to a question that I asked on 19 February about the sailing ketch *Falie.*

The Hon. C.J. SUMNER: I am pleased to be able to respond to the honourable member's question, asked only a few days ago. As the Hon. Peter Dunn has himself said, the current visit by the Jubilee 150 Ketch *Falie* to South Australian ports on the grain trade re-enactment has been a resounding success. The honourable member has drawn attention to the fact that on several ports of call the vessel's sails have not been raised and that as a result some disappointment has been expressed by those watching from the shore.

He asks whether the Jubilee 150 Board would request the *Falie's* captain to use sail whenever possible arriving and departing from ports during the re-enactment voyage and to raise as much sail as possible. I can tell the honourable

member that the board has been in contact with those responsible for conducting *Falie's* current voyage.

The vessel's captain, Mr Allan Workman, a highly experienced Department of Marine and Harbors master, states that he will do all he can to make *Falie's* arrival and departure a thrilling spectacle, subject to the demands of safety and the need for the vessel to maintain its itinerary for the remainder of the voyage. Unfortunately, the vessel cannot negotiate in confined waters under sail and must use its auxiliary engine. I do not know what they did 100 years ago!

Falie is a large ship whose sails cannot be raised and lowered in the way one might expect of a yacht. In confined spaces such as bays, harbors or on approach to jetties, or when wind and sea conditions are unfavourable, the master is obliged to manoeuvre the vessel under power.

As to the amount of sail used, the manager of Falie Project Limited, who is travelling on board the ship, has agreed that as much sail as possible will be raised. That would normally include the main and mizzen sails and three jibs, but not the topsails. These, I am told, are fair-weather, long distance running sails raised when the vessel is well at sea. When set, they do not allow the vessel to tack or jibe, that is, to change course quickly—this is for those who are uninitiated in the ways of yachts and sailing.

The Hon. M.B. Cameron interjecting:

The Hon. C.J. SUMNER: I was fully aware of the meaning of those terms, but obviously the person who prepared the answer wanted to ensure that all honourable members were fully aware of the meanings.

As a consequence of the point I was making, those sails would not be used on entry or departure from port. Certainly, limitations on the use of *Falie's* sails may occasion some disappointment to those watching, but I am certain all of us would agree that we would not want the vessel and crew to be put at any risk. In the final analysis, of course, the decision as to how the vessel will proceed must remain in the hands of the master.

I feel confident that all those associated with the *Falie* will do their utmost to bring as much enjoyment as is possible to the many thousands of South Australians who have taken such an active interest in the vessel's restoration and current voyage.

PENSIONERS' INCOME

The Hon. DIANA LAIDLAW: I seek leave to make a short explanation prior to addressing to the Minister of Community Welfare a question concerning the Department of Social Security rules as they relate to pensioners' income from boarders.

Leave granted.

The Hon. DIANA LAIDLAW: I have been prompted to raise this matter because of a lead article in the Messenger *Weekly Times* newspaper, headed, 'Students lose board in local pension row'. It states:

> Some country students attending Regency College of TAFE can't find homes because of strict boarding guidelines under Federal Government pensioner legislation. Although there is no shortage of local people willing to accomodate students, many people—especially pensioners—find it financially impossible.

Apparently, the Regency College advertised for pensioners to come forward and offer accommodation to country boarders. One person who responded was a pensioner from Alberton, Mr Sid Ellis. He said that the college advised him to charge students about $43 for rent, food and laundry. Because he and his wife did not want to make any profit they were willing to charge only $30 a week. However, when Mr Ellis informed the Department of Social Security of the extra income he was told that the department would take 20 per cent, leaving only $24 a week. Mr Ellis is quoted in the newspaper article as saying:

> Nobody would take anybody under these circumstances. We have opened up our homes to people and the Government wants to get its greasy hands on it. We are not taking in a student to feed the Government.

Mr Ellis said that he had considered taking in two boys from the country, but that he would now have to reconsider because $24 would not cover the cost of food for one student let alone other costs involved in extra cleaning and washing, additional consumption of gas, water and power, etc.

Since reading this article earlier today I have ascertained from the Vice-Principal of the Regency College that the college has lost a number of students this year because potential country students have been unable to find a home in Adelaide and have therefore not been able to commence their studies this year. At a time of high rents in the private rental market, I ask the Minister of Community Welfare whether he also finds it disturbing that the Department of Social Security guidelines relating to pensioners' income from boarders would appear to be acting as a positive discouragement to pensioners offering much needed accommodation to low income earners. If so, will the Minister undertake to raise this subject with his federal counterpart (the Minister for Social Security)? Possibly the matter could be discussed when the Ministers meet at a conference, to be held shortly I understand, to ascertain whether the Federal Minister would be prepared to remove the rule that entitles the Department of Social Security to 20 per cent of a pensioner's income from boarders.

The Hon. J.R. CORNWALL: Let me first say to the Hon. Miss Laidlaw that I have not had the good fortune to catch up with the article in the Messenger newspaper, and therefore I cannot respond in specific detail. But with regard to her questions of whether I find it disturbing that there should be such a disincentive and whether I will raise the matter with Mr Brian Howe, the Federal Minister, I make the following points. First, of course, all pensioners are properly subject to an income test, that is, all pensioners with the exception of those who are over the age of 70—and this is the income test, as distinct from the assets test; I will confine myself to the income test at the moment. I do not think anyone would sensibly argue against that. I can remember having difficulties over many years trying to get home help when my wife and I were struggling to raise a large young family and run a veterinary practice at the same time. One of the real problems always was that the people who were coming forward, prepared to assist in the home, often wanted cash payments, because they did not want the payment to be taken into account to prejudice their full pension.

The Hon. M.B. Cameron interjecting:

The Hon. J.R. CORNWALL: No, I am saying that I believe that an income test is entirely appropriate, on a sliding scale. However, having said that, let me also say that, based on my experience over a long period of time with student children, it is manifestly impossible to provide board for $24 a week. I am also very well aware that student accommodation is a real problem. It is causing me personal problems at the moment. Three of my daughters have returned home within the last few months, because they could not cope any longer, and these are adult daughters that I am talking about, over 18.

The Hon. M.B. Cameron interjecting:

The Hon. J.R. CORNWALL: We have a revolving door policy at my place, as would a lot of other members, I am sure. They have returned home because they could no longer cope with the hassles of trying to sustain themselves in

rental accommodation. It was quite difficult because they had to do their own catering, marketing and so on and at the same time attend lectures and put in a substantial amount of effort as students. So, I am very sympathetic to the student accommodation problem. I do not know precisely at what point the Department of Social Security moves to count board as income. If it is worked simply on a sliding scale rather than on a net income basis, of course, that is foolish.

The Hon. Diana Laidlaw: There is a guideline that says it takes 20 per cent of boarding income.

The Hon. J.R. CORNWALL: If that is a flat 20 per cent—whether it applies to $40 a week or $80 a week—it is manifestly stupid. If that is the case (and I shall have my officers check it immediately), I will be very pleased to take up the matter with the Minister of Social Security, Brian Howe, when I meet with him in the near future. I am not waiting for the Community Welfare Minister's meeting which I am hosting here on 18 April; I already have an appointment to meet Brian Howe in Canberra next month in relation to a number of matters (including maintenance payments) which I wish to take up with him as matters of some urgency. I will add this matter to the list. If the information is as the Hon. Miss Laidlaw tells me (and there is no reason to suspect the integrity of her information, unless someone from the regional office of DSS misinformed her), then it is a silly rule and I will lobby for it to be substantially changed. The only figure that matters at the end of the day, if you are providing board and lodgings, is clearly what the net income might be (taking into account all of the expenses involved).

ASER DEVELOPMENT

The Hon. C.M. HILL: I seek leave to make a statement before asking the Attorney-General, as Leader of the Government in this place, a question about the design and construction work in the ASER development.

Leave granted.

The Hon. C.M. HILL: Honourable members would have read in the press recently of the unusual feature at the ASER development complex, that is, the huge exhaust fans which have been designed and which are now under construction and are being installed. The fans are necessary to take the escaping fumes of the diesel train engines from the newly built enclosed platforms beneath the convention centre and allowing the fumes to escape into the air. One needs only to drive across the Morphett bridge to see the two huge circular exhaust outlets which curve up from the newly built platforms and appear to run along the outside of the newly built convention centre wall. My informant, who is involved in some aspects of the construction work there—

The Hon. C.J. Sumner: A BLF member?

The Hon. C.M. HILL: No, he is not a BLF member. He has quite a high respect for some of the BLF members, but he is not actually a member. He is a friend of mine who is concerned about the welfare of the development and with ensuring as best he can that the design will be correct and efficient. He informs me that the way the outlets have been designed means that the exhaust fumes will be taken away from the platforms but, unfortunately, they will exude the fumes up alongside the convention centre; it is his considered belief that the fumes will then be taken into the centre by way of the airconditioning system within the centre.

The Hon. C.J. Sumner: Is he an engineer?

The Hon. C.M. HILL: He is closely connected with the engineering profession. If there is any possibility of this happening, it is a matter which should be treated seriously by the Attorney, and I think it should be investigated. One can imagine the absurdity of having an international convention at the newly completed convention centre and in the middle of the opening address all the diesel fumes from the Brighton to Adelaide train circulating within the convention hall. I think the total cost of the whole development has reached or exceeds $200 million.

The Hon. C.J. Sumner: It's a big project.

The Hon. C.M. HILL: It is a very big project.

The Hon. C.J. Sumner: It's a very good project.

The Hon. C.M. HILL: The Attorney says that it is a very good project—but I think that history will pass judgment on that.

The Hon. C.J. Sumner: You don't agree?

The Hon. C.M. HILL: It worries me that $200 million is being invested and I am not quite sure of the revenue that will return to the investors; one of the major investors being the superannuation fund, in which we all have an interest (of course, I say that facetiously). Nevertheless, we have a responsibility to try to ensure that when sums of that magnitude are invested in public and private buildings in Adelaide there are no major faults in the construction or in the design. Quite understandably, those involved in the design and construction who notice points which concern them bring them to the notice of members of Parliament.

The Hon. C.J. Sumner: Have they brought them to the notice of the architect in charge of the job, or someone like that? He probably thought that you were more qualified.

The Hon. C.M. HILL: If one reads this morning's *Advertiser*, one will see that I am not the only member of Parliament who is expressing concern about what is going on down there. There is nothing improper at all in the forum of the people—here in Parliament—for such matters to be raised during the construction and before it is too late to correct major mistakes, if they do occur. The Minister seems to place all his faith in experts and merrily sails his sailing ship along on course, as he was doing earlier today, without worrying about the problems that can occur over the horizon.

The Hon. Barbara Wiese: He was jiving.

The Hon. C.M. HILL: Yes, he was jiving a bit. He reread the report, I think, and finally understood the meaning of the word 'jive'.

The PRESIDENT: Order! I suggest to the honourable member that his explanation be relevant to the design and construction of the ASER project.

The Hon. C.M. HILL: Certainly, Madam President, I defer to your ruling. I ask the Attorney to investigate the design of the exhaust fans and to report back to the Council as to whether or not there is any danger of the exhaust fumes being taken into the convention centre when the development is completed.

The Hon. C.J. SUMNER: I thank the honourable member for his very important question. I was not wishing to denigrate or detract from his right to raise in the forum of the people issues of concern to him and to his constituents. Indeed, that is something that he is here to do. It is his duty to do it and I congratulate him on doing that. However, the only issue that I wished to put to the honourable member by way of interjection was whether or not his informant had attempted to discuss what are obviously technical problems or technical opinions with his superiors or with others at the ASER site.

That was the only point of my interjection, and there was no answer from the honourable member on that point. However, it would be, obviously, most inconvenient if, during international conventions when Adelaide was playing host to the world, the fumes from the Brighton to Adelaide train were circulating and upsetting the delegates to that convention, and I am sure that the ASER project managers would want to do everything in their power to

stop that eventuality from happening. So, I will refer the honourable member's question to the people who have, presumably, the technical expertise to make an assessment of the honourable member's problem, and bring back a reply.

JURIES

The Hon. K.T. GRIFFIN: I seek leave to make a brief explanation prior to directing a question to the Attorney-General on the subject of juries.

Leave granted.

The Hon. K.T. GRIFFIN: In January, a law came into effect in Victoria which created three summary offences: publication of jury room proceedings, soliciting or obtaining disclosures of jury room proceedings, and provisions regarding a person who is or has been a juror disclosing jury room proceedings, if the juror knows that the disclosure may or will be published. That Victorian legislation provided for penalties of up to three months imprisonment or a fine of up to $10 000 or both, and was designed to protect jurors from harassment by disappointed litigants, by people with an interest in the case and by the media. Not long after that law came into effect in Victoria, the Western Australian Government announced that it was planning new legislation to protect jurors from harassment or invasion of privacy after trials. That case in Western Australia arose from a convicted murderer having access to a jury list, the list which contained the names and addresses of the jurors who had convicted him, and sending them Christmas cards from gaol. I understand that New South Wales is also—

The Hon. C.J. Sumner: He should not have got the list.

The Hon. K.T. GRIFFIN: He got the list from his lawyer, but it prompted the Western Australian Government to take some action to protect jurors. I understand that there is also legislation proposed—if not already passed—in New South Wales to do the same sort of thing. The matter has been raised by me on occasions, and most recently in the context of an amendment to the Juries Act last year. I ask the Attorney-General whether he has any proposal to amend the Juries Act in South Australia to ensure that jurors are protected from harassment after the trial, and will he examine the legislation in Victoria, Western Australia and New South Wales with a view to introducing similar legislation here if he does not presently have any plans for the Juries Act in this State?

The Hon. C.J. SUMNER: There are no present proposals to amend the Juries Act along those lines. There does not seem to have been a problem in South Australia of the kind that the honourable member has outlined, and I would have thought that previously—

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: Of course, and that is one of the major problems with the sort of law that the honourable member has outlined; that if an injustice has occurred, if you put a complete ban on jurors talking or people soliciting information from jurors, you may end up with the situation where an injustice has occurred and is not uncovered. That is one of the difficulties of adopting a too draconian approach to post-trial revelations outside the jury room. Indeed, if all the honourable member is talking about is harassment, maybe there is a case for some examination of the law, but the broader question of the jury disclosures outside the jury room post trial, or whether it should be made an offence for people to attempt to elicit from the jurors comments about the trial afterwards, is something that has more implications to it and should be very carefully examined.

Indeed, I understand that either a report or a statement from the present Australian Law Reform Commission Chairman, Mr Xavier Connor, was to the effect that there should not be undue restrictions on disclosures by jurors about certain information from the jury room, and that is something that also would need to be examined. So, I certainly do not have any intention of adopting a knee jerk reaction to this particular topic. In South Australia to date there has not been a major problem. The only problem the honourable member has referred to was the case involving Mr Splatt, where the revelations from those jurors eventually led to a Royal Commission and a pardon for the person who was convicted.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: The honourable member is suggesting that the journalists should not have attempted in that case to make inquiries of the jurors. All I am saying is that a blanket prohibition may have some adverse effects in terms of getting at the truth of a particular matter. In this State so far there have not been any difficulties as far as I am aware. I am not going to adopt a knee jerk reaction to the proposition the honourable member has put. Certainly, if it were dealing just with harassment, I think there may be some case to examine the law. I will certainly look again at the honourable member's question. If I feel that any amendment is necessary, I will give further attention to it.

COMMERCIAL AND PRIVATE AGENTS 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 commercial and other private agents; to repeal the Commercial and Private Agents Act 1972, and for other purposes. Read a first time.

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

That this Bill be now read a second time.

In view of the fact that the Government does not anticipate that this Bill will be passed in this session and, I imagine, will be reintroduced in the budget session, to enable honourable members and the public to consider the Bill over that period I am introducing it. I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

This Bill is to repeal and replace the Commercial and Private Agents Act of 1972. The present Bill is the result of a close and careful review of the 1972 Act, and is a major overhaul of the licensing and regulatory scheme of that Act. The existing Commercial and Private Agents Act was passed in 1972 with the aim of licensing and controlling the following classes of agents: debt collectors (known as 'commercial agents'), private investigators (known as 'inquiry agents'), loss assessors—dealing with motor vehicle accidents and workplace injuries, process servers, and security agents. The power of licensing and disciplining these agents was entrusted to an independent Commercial and Private Agents Board. Various substantive provisions were designed to ensure that the conduct of those agents regulated would conform with acceptable community standards.

The Act was amended in 1978. The most significant amendments were the addition of two new classes of agents—store security officers and people who supply guard dogs—and the insertion of provisions enabling the Board to grant interim provisional licences to employed agents entering their industry for the first time. The common theme run-

ning through these apparently diverse occupations is the private prevention of criminal acts and the private enforcement of civil rights. That is why they were brought together in the original Act and that is why, with some adjustments and changes, the new Bill seeks similarly to regulate the conduct of those engaged in these varying activities on behalf of private persons or companies, ancillary to the publicly organised processes of law enforcement.

The original Act introduced to this Parliament by the then Attorney-General, the Hon. L.J. King, has been widely acknowledged as a leader in this field. However, in the light of developments in the approach to occupational licensing generally, and of emerging patterns of conduct and organisation in the industry, some problems became apparent. In 1983, the previous Government established a working party to review the Act. The working party was chaired by the then Deputy Director of the Commercial Division of the Department of Public and Consumer Affairs and made up of representatives of agents' associations and two police officers. Its terms of reference were to review the Commercial and Private Agents Act 1972-1978 and consider in particular:

(1) The extent to which the administration of the Act can be simplified or improved.

(2) The need to alter either the conditions upon which licences are granted to applicants or the requirements necessary for the grant of such licences.

(3) The need to extend the provisions of the Act to apply to uncontrolled areas of activity related to the work of commercial and private agents.

The working party reported early in 1984, and in April 1984 its report was released for comment. Further comment was sought from interested bodies on a draft Bill. The present Bill is closely based on the recommendations of the working party, with some changes in the light of further consideration and of the two rounds of comment during development of the working party's proposals. The underlying intention of the Bill remains the same as that of the Act it is proposed to repeal, to regulate the activities of those who, as agents, are occupied in the private prevention of criminal acts and the private enforcement of civil rights. The Government remains satisfied that, in general, these activities, closely allied as they are to those of the police and of the judicial process, require regulation to guard against unacceptable conduct and impropriety.

The Bill brings the licensing of commercial and private agents under the Commercial Tribunal, as is being progressively done with occupational licensing systems generally. This will lead to the abolition of the Commercial and Private Agents Board, but, as in other areas, the expertise of that board will be preserved by the addition of appropriate industry and consumer representatives to the panels established under the Commercial Tribunal Act. Again, consistent with current licensing procedures, the existing system of separate and annual licences for the various occupations will be replaced by the single continuous licence, requiring an annual return and fee, and endorsed to authorise whichever activities the tribunal is prepared to license in each case. The requirement for commercial agents to lodge a fidelity bond is abolished, but the trust account and audit requirements and inspection powers are strengthened. I will deal later with further changes affecting commercial agents and the rights of debtors. Provision is also made for the development of codes of practice to reinforce the disciplinary powers of the tribunal.

The existing Act provides for the licensing of the range of occupations I have already mentioned. The Bill approaches the matter from a different angle, reflecting the philosophy that it is the para-police and extra-judicial private activities that are at issue, rather than the names of occupations. The various categories of agent are not separately named—with the exception of commercial agents, to whom special obligations apply. The general definition of 'agent' will contain almost all of the activities currently performed by separate licence-holders, and some additions, in accordance with working party recommendations. These activities will be arranged to reflect the para-police, extra-judicial processes to be controlled: from the protection of property and persons, the prevention of crimes and the checking of personal details to the private service of court processes once judicial intervention has been sought. Extra-judicial collection procedures will be set out in the separate definition of 'commercial agents'. Loss assessors engaged in relation to motor vehicle losses and injuries or workplace accidents will no longer be required to be licensed as such.

The working party recommended that the occupations of giving advice about or selling or installing commercial electronic alarm devices be regulated. When coupled with its further recommendations that all licensees be properly trained or supervised the working party considered that the proposed regulation would 'reduce significantly instances of unwanted activations caused by poor installation or the fitting of equipment not suited to its operating environment'. The definition of agent will adopt this recommendation.

Exemptions from the licensing requirements are given to: a member of the police force of this State, a sheriff, deputy sheriff, sheriff's officer, bailiff or other officer of a court or tribunal, an officer or employee of the Crown or any instrumentality of the Crown, an officer or employee of local government.

Exemptions are also given to: a person who practices as a legal practitioner, a person who holds prescribed qualifications in accountancy and practices as an accountant; a person licensed as an agent under the Land Agents, Brokers and Valuers Act 1973, a company authorised by special Act of Parliament to act as a trustee; a society registered under the Building Societies Act 1975; the Friendly Societies Act 1919 or the Industrial and Provident Societies Act 1923; a credit union registered under the Credit Unions Act 1976; a person licensed as a credit provider under the Consumer Credit Act 1972; or a person who lawfully carries on the business of banking or insurance or the business of an insurance intermediary.

These exemptions apply also to the employees of exempt persons or organisations. They reflect the fact that all the groups listed are already under some form of established regulation which it would be undesirable to duplicate. The 1972 Act gave an exemption to employees of non-agents. The review of the Act discussed problems in this lack of control of 'in-house' agents. Accordingly, that exemption has been narrowed, so that it will now only be available to employees whose performance of licensable activities is only incidental to their main duties. This will mean that people employed entirely to perform for their employers activities included in the definition of 'agent' will require a licence, unless the employer is exempt. However, employees of small businesses who are only occasionally engaged in those defined activities will not require a licence. The exemption for secretarial or clerical staff of agents has been preserved. To meet appropriate special cases, a power to grant further exemption by regulation has been retained.

The integrity of the licensing scheme will be protected by making it an offence to hold oneself out as an agent, or to act as an agent, within the meaning of clause 4, or to employ an unlicensed person to do the defined activities. As is true generally for proposed offences in the Bill, the monetary penalty has been increased greatly—in this case to $5 000. This prohibition is supported by retaining, in clause 15, the inability of unlicensed persons to recover fees and charges

and by adding a specific right of action for consumers to recover fees and charges paid in ignorance of that inability.

As mentioned, the licensing scheme itself is streamlined and simplified. Conditional licences, replacing provisional licences, will be available to employee agents, especially new entrants to the industry who will have to work under the supervision of a licensed person. Applicants for unconditional licences which allow them to carry on a business as agent will have to satisfy the Commercial Tribunal that they have made suitable arrangements to fulfil their legal obligations and that they have sufficient financial resources to carry on the business of the type for which their licences are endorsed.

I turn now to particular provisions affecting commercial agents. I have already referred to the abolition of the existing requirement for a fidelity bond. The working party recommended this abolition, and proposed instead a compensation fund to be based on interest from trust accounts. In looking at the requirements in relation to other licensed groups the working party was impressed by the operation of guarantee funds which are made up of the consolidated contributions of all practising agents. It has been decided, however, that this mechanism is not appropriate in this case.

The general requirement that the tribunal be satisfied generally that 'the applicant has sufficient financial resources to carry on business in a proper manner under the licence' will make it unnecessary for a fidelity bond to be regarded as the only guarantee against default in the handling of clients' funds. A closer examination of applicants' financial stability by the tribunal including the availability of real security against infidelity will therefore be possible.

As well, the existing Act's requirement that commercial agents maintain trust accounts will be retained and will be strengthened, on the working party's recommendation, by requiring that moneys be promptly banked in those accounts. Trust accounts will also be opened to greater scrutiny with the insertion of a recommended power of random audit. Clients will therefore enjoy an increased measure of protection under the proposed new legislation.

The protection for consumer debtors against defaulting commercial agents to whom they have made payment is made by the declaratory clause 29, which makes clear the Common Law rule that payment to a commercial agent acting on behalf of a creditor discharges the liability of the debtor to the creditor for the amount paid. Much concern has been expressed about some practices in debt collecting. It is clear that the practices are not confined to licensed commercial agents. For that reason, some objectionable forms of harassment and intimidation are to be made an offence in another Bill. This will mean that the prohibitions will apply to commercial agents and others with equal force. So far as commercial agents are concerned, further measures are proposed in the present Bill.

Clause 38 places strict requirements on the nature of demands made by commercial agents and the times and places in which those demands are made. For example, agents must identify themselves and their authority, they must confine their demands on behalf of the creditor to money strictly owing to the creditor, they must investigate denials of liability, and they may not pursue a person (for example, a spouse), knowing that another person is the debtor. It is intended that further details be incorporated in the proposed code of practice for commercial agents under the regulations.

Clause 39 provides that an agent seeking any payment in addition to the debt is limited to fees to be prescribed by regulation or the amount actually charged to the creditor, whichever is less. Under clause 26, any claim for such fees may be challenged for reasonableness before the Commercial Tribunal. The effect of this group of provisions is that collection fees can only be demanded on behalf of the creditor if they were provided for as a contingency in the original contract between the debtor and the creditor. In any other case, agents must identify the fees as being sought on their own behalf, separately from the debt. In all cases, the reasonableness of the fees will be subject to scrutiny.

Clause 41 establishes control over the form and content of letters of demand used by commercial agents. Agents will be able to seek approval for pro-forma letters, which will be guided by the code of practice. Forms of letter or documents not approved in advance will have to be lodged with the tribunal within 14 days of first use. The prohibition against providing documents or forms that enable non-agents to pretend to be agents has been retained.

The provisions of the Bill are as follows:

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 Commercial and Private Agents Act 1972.

Clause 4 provides definitions of expressions used in the measure. 'Agent' is defined as meaning—

(a) a commercial agent;
or

(b) a person who, for monetary or other consideration, performs on behalf of another any of the following functions:

(i) obtaining or providing information as to the personal character or actions of a person or as to the business or occupation of a person;

(ii) protecting or guarding a person or property or keeping a person or property under surveillance;

(iii) hiring out or otherwise supplying a dog or other animal for the purpose of protecting or guarding a person or property;

(iv) providing advice upon, hiring out or otherwise supplying or installing or maintaining a device of a prescribed kind for the purpose of protecting or guarding a person or property or keeping a person or property under surveillance;

(v) preventing, detecting or investigating the commission of any offence in relation to a person or property;

(vi) controlling crowds;

(vii) searching for missing persons;

(viii) obtaining evidence for the purpose of legal proceedings (whether the proceedings have been commenced or are prospective);

(ix) serving any writ, summons or other legal process;
or

(x) a function of a prescribed kind.

'Commercial agent' is defined as meaning a person who, for monetary or other consideration, performs on behalf of another any of the following functions:

(a) ascertaining the whereabouts of, or repossessing goods or chattels that are subject to any security interest;

(b) collecting, or requesting the payment of, debts;

(c) executing any legal process for the enforcement of any judgment or order of a court;

(d) executing any distress for the recovery of rates, taxes or moneys;

or

(e) a function of a prescribed kind.

Clause 5 provides that the measure is not to apply to—

(a) a member of the police force of this State;

(b) a sheriff, deputy sheriff, sheriff's officer, bailiff or other officer of a court or tribunal, while performing functions as such;

(c) an officer or employee of the Crown or any instrumentality of the Crown while performing functions as such;

(d) an officer or employee of a council within the meaning of the Local Government Act 1934 or body vested with the powers of a council, while performing functions as such;

(e) any of the following:

(i) a person who practises as a legal practitioner;

(ii) a person who holds prescribed qualifications in accountancy and practises as an accountant;

(iii) a person licensed as an agent under the Land Agents, Brokers and Valuers Act 1973;

(iv) a company authorised by special Act of Parliament to act as a trustee;

(v) a society registered under the Building Societies Act 1975, the Friendly Societies Act 1919 or the Industrial and Provident Societies Act 1923;

(vi) a credit union registered under the Credit Unions Act 1976;

(vii) a person licensed as a credit provider under the Consumer Credit Act 1972; or

(viii) a person who lawfully carries on the business of banking or insurance or the business of an insurance intermediary,

while acting in the ordinary course of the profession or business as such or a person employed under a contract of service by such a person, company, society or credit union while acting in the ordinary course of such employment;

(f) a person employed under a contract of service who acts as an agent only as an incidental part of the duties of that employment;

(g) a person who performs only clerical or secretarial functions on behalf of an agent.

Clause 6 empowers the Governor to grant conditional or unconditional exemptions by regulation.

Clause 7 provides that the provisions of the measure are in addition to and do not derogate from the provisions of any other Act and are not to limit or derogate from any civil remedy at law or in equity.

Clause 8 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 9 to 18) deals with the licensing and disciplining of agents.

Clause 9 provides that every licence under the measure is to bear one or more endorsements authorising the holder of the licence to act as an agent by performing one or more of the classes of functions prescribed by regulation.

Clause 10 provides that it is to be an offence (punishable by a maximum fine of $5 000) if a person claims or purports to be an agent authorised to perform functions of a particular kind or acts as an agent by performing functions of a particular kind unless the person holds a licence with an endorsement authorising the performance of functions of that kind. The clause also provides that it is to be an offence (with the same maximum fine) if a person employs another as an agent under a contract of service to perform functions of a particular kind unless that other person holds a licence with an endorsement authorising the person to perform functions of that kind.

Clause 11 provides that an endorsement to a licence may be subject to a condition preventing the licensee from carrying on business as an agent (as opposed to being employed to act as an agent), or subject to both that condition and a further condition requiring that the licensee be supervised by some other licensee of a particular standing prescribed by regulation.

Clause 12 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, resident in South Australia, a fit and proper person to hold the licence with particular endorsement sought and has attained or complied with any standards or requirements of education, practical skill or experience prescribed in relation to that endorsement. In the case of an applicant that is a body corporate, the tribunal must be satisfied that every person in a position to control or influence substantially the affairs of the body corporate is a fit and proper person for that purpose. In the case of an application for an unconditional endorsement, the tribunal must also be satisfied that the applicant has made suitable arrangements to fulfil the obligations that may arise under the measure and has sufficient financial resources to carry on business in a proper manner under a licence with that endorsement.

Clause 13 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. The clause 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.

Clause 14 provides that a body corporate holding a licence with a particular endorsement must ensure that the business of the body consisting of the functions performed in pursuance of the licence must be managed by a natural person resident in the State who holds a licence with the same endorsement as that of the body corporate.

Clause 15 provides that where a person acts as an agent in contravention of a provision of Part II, the person is not to be entitled to recover any fee, commission or other consideration for so acting and that a court convicting the person of an offence against the Part may, on application by the prosecutor, order the person to repay any such fee, commission or consideration.

Clause 16 provides that the Commercial Tribunal may hold an inquiry for the purpose of determining whether there is proper cause to discipline a person who has acted as an agent (whether with or without a licence). 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, the Commissioner of Police or some other person. The Registrar of the tribunal may where appropriate request either 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; suspend or cancel the person's licence or an endorsement to the licence; disqualify the person from holding a licence or a licence with a particular endorsement. There is

to be proper cause for disciplinary action against a person where the person—

(a) has been guilty of conduct constituting a breach of any provision of the measure;

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

(c) the person has, in the course of acting as an agent, committed a breach of any other Act or law or acted negligently, fraudulently or unfairly;

(d) being a licensed person—

(i) has obtained the licence improperly; or

(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;

or

(e) being a person holding a licence with an unconditional endorsement—

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

(ii) has not maintained satisfactory arrangements for the fulfilment of obligations that arise under the measure.

Clause 17 makes it an offence if a person disqualified from being licensed is employed or otherwise engaged in the business of an agent. Under the clause, the offence is committed by both the disqualified person and the agent.

Clause 18 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 III (comprising clauses 19 to 27) contains provisions applying to all agents.

Clause 19 provides that a licence does not confer upon an agent any power or authority to act in contravention of, or in disregard of, any law or any rights or privileges guaranteed or arising under, or protected by, any law. The clause makes it an offence (with a maximum penalty of $2 000) if a licensed agent claims or purports to have by virtue of the licence any power or authority not conferred by the licence.

Clause 20 provides that a licensee shall not carry on business as an agent except in the name appearing in the licence or a registered business name of which the Registrar has been given prior notice in writing. The clause provides for a maximum penalty of $1 000 for contravention of the provision.

Clause 21 provides that an agent shall not, by any false, misleading or deceptive statement, representation or promise, or by concealment of a material fact, induce or attempt to induce any person to enter into an agreement in connection with the performance of functions as an agent. The clause provides for a maximum penalty of $2 000 for contravention of the provision.

Clause 22 provides that any advertisement relating to the business of a licensed agent (other than an advertisement relating solely to the recruiting of staff) must specify the name of the agent appearing in the licence or a registered business name of which the Registrar has been given prior notice in writing and the agent's registered address. The clause provides for a maximum penalty of $1 000 for contravention of the provision.

Clause 23 requires that there must be displayed in a conspicuous position in each place from which the business of an agent is carried on a notice clearly showing the name of the agent appearing in the agent's licence or a registered business name of which the Registrar has been given prior notice in writing, where the agent is a body corporate—the name of the manager who manages the business, and any other matters prescribed by regulation. The clause provides for a maximum penalty of $1 000 for contravention of the provision.

Clause 24 requires a licensed agent to produce the licence on demand by the Registrar, the Commissioner for Consumer Affairs, an authorised officer or a member of the police force. The clause provides for a maximum penalty of $1 000 for contravention of the provision.

Clause 25 provides that service of any notice, communication, process or document upon an agent otherwise than in pursuance of this measure may be effected by sending or delivering it to the registered address of the agent.

Clause 26 provides that where an agent claims or receives from another person any amount in respect of services rendered as an agent (whether or not being services rendered on behalf of that other person), that other person may apply to the tribunal for a review of the agent's charges. The tribunal may, on such an application, reduce the charges and, in that event, the successful applicant is to be entitled to recover any excess paid or to pay no more than the amount fixed by the tribunal.

Clause 27 provides that an agent shall not, when acting on behalf of another, settle or compromise or attempt to settle or compromise any claim in respect of loss or injury arising out of the use of a motor vehicle, or injury arising out of or in the course of employment, after proceedings have been instituted in any court in respect of the loss or injury. The clause provides for a maximum penalty of $2 000 for contravention of the provision. The provision does not apply unless the process by which the proceedings are instituted has been served upon the defendant to the proceedings and does not apply if the agent proves that he did not know, and could by the exercise of reasonable diligence have discovered, that proceedings had been instituted.

Part IV (comprising clauses 28 to 42) contains provisions applying only in relation to commercial agents.

Clause 28 provides that a commercial agent is to pay moneys received in that capacity into a trust account maintained at a bank. The moneys are not to be withdrawn from the account except for the purpose of payment to or in accordance with the directions of the person on whose behalf they were received by the agent, or into, or in accordance with the order of, a court of competent jurisdiction. A maximum penalty of $5 000 is fixed for contravention of the provision.

Clause 29 provides that payment to a commercial agent of moneys sought to be recovered by the agent on behalf of another in respect of a debt owed to the other constitutes a discharge of the debt to the amount of the payment.

Clause 30 requires a commercial agent to keep certain records and documents prescribed by regulation. The clause provides for inspection of such records and documents.

Clause 31 empowers the tribunal to restrict or prohibit any dealings with the moneys in the trust account of an agent.

Clause 32 protects a bank at which a trust account is kept by providing that the bank is not affected by notice of any specific trust to which trust moneys may be subject. The provision does not limit a bank's liability for negligence.

Clause 33 provides for the annual audit of an agent's trust account by an auditor approved by the Commissioner.

Clause 34 provides for the appointment by the Commissioner of an inspector to examine trust accounts. The inspector is to furnish a confidential report to the Commissioner on the state of the accounts and, where such a report is furnished, a copy must also be furnished to the agent concerned.

Clause 35 deals with the powers of an auditor or inspector employed or appointed under the trust account provisions.

Clause 36 requires a bank to report any deficiency in a trust account to the Commissioner.

Clause 37 deals with the obligation of confidentiality to be observed by auditors, inspectors and officers involved in the administration of the trust account provisions.

Clause 38 provides that a commercial agent shall not when recovering or attempting to recover a debt on behalf of another—

(a) make any demand for payment without indicating the agent's identity, the agent's authority to make the demand, the creditor's identity and the balance owing to the creditor;

(b) demand any amount for the creditor that the agent does not believe in good faith to be due and owing to the creditor;

(c) continue to demand that an amount be paid by a person who has denied that the amount is owing without taking reasonable steps to ascertain whether the amount is in fact owing by the person;

(d) demand that an amount be paid by a person knowing that the amount is in fact owing by some other person;

(e) communicate with a person who has notified the agent in writing that all communications in relation to the debt are to be made to a specified legal practitioner appointed to act on the person's behalf;

(f) make any personal calls or telephone calls for the purpose of demanding payment—

(i) on a public holiday;

or

(ii) between the hours of 9 p.m. and 8 a.m.;

(g) except as reasonably necessary to determine the debtor's whereabouts, communicate with any person who is an employer, acquaintance, friend, relative or neighbour of the debtor (not being a person who is surety for the debtor);

or

(h) take any other action that is declared by the regulations to be unlawful.

The clause fixes a maximum penalty of $2,000 for breach of the provision.

Clause 39 provides that a commercial agent shall not when recovering or attempting to recover a debt on behalf of another seek or demand (directly or indirectly) from the debtor any payment in addition to the amount of the debt other than the amount allowed under the regulations, or the amount which the agent has charged the creditor, for the agent's services in recovering the debt, whichever is the lesser amount. The clause fixes a maximum penalty of $2 000 for breach of this provision.

Clause 40 provides that where a commercial agent takes possession of a motor vehicle subject to a security interest, the police must be notified of that fact and given particulars of the vehicle. The clause fixes a maximum penalty of $1 000 for breach of the provision.

Clause 41 provides that a commercial agent shall not, for the purpose of recovering a debt on behalf of another, use or send to a person a document or letter demanding payment of the debt unless the form of the document or letter has been approved by the tribunal or a sample of the form of document or letter is lodged with the Commissioner within 14 days after its first use by the agent. The clause provides for a maximum penalty of $1 000 for breach of the offence. The clause provides any form of document or letter approved by the tribunal shall be deemed to comply with any provisions as to the form of documents or letters of demand contained in a relevant code of practice prescribed by regulation under the measure.

Clause 42 provides that a commercial agent shall not invite the public, or any debtor from whom the agent is seeking to recover a debt, to deal with the agent at any place other than the registered address of the agent. A maximum penalty of $1 000 is fixed for a breach of this provision.

Part V (comprising clauses 42 to 55) deals with miscellaneous matters.

Clause 42 provides that no person (whether licensed as an agent or not) shall supply or lend any document or form or provide any other assistance for the purpose of enabling another falsely to pretend to be a commercial agent. A maximum penalty of $2 000 is fixed by the clause for any breach of its provisions.

Clause 43 provides that an act or omission of a person employed by an agent (whether under a contract of service or otherwise) is to be deemed to be an act or omission of the agent unless the agent proves that the person was not acting in the course of the employment.

Clause 44 provides that the Commissioner of Police may, in proceedings before the tribunal, appear personally or be represented by counsel or a member of the police force.

Clause 45 provides that the Commissioner for Consumer Affairs or Commissioner of Police shall, at the request of the Registrar of the tribunal, cause officers to investigate and report upon any matter relevant to the determination of—

(a) any application or other matter before the tribunal;

or

(b) any matter that might constitute proper cause for disciplinary action under the measure.

Clause 46 provides for the preparation and tabling before Parliament of an annual report on the administration of the measure.

Clause 47 provides for the service of documents.

Clause 48 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 49 provides for the return of a licence where the licence or an endorsement to the licence is suspended or cancelled.

Clause 50 provides that each member of the governing body of a body corporate convicted of an offence is also to be guilty of an offence unless it is proved that the person could not by the exercise of reasonable diligence have prevented the commission of the offence.

Clause 51 provides for continuing offences.

Clause 52 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 53 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. 4)

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act 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.

As this Bill is consequential and is to be debated along with the Bill that I have just introduced, I seek leave to have the

second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

This Bill has been prepared in conjunction with the Commercial and Private Agents Bill 1986. It seeks to impose sanctions on some forms of harassment and intimidation of debtors by creating an offence with a maximum penalty of $2 000. The offence will apply to anyone seeking to recover a debt, and not just those licensed to do so on behalf of others. Under the Bill, it will be an offence to seek payment from a person in a way or in circumstances calculated to cause harm, fear, distress or embarrassment to the person or members of the person's household or family. It will also be an offence to make unsupportable threats of legal proceedings, to pretend to be acting in an official capacity or pretend to be using an official document. A defence is provided for reasonable and otherwise lawful actions in pursuing claims or protecting legal rights.

The provisions of the Bill are as follows:

Clause 1 is formal. Clause 2 inserts a new section 58c creating an offence with respect to the harassment of debtors. The proposed new section provides that any person who, for the purpose of recovering (whether on the person's own behalf or on behalf of another) money claimed as a debt—

(a) makes demands for payment, or takes or threatens to take action, in a manner or circumstances calculated to cause the person from whom the money is claimed, or members of that person's family or household, to suffer harm, fear, distress or embarrassment;

(b) falsely represents in relation to the money claimed that criminal or other proceedings lie if payment is not made knowing that proceedings of that kind would not lie by reason only of that non-payment;

(c) falsely pretends to be authorised in some official capacity to claim or enforce payment;

or

(d) makes use of a document that is falsely represented by the person to have some official character, or that purports to have some official character, that the person knows it does not have,

is to be guilty of an offence and punishable by a maximum penalty of $2 000 or imprisonment for six months.

Under the proposed new section, a person is to be guilty of the offence if—

(a) the person causes or permits another to take action that constitutes an offence against that subsection;

or

(b) demands are made or action taken as referred to in subsection (1) *(a)* of the proposed new section by the person acting in concert with another, notwithstanding that the person's own actions would not apart from this subsection constitute an offence against that subsection.

A person is not to be guilty of an offence against subsection (1) *(a)* by reason only of action taken that is reasonable and otherwise lawful.

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

EVIDENCE ACT AMENDMENT BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Evidence Act 1929. Read a first time.

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

That this Bill be now read a second time.

The Hon. C.J. SUMNER: This Bill proposes an amendment to the Evidence Act to provide for the services of interpreters in court cases. A similar amendment will be made to the Summary Offences Act in relation to the questioning of suspects by police before arrest. At present in civil cases, the use of an interpreter by parties or witnesses is entirely a matter of discretion for the judge. There appears to be no authority directly on the point for criminal proceedings though presumably the position is the same for it is a basic rule that court proceedings must be conducted in English. While there is no legal right to use an interpreter, the law seeks to ensure that those who are not able to speak English receive a fair hearing.

When a party or witness lacks competence in the English language, it is important to ensure that the party or witness understands the questions and that any risk of mistake arising from language difficulties is avoided. If courts are to do justice in these cases it is essential that the party or witness has the right to the services of an interpreter. The proposed amendment to the Act will ensure that parties and witnesses have that right. I seek leave to have the explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

The provisions of the Bill are as follows:

Clause 1 is formal.

Clause 2 provides for the commencement of the measure.

Clause 3 inserts a new section 14 in the principal Act. The section provides that a person whose native language is not English may give evidence in court proceedings with the assistance of an interpreter. However, an interpreter will not be required if the witness has adequate fluency in English. In addition, the section makes provision for the reception of an affidavit or other written disposition in a foreign language if the affidavit or disposition has annexed to it a translation of its contents into English and an affidavit verifying the accuracy of the translation.

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

SUMMARY OFFENCES ACT AMENDMENT BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act 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.

This Bill provides for interpreters in police interrogations. It has a similar effect as the Bill I have already introduced. I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

This Bill proposes an amendment to the Summary Offences Act to provide for the use of interpreters in police

interrogations. A similar amendment will be made to the Evidence Act in relation to the giving of evidence before the courts. The proposed amendment will entitle a suspect to have the assistance of an interpreter where the suspect's native language is not English and where he/she is not reasonably fluent in English.

Current police general orders require police officers, prior to commencing an interrogation or interview with a person who appears to have an inadequate comprehension or command of the English language, to satisfy themselves that the person is able to understand and speak English to a degree which would be acceptable in a court hearing. When there is some doubt as to the level of comprehension or language ability, the officer should arrange for an interpreter to be present before the interview proceeds. As statements made during a police investigation can often be critical evidence in criminal proceedings it is important that no misunderstandings arise between an interrogating officer and the suspect. Where a suspect's command of English is limited, the services of an interpreter should be made available, to minimise the risk of a misunderstanding. An inability to master English should not prejudice a person's right to be dealt with fairly. Access to an interpreter should not merely be dependent on police general orders, but should be a legal entitlement recognised in legislation. The proposed amendment grants such an entitlement.

Clause 1 is formal.

Clause 2 provides for the commencement of the measure.

Clause 3 provides for the redesignation of section 75a as section 74a and inserts a new section 74b in the principal Act. The section provides that a person who is not reasonably fluent in English and who is suspected of having committed an offence will be entitled to be assisted by an interpreter during any questioning conducted as part of the investigation of the offence.

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

STATUTE LAW REVISION BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Adoption of Children Act 1967, the Building Act 1971, the Children's Protection and Young Offenders Act 1979, the Community Welfare Act 1972, the Mining Act 1971, and the Parliamentary Superannuation Act 1974. Read a first time.

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

That this Bill be now read a second time.

The Hon. C.J. SUMNER: This Bill seeks to make sundry minor amendments to the Adoption of Children Act, the Building Act, the Children's Protection and Young Offenders Act, the Community Welfare Act, the Mining Act and the Parliamentary Superannuation Act, preparatory to the publication of those six Acts by the Commissioner of Statute Revision in consolidated pamphlet form.

All of the proposed amendments stem from the Commissioner's objective of producing Acts that are generally more readable, grammatical and modern in expression. All obsolete and exhausted material is deleted, antiquated terminology is changed to conform with today's standards and out-of-date references are corrected. None of the amendments purports to alter the substantive law. I believe that the individual changes are self-explanatory and, for this reason, I do not propose to explain them in detail. The Commissioner of Statute Revision (the Parliamentary Counsel) or any of his officers will of course be available to give a detailed explanation of any particular amendment.

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

SUPPLY BILL (No. 1)

Adjourned debate on second reading.

(Continued from 26 February. Page 577.)

The Hon. M.B. CAMERON (Leader of the Opposition): Today I wish to canvass a number of health matters which directly relate to the funds and resources made available by the Government. The Government has a very important responsibility to effectively, fairly and wisely use the taxes it takes from the community. Various areas of Government activity are essential and warrant adequate resources and support. Regardless of where taxpayers' funds are used, however, whether it be in building roads or providing essential health services, accountability, efficiency and flexibility are essential. The public has the right to demand that its funds, provided to the Government by way of taxation, are properly used and that real need is addressed.

The present health system is coming under increasing pressure. It is pressure which the Government itself has largely generated and which the Minister of Health is finding himself unable to control. Faced with growing waiting lists, inadequate resources in many areas and gross financial mismanagement in others, the Minister of Health is attempting to suppress any information about what is really happening.

Madam President, one thing that has struck me very clearly since I have become shadow Minister of Health is that there are very real and sincere views amongst health professionals that the system is badly deteriorating and in need of additional funds. Despite the Minister's attempting to place his finger in the dyke the leaks have become gushers. Many doctors, patients, administrators and nurses in our public health system have been so concerned about the system's own state of health that they have contacted me to highlight their concerns and to indicate a singular lack of confidence in what is being done in the face of these pressures, and the Minister almost inevitably threatens retribution on anyone who dares speak up.

I have received a letter today from a medical practitioner who works in the system, whose views sum up very well the many views expressed to me. Part of that letter states:

> The Health Commission is so politicised that it attempts to control all information released to the public through its public relations unit.

This unit has been set up recently, with an additional salary provided, as members would be aware. The letter continues:

> Therefore, the public hears only the good news and further information on the waiting lists, bureaucratic bungles and wastage within the public hospital system never surfaces.

We have today had a ministerial statement in which all the ills of our health system are being blamed on the devaluation of the dollar rather than their real source. The reality is that waiting lists are growing. They have grown largely because of the introduction of Medicare which has put the well-off and those who can afford to make their own private arrangements for health care in competition with those in real need. With limited resources, more people seeking State services must inevitably mean that waiting lists grow. The Minister of Health, from the comfort of his air-conditioned office, makes claims about what is happening in our hospitals. I can tell the Minister that the people who are in the hospitals know that things are not right, despite what he says.

Yesterday in this place I raised additional concerns about the financial affairs of the Lyell McEwin Hospital. In a

question to the Minister I revealed that at least two suppliers of goods to this publicly funded hospital were having difficulty obtaining money owed them. I remind the Council of my comments. I said in part:

Not only is the Lyell McEwin expected by the Health Commission to overrun its budget by $500 000 but it appears to be failing to pay debts from earlier years . . .

I went on to ask the Minister:

Will the Minister direct the Health Commission to take immediate steps to ensure that the Lyell McEwin Hospital honours its financial obligations, if it has not already done so, to suppliers which have dealt with it in good faith, in some cases I am informed for several years?

In his reply the Minister yet again attacked me indicating that I was grappling with my new portfolio.

The Hon. Diana Laidlaw interjecting:

The Hon. M.B. CAMERON: No. The Minister went on to say:

To suggest that the Lyell McEwin Hospital is in such perilous financial straits that it is unable to pay its accounts and that it is accumulating bad debts is of course so absurd . . .

If anything, it is absurd that the Minister of Health allows health institutions to grossly mismanage their affairs. I have been contacted by yet another irate supplier of goods to the Lyell McEwin, despite the Minister suggesting that the existence of any such case is absurd.

Carlton Manufacturing Company has an outstanding debt of 90 days of $890, not a large sum to the Minister, I suppose, who talks in hundreds of millions but a large sum to anybody trying to run a company. It has telephoned Lyell McEwin Hospital four times but the calls are never returned. It has just supplied a further $2 312 worth of furniture. It is apprehensive that the same situation may occur and at 20 per cent interest rates they cannot afford to wait 90 days. I remind the Council that the Premier last year indicated that Government departments would be instructed to pay bills within 30 days because of the effect of slow payments on small business and that disciplinary action would be taken if this did not occur.

In this case these goods were supplied in August. There was a dispute about the product and following discussions a discounted price was agreed to in November, but no payment has yet been paid. The company is quite happy to answer questions in relation to this situation. In his reply to my question yesterday the Minister also touched on the matter of the budget overrun at the Lyell McEwin which I revealed by making public confidential documents from the Health Commission. I wish to touch on this financial matter now which has important implications for the expenditure of public moneys.

I will be referring to some letters in association with the Lyell McEwin Hospital. As letters and memos to which I will refer show, there is financial mismanagement at the Lyell McEwin Hospital and it is still occurring despite the Minister's saying that he rectified the situation months ago. More than that, the Minister is doing some swift but doubtful footwork with the figures to suggest that the overrun has been rectified.

I refer to his reply to my question yesterday, remembering that the Health Commission documents (as I had indicated) showed an overrun of about $450 000 expected, even with savings and controls, which I point out should have been in place months ago. The Minister said:

In summary, the Health Service has to date had only a relatively minor overrun in payments of $130 000.

A minor overrun of $130 000—I wonder what the Minister thinks is major. I remind members that previously the matter of the Lyell McEwin Hospital and a disputed amount hidden was $140 000, if I recall. The Hon. Mr Lucas would recall the figure. The Minister continued:

The Health Service projects an end of year overrun of $540 000. Action to be taken by the Health Service will reduce this projected overrun—

at least this will show some restraint—

and additional funds will be provided by the Central Sector for specific items amounting to $162 000, leaving a balance of $98 400.

I remind members that a letter from Mr Des McCullough, Acting Executive Director, Central Sector, in reply to a letter from the Lyell McEwin Health Service indicating an overrun stated:

I do not have any further funds to allocate during 1985-86 to meet your projected overrun. However, because of the seriousness of the situation, I am willing to assist you by providing financial management advice personally to your finance committee.

That letter was dated 4 February 1986. On that day the Central Sector of the Health Commission had no additional funds with which to help the Lyell McEwin Health Service.

I raised this matter in the Council two days ago and the morning after the Minister had funds to help the Lyell McEwin Health Service.

The Hon. C.M. Hill: The morning after?

The Hon. M.B. CAMERON: The morning after some sort of miracle had occurred in this matter. I suggest that it was because the Minister was embarrassed by the situation and knew that what the hospital had said was correct. I will read the following letter from the hospital so that members understand the situation:

Dear Mr McCullough,

On 4 July 1985 I wrote to the Central Sector expressing my concern about the potential deficit of $300 000 facing this Health Service in 1985-86 due to cost pressures particularly in the goods and services area.

Following discussions with you regarding the budgetary situation the budget allocation was adjusted for an increase in insurance premiums in 1985-86, a payment to the Director of Accident and Emergency in 1985-86 for accrued annual leave and a reinstatement of terminal payments funding to account for a penalty arising as a result of a change in the method of funding this line in 1985-86.

A budget review has recently been conducted based on expenditure to 31 December 1985. This resulted in a projected end of year deficit of $939 500 which when adjusted for specifically funded lines reduced to a projected deficit of $545 300. The effect of the devaluation of the Australian dollar has not been allowed for, but it is anticipated that any budget adjustment arising from this issue would only reduce the projected deficit to around $500 000. Enclosed is a copy of the end of year projections for 1985-86 for the hospital.

So much for indicating today in his ministerial statement that one of the major problems was the devaluation of the Australian dollar because in this hospital it is only reducing funds by a minor sum, indeed. The letter continues:

Enclosed is a copy of the end of year projections for 1985-86 for the hospital. The Board of Management have considered this matter in detail and have resolved to establish a Budget Review Committee to oversight the implementation of the following steps to reduce expenditure:

1. Immediate moratorium on equipment purchases;
2. Reduce stockholdings in the main store and imprest stores for medical and surgical supplies and domestic supplies;
3. Review all staffing vacancies as they occur;
4. Immediate review of patient transport practices;
5. Immediate review of linen usage practices and policies;
6. Only essential preventative and breakdown maintenance be performed for the remainder of the financial year.

It is considered however that these measures will only reduce the projected deficit to $450 000. To achieve any further reduction in the deficit, services would have to be cut which would appear to be contrary to recent Government policy of addressing the serious under-provision of hospital services in the Elizabeth/Salisbury area.

I write therefore to formally advise you of the Health Service budgetary position and to request additional funding to overcome this projected end of year deficit.

That was a fairly clear statement from the hospital. The Minister has attempted to say that this is only a bargaining position. It is a strange situation where one develops bar-

gaining positions in relation to health units the size of the Lyell McEwin Hospital. The hospital itself has made it absolutely clear that it will have to cut services and of course the Minister has had to accept that. He has now found money which was not available two days ago. But it has now suddenly become available. I find that an extraordinary situation. It is quite clear that the Minister is seriously embarrassed about what has occurred and about the situation that his officers have obviously allowed to occur at the Lyell McEwin Hospital. In his statement the Minister went on to say:

I believe that this balance can be achieved through the central sector funding incentive scheme on a one-off basis for 1985-86.

Once again, the Minister indicated that there was money available. He went on:

This will enable the health service to achieve a balanced budget for 1985-86.

What a sleight of hand! The Minister is going to let the Lyell McEwin Hospital be rewarded for its financial mismanagement, which has been outlined in the letter from Mr McCullough and which he indicated earlier would never occur again, by giving it an extra nearly $400 000, then claiming that it does not have an overrun. That is a rather strange way of expressing a financial situation. It seems that the Minister is providing the Lyell McEwin Hospital with a one-off payment in reward for mismanagement. How extraordinary it is that the Minister can claim that I am wrong about a budget overrun, because by giving the hospital more taxpayers' money, it will no longer be in the red. I wonder who the public will decide is right and who is wrong. I wish I had a bank manager like the Minister: I could have a deficit, but the bank manager would come along, give me money, and it would be all okay again because I would not have a deficit any longer. The application of that sort of approach by an accountant in dealing with the affairs of a public company would probably see him in gaol.

After the Minister's suggestion yesterday that he was going to reveal all about various hospital's financial affairs today, I looked forward to his ministerial statement with some expectation of enlightenment. His statement was superficial and missed crucial points. In relation to the Lyell McEwin Hospital, it was his own Health Commission which referred to the financial affairs at the Lyell McEwin in the following terms:

Sound financial management and control requires the continuous review of actual and committed payments against funds available. Unfortunately, this does not appear to be happening. It is alarming.

This shows not only that the hospital has a legitimate need for funds but also that there has not been appropriate control exercised at the hospital. Yet, months ago the Minister boasted that the financial controls of the hospital had been improved under his management. He even told a parliamentary committee that the Lyell McEwin was 'an unsung success story'.

The Hon. R.J. Ritson: You know why it was unsung, don't you?

The Hon. M.B. CAMERON: Yes. I know why he did not want the document to get out, too.

The Hon. L.H. Davis: Although he is the best Health Minister in the world!

The Hon. M.B. CAMERON: Yes. Months later we now find that the Minister did not know what he was talking about. He misled that committee. The Lyell McEwin has, as revealed in portions of the letters that I have read out, showed that there was inadequate control of resources, yet as a reward for its overspending the Minister has given the hospital extra funds. I must say that as a vet he makes a very good creative accountant. He certainly has a quality that I have never seen before in an accountant. I do not think my accountant would consider advising me in the same way, and certainly I do not have a bank manager who would be prepared to assist me in that manner. I suggest that it is time that the Minister had a good look at his portfolio and that he be prepared to accept that occasionally—just occasionally—he may be wrong, that he may not know everything, and that he may not be the greatest Health Minister ever seen. One of these days, when he sits down and accepts that, he may look at the Health Commission and decide that there are some problems, because I believe that there are some very serious problems indeed. Of course, the deficit is only a small part of the problem.

There are hospitals in this State (and I have received plenty of information to support this, and I will be talking about it later) suffering from another deficit which is occurring through lack of funds being made available to some hospitals, and this is in relation to waiting lists. There is a hospital in South Australia where the waiting lists are quite clearly increasing at a rate of knots. They would be a lot bigger if it was not for the fact that there are restrictions on entry on to a waiting list. The hospital itself has decided that it cannot take in any more people, that it is pointless putting them on the waiting list on a never never system. The hospital is having to ration services to the community. This is all occurring under the Minister, yet that hospital no doubt will receive the same letters from the central sector of the Health Commission telling it to cut expenditure. I think that the time is fast approaching when the Minister will have to accept that he has not been the greatest Minister in the world and that the hospitals themselves have extremely serious problems. I can assure the Minister that his attempts to restrain information coming to me are not working and have not worked, and that the Minister is going to get some rather large shocks in the very near future. I support the Bill.

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

WORKERS REHABILITATION AND COMPENSATION BILL

Adjourned debate on second reading.

(Continued from 26 February. Page 587.)

The Hon. I. GILFILLAN: I support the second reading of the Bill. In so doing I want to emphasise some features of the State situation, which will be significant in our deliberations on the Bill and which will be affected by the operation of the legislation. I want to make some comments both commending and criticising the Bill. Further, I shall indicate some amendments that the Democrats intend to move. I will also indicate various procedures that the Democrats think are important for the Parliament to properly deal with the Bill.

I want to emphasise that it is essential that South Australia retains a competitive position interstate as far as its economic attractiveness to industry is concerned. It is quite fatuous to believe that we can isolate ourselves from other States in costs to industry and still expect industry to remain in our State. It is an unrealisable utopia to offer the idyllic forms of employment by way of wages and compensation, the costs of which drive our competitive status into the negative, compared with interstate, and thus we lose industries or deter from coming here those which could establish themselves in South Australia.

I believe that it is essential that we keep our feet on the ground when assessing the effects of this Bill on South

Australian industry. It must be a fully funded system, and although a lot of wordage and emphasis can be put on the pros and cons of fully, partially or unfunded systems, I believe that the phrase 'fully funded' is somewhat nebulous.

It is interesting to read that assessors of current insurance companies make the comment that quite frequently insurance companies are not running their premiums on a funded basis; they do not know what their ultimate costs will be. The fully funded aim is, at best, only a guess. Therefore, it is an aim—and it should be the aim of the corporation—to run as a fully funded entity. I hope that in the legislation there will be quite strong restraints on the corporation to comply with that. It will need the incorporation of a sensible response to an annual report by the Auditor-General. We believe that such a report should be recognised as having an authoritative place with the corporation.

It is just not good enough that the Auditor-General's report be given and noted and then be left to slip into some sort of obscure pocket; we believe that in some way there should be an obligation in the legislation for the corporation to respond to indications in the Auditor-General's report that the funding of the corporation is not fully funded; and there may be other aspects where the Auditor-General's report should have a mandatory effect on the way the corporation is run. I repeat: it is absolutely essential that the workers compensation legislation be viewed in its proper context; and it must not be allowed to drop into some sort of redundancy pay scheme.

I emphasise that I am not against a universal compensation scheme, I am not against redundancy pay, and I am not against unemployment benefits. However, it is grossly unfair, if a workers rehabilitation compensation scheme funded by employers becomes the catch-all and the financier for these aspects. Not only must it not be allowed to develop into some sort of redundancy pay scheme, it must not be allowed to become a surrogate welfare agency. The costings must be critically assessed in the cold light of the economics and the desirability of proper employer/employee relationships and the industry generally.

The Government has within its power the ability to have an immediate and profound effect on the cost of workers compensation insurance in this State. It can immediately remove the 8 per cent stamp duty from the premiums. In my opinion there is no reason or justification for the Government delaying or holding this up as some sort of bait or bargaining point in relation to the legislation. I plead with the Government, for the good of South Australia, to lift the 8 per cent stamp duty on premiums immediately. I believe that it is, as with pay-roll tax, a scurrilous taxation on employment. In its own way and in its own right it acts as a deterrent on employment, in the same way as pay-roll tax. I make that call to the Government to consider, whatever the fate or the time span of the implementation of the Bill, immediately lifting the 8 per cent stamp duty.

In the same breath, I ask a question which the Government needs to answer. The Government indicates in the legislation it will lift the 8 per cent. Having done that, where does it expect to recoup the lost revenue? It is quite obvious that the Government will not forgo the 8 per cent stamp duty revenue it will forfeit through this legislation. I am not concerned about the 1 per cent levy. I understand that there are adequate funds in hand to cover that; it can be dropped immediately and there would be no need for an alternative source of funding to cover it. However, I repeat: the 8 per cent should come off tomorrow. The Government should indicate where it intends to recoup the 8 per cent revenue forfeited in the Bill.

The costings which concern us are those involved in the current industry and in the current insurance arrangements. Therefore, it is important that the Auditor-General's report and other actuarial assessments are in hand and viewed and assessed as accurately as possible to allow for proper and full deliberation on the Bill. It is also important that the costs of the proposed system be estimated as accurately as possible before the Bill is finalised. We must be sure that we are comparing apples with apples. It is no good having one group waving an actuarial statement in the air as if it was a golden tablet and another group waving another one and then having them both clash. We must have what is for fairly simple minded politicians (at least in my situation) testimonials from actuarial sources which are directly comparable.

The Hon. R.J. Ritson: We haven't any figures yet.

The Hon. I. GILFILLAN: I think the Government is working diligently and preparing figures which it believes are accurate and demonstrative of the situation. If the Auditor-General's report does come to hand, I believe that its contents should be assessed as to its effect (if any) on the clauses in the Bill, before the Bill is finalised. On the question of costing, I make the point that, if as the insurance industry has asserted there is an underwriting loss suffered by workers compensation business, we must be on the brink of a premium hike. If this is so, at current premium levels there will be no surplus to cream off—either by a single insurer or by the private insurance companies—to reduce premiums in the future. However, a single insurer may be prepared and able to continue the existing premiums longer than private insurance companies, which would be under enormous pressure to lift the premiums forthwith if indeed they are suffering a 20 per cent loss (as has been suggested by one authority).

If, as the Government asserts, there is a substantial profit to be disbursed to lower premiums, the single insurer authority would be able to reduce the premiums to the extent that the forgoing of profits (or the cream) would allow. I think it is important that the nub of this may not be so much an argument of single insurer versus private companies but, rather, how much potential there is to reduce premiums when we actually get down to facts (and I hope we do). One of the aspects of the legislation and the health and safety situation in the State necessarily revolves around the occupational health and safety legislation and the proposed Bill. We believe that it is an important piece of legislation. It is most unfortunate that it has not come before Parliament prior to the Bill now before us, or at least to have it before us at the same time.

I criticise the Government for not complying with what could easily have been taken as an election promise. I refer to page 9 of John Bannon's policy statement on industrial relations. At paragraph 4 under current issues it states:

Occupational Health and Safety: Prevention First.

If 'prevention first' was so important, it would have been absolutely critical that we pass legislation to increase the emphasis on safety in the work place even before we deal with the workers compensation legislation. The aims of occupational health and safety legislation are to compel provisions of a safer work place and to provide penalties and legal obligations on employers and, in our opinion, to compel compliance with safety instructions by employees. I think the frustration and waste of employees who ignore blithely instructions and the provision of safety equipment by employers and who thereby get injured is wrong. It is long overdue to put the responsibility on employees in those circumstances and apply a penalty for non-compliance.

It has to be a team effort. It has to have cooperation, but if we really care about health and safety in the workplace the legislation to achieve that must be put into place as soon as possible. I would like to deal briefly with exempt insurers because, in the overview of workers rehabilitation

and compensation legislation, exempt insurers have a unique place. They are recognised in the Bill as having a unique place and are also recognised by us as having a unique place in providing probably the best available form of cover in safety and rehabilitation that currently exists in the industrial scene in South Australia.

One of the reasons is that they have a very close interface between the employer and the employee. That is a very desirable ingredient which the Democrats have recognised for as long as we have been discussing this issue, and we support as much as can be done within the legislation to encourage that, but the exempt insurers are prime examples of where this particular cooperation can exist. It is important, therefore, that in the legislation there is no serious detriment imposed on exempt insurers; that there is a guarantee for their continued existence and that there is no obstacle placed in the path of other employers who can qualify to come in as exempt insurers. However, exempt insurers may have to wear a slightly heavier mantle of responsibility in this than they are willing to do. They have presented arguments to me that they believe the levies should be based more on a claims record than on a pure contributory basis, and I have had—and will continue to have—discussions with them on this matter.

Later in my remarks on this Bill I would like to deal in more detail with the particular amendments and conditions which could apply to exempt insurers as far as fixing a levy goes. I believe that they have a responsibility to maintain the overall structure on a State basis, and they cannot isolate themselves and say, 'We will just be an authority unto ourselves.' I believe that most of them are prepared to accept that, the same as are some of the major companies. I cite Coca-Cola which, as far as my knowledge goes, has offered an exemplary performance in safety and rehabilitation, but its example probably points out one of the major disadvantages of the current workers compensation situation in South Australia.

Because of its size, it can bargain for reduced premiums. Bargains for reduced premiums are great for the people who get them, but not so good for the other people who do not have the bargaining power and actually subsidise those premiums, and they are the farmers and small business people who are paying punitive premiums of 5 per cent to 20 per cent, and many employers, most of them small business people, who are paying those premiums, and that is a savage deterrent to employment. It has to be trimmed back.

If we are to give them a fair deal or to increase the employment capacity for that section of industry and to keep them viable in South Australia, that must come down dramatically: but it will, of course, have to come down partly for the sake of justice. Not that I am saying that under the new system the premiums all have to go up: they may in fact all go down, and I hope that they do. There has been distortion, in my opinion, of fair premium allocations because of the bargaining power and because of the package deal situation that some of the bigger companies have been able to use and, although it is not quite in that category, I think that the moral obligation for exempt insurers to cover insurance loading right across this State is there to be argued.

I believe that there is a pressure to get this Bill through. It is not just the pressure of the unions and it is not just the pressure of the Government with a much too short period of sitting time. It is also the same economic penalty I have just identified as being felt by businesses because of extremely high premiums. I emphasise again—because I have no embarrassment about doing it—that it is the farmers and the small business people, and they have no combined voice: they do not have a marshalled voice with which to hit the Government or the Opposition—or even the Democrats—because they are out there doing their bit as best they can.

They get this liability for 11 or 15 per cent or more of their wages, and they might grumble to the insurance company or to a few mates, but they still pay it: they have to. In most cases they are the ones making accurate declarations of their wages. It is definitely that section of the community which is suffering and bleeding because of any retention of the current system longer than is absolutely necessary; therefore the Democrats are eager to get this legislation through and for an authority to be working. There are a couple of qualifications, but that is the major attitude we have to it.

There will be a long lead time whatever the program is. If we passed this next week, we would not have it operating next week: it will be a long time before the benefits of these premiums flow through, unless I can persuade the Government to show a bit of conscience and take that 8 per cent off immediately. There will still be another 12 months premiums to be paid by virtually everybody in South Australia even if this Bill is passed next week.

The rehabilitation aspect of the Bill, although it has been criticised in certain circles, does have various emphases placed on it. In general terms, of course, it is ultimately desirable that rehabilitation gets the optimum attention in facilities, economic resources and in genuine intention of both parties involved—those who are providing the people with the rehabilitation, and the employee who has an enthusiasm to get back to work. Rehabilitation offers a substantial saving right across the board: productivity as far as our work force goes; reduction in premiums and reduction in health costs. It is an optimum desire of the Bill, and we believe that if there are deficiencies in the Bill which can be brought forward, they should be addressed. We want to make it absolutely plain that we consider that the emphasis on the wording in the title is very apt—that rehabilitation comes before compensation.

Whether they are neck and neck I am not going to argue, but rehabilitation must be up there right alongside compensation. In the Bill there are aspects picked up that employers will benefit in premiums which are reflecting their provision of rehabilitation facilities. We believe that there ought to be encouragement (whether it needs to be spelled out precisely in the Bill) for other employers to share facilities with employers who may currently have them, and that the corporation should be induced to use the facilities which currently exist.

We would resist just propping up the rehabilitation facilities because someone believes they ought to have one in their own right, or the corporation feels that it ought to have one in its own right. Rehabilitation, we believe, should be a cooperative exercise, and that facilities are going to be expensive. There must be the inducement for full and cooperative use of facilities. We believe that in dealing with rehabilitation we must be treating the injured worker fairly and the facilities must be adequate and pleasant. There must be an inducement for an employee to accept light occupations at work while still healing.

There must be an inducement for an employer to provide a rehabilitation facility or share in one, and to offer attractive, less demanding work situations to an employee as he or she heals from the accident. Attitude to the legislation has been of concern to us. I was sorry to see the UTLC fly sheet which has a rather emotional series of Dracula figures on its front page. It may have its amusing features if one is prepared to treat this lightheartedly: I am not. I believe that there was some substantial valuable work done last year to get a consensus and combined attitude to getting this legislation accepted right across the board. It was inevitable that there would be the cut and thrust of debate and some dealing, negotiating and arguing. There was no way it

could have been brought in without it, but it is such a tragedy that it has been allowed to slip into a polarised slanging match and into a vested interest contest. Fortunately, I believe there are still many people involved right across the board who are not yet addicted to that frame of mind.

However, I do not think that it takes much to incite that sort of attitude and that flysheet of the UTLC was most unfortunate. Incidentally, it does not reflect anything like the cooperative level-headed attitude found when I have discussed the legislation with people in the UTLC. John Lesses, Chris White and others who have spoken to us on several occasions have had their concerns, but they have been rational and prepared to listen. I am very sorry that this ridiculous flysheet has come out and, to people who have not known the way they have been working on it, it could easily create quite the wrong image. I think that the wrong image has been put up by others who, for vested reasons—and I am prepared to accuse certain members of the Opposition and also some people in the Employers Federation—want to win a point as if, by stalling this legislation, by having their way in some procedures, someone will pat them on the back and say, 'You have won that one, you have won this one.' The stakes are too high for winning or losing; there is no second prize.

The legislation has to be right and enacted as soon as possible. People who are determined that they are right in the procedures that have to be followed must bear the consequences if they obstruct or distort the Bill, with the result that the Bill is delayed, or that it does not have its optimum effect as far as industrial benefit in South Australia is concerned. That applies from all sides of the argument. I believe that we are under enormous stress in this Parliament. Because of the incredibly stupid time frame that we have been given for this legislation, we could lose our cool dealing with this Bill. In my opinion we could spend the rest of the sitting time dealing with just this Bill and we would not have too much time even then. Instead of that, we have got a host of other things to deal with as well and in that climate it is very easy to slip into the comfortable role, have a slanging match and say, 'Stuff it. We can wear it. Too bad. We will bulldoze it through.' That is a most irresponsible attitude to the legislation. I do not think we have gone too far, but it is going to be hard. I believe we can deal with it responsibly and I implore members of this Chamber, because this is where the constructive work is going to be done, to deal with it in that light.

In passing, I refer to two points made by the Hon. Mr J.C. Irwin in his second reading speech. First, as I understood him, he criticised the Democrats—he thought that a mandate for a single insurer meant that we would not be critical or seek to amend other aspects of the legislation. If that was a misunderstanding I apologise for not having been coherent about it in any comments that I have made. I hope that my contribution will make it plain to the Hon. J.C. Irwin that we are far from accepting the legislation as it stands without criticism and we do not believe that the mandate goes anywhere near as extensively as that. In referring to that same document 'Industrial Relations: Working Together—policy statement' produced by the Hon. J.C. Bannon, there is no doubt the Government made it quite plain, and at page 12 the document states:

> The creation of a sole insurer to be called Workers Rehabilitation and Compensation Corporation, administered by a board of directors with equal representation from employer and employee interests.

That has consistently been put forward by the Government and I believe (but others may disagree with me) that it has a mandate to do that, even if we disagree with it. We believe that there could be a scope for private insurance companies to play a role. Some time ago they might have been able to be induced to significantly provide the sort of service for which we are looking at this time. Unfortunately, I think that that time has passed. It has had the opportunity and it showed little conscientious effort to do it. Unfortunately, I think that the Government has left it too late.

The second point raised by the Hon. J.C. Irwin dealt with the UF&S. He was concerned that the UF&S, which represents primary producers in South Australia, had accepted the establishment of a single insurer. My conviction is that the UF&S has no great love of a single insurer, but it is dreadfully frustrated by the failure to get a reduction in their premiums. The UF&S and the farming community see that there is not much difference between the service that would be delivered by a single insurer and the service from private companies that could be persuaded to implement that same system. It is not an ideological infatuation with a single insurer, but the UF&S is crying out for a dramatic reduction in premiums for the rural sector.

The Secretary and President of the UF&S have told me they would like us to support the Bill as it currently stands, so that something can be enacted and begin to take effect. If anybody wishes to claim that they are not speaking for the UF&S, they can do so in the second reading or Committee stage. We will move amendments directly in cooperation with them and they are amendments of which they would quite obviously approve (as we do), but they made the point that they believe that the benefits to the rural community from the introduction of this Bill are so substantial that they want it passed.

There are a few features in the Bill which I regard as commendable. There are probably others, but I will refer to a short list. Regarding secondary disabilities, there is very good sense in recognising in the legislation in the industrial scene that employees who have suffered a disability in previous employment will not personally suffer definite obstruction to getting a job; alternatively, in the past the employer who took them on could suffer an extra penalty on his premium because of a recurrence of some complications from the previous injury. I believe that it is a significant reform in this current legislation allowing recognition of secondary disabilities so that it becomes a community, or an industry wide, responsibility and not a specific penalty on the employer *per se.*

Regarding encouragement via premiums for safety, the premium loading for or against the measures for safety are very significant aspects of the Bill. From the Democrats' point of view, it is very important that the actual premiums levied on employers act as an inducement to creating a safer workplace. I have already identified that occupational health and safety legislation is the right place to legislate and to penalise for failure to comply with the legislation. However, to induce a safer workplace is probably, in the long run, even more productive and, therefore, it is important for the corporation not only to have clause 68 but to make sure, when it sets the levies, that it provides a reduction for safe workplaces and for low claims, while imposing penalties for dangerous workplaces and for high claims.

I am glad to understand that the Government intends to have retrospective recognition of an employer's performance in this so that there will be an immediate recognition of their track record. I think there has been some concern that some employees may abuse the situation and that they will become recipients of workers compensation when their behaviour has not warranted it. I believe that there is a subtle distinction between what should be a penalty for a misdemeanor, possibly carrying a fine, and the exclusion of an injured person from compensation for life through an injury sustained in the workplace.

In the case of someone who has had, say, an incredibly distressing social situation at home, who comes to work in an uncharacteristically unique frame of mind, who causes some situation either wilfully or negligently and who suffers a disability, it seems unfair that that person should as a result of that action be automatically cut off from any compensation.

I will refer to clauses that take a reasonable and balanced attitude to this situation so that where there is wilful misconduct the exact wording can be checked in the Bill. Such cases will be excluded from the definition of 'employment' and from workers compensation. They are clauses 30 (4) and 56b (1) *(b)*. Clause 30 (4) provides:

> . . . the worker is guilty of misconduct or a breach of the employer's instructions or voluntarily subjects himself or herself to an abnormal risk of injury, the worker shall not then be regarded as acting in the course of employment.

Clause 56 (1) provides:

> . . . the fact that a disability is attributable to misconduct on the part of a worker—
>
> *(b)* in any other case—is not a bar to a claim for compensation under this Act unless the misconduct amounts to serious and wilful misconduct.

I consider that there is in this legislation a reasonable balance to cover employers and employees concerned in this area.

Concern has been expressed at the delay in processing claims under the current procedure. I know that the UTLC and employees are concerned that, even with the new authority (having had previous experience with certain bureaucracies), there will be extended delays. For people who are suffering from compensable disabilities that can be very distressing. I hope that certain clauses in the Bill will minimise that. Clause 53 provides:

> (4) The corporation shall determine claims for compensation as expeditiously as reasonably practicable and where the claim is for compensation by way of income maintenance shall, wherever practicable, endeavour to determine the claim within 10 business days after the date of receipt of the claim.

That provision specifically requires a time of not more than 10 business days in which a claim can be lodged and acted upon. The other clause which is some consolation to employees is clause 103, whereby there is a right for an employee to directly approach a review officer for immediate assessment of the situation and, one would hope, intervention by a review officer if required.

I commend clause 93 to the Government. It deals with limiting costs on appeal to the review authority. Subclause (2) provides:

> . . . the party is entitled to be reimbursed to an extent prescribed by regulation for the costs of the proceedings.

That does dovetail into a wider attitude that the Democrats have to this Bill. Without attempting to be completely exclusive, we are not enthusiastic about the legal fraternity having a greater involvement than is absolutely necessary in the implementation of this legislation. We believe that this is a reasonable deterrent, for those legal practitioners who might view this as a happy hunting ground, to have the power to prescribe a limit on costs to someone employing counsel in this arena, and we commend the Government for that feature.

I have already mentioned the inducement to employers for a safer workplace. I am convinced that there are inducements in this Bill relating to that. I emphasise, again, something which tends to be obscured when we are dealing with worker rehabilitation and compensation (it is a sort of cart before the horse situation)—we must reduce accidents. This legislation and any other signal coming from those of us who care about it is that the prime concern over and above premiums, rehabilitation and benefits is that there must be a reduction in the incidence of accidents. Absolutely nothing is more important to industry than reducing accidents. I am afraid that employers are sometimes short sighted and feel that the cost of creating a safe workplace is not worth it in dollar terms. The employee's attitude is, 'What the heck, we'll take the risk!' It is a South Australian responsibility in the same way as safety on the roads is a South Australian responsibility. It is a moral obligation on the Parliament, and on the people of South Australia, to reduce accidents. I think that the Bill does to a certain extent, have ingredients to deal with that matter.

I will deal now with a few criticisms of the Bill. We are not happy about certain aspects which are to be left for determination by regulation rather than legislation. That is a generalised criticism of legislation across the board. A couple of aspects of this Bill still have that deficiency. The definition of a medical expert, for example, as a 'person with prescribed qualifications', is not satisfactory in our opinion.

Clause 43 (9) contains power for the Government by regulation to amend the third schedule by adding specified disabilities and fixing in relation to each such additional disability a percentage of the prescribed sum. We object to the Government having the power to make that regulation. It is an important decision that should be brought before the Parliament. There is no reason why a reasonable case should not be supported by the Parliament: that is where we believe the decision should be made.

A further criticism of the Bill is that of the clause which limits the wage to 2.5 times the State average earnings being the upper limit. We believe that it is considerably higher than would apply in any other State at this stage and, although it can very well in certain cases be justified on the grounds of justice for an injured employee, the fact is that it would lift the benefit cost substantially and therefore the pressure on premiums. We have to face the challenge—can South Australia afford it? It may very well be that we cannot afford the full tote odds of 2.5 times the State average earnings. It needs to be actuarially worked out. It would be irresponsible for me to attack it just because it is there.

It must be put in its proper perspective. To date, I do not have an actuarial assessment of the impact of this provision, and I ask the Minister to indicate at the conclusion of the second reading debate what the Government believes will be the effect on benefits of this upper limit of 2.5.

Another criticism that we have concerns the adjustment of the pension to reflect the consumer price index. We believe that for a pension the most appropriate flexibility should reflect the wage level for the industry and the job for which the employee is being compensated. The Democrats consider that this provision has the potential for causing inequities and distortions in the system.

We are concerned in general terms about the journey obligation. We accept that there are reasonable grounds for the employer to claim through this insurance an obligation for the actual journey to and from work. It is arguable, but that stance is based on the grounds that if a person did not have that job they would not be traversing a certain route, and if a person is injured in the course of getting to and from work it is reasonable to consider that to be an injury caused in the performance of undertaking one's duties in a given occupation. However, the wording in the Bill currently allows for too wide a licence and we are not happy with that. We feel that the Bill should be more restrictively worded.

The Democrats have some misgivings about unrepresentative injuries, injuries which occur out of actual work hours, such as during lunch breaks or before or after work. It is unfortunate that these injuries occur, but as quite often is the case it can be shown that there is absolutely no fault

or obligation on the employer. Quite often, and rightly so, employees might play games or undertake other activities which to a certain degree are exposing them to some risk of injury. The Democrats can see no justification for that injury becoming the responsibility of the employer and, because of that, imposing a load directly on employment and industry in South Australia.

The Democrats are also concerned about the definition of subcontractors. We have discussed the matter with various people representing the Government and others, and there is concern that the Bill is expanding in its ambit to embrace people who are currently not regarded as being employees in the general terms of industrial relations, who are now being surreptitiously brought into the net. I have no reason to hold that point of view. I have been assured that the Government does not intend to do that. However, I think it is an issue which needs to be spelt out clearly and unequivocally. If need be, the Bill should be amended to make that provision quite specific. The actual area where self-employed people can opt to come into the ambit of the Bill is a different matter. That is quite clear and above board. It would be a 'pay for what you get' type of negotiation, and we have no objection to that.

Another concern that the Democrats have concerns surveillance. It is important that reliable and thorough surveillance of injured employees be available to the corporation to use in circumstances which from time to time it may believe are necessary. It is not only necessary to catch people who are deceiving the corporation (and they should be caught, with the benefit either being removed or adjusted), but also deterrents must be there to prevent people thinking that they can try the system on and get away with it. Therefore, it must be quite plain that the corporation will have, and will not hesitate to use, appropriate devices to undertake surveillance of a situation in relation to an injured worker. That would be for the protection of the genuinely injured worker. It would be much easier to defend the position of an injured worker if the public knew that those who were swinging the lead or deceiving the system stood a very good chance of being caught. This would be far preferable to workers having to bear stigmas like 'Oh, you're one of those back bludgers.' For many people that is a quite unjustifiable criticism.

I want now to touch relatively briefly on some amendments that the Democrats intend to move. There is a quite extensive list of amendments that are in the final drafting stages but not quite ready to put on file. The Democrats intend that the board be expanded to include one member nominated after consultation with the United Farmers and Stockowners, and one member nominated after consultation with the Australian Small Business Association. The Democrats will be moving for the removal of the General Manager from the board. There seems to be no useful purpose to have the General Manager as a voting member of the board. We support the retention on the board of an expert on rehabilitation. As we have emphasised over and over again, rehabilitation must have a very prominent role in the activities of the corporation.

We believe that the United Farmers and Stockowners is fully justified in having direct representation on the board. It represents a unique area for employment because of its relatively small size and the remoteness of a physical presence to plead its cause. Its interests have been grossly neglected by metropolitan interests and by Governments. Farmers and stockowners offer unique opportunities for employment. I realise that I have a vested interest in this, but I think it is a crying shame that we have not recognised the unique opportunities and richness of opportunity of employment on the rural scene, and I stress a point emphasised by my colleague Mike Elliott, namely, that those activities encourage decentralisation. At the current rates of premium on rural employment, we are positively driving people away from the land. We are deterring landholders from employing people in jobs.

The Australian Small Business Association deserves consideration for virtually the same reasons—because of the massive numbers of these organisations, with the massive potential for them to provide extra jobs.

The Democrats will move amendments for the corporation to be subject to private sector audit. We have a precedent which we will be incorporating in amendments; that applies to the State Bank. I shall put that on the record now so that members who may wish to have immediate access to it will have a chance to look at it. We believe that the Government has said that it wants the corporation to work as it would if it were a privately run and independent authority. We believe that for that to be verifiable to the public and the Parliament it needs to have an audit independent of any Government contact. Therefore, it seems reasonable for the audit to be done by the private sector. The amendment that we will move in this respect is as follows:

> For the purposes of audit under this section the corporation shall, within the first three months of each financial year, appoint two or more auditors of the corporation for that financial year. An auditor appointed under subsection (2) must be a registered company auditor or a firm of registered company auditors. It is the duty of the auditors to report on the corporation's accounting records and on the accounts to be laid before Parliament in respect of the financial year for which they are appointed as auditors of the corporation. The auditors shall have a right of access at all reasonable times to the accounting and other records of the corporation and are entitled to require from any officer of the corporation such information and explanations as they think necessary for the purposes of the audit. An auditor of the corporation incurs no liability and defamation for any statement made by the auditor in the course of fulfilling the duties of an auditor.

We will be moving some amendments which emphasise a significant feature of the philosophy of workers compensation in general terms, that is, the transfer of federal responsibility from its own Treasury to State Government and State employers by leaving the medical costs to be borne by the corporation, and the premiums of the employers. In virtually all other instances and in the overall picture and intent Medicare is a no-fault all cover medical service provided by the Federal Government from federal revenue. We are moving amendments to transfer that responsibility back to the Federal Government because, first, it ought to own up to it in conscience and, secondly, as it is currently constituted it is an unfair burden directly on employment.

We believe it is untenable for employers to have to carry what is Federal Government responsibility. The same thing applies to unemployment benefits. In the Bill a partially incapacitated employee will receive a pension relative to their degree of incapacity. Although there has been some change in the wording, I think it is now clear that, if that employee has been unable to obtain employment, they will receive no compensation for the gap (unless there are absolutely extraordinary circumstances). That is a change in the wording. I do not know, but I believe the Government was not aware of that situation.

I think it was quite unacceptable that workers compensation premiums were to be used to cover what was, in effect, an unemployment benefit. Under the current Bill we think that that is probably left as a gap. If an employee applies for unemployment benefits and still receives the portion of a disability pension, the unemployment benefit will be directly penalised because of the pension they are receiving. That is totally unacceptable to us. The fact that an 80 per cent capacity person cannot obtain a job is an unemployment problem; it is not a problem of compensa-

tion and rehabilitation. This is a potential worker in a fixed working situation. To argue that they cannot obtain a job because they have 80 per cent or 65 per cent capacity and then make it a loading on compensation is just not right. It is an unemployment problem and, in conscience, it should be directed to the Federal Government to pay that money and to allow that person to receive without any penalty the pension they receive for their 20 per cent disability as a consequence of an accident.

If honourable members ponder on that, they will see the justice of it. It should be pursued. In the realms of political likelihood it is perhaps not realisable in the immediate future, because I think the Federal Government is reluctant to accept its responsibilities. The amendments could be passed and their proclamation withheld until enough pressure is brought to bear on the Federal Government. I know that the Victorian legislation dealt with this to a certain extent in relation to health cover. So, there is a marshalling of forces to persuade the Federal Government. I urge the Council to support the two amendments we will be moving in this area.

We have been uncomfortable with common law on the ground of its increasing cost to the system. I make it absolutely plain, particularly to the UTLC and employees, that we are not attempting to penalise employees because of our reluctance and our disquiet about common law. It may be that it is an embarrassment to the legal fraternity that we say that our reluctance to wholeheartedly support common law is because we have great respect for the legal fraternity's ability to blow out opportunities in which it can play an active role before the courts. Injured workers are susceptible to all sorts of persuasions and argument. It may be argued that very few members of the legal fraternity would be guilty of having that attitude directly; but it could not be prevented as a subconscious motive. Nor could it be prevented, once a certain benchmark has been set, that that becomes the level to which all lawyers acting on behalf of their clients must strive. It becomes a sort of leapfrog or 'peg up the ladder' game. Therefore, accepting that there may well be justification for common law actions in certain circumstances, it is our intention to move to limit the sum receivable, related to a percentage of the scheduled lump sum. We are proposing to move that it be 1.1 times that amount.

We also intend to move that, where an injured employee chooses to take an action in common law, that is an option between taking the scheduled amount or what is the award through common law. We do not accept that it is reasonable to have the best of both worlds. If an employee is unhappy with what is available through the table and is persuaded to take action in common law, they are in the hands of common law and will have to accept the verdict of the court.

I refer to clause 64 (5), dealing with the use of corporation funds. I think there is some importance in looking a little more critically at that rather than covering it with the glib phrase that the funds will be used to the advantage of South Australia. South Australian economic development could easily be argued as the promotion of the Austradial. As far as I am concerned, it may be. As far as the development of South Australia goes, it is a good thing to have the Austradial developed, and it could prove to be a great source of education, entertainment and even as a tourist attraction. However, to allow the potential for corporation funds to be placed in that category, to me, is completely unfounded and should be resisted. Although that is an extreme case, I think the argument stands that the purpose of the corporation's funds is to provide economic cover for an injured worker. Therefore, the first priority for the use of the funds must be to maximise the returns. There may be occasions when the corporation can make a decision in favour of an investment or a development in South Australia. However, if we leave it with the emphasis that it is a fund for the development of South Australia, it is open to abuse and all sorts of pressures, and I do not believe that employers in South Australia paying premiums for workers compensation should be subsidising below cost some sort of so-called development of South Australia. If funds are required for development in South Australia, let them come from some other source and not as an impost on employment in this State.

The Hon. C.J. Sumner interjecting:

The Hon. I. GILFILLAN: I do not know; the honourable member can ask them but I bet they do not put them into Austradials.

The Hon. C.J. Sumner interjecting:

The Hon. I. GILFILLAN: The argument is for South Australian development. What does the Attorney-General specify as development? The Austradial is praised in an article in the *News*. The Government has gone crazy.

An honourable member interjecting:

The Hon. I. GILFILLAN: Brian saw its value. I am not sure whether Brian, if he was on the board of the authority, would recommend it as a source of investment for the workers compensation fund. I hope he would not. Clause 115 deals with hearing loss. We will be moving to revert to the original wording of that clause. We are not prepared to support the amendment introduced in another place by the Government.

The current situation allows for an employer to establish the degree of hearing loss that an employee has at the time he is taken on, so that any deterioration can be accurately attributed to the situation that the employer provides, and any previous claim can be attributed to where it rightly belongs. But the amendment which was successful in the Assembly has really made it quite preposterous that an employee can claim the total hearing loss in one hit on one employer after establishing that they had been exposed to anything which can be shown to perhaps have deteriorated their hearing.

We will therefore be moving a reverse amendment to go back to the original. Also, we will be moving an amendment to remove coronary heart disease from a reverse onus obligation in the second schedule. We do not believe that it is logical to accept that such a high proportion of coronary heart conditions are attributable to the current workplace; that the employer or the corporation should have to argue against that position. We believe that the case is more fairly to be established by the employee that the heart condition resulted from his current work situation.

I have deliberately been a little reluctant to be specific about weekly earnings, because this is one area where, quite obviously, the Auditor-General's report—with what one hopes will be an accurate, unbiased revelation of what are the real facts of cost to the industry—will tell us how much we have to play with. If we can provide a 100 per cent wage right through for three years and there are not any other deleterious factors which persuade us that we ought not to do that, let us look at it. If, on the other hand, the increase (and everybody accepts that the increase under the current benefit is at least 8 per cent) is not going to be found from any cream that is going to come back into the system, then I have no sympathy for walloping another load on the employers to have to cover these particular levels of benefits. It has to be based in the context of industrial reality and economic fair play.

I realise that I am subject to criticism from the UTLC that this looks like knocking conditions for the employees, but I do not believe that the current situation is one of extraordinary deprivation to the workforce. It may have inequities and anomalies and there may be areas where

there are deficiencies but, in general terms, it is not an area of enormous social deprivation. I would say that there are other things we should be dealing with equally seriously: the unemployment benefit, single mothers' pensions and a host of things where I believe the social cost to people because of lack of funds is more extreme than in the case of injured workers. However, I am confident that there will be scope for improvement in benefits but, until we have facts to deal with, we cannot be specific in what we would be prepared to support or move in that regard.

I would like to move towards concluding by just addressing a few more remarks to the question of what is called employer managed workers compensation, that is, employer managed workers businesses (self insurers). They have presented an opinion which has indicated their current situation, their concerns and what they feel about the current Bill.

The current levy has a rather extraordinary and convoluted formula. It is three times the current year's claims paid less two times previous years claims paid. That figure is then multiplied by five over four and the levy rate is then applied. The current levy is 1 per cent.

They say that they are quite comfortable with this levy, and that obviously means that it is not very high. Their concerns are that they agree that some contribution should be made to the corporation for administrative use of the system. In addition, they agree that a contribution should be made to provide an indemnity to cover the outstanding claims of any exempt employer who may become insolvent.

They are concerned, however, that the Government may see the levy as a means of obtaining more than just this fair contribution and attempt to use the levy as a means of propping up its own system, should it not run as economically as has been promised. Clearly, it would be to the corporation's advantage if there were no exempt employers, because their premium pool would substantially boost the expected $173 million fund.

During the Committee stage of the Bill in the Lower House, the Minister of Labour (Hon. Frank Blevins) in answer to a question about how the levy would be calculated, is on record in *Hansard* as saying, 'It will be based on claims experience the same as if they were part of the corporation.' These words are of little comfort to them, they say, as the clause in the Bill is far too broad and, in their view, does not guarantee what their members may end up paying by way of a levy. Their proposal is a special levy for exempt employers: the corporation shall in a manner and form determined by the corporation impose a special levy on exempt employers.

They propose that the levy shall be a reasonable amount up to 1 per cent, based on the aggregate of claims paid to workers employed by the exempt employers. They propose that the levy be fixed with a view to raising from exempt employers a fair contribution towards the administrative expenditure of the review procedures, a fair contribution towards the cost of rehabilitation funding and a fair contribution towards actual and prospective liabilities of the corporation arising from the insolvency of exempt employers.

Where an exempt employer provides, with the approval of the corporation, rehabilitation facilities and services for disabled workers, the corporation may grant to the exempt employer such remission of the levy as would otherwise be payable by the exempt employer, which I have mentioned before. Why I am emphasising the exempt employers is that, first, they cover a lot of union-covered workers in South Australia and a significant proportion of the total number of employees in South Australia, and they are doing a very good job.

I argue with them that it is probably not fair to base their premium or their levy on the aggregate of claims, but they ought in fact to be paying at least a substantial portion of any levy in proportion to their payroll, because it seems to us that all employers in South Australia have an obligation to a certain extent for the system. We are not isolated little entities: we cannot just cut ourselves off and say, 'We will only look after ourselves. I'm all right, Jack, I have no accidents. Therefore, I will not contribute to the overall system.'

It is a shared sense of responsibility and cooperation and, therefore, I believe that they will see the sense of this. It is important that their levy contains an ingredient which is relative to the amount they pay in payroll, and not specifically related to their claims. They have a very low claims record. Of course, they have a very low administrative cost. They have a lot in-house which is unique as far as the workers compensation system goes. It is to their advantage, but I believe that it works so much to the advantage both of them and of the injured worker that they must be supported.

Much more disturbing to me, however, is the letter that BHP got from P.D.C. Stratford, the consulting actuary, dealing with their workers compensation. The letter is dated 23 February 1986, addressed to the Chairman, Employer Managed Workers Compensation Association Incorporated, 1284 South Road, Clovelly Park. It is a detailed letter dealing with their particular rehabilitation and compensation. It contains a lot of extremely worthwhile material. I will read this letter fairly quickly, because I am not expecting members to absorb it as I read it, but I would like to have it incorporated in *Hansard*. The letter reads:

Based on the data of claims admitted for workers compensation claims in the year 1981 you have made certain estimates of the increased costs anticipated under the revised legislation before Parliament. Whilst it would have been desirable to examine all claims made over a period of years to establish, if possible, a pattern of claims related to the work force from time to time, it is accepted that this is impractical in view of the volume of claims and the methods by which data is retained.

You have satisfied yourself that 1981 may be regarded as a representative year and it has the advantage that the elapse of time has meant that all claims bar one have now been settled.

2. I can accept this argument particularly as the proportion of long-term claims, that is, total and partial disability, is in the region of industry expectations and is, if anything, a little low, a result which I put down to your own efforts to contain.

3. As you operate a self-administered fund for workers compensation with management and settlement of claims (other than those which result in court action) being handled by your own staff and, where possible, work and rehabilitation of injured personnel is given in your own plant it is not to be expected that any conclusion drawn regarding your experience will apply to claims settled by insurance companies or even other self-managed funds. You have closer contact with injured personnel than do most employers and the size of your operation, located principally in one relatively small city, facilitates the re-employment of personnel who have recovered or been rehabilitated.

4. Additionally, of course, you do not have the expense of obtaining business as do insurers, etc., and, hopefully, you may effect a reduction of legal expenses by your in-house operation because of your intimate knowledge of both the processes of settlement and the actual cases.

5. You have concluded, and I agree with you, that the legislation should have little or no effect upon the majority of your claims, which result in short, temporary incapacity, because you have the capacity to make work available other than in the most extreme cases. However, this could change if employment continues to reduce so a possible increase in costs from the operation of section 35 (2) cannot be ignored. The areas of expected extra claims are:

(i) total and permanent disability;
(ii) permanent partial disability;
(iii) medical expenses in such cases;
(iv) increases in schedule payments; and
(v) the possibility of increased payments for pain and suffering.

6. In addition, I would add that the provisions for permanent partial incapacity are such that two effects may be experienced.

When the employee organisations realise how the wage adjustment provisions of the legislation can operate there may well be pressure to liberalise this section and, in any case, a serious incentive is given to the employee to maximise his disability which may give rise to very serious problems regarding the interpretation of the expression 'being employment which is reasonably available to the worker'. It appears to have been assumed by the Government that this may be interpreted as, for example, if a man is deemed fit to be a labourer that is sufficient to mean that compensation ceases or is based upon the difference between wages as a labourer and the compensation based on pre-accident income as adjusted. As you offer work, to all but a very few, after the accident this definition may not cause you problems, but if economic circumstance change such may not be the case. You have severely reduced employment over the past five years as your records show and it is not beyond the bounds of probability that this may occur again. This must be an area of extreme concern. About 7 per cent, or 308 of your work force, are over 55 years of age. If you become unable to employ them, either because of reductions in your employees or lack of sufficient work for the partially disabled then these persons may well be regarded as totally disabled in the terms of the Bill. Costs would escalate dramatically.

7. This definition must be changed. The charge for the responsibility for the inability to provide work must be shifted from the employer to the community generally where it has always been to date.

8. Whilst not, by any means, advocating the retention of common law rights for economic loss, the existence of such rights at present has not always worked to your disadvantage. Under the new legislation, if continuing medical expenses exist, you will be compelled to pay these as they occur. Where a common law settlement occurred (under the Act to be repealed) in the case of continuing disability, be it total or partial, you would have settled these obligations by way of a lump sum payment. The claimant, well aware that after settlement many of such expenses would be claimed from Medicare would have been tempted to accept, in an out of court settlement, a lower than actuarially correct sum as such would not necessarily be applied to the purpose for which it is granted. An estimate of the cost in respect of such claims in 1981 has been made and shows a significant increase in costs. However, I do not think this could be used as an argument against the new provisions—it is a peculiarity of the present system.

9. The increase in the limit of scheduled lump sums is an obvious increase in your liabilities and the costs of this have been calculated by you. I have merely recorded the totals. Section 43 of the Bill gives the corporation power, a power which is delegated to you as a self-insurer, to add to the schedule but I can see no reason why you should do so unilaterally but you will have to follow the corporation if it does so.

10. The thrust of this legislation, as far as it affects you, is to replace lump sums on permanent incapacity by pensions in all cases. Whilst previously, when negligence on your part existed you were liable to pay compensation for the balance of an employee's working life under the provisions of common law, now though common law actions for economic loss are barred this obligation is, effectively, extended to all accidents. The community's responsibility for losses for which no-one is responsible is to be shifted to the employer. The application of section 35 (4) could well be of serious effect, particularly at the older ages, and result in payments not presently available under the existing Act.

11. Returning now to the question of claims arising in 1981, 684 claims occurred and of these 658 or 96 per cent were settled without running to full redemption. Of these claims 382, or 56 per cent of total claims endured for one week or less. The estimated cost of these claims from your records was $1.3 million.

The letter further states:

13. To estimate the costs involved under the proposed legislation you have revised again the cases involving continuing disability and have set a total figure for all claims of $7.5 million, i.e. an increase of $4 million or 114 per cent. To this must be added the cost of the levy to the proposed corporation but as this is unknown as yet is cannot be quantified.

14. To adjust your estimate to, in some way, make them reflect current costs and not emerging costs, I have made an allowance for interest earnings on the amount you would have to set aside to provide future pension payments. I regard it as extremely unlikely that you would, formally, add interest to the provision each year because of the possible taxation implications and difficulties in determining the correct rate. However, when the new Act is in force, you will have to maintain a reserve for future pension payments and in respect of continuing pensions from previous years an amount equivalent to interest will have to be charged to the company if the reserve is to continue to be adequate. In other words, the reserve will be maintained as though it were a separate fund from the general company funds but no separate assets will be held unless the proposed corporation demands such separation. After pensions have been in existence for four years they are to be adjusted by the Consumer Price Index for Adelaide and I have allowed for this by assuming that the nominal interest earnings will exceed the movements in CPI by 3 per cent. Though, technically, not absolutely correct I have made my calculations as at the date each case was settled.

15. I have also made an allowance for the possibility of death before the attainment of 65.

The letter further states:

16. Upon death as a result of an occurrence giving rise to compensation a spouse and children's benefit is payable. I have ignored this as when a death occurs some considerable time after the accident it is unlikely that it will be attributable to the accident.

17. I have been given data in respect of the 26 long-term cases and of these, two have not entered into my calculations. One case which still remains unsettled I have assumed to be a continuing case of disability.

18. Under certain circumstances, compensation in respect of partial incapacity may not increase with inflation and subject to the provisions of the Bill could even decrease. Some highly theoretical calculations have been made of the effects of section 38 (4).

The letter further states:

19. For the same reasons that the corporation's levy on self-administered funds, and your administrative expenses have been ignored in your calculations, they have been ignored here.

20. I have made two calculations: The first where a case is presently deemed partially disabled I have assumed that disability will continue unchanged. To the costs of such cases has been added the costs of all cases deemed permanently disabled.

In the second case it has been assumed that all cases will be compensated as totally disabled. This assumption is the same as that made by you and the results do not differ greatly and the differences, in the main, can be attributed to the interest credit in my calculations.

21. In the case of the two female claimants I have assumed a retiring age of 65 because I suspect that it will soon be illegal to require a female to retire earlier than a man.

22. The table below summarises the results.

I seek leave to have included in *Hansard* without my reading it a table of purely statistical nature dealing with a comparison of estimated costs of the BHP compensation scheme.

Leave granted.

Comparison of Estimated Costs

	Present Act	New Act (1)	New Act (2)
Pre-settlement Medical	122 994	122 994	122 994
Pre-settlement Economic Loss	306 139	306 139	306 139
Pain and Suffering	384 700	423 000	423 000
Post-settlement Medical	67 134	432 315	432 315
Post-settlement Economic Loss	544 350	798 507	4 382 450
Other Economic	120 000		
Scheduled Lump Sum	214 500	479 400	479 400
Total	1 759 817	2 562 355	6 146 298

A not unreasonable lower estimate of costs is:
Revised costs under present Act—$3.5 million
New proposal, partial invalidity unchanged—$3.9 million
New proposals, all invalidity becomes permanent—$7.4 million

The Hon. I. GILFILLAN: The consequences of this table need to be deliberated before I continue and complete the letter. The three proposals which have been covered in this table are the present Act, the new Act under the circumstances that partial invalidity is unchanged and where all invalidity becomes permanent. The difference is substantial and draconian—from $3.5 million as in the present Act to $3.9 million under the partial invalidity unchanged to $7.4 million with all invalidity becoming permanent.

I will refer to that again in a moment. It prompts us to move an amendment to clause 35 (4). I will address comments to that when I conclude the letter, which states:

To the above costs in respect of the new proposals must be added the charges payable to the corporation which are presently unknown.

Certainly it can be deduced from the above that had the present proposals applied in 1981 then, after making an allowance from corporation charges, your costs would have risen by a minimum of 10 per cent.

Higher costs cannot be excluded as the extent to which persons with partial incapacity will, over the years, become further disabled can only be guessed at and the upper limit as indicated by the figures established is very high. The provisions of section 35 (4) are capable of abuse and could be a problem particularly at advanced working ages. As the figures show, costs are very sensitive to any shift to total incapacity and it would be most desirable if the legislation were to limit this.

To date, it would appear that you have been successful in the early period of disability in providing suitable work for many employees but the provisions of section 35 (2) may result in a reluctance by employees to co-operate with you. This, again, could be a source of extra cost. Certainly, were your work force to fall, you would have difficulty in maintaining opportunities for the disabled and may have to seek employment for such purposes outside your organisation. Failure would result in disability being regarded as total during the first three years and subject to the applicability of section 35 (4) for life.

Given that the Government shows no inclination to resile from its desire to bring in pension-form benefits and the true costs of such action cannot be correctly deduced in advance, employers should seek to modify the legislation to remove as many undesirable features as possible. Once in, change will be very difficult even if the results prove a severe disadvantage to employers. I have enclosed a speedily written summary of certain aspects where change is desirable and can see no objection to you, if you so desire, passing those comments and this letter to the responsible Minister.

It may be that they have done that. I refer back to the letter briefly as I want to bring to the attention of the Council paragraph 8 of the letter where the point about the Federal Government being morally obliged to carry Medicare costs is emphasised again by the actuarial report for BHP. The effect of that affected claims which were accepted out of court under the implementation of the current Act. I emphasise the sentence again, which reads:

The claimant, well aware that after settlement many of such expenses would be claimed from Medicare, would have been tempted to accept, in an out of court settlement, a lower than actuarially correct sum as such would not necessarily be applied to the purpose for which it is granted.

The implications of that are that, actuarially, we may find that some compensation awards were lower than would have applied on absolutely equivalent terms under the effects of the current Bill where there would be no discount for a transfer of that medical obligation to Medicare. The Democrats in their amendments are trying to emphasise that it is a Federal Government responsibility to carry that load.

The other point I make out of this letter relates to an amendment which we intend to move for the dramatic change or removal of clause 35, which provides:

(2) Subject to subsection (3), a partial incapacity for work over a particular period shall, for the purposes of subsection (1), be treated as a total incapacity for work over that period unless the corporation establishes that suitable employment for which the worker is fit is reasonably available to the worker in respect of that period.

That is loading the corporation with the job of a quasi-unemployment benefit agency. It is not the responsibility of the employer to guarantee that suitable employment is available. The cost of providing that quite unfairly lands back as an impost on industry in South Australia.

There have been gaps and deficiencies in quite important aspects of the Bill which I have not covered but which I am anticipating will be covered in the long and detailed Committee stage of the Bill.

I indicate to the Council that we will support the second reading. We have made it quite plain to all who have any doubts that unless the information sought from the Auditor-General, whether by way of report or in some other way, is available to us we are not prepared to pass the Bill. That may result in a delay, but we believe that that delay is justifiable. It is not essential for the Bill to go to another session. It depends largely on the availability of answers to questions that the Auditor-General has been asked to assess.

The Hon. R.I. Lucas: Are you prepared to go into Committee?

The Hon. I. GILFILLAN: Yes. There are hosts of clauses in the Bill which can be given serious attention, which can be dealt with by way of amendment and which are quite detached from information that the Auditor-General might provide. It seems that there is no reason why we should not involve ourselves in that debate. We support the second reading.

The Hon. R.I. LUCAS: I will speak only briefly to the Bill because the substantial arguments on behalf of the Liberal Party have been put forward by previous speakers, in particular by the Hon. Trevor Griffin. I will address one particular issue, the various costings of the proposed scheme that have been floating around for about two years. This matter was touched upon by the Hon. Mr Gilfillan. One matter I raised before approaching that specific item relates to the last comment made by the Hon. Mr Gilfillan in relation to the Democrats' attitude towards whether there should be delay of debate in the Chamber.

It appears to me that there is a fundamental conflict between what the Hon. Mr Gilfillan said on that point and what he said on a number of occasions during his detailed and comprehensive contribution to this debate. Quite simply, that conflict is that throughout the debate the Hon. Mr Gilfillan has said that the Democrats were unable to indicate what they could do in relation to a number of clauses or provisions, particularly in relation to benefit levels, until they were aware of what was available by way of costs or benefits that could be paid to increase benefits to workers under the workers compensation scheme—what was available in the cake-tin, I think he said.

However, at the end of his contribution the Hon. Mr Gilfillan said that we could go through the Committee debate; that we need not delay that debate until we received the costings from the Auditor-General; and that we could debate all these clauses. Not just the clauses to which the Hon. Mr Gilfillan has referred but a substantial number of other clauses in the Bill will be dependent on what is available in the cake-tin, to use his phrase.

The Hon. I. Gilfillan: Cream.

The Hon. R.I. LUCAS: The Hon. Mr Gilfillan says he mentioned 'cream'; whether there will be enough cream left to be used to pay for increased benefits with respect to those specific clauses. To me that is the fundamental conflict—that it appears that on the one hand through the individual debate on the clauses the Hon. Mr Gilfillan says, 'We really do not know how much cream there is to hand out with respect to these clauses; we have not got the official, independent Auditor-General's costing,' and then, at the end of his speech, he says, 'We will delay the Bill but will not delay it at the start of the Committee stage.'

Members on this side of the Chamber, and certainly journalists and interested observers, have really been trying to keep up with specifically what the Democrats were trying to recommend with respect to the matter of a delay—whether it be a delay at the beginning, the middle or the end of the Committee stage of debate. It certainly appears quite clear that the Hon. Mr Gilfillan has determined that we will now be allowed to discuss the Bill right through to the very end of the Committee stage and then, I presume, at the end of the Committee stage the Hon. Mr Gilfillan will in some way put his foot down, together with the Hon. Mr Elliott, and ensure that we go no further.

The only matter that I want to touch on now concerns the various costings of the proposed scheme. The political significance of this is that the various costings that have been floated around South Australian industry over the past two years have been significant since they have been used by proponents of the Government's proposals to convince various groups that the proposals had a good deal of merit by way of substantially reduced premiums for industry. We need only look at the attitude of certain employer groups in this regard. I will be frank and indicate that I am certainly disappointed by the attitude of groups such as the Chamber of Commerce and the United Farmers and Stockowners. Certain other employer groups have been somewhat stronger, and I think a little more comprehensive in their analysis of what is involved in the proposals before us and, as a result, have been prepared to look at the matter fairly objectively and to make some criticism of the various Government proposals.

The first costing, floated in about June 1984, was done by Trevor Mules, an independent economist, then from the Adelaide University, and Mr Fedorovich, a State Government employee. In that first report of June 1984 Mules and Fedorovich state:

> The study [that they had done] was done in close collaboration with a sample of insurers.

From that they seem to indicate that a representative sample had been taken of the 40 insurers operating in South Australia, and that one could infer that some due weight could be placed on the results of that study. Ms President, I now want to quote from a letter from a representative of the Insurance Council of Australia, Mr Noel Thompson, to the Hon. Trevor Griffin, as follows:

> From my own inquiries I am satisfied that during the period up to June 1984, when Messrs Fedorovich and Mules produced their first report—and I am confident that this was indeed the situation up to October 1985 when Messrs Fedorovich and Mules produced their second report—only one insurer, C.E. Heath Underwriting and Insurance (Aus) Pty Ltd—collaborated with and provided information to Messrs Fedorovich and Mules or to any representative of the Government. No other insurer engaged in any such activity.

Mr Thompson further states that he was well aware of C.E. Heath's cooperation and that he certainly applauded it. Therefore, he was not criticising C.E. Heath in any way. The simple point is that the representative group of the insurance industry in South Australia indicates that, rather than a good cross-sectional sample of 40 private insurers in South Australia, currently operating, as was inferred by Mules and Fedorovich in their June 1984 report, it would appear that only one insurer's figures and estimates were used for the survey undertaken.

I also want to quote from the minutes of a Chamber of Commerce and Industry, South Australia Incorporated meeting held on Wednesday, 21 August 1985 at 4 p.m. I want to refer to two sections of the minutes, one section now and the other later. I should explain first that Mr Fedorovich and Mr Slee were asked to present their views on the matter of costings to the chamber so that it could make its decision in relation to the critical question of support or otherwise for the Government's proposals. The minutes state:

> Mr Fedorovich supported the savings which had been claimed and indicated that not only had these been calculated by Dr Trevor Mules of the University of Adelaide, in conjunction with the State Government Treasury, but a consultant actuary, Mr J.R. Cumpston, had supported the figures.

I shall take up that matter later, Ms President. That statement was made by Mr Fedorovich in August 1985, and what has become known as the Cumpston costings—the latest so far, with the Auditor-General's report still to come—are dated February 1986.

Certainly, back in August 1985, in an attempt to convince the chamber—successfully as it turned out—Mr Fedorovich indicated that Dr Mules's calculations had been done in conjunction with the State Government Treasury (I would be interested to know the involvement of the Treasury in this) and also the consultant actuary, an independent party, Mr J.R. Cumpston. The minutes further state:

> Mr Fedorovich advised that the basis for the calculations had been largely gained from companies within the insurance industry.

Once again, the statement originally produced in the Mules and Fedorovich June 1984 paper is reproduced by Mr Fedorovich in the presentation made by him to the Chamber of Commerce and Industry Council in August 1985, in an endeavour to convince the chamber that it should support the Government proposals.

I want to refer briefly to a document that was produced soon after the Mules and Fedorovich paper. The document was a critical analysis of that paper and was commissioned by the National Insurance Brokers of Australia. That organisation used another independent consultant, Mr Rod Benjamin of Nepet Pty Ltd, to advise it in a critique of the Mules and Fedorovich paper. I shall quote briefly from the summary page of that document:

> The figures used to support the authors' claims of a 17 per cent saving—

seventeen per cent was only the minimum level of a range of savings that Mules and Fedorovich were claiming: they went as high as 33 per cent, if one changed certain other variables—

> are wrong, and thus the conclusion reached by them is grossly in error.' In particular:
>
> 1. claims costs as a percentage of insurers' income is 96 per cent and not 78 per cent as claimed by the authors;
> 2. there are no savings of insurers' profits to be made because profits are non-existent;
> 3. interest earnings cannot be 'saved';
> 4. the savings projected for common law and expense are based upon false premises and inaccurate data, so that the conclusions reached are in error;
> 5. a simple arithmetical error has led the authors to underestimate the additional cost of a pension scheme.
>
> The conclusion reached by this paper is that, rather than the proposed alterations resulting in a saving of employers' current cost of 17 per cent, the result would be an increased cost of 17 per cent.

The rest of the paper is laced with criticisms of the various assumptions of Mules and Fedorovich. One of these, on page 3, was:

> In any case we dispute the authors' figure of 18 per cent for the costs of common law as a proportion of premium. Actual figures substantiate a maximum of only 13 per cent.

And it goes on. That document at the time was a substantial critique of the Mules and Fedorovich paper. It does not end there. A Sydney actuary, Mr Gould, at the turn of 1985-86, commissioned by the Employers Federation, produced some costings. His view was that the proposals that we had before us might lead to a possible increase of some 10 per cent. I will not take the time of the Chamber to go through his offerings.

We now come to our friend Mr Cumpston. I will give some background to Mr Cumpston. In 1984, Mr Cumpston circulated a paper to all registrants at the new directions conference. The paper was quite critical of the Mules-Fedorovich costings. We must distinguish with Mr Cumpston in which year we are referring to because, in 1984, he was putting a particular view that the Mules-Fedorovich and Government proposals would increase costs. However, in 1986 he is now on the other side (if I can put it that way) and supporting the Government scheme.

The Hon. R.J. Ritson: He's on the Victorian Government payroll.

The Hon. R.I. LUCAS: The Hon. Dr Ritson in his contribution referred to Mr Cumpston's present position. I refer to Mr Cumpston's 1984 document, as follows:

South Australia may soon introduce a new workers compensation scheme, without insurers or lawyers. The new scheme has not however been adequately designed or costed.

I am being critical of Dr Mules in this contribution, but as a former lecturer of mine in economics at Adelaide University, generally, I have much respect for his contributions in the economic area, particularly in microeconomics. At page 11 of the 1984 document under the heading 'Dr Trevor Mules and Mr Ted Fedorovich' he states:

There are however some errors, omissions and uncertainties in their estimates. The committee's scheme may cost as much or more than present insurance (depending on the generosity with which pensions are determined).

At page 12, he says:

The expense rate of the tripartite committee's scheme is uncertain, as some important aspects have not been spelt out. Will there be a wide network of branches? Will there be a substantial number of rehabilitation counsellors? Will there be frequent workplace inspections?

The third and fourth of these savings seem to assume that insurers make a before-tax profit of 15 per cent of premiums. Actual profits by insurers in Australia have however been much less than 15 per cent.

At page 13, he says:

The adjustments needed to their estimates, in the areas discussed above, thus appear to be:

	%
insurer profits derived from employers	10
error in common law calculations	3
error in redemption calculations	3
extra cost of pay-as-you-go	5

These adjustments total 21 per cent, enough to turn their estimated 17 per cent savings into 4 per cent additional costs.

There has been a change in relation to pay-as-you-go, so that statement may now come back to line ball. Finally, he says:

All of these estimates are however small in relation to the uncertainties inherent in the proposed long term pensions.

The remaining pages of that 1984 Cumpston document are a scathing critique of the assumptions and costings made by Mules and Fedorovich, and used by Fedorovich and company, the Minister and Government advisors in marshalling support throughout South Australia from amongst (in my words) some gullible employer groups to convince those groups to support the proposals of the Government.

That was Mr Cumpston in 1984. Subsequent to that, in January 1985, Mr Cumpston strongly criticised the costing basis of Victoria's Work Care Reforms (in effect the brother or sister program of Work Cover in South Australia). However, during 1985 Mr Cumpston undertook a major assignment for the Victorian Government in relation to its proposed reforms. This work culminated in a report entitled 'Costing Work Care', which the Victorian Government then used to reassure the community as to Work Care's financial basis.

Finally, in the chronology of Mr Cumpston's activities we see that late in 1985 the Victorian Labor Government appointed Mr Cumpston to the Accident Compensation Commission (which, in effect, is a Government monopoly administering Work Care in Victoria). So, from 1984 when Mr Cumpston was criticising the fundamental basis and costings of the Government scheme he went through a metamorphosis through 1984 and 1985, and at the end of that transitional period he emerged in full bloom in February 1986 to issue the latest on the costings—the Cumpston report and costings, phase 2.

I do not intend, as time is getting away from me, to go into the detail of Mr Cumpston, phase 2 (1986) attempted costings of the proposed scheme other than to say that he is now, rather than predicting increasing costs—surprise, surprise—supporting the Government and is—surprise, surprise—indicating that there will be a reduction in premiums of 20 per cent. So, Mr Cumpston, phase 2 has now switched around completely from predicting increased costs in his 1984 report and is now agreeing with the Government and, substantially, with Mules and Fedorovich and suggesting that we will see reduced premiums of 20 per cent.

It is a pretty difficult area to cost actuarial estimates of the future, and I readily concede that; and I readily concede that many groups—employer groups and governments—seek to get the best possible gloss on their own costings. So, I concede that different groups will get different actuaries and costings which will conflict. For the life of me, I find it very difficult to understand how our friend Mr Cumpston—the very same person—in the short space of 18 months can do a backflip or a doubleflip and, instead of predicting increased costs, the very same gentleman predicts a reduction of 20 per cent. My final comment about our friend Mr Cumpston comes from a quote on page 3, as follows:

I have not been asked to report on any costs or savings arising from the changes to benefits currently under consideration.

Here we have a consultant actuary being asked by the Department of Labour to cost the Bill, supposedly. He comes forward with a costing of a reduction of 20 per cent. That is the figure used by the Government through the media and fed out to the journalists. However, no-one looks at the fine print of Mr Cumpston, phase 2 of February 1986. He says there:

I have not even been asked to look at any costs or savings arising from the changes to benefits currently under consideration.

Quite clearly, if he has not been asked to look at the costing of the benefits in this Bill, the particular document that Mr Cumpston phase 2 offers us is completely worthless because, as the Hon. Mr Gilfillan said in one of the few things he said with which I agreed, there are many things in the Bill that are going to need to be costed as to whether we can afford 100 per cent over three years of average weekly earnings; whether we can afford a whole range of benefits—the 2.5 times average weekly earnings maximum payout.

In that range of benefits, the Hon. Mr Gilfillan says, we need to see how much cream there is before we can decide on it. He then at the end says, 'We can actually decide on it. We will go through the Committee stage and then at the end we will get the Auditor-General's costings.' I presume, if the Auditor-General's costings come at the end of the Committee stage and there is not enough cream there for the Hon. Mr Gilfillan, he will then want to recommit the whole Bill for further debate and, if we have gone on for two weeks, we will then go for another two weeks having a look at what is left of the cream the Auditor-General has provided the Hon. Mr Gilfillan.

With as much respect as I have for the Auditor-General and his officers—and I make no criticism of the Auditor-General or his officers—it is quite apparent that any costing of the Government's scheme (whether, as I said, it is done by Government officers, Government employed consultants or consultants employed by opposing forces, such as insurers or employers) is going to need to be taken with a grain of salt because of the problems that are involved in any actuarial estimates of the sort of propositions we have before us in this Bill.

As I said, I make no criticism of the Auditor-General but, as I understand it—and I might be corrected when I see the Bill—the last thing we heard from the Minister of Labour was that the Auditor-General was not doing a comprehensive costing of all 37 private insurers in South Australia, even though the Insurance Council of Australia, on behalf of all insurers, made the offer of opening the books of all the insurers in South Australia for such an independent costing.

As I understand it from what the Minister of Labour is saying, that is not the sort of survey or costing that the Auditor-General is going to do. What the Minister of Labour

was suggesting was that the Auditor-General was going to have a look at Mr Gould's costing and the costing of Dr Mules and Mr Fedorovich, and I think at a later stage Mr Cumpston might have been referred to. I think that is Mr Cumpston phase 2 (the one that says it is going to be a 20 per cent reduction) and not Cumpston phase 1 (which says a 4 per cent increase).

I have been reminded by my friends and colleagues in the Chamber that the five minutes I suggested I needed are up. I thank the Chamber for allowing me to finish my contribution at this stage, and indicate that I have not covered many of the other areas, because I feel that my colleagues—in particular, the Hon. Mr Gilfillan—have covered them more than adequately.

[Sitting suspended from 6.5 to 7.45 p.m.]

The Hon. M.B. CAMERON (Leader of the Opposition): It is not my intention to delay the Council very long on this issue because I think basically everything that needs to be said has been said. However, there are some issues that I think we all ought to keep in mind, because we are now going, within a certain period, into the most difficult part of this debate.

I must say I am grateful to the Hon. Mr Griffin—we all are on this side—for the amount of work he has done on this particular Bill. It is a very difficult and complex Bill, and anybody who thinks that it is going to be simple to cure the problem and that we are going to end up with the result we all want is really fooling himself. The most important thing in this matter this time is that we get it right and that we get it to the point where, first, workers compensation becomes less of a burden upon employers; secondly, in the process we do not interfere with genuine claims from people who work, and that is again a very important issue, because there would be nothing worse than for us to pass a piece of legislation that set about taking away the proper rights of workers; and, third, and just as important, we ensure that the effect on unemployed people is considered. That is an issue which I think has probably not received as much attention as it should.

There has been plenty of talk and discussion about the needs of employers; there has been plenty about the needs of workers in work, but the unemployed people are also important. If we make it too expensive, then the inevitable result will be that people will not employ extra people, and the unemployed people are the recipients of that problem. I think that is one issue that perhaps the Government should keep in mind in considering this issue.

It is all very well to come in here, as perhaps we are seen to do, and represent one side or other of the work force of industry in this State, but there are in the middle people who are wanting work and who will not get it if we make this too expensive—if we make this on cost, which is what it is, too high and we end up destroying the incentive for people to employ more labour within their industries.

I have been somewhat bemused by the attacks being made on this side of the Council by the United Trades and Labor Council. I have just received a copy of a document which appears to put me in comic form as somebody with big teeth coming out like a vampire about to suck the blood out of the workers. This is an official document put out by John Lesses. I must say that I take exception to that sort of approach.

The Hon. K.T. Griffin: Has it got your name on it?

The Hon. M.B. CAMERON: Yes, it has, because it says that now the Liberals are in for the big bite. It is not a very pleasant looking document. Perhaps Mr Lesses is exaggerating the situation, trying to gain attention. All I can say to him is that he has gone down a lot in my estimation by putting out that sort of—

The Hon. K.T. Griffin: It wasn't too high before.

The Hon. M.B. CAMERON: No, it was not, but it is even lower now. He put out that stupid document in an attempt to impress workers with his ability to influence us. He has also made certain threats, and I took great exception to that as well. If he came too close to this place and started saying things like that, he might find himself in a very difficult position indeed. I just do not accept that members of Parliament should make decisions under threat. It has happened to me once or twice in my parliamentary career, and each time I have expressed a very strong view on the matter, not in the Council but to the person concerned. I really do take exception to that.

I have talked to people who have a very deep knowledge of this industry, and there is a general concensus of opinion that it is not simple to cure the problems in the industry at present. I do not accept that by turning the field over to a single insurer overnight there will be a miraculous cure, that everything will be all right and that we will see a sudden decrease in the premium base. Frankly, I think that we will find the growth of a new industry within SGIC that will more than compensate for the numbers of people who will be taken out of the private insurance field and, of course, that will mean that almost immediately expenses will be put back into the system. I just do not see how taking away competition within an industry will work. I as a small employer have appreciated being able to say to an insurance company, 'Your prices are just too high, and I want to discuss the matter with other companies.' From time to time that has led to a rethinking of the situation. Whether the lawyers have been too prominent in the industry is a matter that will be addressed by the Hon. Mr Griffin in Committee.

I have noted that the Australian Democrats in debate on this Bill and in the public arena were first of all very keen to obtain costings on the various proposals from the Auditor-General. That seemed to me to be a very sensible move, because there is nothing worse than debating an issue in this place in the dark. It would be very worthwhile to at least obtain that report before we go too far with the detailed debate, although I am not sure where the Democrats stand now. I understand it is possible that they will want to proceed with the Committee stage without having the Auditor-General's report, although I thought that that was not the case in the earlier stages, given their statement. I am not sure where they stand on this issue at present.

It seems to be somewhat foolish to go through the Committee stage on the basis that, if we obtain a different view after the Auditor-General's report is handed down, we will have to have another look. Surely it would be better to wait for that report and then proceed on the basis of some knowledge of the Auditor-General's view. Of course, I rather wonder what will happen if we wait for that report and it is not available by the end of next week. I am not in any way attempting to put pressure on the Auditor-General: it is quite proper that he takes his time and does the job properly. I am not attempting to delay the Bill.

Anyone with any commonsense wants changes in the workers compensation field, because there is no doubt that there are problems—very serious problems indeed. There is not one person, one employer or one employee in the State who does not understand that, and there is not one unemployed person who does not accept that the situation is causing a problem for them. However, we should not be pressured in this situation: we should have all possible information. As the Minister in another place said, the issue has been debated for eight or nine years, so surely another week or two will not cause any problem if we have to wait that long to get it right. That is the important thing.

If it is necessary for the Council to adjourn for a time and come back, even in this session in the second or third week in March once we have the report, maybe that is the proper thing to do. Then we will not have to pass this Bill under pressure; we will do so with full information. We can look at that matter once we get to the Committee stage.

I support the Bill on the understanding that there will be innumerable amendments put forward by the Opposition and others, all on behalf of somebody somewhere. I hope that out of it all comes a Bill that does something for workers compensation, leads to lower costs for the industries of this State, not affecting the benefits to workers, and also ensuring that at the end we have something that gives incentive for greater employment.

The Hon. M.J. ELLIOTT: I support the second reading of the Bill, to which I will speak briefly and in generalities rather than specifics. There are obviously two groups of people who are primary considerations in workers compensation—the workers and employers. The system must be such that an injured worker receives fair compensation, while the payments required must be such that it does not cripple the employer. One cannot treat an injured worker like damaged machinery that can be simply replaced. If the employer is willing to use a person's labour, that employer must accept the responsibility for that person's well-being as a result of that labour.

Facing the economic realities, if we place too great a burden on employers, we may damage our economic fabric. We are then carrying out a balancing act between what we should and can do. I suppose that it is inevitable that those representing employers and those representing workers will tend to overstate their cases—consciously or subconsciously. The Government has a mandate for workers compensation in the general form proposed. However, the finer details have not been subject to public scrutiny for very long. Each of us in this Council also has a mandate. While we may be obliged to accept the general thrust of the State Government's proposals, we also have an obligation to put the details under scrutiny. For that reason the Democrats, while supporting the direction of Bill, will be offering a number of amendments.

While I have signalled that I see the workers and employers as a primary consideration, we must also be aware of other ramifications. The insurance companies were a necessary component under the previous workers compensation structure. They are not necessary under the structure as it appears to be proposed by the State Government. However, I do not accept that it means that they may not have a role. Work Cover in Victoria has, as I understand it, tendered out the various components of its scheme—rehabilitation, paperwork and investment. The insurance industry has a great deal of expertise in various areas covered by the proposed Bill. The only good reason for not using that expertise would be if it could be shown—and demonstrably shown—that it is cheaper to use a single Government body doing all the work.

Why sack one worker to employ another? Why swap one administrator in the private sector for one in the public sector? I am neither anti public sector nor a supporter of privatisation. However, any change from the status quo needs to be justified. I ask that the Minister in his reply indicate whether the Bill will allow tendering to occur, and whether the Government has contemplated this. If it has rejected it, why? I welcome the concept of no blame in this field, as it will greatly speed up compensation to and the rehabilitation of injured workers. I express disappointment that an Industrial Safety, Health and Welfare Act Amendment Bill has not come into this Chamber at the same time as this Bill, as I believe that the two measures should have been treated together. I have been dismayed at the Government's apparent haste to get such a complex Bill, with potentially great ramifications, through this Parliament. The Government could easily have gained many of the vaunted savings by simply removing things there are outside this single insurer. I have also been disappointed by the Opposition, which has been overstating its own case at times. Is it the end of civilisation as we know it? I indicate that the Democrats support the major intentions of the Bill.

The Hon. C.J. SUMNER (Attorney-General): I thank honourable members for their contribution to the debate. In my reply I do not intend to address all the issues that have arisen. It would appear that, although the Liberal members are opposed to the concepts inherent in the Bill, that is, the single insurer proposition, and will vote against the second reading—because they consider the proposal for a commission to be unacceptable, the Australian Democrats have indicated that they will support the second reading, and that will then enable a Committee debate. No doubt that debate will be fairly extensive, judging from what has been said by members opposite. If they concede that the Bill will pass the second reading, no doubt they will move many amendments to it and question many of the clauses. Indeed, the Democrats have already indicated that they have a number of amendments that they want to have canvassed during the Committee stage.

The principal issue in this debate is whether or not there should be a single authority, or whether we should maintain private insurers in the field and the essentially competitive system, as far as workers compensation premiums and costs are concerned, coupled with the processing of claims through the courts; in other words, a system very similar to what we have at the moment, albeit modified to some extent in accordance with the Liberal proposals, or a single authority, which is the Government's proposition and which the Government asserts will cut costs in the delivery of workers compensation.

The debate on a single authority began with the production of the so called Byrne report in 1980. That was produced by a tripartite committee chaired by Mr Des Byrne, and had employer and employee representatives on it. The report recommended the establishment of a single authority. To my mind that report contained some very compelling figures about the relative costs of workers compensation under a single authority scheme, compared to the existing schemes in South Australia.

Of course, it has been the Byrne report that has provided most of the initial thrust for a change in the workers compensation system. There have been many changes or adaptations of the Byrne model, but the basic proposition, involving a single authority which should enable the delivery of workers compensation at cheaper cost, has remained intact in the Bill that the Government has brought before the Parliament.

I can only ask honourable members, when considering this matter, to return to that basic principle and to examine the cost structures outlined in the Byrne report. I am sure that they will see there the very compelling argument for a single authority as against the court system and the competitive system that we have at the moment.

The Hon. L.H. Davis: The Byrne report is a bit tired; it is six years old.

The Hon. C.J. SUMNER: Indeed, but one has only to look at that and make a comparison to find that certainly the costs of the competitive system have not been reduced in that time; if anything, they have increased. However, in looking at cost comparisons there in relation to a single authority system versus the competitive system for the delivery of workers compensation, one notes that the figures are quite stark in terms of savings. I am not suggesting that

that situation has not changed to some extent. The benefits that are being offered in this Bill are greater than those referred to in the Byrne report.

That is true, but I still think that the basic propositions in the Byrne report demand careful examination, because I believe they are quite compelling in the cost savings that are indicated. From the Government's point of view, there is no—

The Hon. L.H. Davis: You should be able to—

The Hon. C.J. SUMNER: But that is still the basis of the discussion. There have been changes, that is true, and I will get to that shortly. The honourable member seems to have forgotten that report. I want to bring him back to the basis and the genesis for this debate in our community and in the Parliament. I should say that the Government does not have any ideological hang-up about the delivery of workers compensation. We are looking to the delivery of that service, if you like, that can be provided on the most cost effective basis, given a certain level of benefits. If that could have been achieved through a competitive system, that is, the existing system, the Government has no ideological hang-up about that, provided its other social objectives such as rehabilitation and the like could be incorporated in that system.

The evidence that has been presented to date, starting with the Bryne report, indicates that a single authority is likely to be more cost effective. That proposition is accepted by the spokesperson for honourable members opposite in another place, the now shadow Minister of Labour, Mr Baker, who has asserted that South Australia should have a single insurer, a single commission system for the delivery of workers compensation. He admires the Queensland system, which is a single insurer, a single commission system, and is on the public record as having said that in the Parliament.

The Hon. R.J. Ritson interjecting:

The Hon. C.J. SUMNER: Just a minute. It is not a matter of ideology. It is a matter of what is the most cost effective means of delivering a service. In another place Mr Baker was not referring necessarily to the level of benefits—

The Hon. R.J. Ritson: That is what determines the cost.

The Hon. C.J. SUMNER: It is not entirely what determines the cost, as you well know. There has been a number of things identified in the present system which are costs that the single insurer system could do away with and has done away with in Queensland. Mr Baker was not talking about the level of benefits in Queensland. What he was talking about was a better system for the delivery of workers compensation.

Clearly, he is on record in the Parliament as having said that a single insurer or single commission system is a better system. So, it is a matter of weighing up what is the most cost effective means of delivering workers compensation, given a certain level of benefits.

The Hon. R.J. Ritson interjecting:

The Hon. C.J. SUMNER: You could have the level of benefits the same with the competitive system and still have a higher cost than the same level of benefits with the single insurer system.

The Hon. R.J. Ritson interjecting:

The Hon. C.J. SUMNER: That is the proposition. You can argue about the benefits if you wish. I am saying that the method of delivering the service—it appears from such things as the Byrne report, the white paper, from inquiries and actuarial assessments undertaken by the Government, the New Zealand system and the like—by a single insurer or commission is a more cost effective method of delivering a service of workers compensation to the community.

The Hon. R.J. Ritson interjecting:

The Hon. C.J. SUMNER: That is something that the honourable member can explore in Committee. What I do know is that in Victoria workers compensation premiums have been cut quite dramatically. The fact is that, if they cannot be cut in South Australia, we are going to be at a cost disadvantage vis-a-vis Victoria. Honourable members ought to bear that in mind when they consider sinking this Bill. That is what happened in Victoria irrespective of all the arguments about funding or unfunding.

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: The honourable member can examine the level of benefits in the Victorian legislation, but I do not believe that the benefits in the Victorian legislation are any less than those in the Bill before us. We should look at workers compensation more in the nature of social security rather than insurance, with social objectives—

The Hon. R.J. Ritson interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: —such as rehabilitation, rather than the conventional insurance system. Clearly, the critical issue in the debate (and that is what I will concentrate my concluding remarks on) is the cost effectiveness of the proposal put forward by the Government: the question of weighing up the increased benefits under this Bill against the savings that are available from a single commission system. When debating that issue, members opposite must also not ignore what may happen and what will happen with insurance premiums through the existing system. There is no question that they will increase quite dramatically if there is not a change to the delivery system of workers compensation.

A number of parameters in the debate must be accepted by all members of Parliament, and, indeed, by the community. Clearly, we cannot have a cost structure in workers compensation that is higher than the eastern States, particularly New South Wales and Victoria, because of our competitive position in South Australia *vis-a-vis* those two major States; and particularly in the area of manufacturing, which is one area where we are in direct competition with those States. The simple fact of the matter is—and I am sure that it is accepted by everyone—that we cannot have a cost structure in South Australia that is higher than that in the eastern States. On the other hand, we should not have a level of benefits that is worse for the people of South Australia than pertains, generally speaking, in the eastern States. Obviously there can be differences in the way those benefits are delivered, and I believe that is another parameter that we must consider.

When members opposite consider this Bill, I put it to them that it is absolutely essential that our workers compensation premiums do not remain appreciably higher than those of Victoria and New South Wales. At present it is clear that our workers compensation premiums are higher and are likely to go even higher than Victoria's. That is a situation that, simply, we cannot live with—the Government, the South Australian community, South Australian industry and the South Australian working population cannot live with. We must come to grips with the situation of the level of premiums that exist in South Australia *vis-a-vis* what has happened—runs on the board in Victoria and probably in New South Wales (and the details can be explored in the Committee stage).

In conclusion, I direct my remarks primarily to the central issue of the debate, that is, the cost effectiveness of this scheme—the argument about its cost given the level of benefits included in it. I say that the background to that analysis remains the original report of 1980, with the other public documents that have been released since then. With

respect to the Hon. Mr Griffin, who led the debate for the Opposition, he and a number of other members opposite criticised the costing paper undertaken by Mr Fedorovich and Dr Mules and suggested that it is necessary for the Auditor-General's report to be received before proceeding with the legislation.

The concerns over costing and the reason for the reference of the Auditor-General arose because a costing study undertaken by a New South Wales actuary, Mr Jim Gould, and commissioned by the South Australian Employers Federation, produced results that conflicted with those in the Mules-Fedorovich report. It is important, therefore, to put these differences in perspective and to examine to what degree there is a dispute about costings, particularly in the light of the recent costing study undertaken by Mr Cumpston, a Melbourne actuary, who is an expert on workers compensation and a person to whom the Hon. Mr Lucas gave some attention this afternoon.

The costings undertaken by Dr Mules of the faculty of economics and Mr Fedorovich of the Department of Labour uses 1983-84 data. This early year was chosen on the basis that it represented a normal year in terms of profitability. It followed the years of premium discounting in the late 1970s and the massive increase in premiums over the years 1980 to 1983 inclusive. The Employers Federation study by New South Wales actuary, Mr Jim Gould, uses later data and no attempt was made to strike an average or normal figure of profits. The use of a normal year on which to base costings is a more reliable guide to the level of average long-term cost savings.

It is clear from an examination of the two cost studies that the major differences arise only in two areas. First, the margins for profit and risk are 9 per cent under the Government study and minus 20 per cent under the Employers Federation study. The other point of difference relates to the disbursement of premiums on common law claims, being 18 per cent under the Government study and 34 per cent under the Employers Federation study. In other respects, the two studies corroborate one another. I will be interested to hear in the Committee stage whether members dispute that basic situation, namely, that the two studies—the Government study and the Gould study—corroborate one another and are more or less at one except on those two issues that I have mentioned.

The differences on the level of common law claims does not greatly affect the total estimated net cost of the new benefit package and is therefore not of significance. It may well be that the percentage of common law claims is increased which in itself is a good argument for the reforms proposed. It is particularly important to note that the cost savings do not materially differ on the estimated costs of the benefit proposals, so they seem to be *ad idam* on the estimated cost of the benefits in the Bill. In total, the Government's costing estimates the extra cost of the new benefits will be 8 per cent, whereas the Employers Federation study estimates that the extra cost will be 7 per cent.

The Hon. R.J. Ritson: No-one really knows.

The Hon. C.J. SUMNER: The honourable member says, 'No-one really knows,' and that is not a really sensible contribution to the debate. What we do know is that if we maintain the existing system, there will be a massive increase in workers compensation premiums in this State which will take us even further out of kilter with the premiums available in Victoria, which will place even greater burdens on industry in this State than exist at the present time. I really find the honourable member's proposition of throwing his hands up in horror saying, 'No-one really knows' as verging on the irresponsible.

The extra cost of the benefit package is matched by the 8 per cent stamp duty that is being eliminated. Accordingly, all the other savings that will flow from a change to the system will accrue to the employers. The question of whether there will be other savings hinges on whether or not the insurance companies are currently making losses and are likely to continue to do so. It is this difference in particular that the Government has requested the Auditor-General to examine as it represents the only real difference between the two studies, and I think that is probably conceded by members opposite. It must be self-evident, however, that insurance companies cannot continue to make losses at the level estimated in the Employers Federation costing study. Even if such losses are currently being made, there has to come a point at which premiums are increased, as I have said.

The Government was recently advised of one major South Australian business which is currently facing a 100 per cent increase in its premiums and, in another case, a number of large employers have estimated that they are, as a group, facing increases of about 40 per cent in their workers compensation premiums.

It is, therefore, necessary to look at what increases in premiums could be avoided in the long run by the introduction of the reforms. The Employers Federation study takes a short-term view of the problem, whereas the Government's study seeks to identify the average level of profits over a business cycle and, thereby, establish the level of long-term savings to be made as a consequence of the Government's reforms.

Whilst the various costing studies touch on the major areas of saving, a number of savings have not been taken into account because of difficulties in quantifying them. These areas of further savings are as follows: first, the effects of improved rehabilitation—getting workers back to work sooner will cut costs. Encouraging the provision of alternative work, and the re-employment of previously injured workers will cut costs. The actual savings in this area may well be substantial.

Secondly, employers should become more cost conscious as a result of being levied a fair share of their costs. At the moment, big companies can shop around and avoid that direct responsibility. Also, it arises as a result of paying for the first week's claims, 80 per cent of claims falling into this category.

Thirdly, savings for responsible employers can be achieved, by putting a stop to the practice of understating payrolls to avoid paying a fair share of the premiums. In Victoria it is estimated that under the previous system payrolls were underdeclared by approximately 35 per cent. Employers who properly declare their payrolls will thus receive major cuts in premiums on these grounds alone. The recent independent report by Victorian actuary, Mr J.R. Cumpston, gives strong support to the finding of the Mules-Fedorovich report of major savings from a move to a sole authority. Mr Cumpston is an expert actuary who has specialised in the field of workers compensation. He estimated that the profits of private sector general insurers varied from minus 3 per cent to 13 per cent of earned premiums between 1975 and 1984—an average of 7 per cent for the 10 year period.

These profits included investment earnings but did not include capital gains. In his report, Mr Cumpston stated that he could not accept the Employers Federation costing estimate of underwriting losses of 20 per cent being made by South Australian private insurance companies. I must confess that it does seem somewhat extraordinary that insurance companies would remain in business when losing 20 per cent.

The Hon. R.J. Ritson interjecting:

The Hon. C.J. SUMNER: I am sure that the Hon. Dr Ritson would not remain in business as a medical practitioner without putting up his price if that were the state of

his books. I am also sure that the insurance companies will be putting up their prices, too, in the near future.

The Hon. R.J. Ritson interjecting:

The Hon. C.J. SUMNER: Are you suggesting that is not available from the sole insurer? Mr Cumpston estimated that there were major savings in administrative costs to be achieved from any move to a sole authority. He estimated the profit and administration savings possible from the replacement of private insurance by a central workers compensation scheme before any change to benefits as about 20 per cent of premiums.

Mr Cumpston's findings validate the Mules-Fedorovich estimate of a 25 per cent saving from a move to a sole insurer. The Hon. Mr Davis has suggested that Mr Cumpston's recent report contradicts an earlier paper that Mr Cumpston gave.

The Hon. R.J. Ritson interjecting:

The Hon. C.J. SUMNER: The honourable member can quote that in the Committee stages and we can have the debate then.

The Hon. R.J. Ritson: Read the last sentence.

The PRESIDENT: Order!

The Hon. C.J. SUMNER: The honourable member is interjecting again quite banally as he tends to do, and really he is rarely to the point. If the honourable member is arguing with what I have said, I am sure that he has had the opportunity in this debate to argue.

The Hon. R.J. Ritson interjecting:

The Hon. C.J. SUMNER: Everyone has disclaimers, and that is about as inane as the honourable member's previous interjection. His proposition is to throw his hands up in horror and say, 'The whole thing is too difficult.' If one is going to attempt to make changes in this area, one has to try to get the best possible evidence about the costings, and that means making an assessment of expert costings of the new scheme. All one can say is that Mr Cumpston's assessment does accord with other assessments that have been done—indeed, the assessment for instance, in the Byrne report of 1980.

The Hon. Mr Davis has suggested that Mr Cumpston's recent report contradicts an earlier paper that Mr Cumpston gave in 1984. The Government is aware of the earlier paper but does not believe that it is as inconsistent as the Hon. Mr Davis suggests. Mr Cumpston's estimate of administration expenses under the new authority is consistent with his 1984 comments concerning the cost of running the New Zealand and Queensland schemes.

Mr Cumpston's 1984 paper found that average profits between 1975 and 1982 averaged 5 per cent. In his latest paper he was able to extend that period to cover the 10 year period 1975 to 1984, when the average level of profit was slightly higher at 7 per cent. The difference is certainly not significant, and the latest figure is, if anything, more representative because the years 1983 and 1984 saw a return to some degree of normal profits.

Whatever may be made of these varying estimates of profit, one thing is clear: over a period of years the insurance industry has made good profits out of workers compensation. Because of the industry's tendency to hold on to the business, it certainly expects to make good profits in the future. On the basis of the Employers Federation costing study, if insurance companies were only to break even, the savings would still be of the order of 20 per cent after taking account of the costs of the improved benefits package. Mr Cumpston's paper supporting the overall findings of the Mules-Fedorovich estimate of the savings to be achieved from a move to a sole insurer is significant.

The Hon. Legh Davis also takes issue with other so-called inconsistencies between Mr Cumpston's 1984 paper and his current report. In 1985 Treasury arranged a conference between the Public Actuary, Dr Mules, Mr Fedorovich and Mr Cumpston to discuss the costings of the Government's reforms in an attempt to reconcile the differences between the various statisticians. General agreement was reached, as a result of that conference, that there were significant savings to be achieved from the proposed reforms, and Cabinet was advised by Treasury accordingly.

Mr Cumpston's position in his current paper is consistent with his agreement, reached after joint discussions with the authors of the Government's costing study and the Public Actuary in 1985, that significant savings would flow to employers from the Government's proposed reforms. Mr Cumpston's credentials are impeccable. He is an acknowledged Australian actuarial expert in his field. Even the Hon. Legh Davis admits that it is necessary to have this independent and expert actuarial advice. He is selective, however, in the advice that he is prepared to accept. The Government, on the other hand, believes that the reports received to date are actuarially sound but, in the case of the Employers Federation study, a short-term view was taken when a long-term view was required.

If that fundamental point is grasped, there are no major inconsistencies between the various reports, and the Government therefore believes that significant savings will be achieved as a result of its reforms. Because the package seeks to provide fair and proper levels of compensation and because it seeks to achieve a number of important social goals as against purely economic goals, it is still necessary to proceed with these reforms. The social goals include improved rehabilitation, the secondary disability concept to overcome disincentives to employment of previously injured workers, a speedier, less legalistic and less adversarial dispute settling system, the investment of hundreds of millions of dollars of funds that are surplus to current requirements with preference to investments in this State, and the collection of accurate accident statistics to assist programs of prevention, etc.

So, whilst the Auditor-General's report may assist a further understanding of the current position, the Government believes that the levels of compensation are fair and should be proceeded with, whether or not there is a reform of the system. The Bill incorporates a number of social goals that are important in themselves. Even if the Employers Federation costing was accurate, the introduction of the reforms would avoid future premium increases which are inevitable because insurance companies could not continue to sustain losses at the levels estimated.

A number of savings are likely to flow from the changes, which have not been quantified but which may well be substantial, and I imagine that the Auditor-General will probably not comment on those, although I have outlined them in this speech.

The most recent study by an independent expert actuary, Mr Cumpston, supports the view that major savings will be achieved by a move to a sole authority. While Mr Griffin criticises other centralised schemes, he alleges that in Victoria the premiums have gone up. In fact, the Victorian scheme has cut premiums in that State by $600 million. The Victorian Government's proposals involve averaging, which has led to some employers paying more.

This approach is not being adopted in South Australia. Clause 68 makes it clear that employers with a good safety record will have their low claims experience reflected in their premiums. Mr Griffin also attacked the Canadian and New Zealand schemes. Mr Cumpston, in his report, pointed out that data from New Zealand and from 10 Canadian provinces show that all have on average workers compensation levy rates below 3 per cent of wages and that seven of the 11 have the average rates below 2 per cent.

By contrast, he estimates that South Australian premiums will be at least 3 per cent of wages. Whilst a few of the Canadian provincial schemes have built up large unfunded liabilities, these provinces have the problem in hand and are amortising their liabilities by increasing their rates gradually over a number of years. The problem of under funding is not limited to such schemes and the Federal Insurance Commissioner has pointed out that many private insurance companies are consequently underfunded. The Government's scheme is to be operated on a funded basis and with good management the corporation should not get into the funding problems experienced by a few (not all) Canadian schemes and a number of the private insurers.

The Hon. Dr Ritson questioned the urgency of the matter. I think that this is an important point. Because of the lead time in setting up the new system, which would be approximate 12 months once the legislation is passed, a further delay could put off the commencement date until early 1988. The Government is concerned about what the private insurance companies might do in that time once they know that they are to be removed from the field.

I have already pointed out how a number of major employers are facing crippling rises in premiums. Even if this Bill passes in this session, we will be 12 months behind Victoria in lowering our workers compensation costs. If there is further delay it will be two years before South Australian industry regains its competitive position with Victoria in terms of the cost of workers compensation. The costs of delay are, therefore, substantial and there need to be very good reasons for such a delay to occur.

There is already a wealth of actuarial advice on the costing and further delay may not necessarily lead to any greater clarification of the issues. The Hon. Dr Ritson and other speakers such as the Hon. Mr Davis criticised the lack of emphasis on rehabilitation in the Bill. Members opposite have clearly not fully understood it. The detailed provisions in the Bill have been praised by a number of experts in the rehabilitation field. Support for the Government's proposals on rehabilitation has been received from Dennis Smith, Professor of Rehabilitation Studies, Flinders University; Richard Llewellyn, Disability Adviser to the Premier; and Dr Revindran, Medical Director of the Commonwealth Rehabilitation Service in S.A. If the Government's proposals on rehabilitation had been deficiant I would have expected the Opposition to move substantial amendments in the Lower House. Such is not the case and all the criticisms of the Opposition on this important aspect of the legislation are, in my view, misplaced. Clearly, one of the very important aspects of this legislation and this scheme is greater emphasis on rehabilitation of injured workers. I have attempted in my reply to basically deal with the central issue that is of concern to honourable members—deciding the principal question of whether or not we should opt for this scheme of a single insurer or continue with the existing scheme.

I have put the Government's position in relation to its perspective and point of view on the costings and analysis of the costings that we have before us at present and the Government's view that those costings are valid and that it should lead to a reduction in premiums or, at the very least, a holding of premiums at no greater level than they are at the present time, given that the insurance companies and the system currently operating will involve a significant increase in premiums in the very near future. Those matters will be explored further in the Committee stage of the Bill. I commend the Bill to the Council and the second reading to all honourable members.

The Council divided on the second reading:

Ayes (9)—The Hons G.L. Bruce, J.R. Cornwall, M.J. Elliott, M.S. Feleppa, I. Gilfillan, Carolyn Pickles, T.G. Roberts, C.J. Sumner (teller), and G. Weatherill.

Noes (8)—The Hons J.C. Burdett, M.B. Cameron, Peter Dunn, K.T. Griffin (teller), C.M. Hill, J.C. Irwin, Diana Laidlaw, and R.J. Ritson.

Pairs—Ayes—The Hons B.A. Chatterton and Barbara Wiese. Noes—The Hons L.H. Davis and R.I. Lucas.

Majority of 1 for the Ayes.

Second reading thus carried.

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

The Hon. K.T. GRIFFIN: Now that the Bill has passed the second reading stage, I have a number of amendments still in the process of completion, and accordingly I ask the Attorney, because of that and for other reasons that I explained previously, to report progress.

The Hon. C.J. SUMNER: I am prepared to accede to that request. There are also some Government amendments in the course of preparation. It seems desirable to ensure that those are on file before proceeding through the Committee stage.

Progress reported; Committee to sit again.

BUILDERS LICENSING BILL

Adjourned debate on second reading.

(Continued from 26 February. Page 593.)

The Hon. C.J. SUMNER (Attorney-General): This is essentially a Committee Bill, and much of what I could say now will be debated in detail during the Committee stage. There does not seem to be a great deal of point in going through each and every matter raised by honourable members. The Hon. Mr Griffin sought information about several clauses which provide for things to be prescribed by regulation. I am not in a position to give a definitive answer on all the things that might be in the regulations. Indeed, one of the reasons for making provision for certain matters to be prescribed is that there needs to be discussion and consultation before the administrative details are worked out. It is not appropriate to put all details of this kind in the Bill. Some of the matters raised by the Hon. Mr Griffin can be dealt with by way of regulation, and his comments will be taken into account when the regulations are being drafted.

I also give an undertaking that there will be proper consultation with industry and consumer groups before the regulations are finalised. I am sure that honourable members will realise that once a Bill of this kind is passed there is still a considerable amount of work to be done to get it in place and operating, because of the regulations that have to be prepared. The Hon. Mr. Griffin dealt with a number of issues. I believe that it is better that most of those be dealt with in Committee, if the honourable member is happy with that course, rather than my going through them in detail at this stage. When we get to the relevant clause, I will attempt to answer the questions raised by the honourable member, as well as deal with the amendments he will be proposing.

Bill read a second time.

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

The Hon. K.T. GRIFFIN: Will the Attorney-General indicate which parts of the Bill will not come into effect on the first occasion when a proclamation will bring the other parts

of the Bill into operation, and the reasons for suspension of any specific provisions of the Bill?

The Hon. C.J. SUMNER: There are no specific provisions in mind at the moment: this provision has become more or less standard in drafting in recent times. I guess it is a failsafe mechanism in case there are any difficulties as we get closer to proclamation or if any clauses need to be suspended. However, at this stage, it is not envisaged that that will be necessary.

Clause passed.

Clause 3 passed.

Clause 4—'Interpretation.'

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

Page 2, lines 5 to 7—Leave out 'in respect of domestic building work or inspecting and reporting upon domestic building work' and insert 'or furnishing reports in respect of domestic building work, whether being work already performed, work in progress or work which may be required in the future'.

It has been suggested that the present definition of 'building consultant' does not cover a person who inspects and reports on a completed house: for example, checking whether salt damp is present and recommending any remedial work that might be necessary. The amendment makes clear that this type of work is included.

The Hon. I. GILFILLAN: I am concerned about the wording of this definition, which seems to me actually restricts the work of a building consultant to domestic building work. Will the Attorney explain the full meaning of the definition and say whether in fact that restriction does apply? Can a building consultant consult on, say, a shop or a small factory?

The Hon. C.J. SUMNER: The Act regulates domestic building work, as the honourable member is aware, and it is for that reason that the definition of 'building consultant' is cast in the manner it is in this definition clause.

The Hon. K.T. GRIFFIN: As I understand it, that would not preclude others who give advice on other building work from carrying on the business of a building consultant. It just means that for the purposes of this Bill it is only building consultants in relation to domestic building work who are subject to the negative licensing provisions. There is no difficulty, as I would interpret it, with other people wanting to be building consultants in fact carrying on business as building consultants in regard to work other than domestic building work.

Amendment carried.

The Hon. K.T. GRIFFIN: Paragraph *(c)* in the definition of 'building work' means 'work of a prescribed class'. Is the Attorney able to indicate what sort of work is likely to be covered in that prescribed class of work?

The Hon. C.J. SUMNER: Once again, it is a fail-safe provision to ensure that we have not left out in the principal definition any building work that ought to be covered by the legislation, and it is a means of correcting that situation if it should arise. It does not have any particular significance at this stage, except to try to ensure that the Act is as broad in its coverage as it possibly can be, given that circumstances change and that building techniques change. It may be considered that there is a deficiency in the definition and, if that does arise (although it is not anticipated), it can be covered expeditiously.

The Hon. K.T. GRIFFIN: I presume that that would also be the answer in regard to paragraph *(c)* of the definition of 'domestic building work'. Although I do not intend to move an amendment. I want to put it on the record that I do have a concern about the ambit of the legislation being extended by regulation in a way that is at least possible by the use of the two paragraphs *(c)* in those two definitions.

I take the fairly strong view that the Act itself ought to establish the ambit and that ought not to be able to be extended by regulation. Although I put it on the record, I do not intend to move an amendment.

I now wish to pick up a question on another definition. In my second reading speech I referred to the definition of 'insolvent'. There has been some discussion about the meaning of a scheme of arrangement with or for the benefit of creditors in paragraph *(b)* of the definition. I indicated that it was my view that there are schemes of arrangement that are entered into for the purposes of amalgamation or reconstruction that do involve meetings of creditors, and that it may be that such meetings to approve a scheme of arrangement would, therefore, bring a particular body corporate within the provisions of the definition of 'insolvent'. I concede that there are arguments both ways, but as I have raised the matter will the Attorney-General venture a view on it?

The Hon. C.J. SUMNER: I do not agree that the definition of 'insolvent' is too limiting. The fact of the matter is that there is a great deal of concern in the community about the apparent ease with which ex bankrupts, ex directors of bankrupt companies and insolvent companies can continue to carry on businesses and thereby place consumers at risk. I am sure the honourable member, being a diligent member of Parliament and in touch with the community, would be aware of the considerable heat that this issue generates in the community—heat that generates in particular from creditors who have been deprived of funds from an insolvent builder; but also because of the consumer concern where people involved in a company that becomes insolvent can start up a very short time later with a new company, a brand new business, and off they go again.

I am sure the honourable member would be aware of the very considerable disquiet—and that is putting it at its lowest—about that sort of action. The fact is that there is a lot of not just disquiet but anger about that sort of action. This clause is designed to pick it up. I believe the honourable member has, in any event, significantly overstated the problem. Where a corporation has been involved in matters which come within the definition of 'insolvent' but the corporation and its directors are entirely blameless, and there is no reason to believe that they would pose any risk to consumers. I have no doubt whatsoever that the tribunal would not take disciplinary action against the corporation and would be prepared to grant its application for a new licence.

It seems to me to be perfectly reasonable that, where a person or corporation has been insolvent, the onus should be on that person or corporation to establish to the satisfaction of the tribunal that there is no reason why he or it should not be granted a licence. That is basically the structure of the Bill. It requires a person in those circumstances, an insolvent person, to go to the tribunal for approval to continue to act as a director of a company in the industry. I think that is a perfectly reasonable clause and certainly one that I think there has been a lot of public pressure to introduce in recent times.

The Hon. K.T. GRIFFIN: The Attorney-General has misinterpreted the matter to which I referred. I have no quarrel with a company or person involved in the management of a company. I have no quarrel with the proposition that a body corporate which has had financial difficulties or the directors of such a body corporate should be subject to very close scrutiny. I have not argued otherwise. What I have said is that the definition of 'insolvent' in relation to schemes of arrangement may in some circumstances create an injustice.

That is the only question. It is not a question relating to getting truly insolvent persons back into business, or truly insolvent corporations back into business. It deals with a very limited group of circumstances: where a scheme of

arrangement is entered into, it involves creditors only because of the Companies Code and the requirements of the Supreme Court Rules, where there is no defalcation and no inadequacy in the funding of the corporation.

The difficulty to which I have drawn attention is related to the later clause 10 where, of course, if there has been a corporation in financial difficulty special reasons have to be adduced before the tribunal as to why a licence should be granted. I will be dealing with that when we get to that clause. My proposed amendment to that clause may in fact largely alleviate the difficulty that I have foreseen with the definition of 'insolvent'.

It has to be remembered that 'insolvent' in the context of this Bill has an artificial meaning. That is what it is about. It is not about what in ordinary legal parlance is 'insolvent' but what for the purposes of this Bill is defined as being 'insolvent'. I do not propose to move any amendment on this clause. I wanted to focus on a particular technical difficulty, not with a view to writing down the protective provisions of the Bill but with a view to highlighting a possible area of injustice in certain limited areas.

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

Page 3, after line 25—Insert definition as follows:

'perform' in relation to building work includes—

(a) cause building work to be performed;

or

(b) organize or arrange for the performance of building work.

This deals with a new definition of 'perform'. The word 'perform' is used in the definition of builder and in several other places throughout the Bill. It has been suggested that this might be interpreted in a narrower sense than was intended so that it covers only persons who physically carry out building work. It is doubtful that this interpretation is correct, otherwise a corporation could never be a builder because it is incapable of physically carrying out work except through the agency of others. However, to put the matter beyond doubt, I propose to insert a definition of 'perform'. The new definition will make it clear that a person who carries on a business of organising or arranging for the performance of building work is a builder. This will include a person engaged by an owner builder for the purpose of coordinating the work of various subcontractors to be engaged by the owner builder.

Amendment carried.

The Hon. K.T. GRIFFIN: I want to raise a question on the definition of 'minor domestic building work'. Can the Attorney-General indicate what is the prescribed sum referred to in both paragraphs *(a)* and *(b)*?

The Hon. C.J. SUMNER: The current proposition is for that to be $5 000, but it will be subject to further discussion with industry and the interested groups when the regulations are being prepared.

The Hon. K.T. GRIFFIN: I have been trying to go through the definitions in a sequential way, but there was one question about the definition of 'director' which I overlooked. I refer to the addition of the words to the definition of 'director', beyond the definition in the Companies (South Australia) Code, the words, 'or who is in a position to control or influence substantially the affairs of the body corporate'. Why was it was felt necessary to extend the definition of 'director' beyond that which applies for all other purposes under the Companies (South Australia) Code?

The Hon. C.J. SUMNER: The simple answer is that the scheme of the Act is to cover not just directors but also those who are in a position to control or influence substantially the affairs of the body corporate. Including it in the definition, of course, overcomes the problem from a drafting point of view of repeating it every time the word 'director' occurs. There is no particular magic in it except that it is intended that there be a broad coverage of the people who should be considered to be director and therefore have responsibilities under the Act.

Clause as amended passed.

Clauses 5 to 9 passed.

Clause 10—'Application for a licence.'

The Hon. K.T. GRIFFIN: Before I deal with my amendment, which is on page 6, in subclause (8) *(a)* (iii) there is a requirement that the applicant should have sufficient business knowledge, experience and financial resources for the purpose of properly carrying on the business authorised by the licence. In preparation of the Bill, what level of business knowledge and experience was envisaged by the Attorney-General? Has he any particular qualifications in mind? Was it proposed that that business knowledge and experience would be business knowledge and experience in the building industry, or could it be in relation to the conduct of any business?

The Hon. C.J. SUMNER: The proper determination of what amounts to sufficient business knowledge and experience in a particular case would obviously be left to the discretion and good sense of the tribunal which, I remind members, will include industry and consumer representation. As the activities of licensees under this Act will range from the construction of multi-storey buildings to the laying of concrete paths, it is quite impractical for the Act or the regulations to include specific criteria for every type of activity. The tribunal itself will have to establish guidelines that will be applicable to the different categories of licence and different work that is being done.

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

Page 6—

Line 22—Leave out '10' and insert '5'.

Line 26—Leave out '10' and insert '5'.

Lines 29 to 31—Leave out all words in these lines and insert 'the Tribunal shall not grant the application unless satisfied by the applicant that the insolvency arose through no wrongful act, default or neglect on the part of the applicant or director'.

Subclause (9) provides:

Where—

(a) a natural person applying for a licence, or a director of a body corporate applying for a licence, is or has been, during the period of 10 years preceding the date of the application, insolvent or the director of an insolvent body corporate; or

(b) a body corporate applying for a licence is or has been, during the period of 10 years preceding the date of the application, insolvent or in a prescribed relationship with an insolvent body corporate, the tribunal shall not grant the application unless satisfied that there are special reasons (proof of which shall lie upon the applicant) why the application should be granted.

Under the Bankruptcy Act, for a natural person five years is the relevant period. It seems to me to be an inordinately long period of time for 10 years to elapse before any further consideration can be given other than an occasion where special reasons may be adduced. If a body corporate is in liquidation, that is the end of it. It will not come back in one year, five years, 10 years or any other period of time. Where it has been placed in receivership, it may well be that, because of the vagaries of the building industry—particularly recessions, high interest rates or some other economic circumstance—a secured creditor feels it necessary to appoint a receiver.

There are companies where, receivers having been appointed, they have traded out of their difficulties and have then gone on to carry on an effective business. If in fact a company has been in receivership or has entered into a scheme of arrangement or composition with its creditors, it seems to me that five years would be adequate to determine whether or not it was then a fit and proper corporation to carry on a business, if it applied for a new licence. Of course, where the applicant is a natural person and was a

director of an insolvent body corporate, again it can have a number of connotations. But again, I suggest that five years is a more appropriate period of time rather than 10 years.

With respect to a body corporate which is an applicant, the other disqualifying factor is if it is in a prescribed relationship with an insolvent body corporate. It may be that there is a holding company or some other related company under the Companies Code which is quite strong financially but which has the misfortune, if it might be termed that, to be a related corporation of a body corporate which has gone into liquidation or in relation to which a receiver has been appointed or a scheme of arrangement entered into. It again seems to be unduly harsh that a 10-year period is specified rather than a five-year period.

The other difficulty as the clause is drafted is that the tribunal must be satisfied that there are special reasons, and the onus of proof is placed on the applicant natural person or applicant body corporate. I have no quarrel with that reverse onus of proof, but the difficulty there is that, unless there can be shown to be special reasons, not just mitigating circumstances or a likelihood of reasonable financial stability in the future, the licence will not be granted.

So, I am moving for the period of 10 years to be reduced to five years. Then I have a further amendment to which I will address some remarks when this particular time period has been disposed of.

The Hon. C.J. SUMNER: I oppose the amendment. I think the proposition in the Bill of a 10-year period in which a person should not have been involved with an insolvency if they are to apply for a licence under this Act is reasonable. I think that the tribunal does have the power to enable a person who has been involved with an insolvency during that 10-year period to apply to the tribunal and to have the application granted if there are special reasons why it should be. So, I do not see any case for reducing from the 10 years to the five years protections that are in the Act, as proposed by the honourable member.

The Hon. I. GILFILLAN: I would like to indicate that the Democrats oppose this amendment and support the retention of the 10-year period.

The Committee divided on the amendment:

Ayes (8)—The Hons. J.C. Burdett, M.B. Cameron, Peter Dunn, K.T. Griffin (teller), C.M. Hill, J.C. Irwin, Diana Laidlaw, and R.J. Ritson.

Noes (9)—The Hons G.L. Bruce, B.A. Chatterton, J.R. Cornwall, M.J. Elliott, M.S. Feleppa, I. Gilfillan, C.A. Pickles, C.J. Sumner (teller), and Barbara Wiese.

Pairs—Ayes—The Hons. L.H. Davis and R.I. Lucas. Noes—The Hons. G. Weatherill and T.G. Roberts.

Majority of 1 for the Noes.

Amendment thus negatived.

The Hon. K.T. GRIFFIN: I will not move my proposed amendment to line 26 because it is identical with the amendment that has just been defeated. I move:

Page 6, lines 29 to 31—Leave out all words in these lines and insert 'the Tribunal shall not grant the application unless satisfied by the applicant that the insolvency arose through no wrongful act, default or neglect on the part of the applicant or director'.

The provision in the Bill requires the applicant to establish special reasons why the application should be granted. It is difficult to identify special reasons in a whole range of areas, and for that reason I would prefer to see the onus placed upon the applicant to show that there was no element of fault in the applicant before the tribunal granted the licence in the circumstances referred to in paragraphs *(a)* and *(b)*.

The Hon. I. GILFILLAN: The Democrats oppose this amendment. It is not just a question of what is regarded as the personal situation of the body corporate or the natural person involved: it is very much an attempt to establish a stable, ongoing and reliable building industry. We therefore feel that the wording in the Bill is acceptable.

The Hon. C.J. SUMNER: There seems to be some difference of opinion here on what is the meaning of 'special reasons'. I should have thought that the words 'special reasons' would cover the matters that the honourable member has outlined. Indeed, there may be other things in 'wrongful act, default or neglect' that could be taken into account in considering this matter before the tribunal.

I suppose that wrongful act, default or neglect are the main factors that would be considered by a tribunal in deciding whether there are special reasons, but there may be other factors. In one sense, the Hon. Mr Griffin's amendment may be narrower and may make it more difficult for someone to obtain approval from the tribunal. I am also concerned about confining it to wrongful act, default or neglect, because I believe there are circumstances where technically there had been no wrongful act and no breach of the criminal law or the companies law, and one could not prove individual default on the part of the director or indeed negligence might be too high a standard as well.

However, I perceive that there could be circumstances where one would not want to register or license a builder who was insolvent within the 10 years even though that builder had not committed a wrongful act, default or neglect in relation to the previous insolvency. Therefore, it is better to leave the Bill as it is. I am certainly prepared to examine the honourable member's remarks again. The matter is to be debated in the other place, but at this stage I think that we ought not to accede to the amendment.

The Hon. K.T. GRIFFIN: I am disappointed about that, because I would have thought it was obvious that the reference to special reasons required the demonstration of something of a positive nature, not merely the fact that there was nothing that could be attached to the applicant as being some liability for a corporation entering into a scheme of arrangement or for a receiver being appointed. It seems to me that 'special reasons' will mean that there will be very few, if any, cases, even those that might be deserving, in relation to which the tribunal will be able to grant a licence in the light of the embargo set out in subclause (9).

Under the Bill the tribunal must be satisfied that there are special reasons, that is, something positive—some positive reason why the application should be granted, the basis for refusal having already been established that the person or the body corporate was in a prescribed relationship with an insolvent body corporate. It may be that that was a holding company or a corporation related to one that had financial difficulties because of the recession or because of high interest rates. There would be no blame at all, and it would not be unreasonable to believe that, if the company traded out of that situation or if it finally went broke, other corporations related to it had been able to maintain their financial stability during a time of crisis within the economy. In those circumstances, the Bill provides that there will be no registration unless special reasons can be adduced.

There are no special reasons that a corporation in that context can establish. It seems to me to be quite unreasonable for that embargo to be placed on persons and corporations where there has been no fault at all and no liability for the difficulties that might have occurred six, seven or eight years ago. I see that there is a difficulty with the drafting as it is. I hope that the Attorney-General will have another look at it before he finally commits himself to his cautiously stated position in response to my earlier comment.

The Hon. C.J. SUMNER: I am prepared to examine the matter again. Certainly, the view taken by the Commissioner and Parliamentary Counsel is that special reasons

would encompass those factors that the honourable member has outlined. There may be a difference of view in relation to the words, and we can have another look at it. I do not think it is a major difficulty.

The Hon. K.T. GRIFFIN: It is a pity to let the matter go past the Council, but I have to accept that, as I do not presently have the numbers. I do not believe that the concept of special reasons will allow an application to be granted in the circumstances to which I have referred; and that is the problem I see. It is a very severe embargo with very limited discretion on the part of the tribunal. I think it will create some injustices.

Amendment negatived.

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

Page 6, after line 31—Insert subclauses as follows:

(10) Where, upon an application for a licence, the Tribunal—

(a) is not satisfied that the applicant has sufficient business knowledge and experience and financial resources as required under subsection (8) *(a)* (iii);

but

(b) is satisfied that the applicant proposes to carry on business as a builder in partnership with a licensee who has sufficient business knowledge and experience and financial resources,

the Tribunal may, subject to the other provisions of this section, order that the applicant be granted a licence subject to the condition that the applicant not carry on business as a builder except in partnership with that licensee or some other licensee approved by the Tribunal.

(11) A person granted a licence subject to a condition referred to in subsection (10) shall not contravene that condition.

Penalty: $10 000.

This amendment deals with partnerships. The Bill abolishes the concept of a partnership licence because of the difficulties that have been encountered under the present Act with this concept, that is, the partnership having to obtain a new licence every time there is a change in the partnership. Each individual partner will now require a separate licence and that licence will remain valid whether the person is carrying on business on his own account or in partnership with others. It has been suggested that clause 10 (8) *(a)* (iii) will prevent all members of partnerships obtaining a licence unless they all have sufficient business knowledge and experience in financial resources.

This might be a particular problem for husband and wife partnerships where one spouse is an experienced builder and the other spouse runs the office. The amendment overcomes this problem by enabling a person who does not separately have sufficient business knowledge and experience in financial resources to obtain a licence only for the purpose of carrying on business in partnership with another person who does meet these criteria.

The Hon. I. GILFILLAN: We oppose the amendment and feel that it offers an opportunity for the principal to circumvent the disqualification penalty—

The Hon. C.J. Sumner: What are you going to do about the husband and wife then? Don't you care?

The Hon. I. GILFILLAN: We care about it, for sure. One cannot have legislation—

The Hon. C.J. Sumner: You are not doing anything about it.

The Hon. I. GILFILLAN: If it offers an escape channel for people who ought not to be able to avoid the disqualification penalty, then it should not be put in here. The intention of the legislation is to protect the home builder and to deter people who are defrauding them or are found to be deficient in performing that act.

Amendment carried; clause as amended passed.

Clause 11—'Duration of licences.'

The Hon. K.T. GRIFFIN: Referring to subclause (2) *(b)*, can the Attorney-General indicate what sort of prescribed information is likely to be required in the annual return? I would remind the Attorney-General that, if the licensee is also a body corporate, the Corporate Affairs Commission will require an annual return, and also that, if the licensee is a public corporation, it will be required to file annual audited accounts with the Corporate Affairs Commission as well. I am not suggesting that there ought not to be some information held by the Registrar and collected on an annual basis, but I want to ensure that there is as little duplication as possible between the two registries and that we do not have yet another form that must be filled out by business.

The Hon. C.J. SUMNER: The information that will be prescribed basically will be the information that is currently required for the renewal of a licence. The Bill introduces continuous licensing rather than a system of annual renewals but, as a part of that scheme, when the time for renewal comes up the applicant must pay the annual licence fee and submit the return. Basically, the return will be an update of the information submitted on the original application for a licence. Obviously, it will have to contain information about directorships of the corporation and other information that will be required at the time of the original licence application, such as the details of the financial circumstances of the applicant. However, as the provision is designed, the prescribed information should not be very much different from that which is required now, except in so far as financial information is required for the purposes of this Act.

Clause passed.

Clause 12—'Business may be carried on by unlicensed person where licensee dies.'

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

Page 7, line 16—Leave out '28 days' and insert '6 months'.

The Bill provides that an unlicensed person may carry on business for a period of 28 days after the date of death. I have drawn attention previously to the fact that I think that that period is too short. Under the Administration of Probate Act, unless leave is given by a judge of the Supreme Court even a grant of probate of a will cannot be obtained within a month after the date of death. So, there will be some problems, I think, in administering this provision. I propose that it be six months, which would then bring it into line with travel agents and second-hand motor vehicle dealers.

I do not think that it will prejudice consumers to have an extension of the time involved, because a registered building work supervisor will still have to be involved in the business, and, if the licencee also happens to be the registered building work supervisor, some action will have to be taken to get a registered building work supervisor fairly quickly after the date of death.

The Hon. I. GILFILLAN: The Democrats support this amendment, which seems sensible, practical and worth while.

The Hon. C.J. SUMNER: I oppose the amendment. I believe that it seriously weakens the requirements in the Bill for licensees, and I believe that, although there have been some other occupational licence variations, that is not a consistent time in relation to the continuation of a business. I believe that 28 days ought to become the standard.

There is not a suggestion in this clause that a person needs to obtain a grant of probate and deal with the assets of a deceased estate within 28 days, as I think the Hon. Mr Griffin suggested. All that has to happen within 28 days is for the personal representative or any other person who wishes to carry on business to apply to the tribunal for approval.

This is simply to ensure that the person who is going to be carrying on business is a suitable person to be doing so. It is quite conceivable that the personal representative of the deceased licensee, or some other person who wishes to carry on the business, because of previous convictions or

past history of business failure, for example, is a person to whom the tribunal would not be willing to grant a licence.

All sorts of damage could be caused if such a person were unable to carry on the business for six months, without any restrictions being placed upon that person. Obviously, there is a difference in consistency between the travel agents legislation and this Bill, but I believe the policy enshrined in this clause—28 days—is the correct one. In other words, it says that, following the death of a person, personal representatives ought to get before the tribunal within 28 days: six months is too long, particularly in the building area, where the personal representatives may not have the skills necessary to carry on the business, and yet people will be able to carry on for six months without any obligation for the tribunal to determine whether they are qualified to be licensed. That is a significant undermining of the protections in the Bill.

It is not a great problem: all it means is that the person who wishes to continue the business should at least get before the tribunal within 28 days. The tribunal might then say that the person has not got his affairs in order but will be able to continue or that he has the qualifications to continue for a while at least, and that the tribunal will give an extension of a month or so. In other words, once the matter is before the tribunal, it has the authority to determine whether or not it is appropriate for the individual to continue. It is important that we get a standard, and the appropriate standard should be 28 days. It is even more important in respect of building than it might be in respect of other occupational licensing groups.

The Hon. K.T. GRIFFIN: The Attorney is over dramatising the position. No-one is a personal representative under a will: they are a personal representative in the sense that they are named as executor, but they have no document of title until the will has been proved in the Supreme Court and a grant of probate has been made. It is all very well to say that someone has to get before the tribunal in 28 days, but the only person who has any authority in relation to the business would be a person who was named as an executor in a will and who has a grant of probate of that will from the Supreme Court.

No-one else can go into that business, which is an asset in a deceased estate, and say, 'License me because I want to carry on this business.' That person has no authority to do that. Perhaps six months is too long for the Attorney-General, but 28 days is too short for any practical purposes.

If the Attorney wants to make it three months or two months—I do not mind two months—I will consider it, but 28 days is physically impossible unless the legal personal representative goes to the Supreme Court and says to a judge, 'I have this obligation placed upon me by the Builders Licensing Act. I have to have a grant in less than the month which is prescribed by the Administration and Probate Act.' The judge will consider it and may or may not grant the dispensation to get an early grant. One can get a grant within a matter of days after the expiry of one month after the death, but it is difficult to get it before then. The estate is placed in a hazardous position if one does not give a reasonable opportunity at least to get a grant of probate of the will.

That is the problem. At this stage I insist on six months. If the Attorney-General wants to make some concession, I am prepared to come some of the way, also. Let us not insist on 28 days in all occupational licensing, because I do not believe that is fair and reasonable to deceased estates, and it may well create prejudice to an estate. This is not going to create prejudice, I would suggest, to consumers, because we still have to have a registered building work supervisor in control of the supervision of the business. That is the protection given to consumers.

The Hon. C.J. SUMNER: The advice I have is that 'personal representative' includes the persons named in the will as executors, irrespective of whether a grant of probate has been obtained from the Supreme Court. That is the advice provided by Parliamentary Counsel. It is on that basis that 'personal representative' is referred to in clause 12. I insist that 28 days is a reasonable period. However, I recognise that, with the Australian Democrats, assuming that they vote together on this issue, I do not have the numbers. However, I am certainly happy to have researched the question of whether Parliamentary Counsel's interpretation of 'personal representative' is correct. If it is not, perhaps some adjustment can be made. I think that 28 days is a reasonable period. However, in the light of the Democrats' agreement with the honourable member's proposition to weaken the Bill in this respect I will not call a division.

Amendment carried; clause as amended passed.

Clause 13 passed.

Clause 14—'Building work must be supervised by registered and approved supervisors.'

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

Page 7, lines 43 and 44—Leave out 'approved by the Tribunal under this Act' and insert 'who has been nominated by the licensee in accordance with the regulations'.

This relates to an important question about the registered building work supervisor. My amendment does not seek in any way to reduce the importance of registration of a building work supervisor or to reduce the responsibilities of a building work supervisor; it merely seeks to facilitate an alternative to the tribunal having to not only register a building work supervisor but to register that building work supervisor in relation to a particular licensee. I believe it is adequate to require a licensee to nominate a registered building work supervisor in relation to his, her or its business. That nomination is notified to the tribunal so that there is a record in the records of the tribunal as to who is the registered building work supervisor for a particular licensee.

That overcomes what I would see as rather cumbersome provisions of the tribunal having to deal with and in fact approve a registered building work supervisor in relation to a licensee's business, including the changes which might occur from one licensee to another, particularly where the registered building work supervisor wants to change employers or within a related group of licensees, to shift from one licensee to another. I think it is unnecessarily bureaucratic to require the tribunal to be involved in the change of a registered building work supervisor from one licensee to another and in fact to have to address the question whether or not a registered building work supervisor should be registered in relation to one or some other licensee.

It is in that context that I move the amendment to delete the words, 'approved by the tribunal under this Act' and to insert, 'who has been nominated by the licensee in accordance with the regulations'—the regulations, of course, being the vehicle by which the mechanism for nomination and notification of changes in nomination is to be made.

The Hon. C.J. SUMNER: I oppose the amendment. I do not agree that the provisions in the Bill relating to approval of a registered building work supervisor should be replaced by a simple notification system. The tribunal needs to have some oversight of this matter in order to ensure that there is proper and meaningful supervision rather than just a token nomination of a supervisor. It is for this reason that the tribunal has a discretion to refuse approval if the person is already approved as a building work supervisor in relation to another licensee.

However, where the tribunal is satisfied that a building work supervisor can, because of the nature and extent of the work, properly and meaningfully supervise the building

work of more than one licensee, then it could grant the approval accordingly. I believe that it is necessary and could undermine the scheme of the Act. If the building work supervisor is not approved by the tribunal, we could end up with a situation of token nominees as building supervisors by some companies, and that could effectively subvert the intention of the legislation.

The Hon. I. GILFILLAN: I indicate that we oppose the amendment.

The Committee divided on the amendment:

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

Noes (10)—The Hons G.L. Bruce, J.R. Cornwall, M.J. Elliott, M.S. Feleppa, I. Gilfillan, Carolyn Pickles, T.G. Roberts, C.J. Sumner (teller), G. Weatherill, and Barbara Wiese.

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

Majority of 1 for the Noes.

Amendment thus negatived.

The Hon. K.T. GRIFFIN: I indicate that I will not move the amendment standing in my name as it is consequential on the amendment which I have just lost.

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

Page 8, lines 4 to 6—Leave out paragraph *(b)* and insert paragraph as follows:

(b) that building work of any kind performed in pursuance of the licence is properly supervised by a registered building work supervisor who is so approved in relation to the licensee's business and whose registration authorises the supervision of building work of that kind.

This amendment is to overcome a difficulty indicated in the current drafting where, at present, if a builder has a licence to do all types of work, the building supervisor that that licensee must have must also be approved to do all forms of building work.

The problem with that is that there may be a licensed builder who does high construction work and also domestic building. It seems too onerous to say that all the registered building supervisors of that company should be registered to do the full range of work, when it may be appropriate that there be a registered building work supervisor within that company who is registered to do the less complex work the company also performs.

So, the effect of the amendment is to enable a builder, licensed to do all forms of building work, to have a building supervisor who is licensed to supervise other less complex work, but under the legislation the obligation is then placed firmly on the builder to ensure that the building work supervisor supervises only the work for which the building work supervisor is registered.

Amendment carried; clause as amended passed.

Clause 15—'Application for registration as building work supervisor.'

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

Page 8, line 35—Before 'be accompanied' insert 'except where the applicant is a licensee—'.

This really relates to an application for registration as a building work supervisor. The application has to be made to the tribunal in the prescribed form and be accompanied by the prescribed application fee. Undoubtedly, a number of building licensees, by the nature of their business, will also be the building work supervisors, and it seems to me to be an imposition upon them that they should also have to pay an application fee to be registered as a building work supervisor, having had to pay a registration fee to be licensed as a builder. Those sorts of businesses will be small businesses, and I see no justification at all for doubling up in the fee. My amendment will ensure that in those circumstances only one fee is paid.

The Hon. I. GILFILLAN: We support this amendment, which seems appropriate and reasonable. I do not understand the necessity for an extra fee to be involved.

The Hon. C.J. SUMNER: The honourable member is not quite correct in seeing it as a Government revenue measure. We would have been quite happy to deal with this matter by way of regulations that set the fees but, as the honourable member has raised it, I will accede to his request.

Amendment carried.

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

Page 9, after line 36—Insert subclause as follows:

(9) An applicant who is a licensee is not required to pay a registration fee under subsection (8).

The amendment is similar in context to the amendment which has just been carried. However, it deals with the registration fee, not the application fee, but the principle is the same. I do not see any reason why a small business person licensed as a builder, being registered as a building work supervisor in relation to that business, should have to pay two sets of registration fees, one as a builder and one as a registered building work supervisor in relation to the same buisness.

The Hon. I. GILFILLAN: We support this amendment.

Amendment carried; clause as amended passed.

Clause 16 passed.

Clause 17—'Duration of registration.'

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

Page 9, line 43—Before 'pay' insert 'except where the registered building work supervisor is a licensee—'.

The amendment is similar to the two previous amendments which have been carried. They are directed towards ensuring only one annual registration fee for a small business person licensed as a builder and also as the registered building work supervisor in relation to that business.

The Hon. I. GILFILLAN: We support this amendment.

Amendment carried; clause as amended passed.

Clause 18—'Approval as building work supervisor in relation to licensee's business.'

The Hon. K.T. GRIFFIN: I indicated that I would oppose this clause. However, that is now not the position, as it is consequential upon an earlier amendment to clause 14 which was defeated on a division. Clause 18 deals with the approval of a building work supervisor in relation to a particular licensee's business. Therefore, I will not oppose the clause, having lost my amendment to clause 14.

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

Page 10, lines 35 to 38—Leave out paragraph *(a)* and insert paragraph as follows:

(a) the person is a registered building work supervisor;.

I thank the honourable member for his intimation. This amendment is consequential on the one that I moved to clause 14 dealing with building work supervisors. This amendment to clause 18 (4) deletes the requirement for the scope of building work that may be supervised by the supervisor be not more limited than the scope of work that the licensee is authorised to perform under the licence.

Amendment carried; clause as amended passed.

Clause 19—'Tribunal may exercise disciplinary powers.'

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

Page 12, after line 13—Insert subclause as follows:

(2a) An inquiry shall not be commenced under this section in relation to any matter if more than 2 years has elapsed since the occurrence of the matter.

This clause relates to disciplinary action against a licensee. It seems to me that a time limit needs to be set on the making of a complaint under subclause (3), which provides that any person, including the Commissioner, may lodge with the tribunal a complaint in the prescribed form setting

out matters that are alleged to constitute grounds for disciplinary action against a person referred to in subsection (1). I think that two years would be an adequate period within which to require a complaint to be lodged for the purpose of disciplinary action; otherwise it is very much open ended. I think it is reasonable that there at least be some limits within which action is required to be taken, and two years seems to be an appropriate period to include in this clause.

The Hon. C.J. SUMNER: The Government opposes this amendment. The honourable member is correct in pointing out that there is no time limit for the lodging of complaints under clause 19 (3) with respect to disciplinary action. However, I would think it is obvious that the tribunal would not take disciplinary action in respect of something that occurred years before if there was no indication that the licensee had been guilty of any recent conduct that warranted disciplinary action.

In any event, it is difficult to determine in the context of some of the factors that might give rise to a disciplinary action when a time limit would commence. For instance, how can one establish the precise time at which a person has ceased to be a fit and proper person to be licensed? There is no time limit under the present Act for the purpose of commencing disciplinary proceedings, and that Act has been in place for many years. As far as I am aware, it has not presented any problems. It therefore seems to me that no case is made out for the amendment moved by the honourable member.

The Hon. I. GILFILLAN: The Democrats oppose the amendment. The action that may be the cause for disciplinary action may not appear, be in evidence or have effect within a two-year period and, in the provision of the domestic market requirement, it is a long term with perhaps a 100 years anticipated for the result of this work. Certainly, it would be unlikely that the tribunal would be looking back over that period of time. So, it is quite unacceptable to ask that a two-year limit be set.

The Hon. K.T. GRIFFIN: I do not intend to call for a division if I lose on the voices, because obviously the numbers are not with the proposal to impose a time limit. Although it may not be included under the present Act, we must remember that this is a new licensing Bill and there is no reason at all why this matter should not now be considered. I would have thought that it was fair and reasonable to impose some sort of time limit on matters that may be taken into consideration in determining what disciplinary action, if any, should be pursued.

Amendment negatived; clause passed.

Clause 20—'Restriction upon disqualified persons being involved in business of builder.'

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

Page 14, after line 38—Insert subclause as follows:

(2a) No offence is committed against this section by reason only of the fact that a person is, without the prior approval of the tribunal, employed under a contract of service to perform work in a building trade or as a labourer.

The difficulty that has been drawn to my attention is that a person may be disqualified from being licensed or registered but, by virtue of the operation of this clause, will be prevented from being employed under a contract of service to perform work in a building trade or as a labourer, that is, as someone working for a licensed builder and undertaking his or her normal trade responsibilities and performing work under the supervision of both a licensee and a registered building works supervisor. The amendment inserts a new subclause and provides that no offence is to be committed by reason only of the fact that a person is, without the prior approval of the tribunal, employed under a contract of service to perform work in a building trade or as a labourer.

The Hon. I. GILFILLAN: The Democrats oppose this amendment. There is no reason why someone who intends to be employed or a builder who intends to employ someone of that category cannot seek prior approval of the tribunal. The tribunal may be quite agreeable to granting that request.

The Hon. C.J. SUMNER: I dealt with this matter in some detail in the debate on the 1985 Bill. I indicated then that we were opposed to the Hon. Mr Griffin's suggestion. The range of penalties that the tribunal may impose in disciplinary proceedings is such that a disqualification order is different from and far more serious than a suspension or cancellation order and will be made only when the conduct of the person in question has been so serious that he should be prevented from working in the industry at all.

It is anticipated that orders of this kind would not be an everyday occurrence. However, the power is provided in case it needs to be exercised in a particular case. I am sure that honourable members would be only too aware of cases in which persons are the *de facto* controllers of a business but are able to pretend to be only an employee. Without a provision such as clause 21, it would be relatively easy for a disqualified person to continue to control a building business while posing as an employee of his or her spouse. I point out that the tribunal has power to give approval under clause 21. At least the Government's proposition ensures that the tribunal is able to inquire into the circumstances in which a disqualified person seeks to be employed in the industry.

The Hon. K.T. GRIFFIN: With respect, I would not have thought that there would be any injury done to consumers as a result of the exception that I am proposing. I do not want to create difficulties within the industry in so far as consumers are concerned, or for consumers. The proposition I am putting seems to me to be perfectly reasonable but, having seen the indication from the Attorney-General and the Hon. Mr Gilfillan as to where the numbers are, and in view of the hour, if I do not succeed on the voices I indicate that I do not intend to call for a division.

Amendment negatived; clause passed.

Clauses 21 and 22 passed.

Clause 23—'Formal requirements in relation to domestic building work contracts.'

The Hon. K.T. GRIFFIN: In relation to clause 23 (1) *(d)*, is the Attorney-General able to indicate at this stage what sort of requirements are likely to be included in the regulations as to the contents of domestic building work contracts?

The Hon. C.J. SUMNER: I am not in a position to give any detail of that at this stage. The matter is to be discussed with industry, and also the Australian Standards Association is currently considering a standard form contract and we would obviously wish to examine that as well.

The Hon. K.T. GRIFFIN: I want to ensure that the contract is fair to both parties. I would not like to see the contract being used to expand the ambit of this legislation. I guess that all we can really do is wait to see what is in the regulations and hope that, when consultation occurs with consumers and builders, the Opposition would somehow or other obtain access to the draft regulations, so that we might also have some input into the consultative process.

One of the difficulties is that frequently the first we hear or see of regulations is when they are tabled in Parliament, unless they drop off the back of a truck somewhere, in which event we would be pleased to make an input. That is a bit different in other areas where sometimes those affected by legislation often hear of it first from us, rather than from the Government. There is then a reversal of roles. I want to ensure that there is adequate consultation

and that the contract ultimately ends up fair and reasonable, and that the Opposition might have an opportunity to make some input into the regulations.

The Hon. C.J. SUMNER: I will be happy to make copies of the draft regulations available to the honourable member as part of the process of consultation with interested groups. I, too, am concerned to ensure that the contract is fair and reasonable for all parties. However, it is probably opportune to say that part of the reason for this Bill is to ensure that the contracts are fair. In the past, in the great majority of cases, they have not been fair. The Commissioner of Consumer Affairs has on numerous occasions commented on the problems with building contracts.

Many of them have not been fair in the past, and we wish to see that they are fair in the future. In particular, we want to ensure that they are fair from the point of view of consumers of the future.

Clause passed.

Clause 24—'Provisions with respect to price in domestic building work contracts,'

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

Page 16, lines 34 to 37—Leave out all words in these lines and insert:

(i) in acquiring materials specified in the contract;
(ii) in performing work specified in the contract.

A concern that was drawn to my attention—and I must say that I shared it—was that there was some suggestion that this provision might apply to variations of a contract, whereas I understand it was intended that the provision should relate to prime cost items only, with variations being dealt with as they have generally been dealt with in the past. I think that the redrafting clarifies that, and I hope that the Attorney sees fit to accept this as a clarification that subclause (5) deal only with prime cost items.

The Hon. C.J. SUMNER: This is a matter of drafting more than anything. I think that the Bill as introduced is satisfactory, but if the honourable member's amendment is a clarification I do not have any objection to it.

The Hon. I. GILFILLAN: I realise that in relation to our opposition to this amendment we do not have the numbers, so I do not intend to call for a division.

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

The Hon. I. GILFILLAN: It seemed as if the—

The Hon. Diana Laidlaw interjecting:

The Hon. I. GILFILLAN: That is quite erroneous. The interjection, which is implying that we actually react to amendments on the basis of an indication from the Leader of the Government, is an insult. I would like to put on record that I have not discussed this amendment with the Attorney-General. I have advice, which I am taking much more seriously than from anyone who is speaking in this Chamber, including the interjector, from people who have been involved as consumers in the housing industry and who have suffered at the receiving end due to people having abused contracts and the provision of goods for building purposes. So, I would at least like some respect given to comments that are given with integrity; the opinions are our own, and not based on some whim of the Government.

We believe that there is good reason for a 10 per cent mark-up to be specified in contracts. Prime cost certainly is the original intention, but a lot of material, which may not necessarily be recognised as prime cost and which may be enbraced as additional extras, is still purchased at cost price. For a builder who is providing those materials, we believe that a 10 per cent mark-up is quite adequate, and they should not be left open to what can quite often be exorbitant mark-ups. However, we do not have the numbers and we do not intend to divide on the amendment.

The Hon. K.T. GRIFFIN: With respect to the Hon. Mr Gilfillan, that is not relevant to this provision, which deals with prime cost items. The redrafting makes that clear, rather than leaving it somewhat uncertain as to which item it refers to. I suggest that the redrafting helps clarify that it does apply to prime cost items.

Amendment carried.

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

Page 17, line 4—After " 'This price may change' " insert ", 'subject to alteration' ".

This amendment includes the description 'subject to alteration' which is equally effective in ensuring that the consumer's attention is drawn to those items where the price may change or where it may be subject to alteration, or where it is an estimate only. That is the important aspect of subclause (6): it draws attention to the fact that the price may vary.

The Hon. I. GILFILLAN: We are determined that we will support wording that defines specifically that the alteration will be to the price. At times there can be ambiguity if 'subject to alteration' is the only wording. I should like to know whether the amendment means that the words 'subject to alteration' would stand free of any preliminary mention of 'this price'. Is there any intention to have 'price' locked into it? Otherwise, there is the ambiguity of whether 'subject to alteration' applies to the other detail in the contract.

The Hon. K.T. GRIFFIN: It was not intended that it contain the words 'this price is subject to alteration'; it would be placed in relation to the rise and fall clause. My own view is that it is clear and that, if it is placed in proximity to the rise and fall clause and in relation to any particular prices specified for any building work or any labour or materials, it will draw attention to the possibility that the price might alter.

The Hon. I. GILFILLAN: It appears that the words 'subject to alteration' appear on a contract, maybe alongside the price or below it, but that is not good enough as far as I am concerned. It could be interpreted as meaning that a phrase could apply to other detail in the statement. It specifically includes the price, and I would have no problem if the wording were to the effect, 'This price is subject to alteration'. Unless that is part of the amendment, I cannot support it. What is the Attorney-General's view?

The Hon. C.J. SUMNER: The Hon. Mr Gilfillan will be pleased to know that I think that, on this topic, he is talking reasonably and with some logic. It so rarely happens that I feel constrained to draw attention to it when it does. I think there is some merit in the argument that 'subject to alteration' could be misinterpreted. If we are referring only to price, I think it is important that price be stated: for example, in a clause saying, 'Kelvinator refrigerator price $300 subject to alteration' it is possible that that could be interpreted to mean that it is not the $300 that is subject to alteration but the item specified. I think that would be unfortunate. If what we are talking about is price, I think the word should appear so that it specifically relates to price. Otherwise, there is the possibility of confusion, and I do not think that there should be.

The Hon. K.T. GRIFFIN: I indicate that, if I lose the vote on the voices, I do not intend to divide.

Amendment negatived; clause as amended passed.

Clause 25—'Payments under or in relation to domestic building work contracts.'

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

Page 17, after line 25—Insert paragraph as follows:

(ab) constitutes an amount, or a fair and reasonable estimate of an amount, to be paid under the contract to a third party for engineering, drafting, surveying or other professional services or in respect of any approval, permission or consent required by or under an Act;

It seems to me that there ought to be an opportunity to require a party to make a payment for engineering, drafting, surveying or other professional services or in respect of any approval, permission or consent required by or under an Act. It seems to me to be unreasonable to expect a builder, for example, to lodge a set of drawings with a council for approval and to pay the necessary fee and not be able to recover that before payment is received from the building owner.

I think that, if I were the builder, I would refuse to lodge the plans until the disbursement had been paid. There is no guarantee that it will be paid afterwards. The same thing applies in relation to surveying, and the same with some drafting or engineering work. They are all matters which are, generally speaking, matters of disbursement incurred on behalf of a building owner and on which the builder will have to pay out as part of the process of getting the work to the stage of council approval, for example, and then the commencement of building. I think it is reasonable to have a specific provision in the clause which will allow that amount, or a fair and reasonable estimate of that amount, to be required to be paid. It is not a genuine progress payment as such, because on my understanding it does not come within the concept of a progress payment. However, they are disbursements, and the building owner ought to be required to pay them before they are incurred.

The Hon. I. GILFILLAN: We are opposed to this clause. There is no reason why a home builder should not pay genuine costs that are incurred, with a reasonable expectation that that reimbursement will be made promptly. Maybe that is something that could be addressed. The actual payment on estimates is certainly not acceptable and we oppose the amendment.

The Hon. K.T. GRIFFIN: The fact is that that is not possible under the Bill as it is presently drafted. I would have thought the criteria in my subclause provides an adequate safeguard.

The Hon. C.J. SUMNER: I oppose the amendment. I believe that this matter can be adequately dealt with by regulation. Regulations can include disbursement of the kind referred to by the honourable member. I am certainly prepared to consider his suggestions, but I believe that it ought to be done in the regulations by way of further consultation.

The Hon. K.T. GRIFFIN: It is a matter which I know could be done in the regulations, but I think it is important to have as much in the legislation that is considered by the Parliament as possible, and not leave everything to regulation. Therefore, I would hope that the amendment would be carried. If I lose it on the voices, again in view of the hour I will not call for a division because the Hon. Mr Gilfillan has indicated where he stands. He is opposed to my amendment, and that is also the view of the Attorney-General.

Amendment negatived; clause passed.

Clause 26 passed.

Clause 27—'Statutory warranties.'

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

Page 19, lines 23 to 32—Leave out subclause (8).

Clause 27 deals with notice of proceedings for breach of statutory warranty. Clause 27 (8) requires a person who wishes to commence proceedings for breach of the statutory warranty to serve notice in writing on the proposed defendant informing him of the grounds on which the proceedings are to be brought and offering him a reasonable opportunity to inspect and repair the work. This provision is a carryover from the Defective Houses Act, which applied only to contracts for the construction of a complete house. It does not sit well with the new Bill under which the statutory warranties apply to all types of building work, including repairs and alterations. Almost any legal proceeding commenced by a consumer against a builder will relate in some way to an alleged breach of statutory warranty on the part of the builder.

I am concerned that a consumer who commences proceedings without serving the statutory notice may be met with a technical objection by the builder that he has not been informed of the grounds on which the proceedings are to be brought, even when he is well aware of the nature of the dispute. The Bill does not require a builder to give notice to a consumer before commencing proceedings against him or her, and I see no reason why this requirement should be placed upon the consumer. In most cases, proceedings for a breach of statutory warranty will be commenced in the Commercial Tribunal. It is important to note that the tribunal may, under clause 43, decline to hear the proceedings until there has been some attempt at conciliation. This is undoubtedly the course that the tribunal would adopt when proceedings are commenced against a builder about a matter of which he is not aware. Furthermore, the requirement that the builder be given an opportunity to make good any deficiencies in the building work gives rise to a significant difficulty.

The consumer may quite reasonably take the view that the building work carried out demonstrates a level of incompetence such that the builder should not be permitted to make any further attempts to fix it up. Indeed, the Bill specifically recognises this possibility in clause 32 (7) *(b)*, which provides that if the tribunal considers that the builder is not likely to perform the remedial work properly it may require him to employ at his own expense a licensed person to perform remedial work. However, a person who intends to seek such an order from the tribunal must first give the builder an opportunity to carry out the repair work himself. This would clearly frustrate the intention of clause 32 (7) *(b)*. My amendment deletes subclause (8) of clause 27 altogether, so that there is no requirement to give notice in writing before commencing proceedings.

Amendment carried; clause as amended passed.

Clause 28 passed.

Clause 29—'Requirement of insurance.'

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

Page 20, lines 1 to 4—Leave out this clause and insert clause as follows:

29. A builder shall not perform building work to which this Division applies unless—

(a) a policy of insurance that complies with this Division is in force in relation to that building work;

and

(b) in the case of building work to be performed by the builder under a domestic building work contract—the building owner has been furnished with a certificate that evidences the taking out of that policy of insurance and complies with the requirements of the regulations.

Penalty: $10 000.

Clause 29 requires that a builder must not perform building work until he has taken out a policy of insurance to protect the consumer in the event that the builder dies, disappears or becomes insolvent. Regulations under the Building Act require that the local council sight a certificate of insurance before giving building approval.

However, there is no requirement at present that the consumer be given a certificate of insurance. There have been cases recently where consumers have heard that their

builder was in some financial difficulty but did not know whether they were covered by insurance. My amendment simply provides that the builder must give the consumer an insurance certificate complying with the regulations. Regulations will require that the certificate include such matters as the name of the insurer, where a copy of the master policy may be obtained, and the procedures to be followed for making a claim. My amendment also increases the penalty for failing to take out this insurance. The penalty for this offence should be the same as that for carrying on business without a licence.

The Hon. K.T. GRIFFIN: This may be the appropriate point to raise a problem which the Housing Industry Association has raised with me—and, I understand, with the Attorney-General and his advisers—relating to insurance of subcontractors. I have a letter from the Director of Alexander Stenhouse to the Secretary, Housing Indemnity Australia Party Ltd, which states:

I refer to our recent discussions with you regarding the Builders Licensing Act, clause 28 (2) in respect of class 3 and class 4 proposed licensed builders carrying out subcontract work, particularly in relation to owner-builders, where domestic building work is to be performed in conjunction with or as part of other domestic building work.

I have discussed the subject with underwriters concerned with the housing indemnity scheme. In no circumstances will they grant cover to these classes of builders where they are doing segments of a contract unless the whole project is being administered by a registered builder. In the case of owner/builders, this of course is not covered under the Act, as the Act only embraces licensed builders.

In respect of class 3 and 4 licence holder builders, we are quite happy to cover them within the scope of the scheme if they perform the total contract or in conjunction with other 3 and 4 class licence holder builders.

Therefore, we wish to make it quite clear that we will not indemnify an owner/builder where an owner/builder is involved in subcontracting such work using class 3 and 4 licence builders.

In respect of class 1and 2 licence builders, the same situation will apply if working in conjunction with an owner/builder, unless, of course, the class 1 or 2 licence holder is controlling the total contract. Our main concern with the owner/builder is the lack of professional expertise and supervision.'

What steps is the Attorney-General prepared to take to overcome this particular difficulty of inability to obtain professional indemnity insurance?

The Hon. C.J. SUMNER: I thank the honourable member for raising this point, which is very important. The 1985 Bill that lapsed last year provided that only the holder of category 1 and 2 licences had to take out indemnity insurance. The 1986 Bill has removed this restriction. The reason for this is that a consumer may engage either a general builder or a person licensed in a particular trade to carry out building work above the prescribed amount for which council approval is required, and the protection of the insurance scheme should not depend upon the somewhat esoteric consideration of the category in which the builder is licensed. For example, if a consumer engages someone to build a pergola and timber deck on his home for a price exceeding $5 000, he may choose to deal with a category 1 or 2 licensee or he may engage a carpenter with a category 3 or 4 licence. Whatever category of licence is involved, the consumer would reasonably expect to be covered by insurance under the building indemnity scheme.

Those insurers presently providing this insurance say this does not present any problem in the case such as the example to which I have referred where only one contractor is involved; that is the point the honourable member has raised. However, the insurers have said there is a problem in the case of an owner/builder who intends to build his own house by engaging subcontractors direct rather than through a builder.

Under the Bill each of these subcontractors who is carrying out work above the prescribed amount for which council approval is required will be required to take out the insurance under clause 29. The insurers have said they would not be prepared to provide insurance to each of the subcontractors separately because of the inevitable problems that arise when building work is not properly coordinated and supervised and no head contractor is responsible for the whole of the work.

In these cases they say there are inevitably disputes between the subcontractors as to who should be blamed when portion of the building work is defective. For example, if there is a complaint that built-in cupboards or other joinery is not built square, the joiner may blame the bricklayer for not making the walls square, and the bricklayer may blame the foundation contractor for not making the foundations square.

Consideration is being given to methods by which this problem can be overcome. These include, first, placing the onus on the building owner in these circumstances to take out insurance himself. This would involve a substantial change to the nature of the scheme. It would also probably have the effect of requiring the owner/builder to engage a licensed or registered person to supervise the work, as insurers would probably raise the same difficulty as under the present provisions. It is also conceptually rather odd to require the owner/builder to take out insurance which is primarily for his own benefit, although this might be justified on the basis of protecting a subsequent purchaser.

The second matter being considered is providing for an exception from the insurance requirement where two or more builders are responsible under separate contracts for separate portions of building work. This would almost certainly result in some general builders splitting their building contract into separate contracts to avoid the insurance requirement.

The third option is to provide for the owner/builder to waive the insurance requirement. This is still a possibility, although there would have to be some restriction to ensure that the waiver was given full knowledge of the consequences and that builders were not in a position where they could simply talk the consumer out of the insurance requirement order to save the amount of the premium. Such waiver might also be restricted to cases in which insurance is genuinely not available, as evidenced by certificate or declaration given by the builder. It might be possible to provide a waiver system similar to that which operates under section 33 (2) of the Second-hand Motor Vehicles Act under which a person might waive a right conferred on him under that Act only if he has obtained from the Commissioner for Consumer Affairs a certificate certifying that the effect of waiving the right has been explained to him.

Further discussion is obviously necessary with the industry and insurers to overcome this problem. It may be necessary for a further amendment to be introduced in the next session of Parliament if there is to be any significant change in the nature of the indemnity scheme. However, in the interim it will be possible to overcome the immediate problem by an exemption by regulation under clause 5.

The Hon. K.T. Griffin: That's the way you'll deal with it?

The Hon. C.J. SUMNER: Yes, if it is necessary. There will be further discussions with the industry and insurers to seek an acceptable solution to the problem. The regulations will include an exemption to whatever extent is necessary to overcome the problem in the short term.

Amendment carried; clause as amended passed.

Clause 30—'Compensability of disabilities.'

The Hon. K.T. GRIFFIN: I have a question in relation to subclause (2). I cannot quite understand what this subclause means when it provides that a person who is entitled to a benefit of a statutory warranty in respect of building

work in relation to which a policy of insurance has been taken out under this division is entitled to sue on the policy in his or her own right. Does that mean that the person who is entitled to the benefit of the statutory warranty, either the home owner or the successor to the original home owner, can sue the insurers or sue the builder and be indemnified? Just what does it mean? It is not clear. If the Attorney-General does not have the precise answer, he can consider the matter before it is dealt with in the other place.

The Hon. C.J. SUMNER: The provision is there because the home owner can sue the insurer under that provision, but it is put there because the home owner is not a party to the policy. The policy is between the builder and the insurer. However, the home owner does have access to the benefits of the policy and can sue. That is the reason for the clarification, that the home owner is entitled to sue on the policy in his or her own right.

The Hon. K.T. GRIFFIN: With respect, I should have thought it would be clearer if we said 'is entitled to sue an insurer under the policy in his or her own right', subject of course to the breach of statutory warranty being established. If that is what it means, perhaps the Attorney can consider redrafting.

The Hon. C.J. SUMNER: We are happy to examine it. Parliamentary Counsel seems to believe that it is satisfactory but, in the light of the honourable member's comments, I will have another look at it.

Clause passed.

Clause 31—'Right to terminate certain domestic building work contracts.'

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

Page 21, line 5—Leave out '5' and insert '2'.

This amendment relates to cooling off periods. Under the Bill the prescribed time for the cooling off period is five clear business days, which may well be nine ordinary days if two weekends are included. The more significant difficulty is that under the Land and Business Agents Act two clear days has been the cooling off period for quite a number of years—for well over a decade, I suggest. Many contracts involve the sale of land and the erection of a house as part of a package.

There are some inconsistencies in stipulating a cooling off period of two days in relation to the land and five days in relation to the domestic building work aspect of the transaction. It would be much easier for everyone if two clear days was the cooling off period in both cases, that time limit having worked satisfactorily without any criticism for the past 10 years under the Land and Business Agents Act.

The Hon. I. GILFILLAN: The Democrats oppose this amendment. There is a significant difference in the implications for home builders in actually contracting to build the house. That sometimes involves the purchase of land, but in a package the erection of a house is an even bigger financial responsibility. Arranging finance is often quite a long and involved business, and a limit of five days is adequate.

The Hon. C.J. SUMNER: The Government opposes this amendment. We believe that we have a very firm mandate for a five day cooling off period. This matter was raised publicly last year on a number of occasions, and when the Bill was introduced into the Parliament it contained a provision for a five day flexible cooling off period. That was explained—

The Hon. K.T. Griffin: A five day flexible period?

The Hon. C.J. SUMNER: It was as explained—it is the same as that in the Act. I announced that when the Bill was introduced last year. In fact, I believe that it was announced before the Bill was introduced, when we were preparing the drafting instructions for the Bill, that a five day limit was considered appropriate.

We undertook, during the election campaign, to reintroduce the Bill. The five day cooling off period is one of the important aspects of the Bill, and it is something that I am not prepared to resile from at this stage.

The Hon. K.T. GRIFFIN: It is a load of nonsense to suggest that there is any mandate for five clear business days as against two. I make that comment only because I do not want the Attorney-General, every time he says that he said something prior to the election or at the time of the election, to claim that because the Government won the election it has a clear mandate. If he argues it on a matter of principle, that is a different matter. However, it is not arguable on the basis of any mandate.

The Hon. C.J. Sumner: We got a mandate on this one.

The Hon. K.T. GRIFFIN: Five days against two?

The Hon. C.J. Sumner: Definitely.

The Hon. K.T. GRIFFIN: That is nonsense. I feel strongly about the two days. I think that two days is an adequate cooling off period. In relation to finance, contracts can be made subject to that, and, provided that is properly drawn, there is no prejudice to the consumer if the finance cannot be arranged. I suggest to the Hon. Mr Gilfillan that the question of arranging finance is irrelevant because a clause making a contract subject to finance can be inserted.

The two clear business day would be adequate. It is adequate for land sales where one has to check encumbrances or a title. One then thinks about whether or not one wants to go ahead and, if one decides over those two days that one does not want to proceed, it is appropriate to give the required notice. I feel strongly about the matter and propose to divide on it.

The Committee divided on the amendment:

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

Noes (10)—The Hons G.L. Bruce, B.A. Chatterton, M.J. Elliott, M.S. Feleppa, I. Gilfillan, Carolyn Pickles, T.G. Roberts, C.J. Sumner (teller),G. Weatherill, and Barbara Wiese.

Pair—Aye—The Hon. C.M. Hill. No—The Hon. J.R. Cornwall.

Majority of 1 for the Noes.

Amendment thus negatived; clause passed.

Clause 32 passed.

Clause 33—'Harsh and unconscionable terms.'

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

Page 23, lines 27 to 29—Leave out subclause (6).

Clause 33 enables a consumer to apply to the tribunal for relief or to defend proceedings in a court on the ground that a term or condition of a domestic building contract is harsh or unconscionable or such that a court of equity would give relief. There is an inconsistency in this provision in that there is a six month time limit for instituting proceedings before the tribunal, but no time limit with respect to proceedings in a court. Submissions from industry suggested that a six month time limit should also apply to court proceedings. However, such a provision would simply not work, because there are other time limits applying to court proceedings under the Limitation of Actions Act.

It would be clearly unfair if a builder were able to commence proceedings against a consumer outside the period of six months with the consumer unable to plead that the contract was harsh and unconscionable. Furthermore, proceedings may now be taken under this Bill by the builder before the Commercial Tribunal and there is no time limit for such proceedings. Clause 33 (6) would enable a builder to deliberately lead a consumer to believe that no further

claim was going to be made against him or her, and then commence legal proceedings outside the time in which the consumer may plead that the contract is harsh or unconscionable. That is the reason for the amendment to delete subclause (6).

The Hon. K.T. GRIFFIN: It really cuts both ways: just as a builder may institute proceedings against an owner, in the context to which the Attorney-General has referred, so may an owner commence proceedings against a builder, outside the period fixed by the statute of limitations in relation to court proceedings. I have some reservations about the amendment. I would have thought that the matter could be clarified by applying the same limitation period to both court and tribunal proceedings. I ask the Attorney-General to examine that question to see whether that could be ensured. I think it would be unreasonable for the limitation period to apply only to court proceedings and not to the proceedings which may be taken before the tribunal. It needs to be clarified. I have not had a chance to check the Limitations of Actions Act. Although it is six years for the courts, the question is whether it also applies to the tribunal.

The Hon. C.J. Sumner: It does not.

The Hon. K.T. GRIFFIN: If it does not, I suggest it ought to, where one is taking proceedings of the sort that involves civil litigation about questions of damages and so on. It is unreasonable that the same limitation does not apply to both court action and tribunal action.

The Hon. C.J. SUMNER: We will proceed with my amendment now, but we will examine the matter.

Amendment carried; clause as amended passed.

Clause 34 passed.

New clause 34a—'Certain titles only to be used by category 1 or 2 licence holders.'

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

Page 23, after line 43—Insert new clause as follows:

34a. A licensee shall not use in an advertisement or otherwise as a title or description of the licensee's business the expression 'master builder', 'general builder', 'builder' or 'building contractor' (whether alone or in combination with the word 'licensed'), or any other expression likely to lead others to believe that the licensee may perform building work of all kinds, unless the licensee holds a category 1 or category 2 licence.

Penalty: $2 000.

The Bill uses the expression 'Builder' to encompass all builders and tradesmen who perform building work. It has been suggested that a licensed tradesman who holds a category 3 or 4 licence may describe himself in advertising on his letterhead as a builder, which may lead people to believe that he is authorised to carry out building work of any kind. If challenged such a person might say that he is a builder by definition under the Act. My amendment inserts a provision similar to section 21 (2) *(a)* of the present Act which is designed to overcome this problem.

New clause inserted.

Clause 35—'Name in which builder carries on business.'

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

Page 24, line 4—After 'Act, 1963' insert 'of which the Registrar has been given prior notice in writing'.

This clause deals with the name with which a builder carries on business. It provides that a licensee may carry on business only in the name appearing in his licence or in a registered business name. My amendment requires a person who carries on business under a registered business name to notify the registrar of that name. Without this requirement the registrar would not always be able to advise whether a particular person is licensed or not, unless he makes a search of the register of business names kept by the Corporate Affairs Commission. For example, a person may be licensed under the name 'John Smith' and may carry on business under the registered business name 'ABC Building Company'. A person would not be able to contact the registrar to find out whether ABC Building Company is licensed unless he also knows that John Smith is the proprietor of that business. My amendment will enable the registrar to include on the register any registered business name under which a licensee carries on business.

Amendment carried; clause as amended passed.

Clause 36—'Publication of advertisements.'

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

Page 24, lines 7 and 8—Leave out '(other than an advertisement relating solely to the recruiting of staff)'.

My amendment relates to the need for builders to give their licence numbers in advertisements that are directed to other builders as well as offering or seeking applications for employment. I think there are some administrative difficulties and, in fact, it is unnecessary to show the builder's licence number in those circumstances. Of course, there may be a typographical error which may leave the licensee open to prosecution. It may be that the licence number is left off inadvertently. It does not serve any useful purpose where applications are being called for tenders from subcontractors or suppliers of materials; that is a matter which is being dealt with within the building industry. It is a different matter if the advertisement is directed towards the consuming public. My amendment does not seem to interfere with the requirement to show a licence number on an advertisement in those circumstances. Builders frequently advertise to subcontractors for tenders. Some of the larger building companies will be undertaking a matter of perhaps dozens each month. It seems to me to be an unnecessary additional requirement to have the licence numbers on all those advertisements.

The Hon. C.J. SUMNER: We do not have any difficulty with the amendment.

Amendment carried.

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

Page 24, line 12—After 'builder' insert 'and of which the Registrar has been given prior notice in writing'.

The amendment is consequential on the amendment moved to clause 35.

Amendment carried.

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

Page 24, after line 17—Insert subclause as follows:

(2) Subsection (1) does not apply in relation to an advertisement offering or seeking applications for employment or directed to other builders.

Amendment carried; clause as amended passed.

Clause 37—'Licensee to have sign showing name, etc., on each of licensee's building sites'.

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

Page 24, line 24—After 'builder' insert 'and of which the Registrar has been given prior notice in writing'.

This amendment is consequential.

Amendment carried; clause as amended passed.

Clause 38—'Unlicensed persons not entitled to fees, etc., for building work.'

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

Page 24, line 36—After 'building work' insert 'unless the Tribunal or any court hearing proceedings for recovery of the fee or consideration is satisfied that the person's failure to be licensed resulted from inadvertence only'.

This clause deals with unlicensed persons not being entitled to fees for building work, and it provides that an unlicensed person who should hold a licence cannot recover moneys for building work carried out in breach of the licensing requirements. This provides a very effective sanction against carrying on business without a licence. However the provision is capable of working harshly in some cases. In particular, it has been argued that, where one member of a partnership inadvertently becomes unlicensed as a result of failure to lodge an annual return or pay an annual fee even

the other members of the partnership who are duly licensed may not be able to recover moneys for building work carried out by the partnership.

I think it is reasonable that an exception be made where the failure to be licensed results only from inadvertence as provided in my amendment. The amendment will not assist a person who has been refused a licence or who deliberately chooses not to apply for a licence, nor even a person who acts in ignorance of requirement to be licensed. Chief Justice Bray said in *Dimella Constructions v Stocker* 1976, in SASR, at pages 215 and 221:

> It is difficult to see why Parliament should wish to penalise by the loss of the fruits of his labour a builder who has committed no offence against the section because he has a good defence of the charge, or to enable the building owner to get his house built for nothing if he is unfortunate enough to engage an unlicensed though innocent builder.

My amendment still prevents recovery of money where a builder is unlicensed as a result of a deliberate act of the builder but provides some relief in the case of inadvertence.

The Hon. I. GILFILLAN: We support the amendment, recognising that there ought to be very strict control on unlicensed builders' activity. As the amendment requires an unlicensed builder to satisfy the tribunal that it is only due to inadvertence, we feel that that is an adequate safeguard under the circumstances.

Amendment carried; clause as amended passed.

Clause 39—'Evidentiary.'

The Hon. K.T. GRIFFIN: I do not intend to move my amendment.

Clause passed.

Clauses 40 to 42 passed.

Clause 43—'Conciliation.'

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

> Page 25, lines 38 and 39—Leave out 'the Commissioner or a person appointed by the Commissioner' and insert 'a person appointed by the tribunal'.

I have constantly referred to the overlapping of functions of the Commissioner in the context of resolving disputes and also of the tribunal in some cases being the body which both receives the complaint and institutes inquiries, and then acts as judge and imposes penalties. It seems to me that it is not appropriate for the Commissioner, who may well be the complainant before the tribunal, to also be the person who acts as conciliator. In some instances it may be, but it seems to me that, if my amendments are accepted, it will mean that the tribunal has the responsibility for appointing an appropriate person to be the conciliator rather than being required to refer the matter to the Commissioner or a person appointed by the Commissioner.

Under the Conciliation Act 1929, I think it is, the Supreme Court has power to conciliate in civil proceedings. It is the court which does the conciliation, and I see nothing inconsistent with the tribunal in this instance also being the body which has the control of the conciliation process. It takes away the problem, I think, of the Commissioner being the complainant and also the conciliator so that there is inherently a view that the Commissioner is performing more than one function. This does not preclude the Commissioner from performing both functions if the tribunal thinks that the Commissioner is the appropriate person, but it gives the tribunal the control of the conciliation process. It seems to me that that is the appropriate way to do it, and I move accordingly.

The Hon. C.J. SUMNER: I oppose the amendment. What the honourable member is saying, in effect, is that the Commissioner should not attempt to conciliate in any case. The honourable member has to realise that the Commissioner for Consumer Affairs attempts to conciliate in virtually all cases brought to the Consumer Affairs Dept. In fact, the role of the Department is to take up the case on behalf of the consumer, discuss with the builder or the trader, and then attempt to see—in the beginning at least—whether the differences between the two parties can be resolved.

That happens as a matter of course in the day-to-day activities of the department. It may be that, having done that, some of those matters then go before the tribunal, and that would happen across the whole gamut of occupational licensing matters. In fact, the Commissioner is not the complainant in matters before the tribunal.

The Hon. K.T. Griffin: May be.

The Hon. C.J. SUMNER: But in most cases is not. In disciplinary matters the complainant may be the Commissioner, but in other matters it is the consumer who is the applicant before the tribunal. In any event, it seems to me that the honourable member's amendment, if his argument had any force, would mean that the Commssioner for Consumer Affairs could not conciliate in any matter because—

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: Of course it is, on the basis that the matter may end up before a tribunal. I really do not see what the difference is between the Commissioner for Consumer Affairs conciliating when a person comes in off the street and conciliating when it has been referred to the Commissioner by the tribunal.

The same problem—if it is a problem—still would exist from the point of view of the honourable member. But I do not concede that there is a problem. Conciliation is part of the role of the Commissioner for Consumer Affairs, and if he did not have that role the whole basis of consumer protection and the role of the Commssioner for Consumer Affairs in this State would be undercut.

The Hon. K.T. GRIFFIN: Cl 43 does not relate to conciliation before the matter gets to the tribunal but to conciliation when it appears to the tribunal, upon the basis of evidence given in the matter or the attitude of the parties that there is a resonable possibility of the matter being resolved by conciliation. There is nothing to stop the Commissioner for Consumer Affairs conciliating before the matter gets to the tribunal. That happens whether it is a consumer affairs matter or not. It may well happen in police proceedings that there is some discussion with the person who has complained to the police, or with the accused person about the way in which the matter will be resolved.

As a matter of principle, it is my view that, once the matter has got to the tribunal, it is for the tribunal to have control of the conciliation process. The tribunal can ask the Commissioner to do it: there is nothing to stop it under my words, but if the tribunal thinks that it is not consistent for the Commissioner to do it then the tribunal can appoint somebody else. That is all the flexibility that is given here, whereas in the Bill itself, if there is to be some conciliation, the tribunal has to give the matter to the Commissioner or a person nominated by the Commissioner. That is the problem: the tribunal is compelled, if it believes that conciliation may be achieved, to give it to the Commssioner or a person nominated by him. I want to give the tribunal some flexibility and to have the control itself of the conciliation process.

The Hon. I. GILFILLAN: At the risk of incurring some querulous wrath from the Attorney-General, I would like to indicate that the amendment does have some appeal to us. There may be a variation of the wording, such as 'the Commissioner or a person appointed by the tribunal,' so that the Commissioner still has an eminence as being the referee for disputes resolution. I suspect that it is probably not an issue where the integrity of the Bill is going to stand or fall on whether this amendment is passed or not, but I would like to indicate that we would prefer the wording

'the Commissioner or a person appointed by the tribunal,' and would suggest that wording for the amendment.

The Hon. C.J. SUMNER: We are happy to accept that, if someone is prepared to move it.

The Hon. K.T. GRIFFIN: I seek leave to withdraw my amendment with a view to moving another.

Leave granted; amendment withdrawn.

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

Page 25, lines 38 and 39—Leave out the words 'a person appointed by the Commissioner' and insert 'some other person appointed by the tribunal'.

Amendment carried.

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

Page 25, lines 40 and 41—Delete the words 'a person appointed by the Commissioner' and insert 'some other person appointed by the tribunal'.

Amendment carried; clause as amended passed.

Remaining clauses (44 to 51), schedules and title passed.

Bill read a third time and passed.

INDUSTRIAL RELATIONS ADVISORY COUNCIL ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 25 February. Page 496.)

The Hon. K.T. GRIFFIN: The Opposition supports the Bill believing that it is really a matter for the Government to establish what consultative mechanisms it wishes to establish. The Bill seeks to extend the Industrial Relations Advisory Council Act so that it will expire on 30 June 1990 rather than the third anniversary of its commencement, which would be within a matter of months. Employers hold a view that the Industrial Relations Advisory Council is a useful vehicle for consultation with the Government and representatives of unions. For that reason they are prepared to agree with the extension of time during which the council will operate.

They have expressed some concern, as we do, about the failure of the Minister of Labour to properly use the council in a consultative capacity, particularly in relation to the Workers Rehabilitation and Compensation Bill, where the Minister introduced the Bill finally without referring it to IRAC. There are other issues upon which that has occurred. I sometimes feel that IRAC is used by the present Government to endeavour to water down opposition from employers to controversial Bills and on occasion to hit them with something draconian and then bargain back to something which is really what the Government wants but which is certainly better than what was originally presented to IRAC.

That is really a matter for those on the council and, if that is the way in which they wish to deal with matters referred to them, so be it. There will, of course, be a cost to the taxpayer in continuing IRAC for a further four years, but that is a matter for the Government, which has to be accountable for that use of taxpayers' funds. We raise no objection to the Bill and support the second reading.

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

INDUSTRIAL CONCILIATION AND ARBITRATION ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 25 February. Page 497.)

The Hon. K.T. GRIFFIN: This is a relatively minor Bill and the Opposition is prepared to support the second reading. It deals with the sick leave that an employee might have accumulated with a particular employer where that employer sells the business or transmits it to another person. There is already continuity of entitlement for recreation leave and long service leave where businesses change hands and the business remains intact. This Bill seeks to achieve the same objective with sick leave entitlements. There appears to be no opposition to the measure from employers and in fact it is something that has been honoured in recent years when businesses have changed hands.

The member for Mitcham (Mr Baker) in the other place suggested that reasonable notice should be given to those who carry on businesses about the implications of this legislation before it comes into effect, but of course that will not be possible by reason of any suspension of the operation of the legislation. It will come into effect immediately it is assented to. It would be useful for some public notice by way of advertisement to be given to business agents and employer organisations that this legislation has been passed so that they are not caught denying a liability to sick leave when the statute hereafter requires them to do just that.

The other matter that is relevant to this debate is the question of the payment of sick leave entitlements in cash upon retirement of the employee. We have a basic objection to that.

Fortunately, it is not a matter that is referred to specifically in the Bill. The Opposition wants it to be on notice that if at any time in the future that sort of legislation is introduced we would oppose it on the basis that the legislation is contrary to the whole concept of sick leave entitlements. I propose, during the Committee stage, to refer to section 143a of the present Act which deals with the limitations on employers to take action against unions and union officials during an industrial dispute, particularly for an injunction. During the Committee stage, if leave is granted to me to do so, I propose to take this opportunity to raise that issue by way of an amendment to section 143a. The Opposition, for the moment, supports the second reading of the Bill.

Bill read a second time.

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

That it be an instruction to the Commitee of the whole Council on the Bill that it have power to consider an additional clause relating to the prevention of conduct causing substantial loss.

Motion carried.

In Committee.

Clauses 1 and 2 passed.

New clause 3—'Prevention of conduct causing substantial loss.'

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

Page 2, after line 5—Insert new clause as follows:

3. Section 143a of the principal Act is repealed and the following section is substituted:

143a. (1) Subject to this section, a person shall not, in an attempt to affect the outcome of an industrial dispute, engage in conduct that has or is likely to have the effect of causing substantial loss or damage to the business of an employer who is a party to the industrial dispute. Penalty: $5 000.

(2) Subsection (1) does not apply in relation to conduct undertaken in accordance with an order of the Court or the Commission or undertaken with the approval of the Court or the Commission.

(3) Where a person is convicted of an offence against this section, the court by which the person is convicted may, in addition to imposing a penalty on the offender, order the offender to pay, within a specified period, to any person who has suffered loss or damage as a result of the commission of the offence, such damages as it thinks fit to compensate that person for the loss or damage so suffered.

(4) The Supreme Court may, on the application of an employer, grant an injuction to restrain a breach of this section.

(5) The provisions of this section do not derogate from any other action or remedy that exists apart from this section.

Having formally moved this new clause to enable the procedures of the Committee to continue, I reserve the right to speak in some detail on it when we next consider the Bill.

Progress reported; Committee to sit again.

POTATO MARKETING ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 25 February. Page 504.)

The Hon. M.B. CAMERON (Leader of the Opposition): The Opposition supports the Bill, although I indicate that there will be some discussion on amendments later. This Bill is the result of action taken by Parliament in the middle of last year to bring about the end of the Potato Board. Of course at that time a sunset provision was put in place, but the Government has now seen fit to bring forward a Bill to hasten the end of that organisation. I understand that the organisation no longer acts as a marketing body, so some commonsense is involved in bringing about this situation.

A matter that has caused considerable concern involves the distribution of the funds and assets of the board which have been raised over a number of years from the growers. Of course some of the money has already been spent in redistribution of staff and on other matters. I understand that some difficulties are involved with the distribution of the funds and determining where the funds have come from. From my information, it appears that there are incomplete records of who has actually contributed to the fund.

In relation to the Potato Board itself, I think most people would be aware that I spoke on this matter when the first Bill was considered by Parliament, and when I spoke in favour of the action that was then taken by the Government. That action was not approved by all Opposition members.

The Hon. R.I. Lucas interjecting:

The Hon. M.B. CAMERON: Some members did support me in the view that I took at that stage in relation to the board. Unfortunately, the matter became a bit of political football just prior to the election.

The Hon. B.A. Chatterton: A hot potato!

The Hon. M.B. CAMERON: Yes, and I received some unusual messages in relation to the board at about election time. I think a lot of those, and perhaps some of the original moves, were aimed at the seat of Mount Gambier—and we all know which happened there. So, if that was the motivation for what was done, of course, that particular situation cured itself. We were fortunate that the Minister of Health went to Mount Gambier to help us at that time; I do not think that was his intention, but in the event we were very grateful for his going down there. I trust that he will do the same thing before the next election, because, if he keeps going there, we might eventually get 100 per cent of that electorate! Of course, the Minister is not the only person who can take credit: we must give credit to our candidate, who did an excellent job.

The Hon. B.A. Chatterton: Who was that?

The Hon. M.B. CAMERON: The man who turned the seat of Mount Gambier into a safe Liberal seat. However, Madam President, you would be quite right in pulling me up and saying that that has nothing to do with the Bill. At this stage I indicate that the Hon. Mr Elliott has an amendment on file, as I have. My amendment, which is a direct copy of an amendment that the Opposition moved in the Lower House, I understand it is less acceptable to some people in the industry than was the original amendment, and for very good reasons, might I say. So, if the Hon. Mr Elliott proceeds to move his amendment, I will not proceed with mine, because associated with my amendment are some very serious problems that Parliamentary Council did not pick up at the time of drafting. With those remarks, I indicate that the Opposition will support the Bill. We will be listening to the arguments put forward by the Hon. Mr Elliott concerning his amendment, and following that I am sure the Council will make up its mind about the amendments.

The Hon. M.J. ELLIOTT: I will be reluctantly supporting this Bill, which has become known rather cynically as one of the Mount Gambier Acts. The final demise of the board was announced by Mr Blevins on 4 December, just three days before the State election and, by coincidence, the one area where there was signficant grower support for the abolition of the board was the Mount Gambier region.

I do not know whether Mr Blevins knew that only seven potato growers lived in the seat of Mount Gambier and that the rest lived in the seat of Victoria. Nevertheless, that is the case. I have heard a number of allegations about the operations of the board from a number of directions which suggest that what it had done perhaps was not always right. However, I have not yet heard what I consider to be plausible reasons why the board should have been disbanded rather than its operations being modified. I looked back to the previous debates on this matter, and I intend to quote a few of the members of this Council. The Hon. Mr Griffin stated:

> One has to recognise that there are occasions where orderly marketing schemes are necessary to ensure that that sort of market muscle which monopolies and the big operators can exercise is not used to the disadvantage inequitably of the small producers.

He did later admit preferring Trade Practices Act type provisions. They have failed so many times that I would have thought he would learn by now. The Hon. Mr Griffin also noted:

> Provision existed in the original Potato Marketing Act to disband the board by using a grower poll.

Such a poll has not been held and the question can be asked, 'Why not?' The Hon. Mr Dunn noted the valuable role played in promotion and research. No doubt the committee I am proposing will continue this, but it will have decreasing funds, as no mechanism will exist to collect levies from growers. I believe that growers are willing to pay a levy and we will need to address that matter this year. The Hon. Mr Dunn also complimented the quality of the board's potatoes. He also recognised the risk that small growers would be put at it were not for the protection offered by the board. The Hon. Mr Cameron and the Hon. Mr Lucas—both from the South-East—were strongly supportive of the abolition of the board. I, too, am from the South-East originally, but I recognise my responsibility to the whole State, as we all have in this Council.

The Government, with the exception of the mover, was silent. I had been led to believe that the Labor Party cared about little people. Is that wrong? The Minister who moved the Bill provided no real substance in his support for the removal of the board. He talked about malpractice by the board, but did the board really need to be abolished?

I believe that the Minister was lobbied—in fact, I know he was lobbied strongly by vested interests—and he folded to make life easier for himself. Both Labor and Liberal have now gone overboard on free marketing, displaying their ignorance of the real world. There are 300 odd growers in the potato industry: 113 are on the Adelaide plains. This group is virtually 100 per cent behind regulated marketing.

One could ask why that group is of that opinion. The people of the northern plains are market gardeners growing a variety of vegetable crops and they are aware of the effects of the free market on their other vegetables that they also take to market *versus* the effects on the potato. They can make a direct comparison between different crops. They

understand better than anyone else the difference between having a board and not having one.

Pressure for the free market has come from very large growers, from some merchants and particularly from the retail chains. The public will not get cheaper or better potatoes. The merchants and retailers will make greater profits, and many previously profitable growers will be financially destroyed. The small grower will be manipulated in the free market just as the smaller grape grower is at this time.

If a grower goes to the retail chains with a crop, automatically there is talk of a 15 per cent discount below the price a normal grower should expect—and then they bargain down below that. The hills group of potato growers held a meeting in Balhannah on the night before last. Some of the very same growers who had previously wanted the board disbanded are now very vocally calling for a price fixing committee. The board has ceased operating for only a few months and already the growers are starting to feel the pinch. They have now discovered what the real world of free marketing is all about. Free markets do not remove the inefficient: they simply cripple the smaller growers who cannot withstand buying cartels. There are many growers of other crops who would have liked to have regulated marketing. I have read debates where people have said, 'We do not have a celery board, so why should we have a potato board'. In fact, the argument could quite easily have been reversed: we have a potato board, why not have a celery board?

Members interjecting:

The Hon. M.J. ELLIOTT: I would certainly like boards on most of the major crops. This Bill goes in entirely the wrong direction. I have consulted with both the Horticultural Association and the UF&S and in both cases I have been advised that orderly marketing of potatoes is the way they would prefer things to be. However, I must realistically accept that both Labor and Liberal are free marketers and, further, the board has been so emasculated as to be non functional at this time.

Recognising this, I simply seek to amend the Bill to make the best of a bad lot. I will be seeking to delete from the original Bill some of the costs which will be put against the board. I feel that when a political decision has been made by this place against the assets which were originally those of the growers, those assets should not be used to pay for the political decision. If the Government decides to bill the assets for the retraining of the people they have taken from the board, the Government itself should pay for it—not the assets of the growers.

I was also very disappointed with the drafting of the Bill in so far as it sets up a fund and fails to address the fund any further than that. At the very least the Government could have come up with provisions somewhat similar to the Cattle Compensation Act where there is a fund advisory committee. If something like that had been set up, I may well have been satisfied. However, the Bill is completely silent on the fund and its purpose. There has been little said about this in debate. It is for that reason that I am forced to move amendments to give the growers some say in what are after all their assets. As I said before, I will be supporting the Bill but with severe reservations.

The Hon. PETER DUNN: I rise to correct some of the statements made by the previous speaker. I do not think the Liberal Party has ever said that it does not support orderly marketing; it has always said that it supports orderly marketing but not orderly production. One only had to live 10 years ago to see what happened in the wheat industry when the world markets were flooded with wheat. The rural industry was told that America would kill our economy if we did not control our production. What did we do? We fell for that hook, line and sinker and we controlled our production. Never have I seen such animosity amongst the rural community as I saw in those years when we were controlling production by Statute. It did not work. People made enormous amounts of money out of it by not obeying the Statute, by putting wheat into the system, and not accepting payment for it immediately but accepting payment for it when the restrictions were lifted. Orderly marketing and orderly production are totally different things.

Orderly production is in my opinion only a method of masking market forces. Orderly marketing is a different thing. People can band together and market just the same as, I daresay, the buyers are doing. They are banding together and purchasing in large sums. I do not see why people cannot cooperate in the same fashion in this industry. However, the Government in its wisdom has decided that it did not want it, and it is a *fait accompli*. I am sorry that it has reached the stage that it has; having said that it would put in a sunset clause, concerning the board's operation, it then turns around and quickly demolishes it in this way.

If growers need protection, it is because of the funds that they have invested, and that protection can be given, within reason, to those growers through the amendments that we have before us. It was the Government that decided to abandon the Potato Board. The funds were there, and I cannot see why it cannot help those growers. The Government itself disbanded the potato production mechanism. As the funds were there, why could it not give that money back? I think that is only fair and reasonable. For the Government to say that it needs that money to re-employ those people seems to me quite unusual. The Government itself made the decision to disband the Potato Board, so why did it not pick up the bill for re-employing those people? I find that rather difficult to comprehend.

However, I do seek some assurances from the Government that if it does carry this through, it will go to those growers as quickly as possible and endeavour to ascertain from them the method by which they want that money distributed. After all, it is their money. It involves a statutory organisation, I know, so the Minister has that control over it, but in all honesty the Government should go back to the growers as quickly as possible and ensure that their wishes are ascertained. I am sure that, if we were controlling some of the Government's money, it would very quickly want to get its hands on it, and I think that is only fair and reasonable. I believe that this money would be well used. It would be used for all those things talked about—research, promotion, and for the betterment of the industry.

If the market price is down at the moment, maybe it needs a little support, and maybe that money would help overcome the present situation. Maybe it will give the people concerned breathing space so that they can band together and form themselves into a cooperative as other producers such as the small seeds industry have done in this State. Maybe they can get their act together and form a cooperative which will be equally as competitive with the purchasers, thus having their own control. As it would not have statutory backing, it would be more of a grower's organisation, which I believe is the correct way to go about it.

The Hon. BARBARA WIESE (Minister of Tourism): I thank honourable members for their contributions to this debate. In view of the lateness of the hour it is not my intention to reply now to the points that have been raised by various speakers in this debate. Indeed, I do not intend to comment at all on the matter raised by the Hon. Mr Elliott concerning abolition of the Board. I think that the Minister of Agriculture, at other times in other places, has clearly stated the reason for the abolition of the board, and

I do not see that there is any point in going over that issue again.

As to the issues that have been raised relating directly to this Bill, it will be my intention to comment on some of those matters in Committee. With respect to assurances for which the Hon. Mr Dunn has asked, I would also hope to be able to satisfy his concerns at that stage.

Bill read a second time.

In Committee.

Clause 1 passed.

Clause 2—'Winding up of the affairs of the board.'

The Hon. M.J. ELLIOTT: I move:

Page 2, line 3—Leave out 'redeployment or'.

As I said in the second reading debate, I do not consider it a reasonable thing to expect the growers' assets to pay for a decision of the Government to disband the board.

The Hon. BARBARA WIESE: I indicate that this amendment is not acceptable to the Government. It is the Government's view that the Crown is entitled to compensation towards the cost of redeployment of board staff into the public sector. Since the people concerned were employees of the board, it is reasonable, in our view, that the board should be responsible for any redeployment costs. It is not anticipated that those redeployment costs will be very high, and I assure anyone who may be concerned that this is some ploy for redirecting some of the board's money into Government coffers that that is not the intention of this clause at all. It is purely and simply to ensure that members of the staff of the board can be relocated wherever that is possible or desired by the individuals concerned.

While on the subject of relocation of staff, so far seven of a total of 22 staff members have been placed, resulting in savings of board assets; five others are likely to be placed within the next three months; two have accepted retrenchment; and eight people have yet to be placed.

The Hon. C.M. HILL: I ask the mover whether he is being consistent with this amendment, in that he is accepting that these funds should be used towards the cost of retrenchment and yet he says that they should not be used for the purpose of redeployment. I would think that if they are to be used for one thing they should also be used for the other: if they are not to be used for one thing they should not be used for the other. In general terms, I accept that they are growers' funds. Also, there is an existing situation now applying in which further redeployment may be necessary and other retrenchments might occur. I would think that the funds ought to be utilised for both those purposes as in the original measure.

The Hon. M.J. ELLIOTT: There may have been a degree of inconsistency, but I was assured that any retrenchment that was to occur already had occurred. I did not want to upset the Government by slashing its Bill too much. It was only the redeployment costs that I was particularly concerned about.

The Committee divided on the amendment:

Ayes (6)—The Hons J.C. Burdett, M.B. Cameron, Peter Dunn, M.J. Elliott (teller), K.T. Griffin, and R.I. Lucas.

Noes (12)—The Hons G.L. Bruce, B.A. Chatterton, L.H. Davis, M.S. Feleppa, C.M. Hill, Diana Laidlaw, Carolyn Pickles, R.J. Ritson, T.G. Roberts, C.J. Sumner, G. Weatherill, and Barbara Wiese (teller).

Majority of 6 for the Noes.

Amendment thus negatived.

The Hon. M.B. CAMERON: My amendment has proved to be unacceptable to everyone, so I will not proceed with it.

The Hon. M.J. ELLIOTT: I move:

Page 2, line 7—Leave out 'a fund established by the Minister' and insert 'a trust fund'.

As I said in the second reading stage, I believe that the Act deals inadequately with the fund and that a trust fund is required. I will move amendments in relation to that trust fund later, putting it in the hands of the growers, where it belongs.

The Hon. M.B. CAMERON: I support this amendment. Some reservations have been expressed to me about whether the body nominated in the amendment was representative. However, I am sure that industry groups have made their feelings about that known to the majority of members. It is certainly a more representative body than that proposed under my original amendment. I understand that that was the purpose of the Hon. Mr Elliott's amendment.

The Hon. BARBARA WIESE: The Government does not accept this amendment. The Minister of Agriculture has made very clear that in his view the trust fund to be established should be established by him and be accountable to Parliament and to the Government, because the money that was raised by the Potato Board, which was a statutory authority, was raised under statute. The board was set up under an Act of Parliament. Therefore, it is reasonable that the administration of a trust fund be scrutinised by the Government and the Parliament, and for that reason the Minister has made very clear that he should be the person responsible for setting up a trust fund. That would enable him to ensure that it is properly accountable and subject to the scrutiny of the Auditor-General. Everyone could be satisfied that the funds are being used properly.

I wanted to talk about other aspects, but I will raise those issues when we deal with an amendment that will be moved later with respect to assurances I might give to people who are concerned about the use of the money. The amendment moved by the Hon. Mr Elliott is not acceptable to the Government because it does not give any indication about any public accountability of those people who might be operating the trust fund.

The Hon. M.J. ELLIOTT: I will need to address the later amendment because if this one is lost the latter one becomes virtually irrelevant, anyway. Only one body in South Australia is in any way representative of potato growers. If the Minister goes looking for people to represent the potato growers, who else will he go to but that body, unless he goes to whoever has been advising him rather poorly at times. Only one body represents all potato growers. It is divided into four regions. The growers in each region are automatic members, and most are active. They may not always agree with what is occurring, but that is not unusual in any organisation, including this place. The Combined Potato Industry Committee represents all growers in South Australia. If the Minister was not going to use them for advice, I am not sure where he will go to get advice on what he will do with the funds that originally belonged to the potato growers.

The Hon. C.M. HILL: Would it not be proper to have a full discussion on the balance of the proposed amendments? As the Hon. Mr Elliott just said, one cannot help but draw the whole issue out now so that everyone knows what is happening. To specifically debate this one proposition of setting up a trust is not expansive enough. The Hon. Mr Elliott said earlier that growers must have a say, and I agree with that. The amendment indicates the sort of say they would have, but what sort of say can the Government give us an assurance on as to their input?

The Hon. BARBARA WIESE: I am happy to address those questions now. At this stage, because of the timing of the whole exercise with the abolition of the board and the need to deal with some of the administrative arrangements in relation to the winding up of the affairs of the board, there has not been sufficient time for the Minister of Agriculture to consult the potato industry on the question of

the exact nature of the trust fund, who should be represented on it and how they should operate.

For that reason the Minister has deliberately not included any specific details about the proposed trust fund in this Bill because he felt that that would reduce his flexibility in being able to discuss these issues with representatives of the industry. The concern that the Government has is that the Combined Potato Industry Committee of the Horticultural Association (the body suggested by the Hon. Mr Elliott as the most appropriate body to adminster the trust fund) is not necessarily the most representative body of potato growers in South Australia.

Some potato growers are not members of this organisation, and other people in the regions, referred to by the honourable member, have views which differ from those who may be the elected representatives of the growers in various regions. There is a very great diversity of views amongst people in the potato industry, and the Minister is very well aware of that. For that reason he does not wish to be in a situation where he is accepting advice from people who are not necessarily representing views of the whole industry. That is why the Minister of Agriculture has not specifically outlined in this legislation any sort of proposal for the establishment of the trust fund, before talking to everyone in the industry. The Minister intends to do that as quickly as possible after this legislation is passed.

I point out, however that during debate in the House of Assembly the Minister gave some very clear assurances to the House in respect of the use of the trust fund moneys. The Minister is concerned that all moneys coming from the establishment of the trust fund should be used for the benefit of the potato industry in South Australia, and particularly for research and marketing of the potato industry. The Minister of Agriculture has indicated that he will discuss these issues with people in the industry to ensure that the wishes of all parties are met. In debate in the House of Assembly and in reply to questions asked by the member for Elizabeth, Martyn Evans, the Minister gave some very clear assurances, and I think that it is important to put those on record in this place. The member for Elizabeth in the other place asked:

> Will the Minister give a clear undertaking that the fund will be separately accountable; that it will not be merged with consolidated revenue or the Agriculture Department fund; that it will be audited annually by the Auditor-General; that such audit will form a separate component of the Auditor-General's report to Parliament; that the fund will establish a clear relationship with the industry, so that formal advice may be tendered by the industry on an ongoing basis as to the use to which the funds should be put; and that the fund will be used for the purposes not only of research and development but also, if necessary, of promotion?

In response to those questions, the Minister said:

> I can say 'Yes' to all the questions that have been asked by the member for Elizabeth.

Clear undertakings about those issues were given in the House of Assembly. On behalf of the Minister and the Government I repeat those assurances. The money will not go to any source other than the trust fund, to the benefit of the potato industry, and particularly in the areas of research and marketing.

The Hon. M.J. ELLIOTT: I will be interested to see how the Liberals behave, in this instance, as they have complained often about Government by regulation and about how terrible that is—and I agree that too often regulation is being used. Here we do not even have regulation; all we have is a fund of money in the charge of the Minister of Agriculture, full stop. In that regard this is different, as there is nothing there at all; there are not even regulations which must be approved. The other thing is that perhaps the Minister has not noted that I have included within my amendments that the committee would be accountable to Parliament and it must report to Parliament; there is an audit there. As it now stands the Bill is completely silent on audit and in relation to having a committee.

Certainly, the Minister has said that he will have those things, but why were they not included in the Bill? That is sloppy. They should have been included in the first instance. If there had been something similar to the provisions in the Cattle Compensation Bill, I probably would have found that acceptable. However, the Bill was silent.

The Hon. BARBARA WIESE: As I said earlier, the Minister has specifically not included any arrangement in the Bill because he has not consulted the industry about its preferences for the composition of a committee. If we were to incorporate in this Bill a provision similar to that which we are hoping to incorporate in the Cattle Compensation Bill or the Swine Compensation Bill it might turn out, after consultation with the industry that that is not satisfactory or acceptable to members of the industry.

I imagine that the Hon. Mr Elliott would then be the first to approach and criticise the Government for having done the wrong thing. So, rather than set the agenda before the consultation has taken place, the Minister has left the Bill open but has given some clear undertakings about the principles on which a committee like this will work. The sort of concerns that have been expressed by members opposite and the Hon. Mr Elliott have been dealt with clearly by way of those commitments made and undertakings given by the Minister of Agriculture.

The Hon. PETER DUNN: I thank the Minister for her explanation and guarantee, but the Government has been very slack in bringing in a Bill like this without previously doing its homework.

The Hon. Barbara Wiese: There wasn't time.

Members interjecting:

The PRESIDENT: Order! The hour is late.

The Hon. PETER DUNN: The Government did not have to bring down the legislation at this time. The Government has mishandled its power in introducing this Bill so quickly without doing its homework as to how and by whom the money should be distributed.

The Hon. R.I. LUCAS: I was intrigued with the Minister's reply that the Government cannot accept the sort of concept proposed by the Hon. Mr Elliott because the combined potato industry committee is not representative and that growers are not represented by this committee. I remind the Minister that on dozens of previous occasions we have had Bills from her Government nominating members of the UTLC to various bodies when clearly it has not been representative of many people. It is an option for people to join a union if they want to. They can choose to join or not to join. Where is the consistency from the Government?

The Hon. Diana Laidlaw: It is the same as the UF&S.

The Hon. R.I. LUCAS: Yes, and there are many other examples. The argument that it is not representative is surely hollow if one looks at the consistency of previous legislation that the Government has introduced to this Council using bodies such as the UF&S, the UTLC or various representative bodies that growers or workers can join if they want to and be represented in that industry or employee group. This is exactly the same thing. There is nothing preventing growers joining that committee if they want to; it is a matter of choice. Can the Minister indicate where these growers are who are not represented by the committee, and can she indicate what percentage of growers are not represented by it?

The Hon. BARBARA WIESE: I am not able to indicate what percentage of growers are represented by this organisation. I do not have that information. I am aware that there are some growers in the South-East of South Australia,

and I think also in the Adelaide Hills, who would not regard the CPIC as an organisation which represents their interests or their views. For that reason, they would be most unhappy to see an amendment like this carried in Parliament tonight.

The Hon. R.I. Lucas interjecting:

The Hon. BARBARA WIESE: I cannot tell the honourable member that. However, a number of growers from the regions that I have just mentioned have contacted the Minister of Agriculture and have spoken with other members in this place. Those persons have clearly indicated that they do not support a proposition such as the one that has been presented to us tonight by the Hon. Mr Elliott. They have not been consulted about this issue and would like the opportunity of being able to put a point of view before the composition of the committee is finally decided. That is the crux of this question. It may very well be that after consultation the industry decides that the CPIC is the appropriate body. But, the point is that the whole industry has not yet had an opportunity to put that point of view. Until it has had the opportunity to have an input on this matter, the Government's intention is to leave unspecified in the Bill the terms under which the trust fund is established.

The Committee divided on the amendment:

Ayes (7)—The Hons. J.C. Burdett, M.B. Cameron, Peter Dunn, M.J. Elliott (teller), J.C. Irwin, Diana Laidlaw, and R.I. Lucas.

Noes (11)—The Hons. G.L. Bruce, B.A. Chatterton, L.H. Davis, M.S. Feleppa, C.M. Hill, Carolyn Pickles, R.J. Ritson, T.G. Roberts, C.J. Sumner, G. Weatherill, and Barbara Wiese (teller).

Pair—Aye—The Hon. K.T. Griffin. No—The Hon. J.R. Cornwall.

Majority of 4 for the Noes.

Amendment thus negatived.

The Hon. M.J. ELLIOTT: I move:

Page 2, line 11—Leave out '14 March 1987' and insert '14 June 1986'.

The date 14 March 1987 was originally included because of the sunset clause which existed when the Bill was going to fold at about that time next year. However, now that the board is being dissolved much more rapidly, I believe that we should bring this forward so that the assets of the board will be clearly known at a much earlier date. I believe that three months is ample time for anyone who has a claim against the board.

The Hon. BARBARA WIESE: It is not true that the date which is included in the Bill was chosen to coincide with the sunset clause in the original legislation. It has absolutely nothing to do with that whatsoever. The reason that 14 March 1987 has been chosen is to give creditors of the board adequate time to make any claims that they might need to make on the board. We are concerned that, if the time is shortened, the rights of some of those creditors might be lost. For that reason, and certainly as a protection for creditors of the board, it is considered by the Government that a 12 month period is desirable for claims to be made.

Amendment negatived.

The Hon. M.J. ELLIOTT: In the light of that decision, it is pointless my pursuing the other amendments, not having secured the amendment that I needed earlier to make those work.

Clause passed.

Title passed.

Bill reported without amendment. Committee's report adopted.

The Hon. BARBARA WIESE (Minister of Tourism): I move:

That this Bill be now read a third time.

The Hon. M.B. CAMERON (Leader of the Opposition): Now that we have reached the stage of the Bill in its original form, I think it is very important, because we have a situation where the Minister has been given a lot of power over what are essentially potato growers' funds, that we be absolutely clear as to what the Minister has said. As I understand it, the Minister has made it clear that the funds belong to growers; that there is no intention on the part of the Government—because of the fact that the Minister has a period until he sets up a trust fund—of the Minister's using those funds for anything other than grower promotion or research into potatoes.

The Council has given a large degree of trust to the Minister in this matter, and it is very important that the Minister also consults all growers and, if the growers get to the point where they make it clear that the particular organisation that was indicated by the Hon. Mr Elliott is the proper organisation to provide membership of a trust fund, that could well happen.

It is important that the Minister carries out that trust in a manner that protects the interests of the growers, because the funds have not been contributed by the Government; they have been contributed by growers. I know there are some problems associated with some growers. I know that there is a feeling on the part of some growers that they have put in the funds and therefore they should receive the funds back, but I also know that there are difficulties associated with that. It could well be that, after the period of consultation that the Minister has indicated he is going to have, there may still be some unhappy growers. That may well be the case, but I ask the Minister to again very clearly spell out the fact that these funds are growers' funds and they will not be used for any purpose by the Government other than for the growers, and that eventually the trust fund will be set up after very clear consultation with the growers and with the growers' consent.

The Hon. BARBARA WIESE (Minister of Tourism): I have great pleasure in being able to confirm and reassure members of this Council that the points that have been made by the Hon. Mr Cameron represent the Government's position on this issue. I recognise that the Council is placing considerable trust in the Minister in this matter. He is not unaware of that, and I think I can assure the Council on behalf of the Minister of Agriculture that he will use that trust wisely and that the points the honourable member has made and the assurances that he seeks can be guaranteed.

Bill read a third time and passed.

RACING ACT AMENDMENT BILL

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

The Hon. BARBARA WIESE (Minister of Tourism): I move:

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

This Bill seeks to make three amendments to the provisions of the Racing Act, 1976: firstly, to amend section 63 (1) of the Racing Act, 1976, to give the Minister the authority to permit a club which conducts a race meeting to also bet on another form of racing, commonly known as cross-code betting. Secondly, to amend section 69 (2) of the Racing Act, 1976, to provide for a fixed percentage distri-

bution of TAB profits to the three codes of the Racing Industry. And thirdly, to amend Section 70 (3) of the Racing Act, 1976, to permit authorized racing clubs, when conducting approved charity race meetings, to offset operating expenses incurred in conducting the race meeting against the balance of totalizator commissions received by the club, in determining the net proceeds payable towards approved charitable purposes.

Section 63 (1) currently provides for cross-code betting on the on-course totalizator once racing dates have been granted. However, Ministerial approval for bookmakers to bet cross-code must be obtained, thereby creating an anomaly.

This Bill seeks to amend section 63(1) of the Racing Act, 1976, in order to alleviate the present anomaly that exists between the on-course totalizator and bookmakers with regard to cross-code betting, thereby granting the Minister the authority to permit a club which conducts a race meeting to also bet on another form of racing, commonly known as cross-code betting.

Section 69 (2) of the Racing Act, 1976, currently provides that fifty per cent of TAB profits shall be paid to the Treasurer, to be credited to the Hospitals Fund, and the remaining fifty per cent divided amongst the three Codes of racing in proportion to respective TAB turnover shares.

Whilst profit allocations to each of the Codes based on this formula have increased annually, in varying proportions, to date, there exists a trend through the movement in turnover shares which, if maintained, will lead to reduced distributions in both real and absolute terms for the Harness Racing and Greyhound Codes. Over the past six years, for example, turnover shares of each of the three Codes have moved as follows:

	30.6.80	30.6.85
Galloping	67.07%	74.22%
Harness Racing	20.33%	16.89%
Greyhounds	12.60%	8.89%

The year ended 30 June 1980 is taken as a base in this example, as it was the last complete financial year prior to the introduction of after-race-payment of TAB dividends. This initiative resulted in a significant increase in TAB turnover, particularly for the Galloping Code.

Contrary to the argument that annually increasing TAB profits will offset declining market shares, the distribution received by the Harness Racing Code last financial year represented an increase of $50 491 over the previous year's receipts of $1 575 775, or a 3.3 per cent increase. This represented a decrease in real terms.

There are several other major issues which are contributing factors to the current proposal to amend the formula for the allocation of TAB Profits; these include:

1. the number and category of meetings upon which the TAB agree to provide a betting service.,
2. the hours of operation of TAB agencies;
3. prime time exposure for the Galloping Code;
4. the extent and trend of TAB investments on interstate meetings; and
5. the relationship between on-course and off-course betting turnovers.

A Working Party, established by the previous Minister, was convened to formulate a recommendation on the future distribution of TAB profits. The Working Party comprised representatives of each of the Codes, TAB and officers of the Racing and Gaming Division.

The Working Party could not achieve a recommendation that was acceptable to each representative. It was unanimously acknowledged, however, that the Harness Racing and Greyhound Codes required additional funds to supplement decreasing distributions.

The most recent available statistics on TAB turnover shares (up to mid-January, 1986) indicate that the previously recorded rapid growth of the Galloping Code may have been arrested. This could be attributed to two major causes. Firstly, the Night Codes', particularly the Greyhound Code, have increased the number of meetings for which a TAB service has been given, and secondly, it could be considered that the Galloping Code has reached a saturation point or peak level of proportionate TAB turnover.

It is contended, however, that this position does not affect the need to amend the scheme of distribution. The present situation may only be a temporary circumstance and it is not supported by previous annual trends. In addition, it is a dubious practice for the Night Codes to have to seek more and more race meetings to be serviced by TAB in order to simply maintain turnover and therefore profit shares. This is particularly relevant when one considers that their ability to generate TAB turnover is inhibited by factors over which those Codes have no control.

Prior to the last financial year (ending 30 June, 1985) it is considered that the present formula provided each of the Codes with an adequate and appropriate level of funds, and whilst it can be demonstrated that the racing Industry is enjoying a period of rapid growth, development and financial stability, it is essential that this position be maintained to promote further expansion and progression of the Industry.

In this regard, the projected trend of future market shares of TAB turnover is cause for genuine concern. A continuation of the rapidly increasing percentage share of turnover generated by and/or attributed to the Galloping Code will lead to reduced distributions available to the Night Codes—in real terms in the short-term, and in absolute terms in the medium to longer-term.

Whilst reduced distributions is not in itself sufficient reason to amend the formula, it must be acknowledged that a commitment exists to ensure the ongoing viability of each of the three Codes.

The Bill proposes that a fixed percentage distribution should be established on the basis of:

Galloping	73.50%
Harness Racing	17.50%
Greyhounds	9.00%

The Bill also seeks to implement these percentage distributions during the current financial year. As distributions are paid to the Codes on a quarterly basis, adjustments to reflect the above fixed allocations can be made during the remaining third and fourth quarters.

Based on the estimated distributable profit of the S.A. TAB for the year ending 30 June, 1986, distribution to the three Codes using the proposed fixed percentages, compared with last year's allocation, would be as follows:

	1985/86	1984/85	Increase	
	$	$	$	%
Galloping	8 283 818	6 946 686	1 337 132	19.25
Harness Racing	1 972 338	1 575 775	396 563	25.17
Greyhounds	1 014 344	830 463	183 881	22.14
	11 270 500	9 352 924	1 917 576	20.50

It is considered that the introduction of a fixed percentage distribution of profits to the three Codes will remove the anomalies associated with the present fluctuating turnover-based formula and provide to each Code a sound basis enabling accurate forward planning to be undertaken with confidence for the continued viability of the overall Industry.

The percentages as recommended, have been determined in accordance with several factors including consideration of historical turnover shares; the making of allowances, or concessions for turnover shares which are not truly earned

(e.g. interstate turnover), or which are inhibited as previously noted; and estimates of the levels of funds required by each of the Codes to remain competitive and viable.

One of the most controversial issues in the Racing Industry over recent years has been the scheme of distribution of the surplus from TAB. The primary purpose of this Bill is to resolve this problem in a fair and equitable manner by the establishment of a fixed percentage distribution.

This Bill also acknowledges that the financial needs and other circumstances within the Racing Industry are sufficiently variable to warrant periodical monitoring, especially with respect to the increasing dependence by the Codes on TAB income. In this respect, the Bill seeks to establish an independent review of the impact of the fixed percentage scheme of distribution after a period of three years. This review will be undertaken by a committee of three people chosen by the Minister who will be independent of the Racing Codes.

Section 70 (3) does not currently provide for operating costs, or other losses, to be offset against the balance of totalizator commissions received by a club, in determining the net proceeds payable towards an approved charity.

In their interpretation of section 70 (3), the four clubs presently conducting approved charity race meetings have traditionally offset their operating expenses against the balance of totalizator commissions received, although this accounting practice is not currently sanctioned by the Act. If authorized racing clubs were advised to comply with the provision of section 70 (3) and to bear the operating expenses of conducting charity race meetings, it can be assumed that those clubs would discontinue the conduct of charity race meetings, which would result in selected charities being deprived of the income currently being paid to them.

This Bill seeks to amend section 70 (3) of the Racing Act, 1976, in order to permit the fundamental commercial practice of offsetting expenses in determining the profitability of a charity race meeting and to overcome the problems associated with requiring racing clubs to comply with the provisions of section 70 (3), in its present form.

Clause 1 is formal. Clause 2 provides for commencement of the Act. Subclause (3) makes the operation of clause 5 *(a)* retrospective to 1 July, 1985. Clause 3 amends section 63 of the principal Act. The amendment replaces a passage in section 63 (1) that has the effect of authorizing cross code betting on the days of the annual racing programme published by the Minister.

Clause 4 inserts new section 63a which allows on-course totalizator betting on other forms of racing with the approval of the Minister. Clause 5 amends section 69 of the principal Act. Paragraph *(a)* inserts the percentages in which the three codes share the balance of TAB deductions. Paragraph *(b)* allows for adjustment of shares calculated under the previous system since 1 July, 1985.

Clause 6 provides for the establishment of a committee to make future recommendations to the Minister as to the shares in which TAB deductions should be distributed. Clause 7 amends section 70 of the principal Act. The amendment makes it clear that the balance of deductions retained by a club under section 70 (1) are to be included as part of the club's gross proceeds when determining what its net proceeds are under subsection (3).

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

AUSTRALIAN FORMULA ONE GRAND PRIX ACT AMENDMENT BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

The purpose of this Bill is to amend the Australian Formula One Grand Prix Act in relation to:

1. the redefinition and linking up of terms and definitions currently used in the Act;

2. the alteration of the reporting date and period within which the Australian Formula One Grand Prix Board must report to the Minister;

3. the insertion of provisions relating to the relaxation of liquor trading hours, limitations and conditions over the period of the Australian Formula One Grand Prix; and

4. provision for the reimposition of certain Acts at times during the 'declared period' that any part of the 'declared area' is opened to public vehicular or pedestrian traffic.

1. As members would be aware, amending legislation to this Act was introduced by the Government in early September last year. Those amendments dealt with the protection of intellectual property rights and were introduced as a result of a series of events which potentially jeopardised the licensing program of the Australian Formula One Grand Prix Board, and as a consequence, an important source of revenue to the board.

In 1985, the licensing and merchandising program attracted over $450 000 in revenue to the board, well above original estimates. In future years, it is envisaged that this amount will increase substantially. However, despite this amending legislation and the subsequent production of a graphic standards manual (which incorported depictions and standards of use for the logo), confusion resulted from constant interchanging in use (by the board, the media and others associated with the event) of the terms 'logo', 'Australian Formula One Grand Prix' and 'official grand prix insignia'.

'Australian Formula One Grand Prix' is defined in the Act as only the motor race itself, but throughout 1985, was consistently referred to by many (and perhaps associated by all) as the whole event taking place over four days. Indeed, the Government's charter, and that with which it is charged with promoting, encompasses much more than laps of a formula one motor race. Consequently, provision in the Bill has been made for the associated activities of the race itself to be incorporated under the new definition of 'motor racing event'.

Additionally, problems of definition can potentially arise from use of the terms 'official symbol' and 'official title'. It was initially felt that it was not necessary to define these terms, as they could be only one thing, that is, the logo and the name 'Australian Formula One Grand Prix' respectively, given the title of the legislation and the name of the board. However, the appointment of a major sponsor for the event, together with the fact that the sponsorship package entitled the sponsor to certain naming rights, demonstrated the need for an 'official title' (which would encompass the corporate name of a sponsor), as well as a name. Major sponsorship of the event is quite obviously a very large and important source of revenue to the Australian Formula One Grand Prix Board and will continue to be so in the ensuing years.

The benefits of the proposed amendments in the Bill relating to this area are threefold in that:

(i) they will achieve the desired effect of textual consistency in the Grand Prix legislation through removal of potential ambiguities;

(ii) they will enable consistent use of the terms by the board in all their negotiations, agreements, promotion and publicity with respect to the Grand Prix both in 1986 and in future years; i.e. in pursuance of that with which they are charged, which is the promotion and financial and commercial management of the event; and

(iii) they will provide the much needed clarification of terminology for all those associated with the event, the media and the public at large.

2. A second aspect to this legislation relates to the time at which the board must report to the Minister. Because of the variability of the date in any one year which might be allocated to Adelaide in respect of the formula one series calendar, the imposition of a fixed reporting requirement is unsuitable and unworkable. The real purpose of the report in this case is for it to be provided in relation to each event, rather than on a calendar or financial year basis. The reporting requirement in this Bill centres upon the timing of the event in any one year with the period within which the report is to be prepared and tabled being six months, dating from the staging of the event in that year.

3. In addition, this Bill deals with the issue of the relaxation of liquor trading hours, limitations and conditions over the period of the Grand Prix event. In 1985, removal of certain restrictions relating to the sale and consumption of liquor during the period of the Grand Prix was achieved through amendment to the Liquor Licensing Act 1985 (Liquor Licensing Act Amendment Act (No. 2) 1985), the operation of which amendment is due to expire on 30 June 1986. Rather than continue to legislate in this regard through the liquor licensing legislation, in the final analysis, it was considered the most appropriate course would be to adopt and incorporate the provisions of that amendment into the Grand Prix Act, so that matters pertaining to the Grand Prix can be found in one piece of legislation. The new Part IIIA set out in the Bill, adopts almost word for word those which were used in the Liquor Licensing Act Amendment Act (No. 2) 1985.

4. Finally, last year, the closure of public roads in the declared area (in particular Bartels Road) over the period of the Grand Prix event caused considerable traffic congestion and inconvenience to the public, especially during morning and peak periods. Given section 25 of the Act, which provided for, *inter alia,* the suspension of the operation of both the Road Traffic Act and the Motor Vehicles Act, the opening of roads created potential problems in relation to lack of traffic control and the fixing of liability in the event of an accident involving an uninsured vehicle or unidentified driver.

Although last year regulations were made to overcome these problems it is considered that legislative amendment to the Act itself is required to avoid similar problems in future years. The amendments in the Bill will ensure the operation of the Road Traffic Act and the Motor Vehicles Act at any times any part of the declared area is opened. The only time they will not apply is when vehicles are being driven in a motor race or practice.

5. In summary, no-one can doubt the outstanding success of the inaugural Australian Formula One Grand Prix. At the very least, its success was reflected in the two awards of the Formula One Constructors Association being the award for the Best Organisation of a Formula One Grand Prix and the award for the Best Television Presentation of a Formula One Grand Prix. To receive such international accolade for an inaugural event is unprecedented in the history of formula one racing. Additionally, the growth generated to so many South Australian businesses and the increased awareness of our State, world wide, demonstrate but few of the benefits attracted by the successful staging in Adelaide of a Formula One Grand Prix in 1985 and in ensuing years. Such success, however, does not come without advanced planning, attention to detail and sheer hard work. It is partly for these reasons that this Bill has been introduced this session, so that those who are responsible for the continuing success of this the Australian Formula One Grand Prix can get on with their programs to achieve it unhindered.

Clause 1 is formal. Clause 2 provides for the commencement of the measure. Clause 3 provides for the recasting of various definitions under the principal Act. The definition of 'Australian Formula One Grand Prix' is to be replaced by a separate subsection that defines the expression 'motor racing event' for the purposes of the Act. This expression will include not only the motor car race held for formula one world championship points but also associated races, practices and activities. The definition of 'official grand prix insignia' is to be recast and new associated definitions are to be inserted. New definitions will include the 'official symbol', being a combination of the logo and an official title, and 'official title', which will be a name or title of a motor racing event, as declared by the board in accordance with the Act (new section 3 (4) and (5)).

Clause 4 amends section 10 to delete references to Australian Formula One Grand Prix and substitute references to 'motor racing event'. Further consistency in expression is also introduced. Clause 5 amends section 19 of the principal Act so as to provide that the board should provide a report on its conduct of a motor racing event and the performance of its functions between events within six months of conducting a motor racing event.

Clause 6 amends section 21 of the principal Act so that the Act will provide that if the board opens a road within a declared area for any part of the declared period then the road will be, while so open, a public road. Clause 7 amends section 25 in relation to the non-application of the Road Traffic Act and the Motor Vehicles Act. It is intended that these Acts only not apply in relation to vehicles and drivers involved in motor racing events. Clause 8 inserts a new part IIIA in the principal Act. The provisions of the new part are similar to those presently contained in the Liquor Licensing Act in respect of the week of the Grand Prix (see Act No. 94 of 1985). The provisions in the Liquor Licensing Act are due to expire on 30 June 1986. They are now to appear in the principal Act.

The Hon. DIANA LAIDLAW secured the adjournment of the debate.

BEVERAGE CONTAINER ACT AMENDMENT BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

This Bill seeks to change certain aspects of the Beverage Container Legislation as they apply to beer cans and bottles. The Government sees no reason at this stage to change the Act in respect of soft drinks and the Bill is framed accord-

ingly. A position has arisen whereby the much valued traditional South Australian use of reusable containers for the marketing of beer is under threat. In August 1985, following discussions with the Government, South Australia's breweries increased the refund amount for refillable bottles from 30c to 50c a dozen. The interstate brewer has refused to follow suit.

Since a return to the 30c deposit level by the local manufacturers would be an environmentally retrograde step the only reasonable course open to us is to legislate to place all suppliers on an equal footing. The amount is to be fixed at 48c per dozen, 4c a container, something which will be easily understood by the public. These deposits will continue to be redeemed at marine store dealers.

The effect of this change, if taken on its own, would be to seriously erode the differential between multi and one trip containers and hence reduce the strong disincentive against a move into one trip packages. Accordingly, the Government believes the time has come to restore the relativity between the deposits on multi and one trip containers as it existed at the time of the introduction of the principle Act.

The new deposit for one trip bottles and cans containing beer will therefore be 15c. Provision is made in the Bill for further adjustments to this figure to be made by regulation. Again, I stress that this does not relate to soft drink cans and the colour coding system will be used to ensure that beer and soft drink cans can be easily sorted and differentiated at the marine store dealers. The higher deposits will have the effect of increasing scavenging, thereby reducing the loss of resource to either the litter stream or buried in rubbish tips. In this way the twin objectives of the legislation—litter control and resource re-use will be improved.

As a result of amendments in the other House, the Bill now contains provisions which put it beyond doubt that the Act may have appliction to the glass containers used for the new 'Wine Cooler' type of beverage. Under the scheme of the Act, the particular form of control to apply to these containers is left to be determined by the regulations under the Act. If there is to be any change to the regulations in this area, it will only be after proper consultation with industry and full consideration of all the relevant factors.

The Bill proposes to overcome some administration shortfalls, offences against the Act are clearly spelled out for the first time and as a further deterrent, penalties for breaches of the provisions of the Act have been increased substantially. The Government is serious about its attack on litter in this State. There have been accusations in the past that the Act has not been rigidly enforced. The amendments to the powers of inspectors and the increases in penalties should be clearly seen as a signal that the Government intends to enforce this legislation stringently.

Clauses 1 and 2 are formal. Clause 3 repeals section 3 of the Act. Clause 4 amends the definitions in section 4 of the Act. The present definition of container provides that a container is a receptacle which is closed at the time it holds the beverage. The new definition defines 'container' as a container made to contain a beverage, which when filled with the beverage is sealed for the purposes of storage, transport and handling prior to its sale or delivery. The new definition does not contain the current exceptions which instead are dealt with in the proposed sections 5 and 5a. The clause inserts a new definition of 'low alcohol wine-based beverage'. This is defined as a beverage that contains wine and that at 20° Celcius contains less than 6 per cent alcohol by volume. 'Refund amount' is defined as the prescribed amount in relation to a container of a particular description. This enables the amount to be prescribed by regulation and removes the current ceiling of 5c.

A new definition of 'mark', meaning a mark placed on a container or label by any method (including embossment) is inserted and the definitions of 'appointed day', 'description' and 'exempt container' are struck out. Clause 5 repeals section 5 of the Act which enables the Governor to exclude containers from the definition of glass container by proclamation and inserts three new sections. Section 5 provides that the Act does not apply to glass containers made for the purpose of containing wine or spirituous liquor other than containers made for the purpose of containing a low alcohol wine-based beverage. Section 5a provides that the Governor may by regulation exempt specified containers (not being containers to which section 5b applies) from specified sections of the Act either conditionally or unconditionally.

Section 5b provides that the Minister may, by notice published in the *Gazette*, exempt from section 7 of the Act glass containers made after the commencement of this section for the purpose of containing beer, or prescribed glass containers, if the Minister is satisfied—

(a) that the containers are made to be refilled not less than 4 times;

(b) that the containers are marked with a statement indicating that they are refillable in a manner and form approved by the Minister; and

(c) that proper arrangements have been made for the re-use of the container.

Clause 6 substitutes a new section 6 which provides that a retailer shall not sell or cause or permit to be sold a beverage in a container unless it is marked in a manner and form approved by the Minister with a statement indicating the refund amount applicable to the container and if required by the Minister some other mark or feature indicating that a refund amount is applicable to that container. The penalty for breach of this section is $2 000. Section 6, at present, does not provide that the Minister may require some other mark or feature to be placed on a container indicating that a refund amount is applicable to the container.

Clause 7 repeals the heading to part III of the Act and substitutes the heading '***RETURN OF CONTAINERS***'. Clause 8 increases the penalty provision in relation to a retailer who refuses or fails to accept an empty glass container and pay the refund amount in accordance with section 7 of the Act from $200 to $2 000. Clause 9 repeals the heading to part IV of the Act. Clause 10 repeals section 8 of the Act which provides that part IV of the Act does not apply to glass containers.

Clause 11 amends section 10 of the Act by increasing the penalty from $200 to $2 000. Section 10 provides that a retailer shall not sell containers of a particular description from a retail outlet unless it is situated within a collection area in relation to which there is a collection depot which will accept containers of that description. A new subsection (la) is inserted which provides that section 10 of the Act does not apply to containers to which section 7 of the Act applies, namely, glass containers marked in the manner referred to in section 6 of the Act and not exempted by the Minister under proposed new section 5b.

Clause 12 amends section 11 of the Act by increasing the penalty from $200 to $1 000. Section 11 provides that a retailer shall keep a sign exhibited specifying the location of a collection depot in relation to the retailer's premises. Clause 13 amends section 12 of the Act by increasing the penalty from $500 to $2 000. Section 12 provides that a retailer shall accept delivery of empty containers marked in the manner referred to in section 6 of the Act and pay the refund amount for the container. Clause 14 amends section 13 of the Act by increasing the penalty from $500 to $2 000. Section 13 of the Act provides that a retailer shall not sell a beverage in a 'ring pull container' on or after 30 June 1977.

Clause 15 amends section 13a of the Act by increasing the penalty from $500 to $2 000. Section 13a provides that a retailer shall not sell carbonated soft drink or waters in glass containers of a prescribed kind. Clause 16 inserts a new part VA in the Act providing for the appointment of inspectors and setting out their powers. Section 13b provides that inspectors may be appointed by the Minister subject to such conditions as the Minister thinks fit. An appointment may be revoked or varied. Section 13c provides that an inspector may at any reasonable time enter and inspect premises, require a person who is suspected of having committed or about to commit an offence to state their name and address, require a person to answer questions, and produce relevant records and documents, inspect and take copies of any records or documents and seize and remove any records, documents or objects that may afford evidence of an offence. Section 13d provides that an inspector shall not be hindered in the exercise of the inspector's duties. Clause 17 amends section 17 of the Act by increasing the amount which may be prescribed as a penalty by regulation from $200 to $1 000.

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

CATTLE COMPENSATION ACT AMENDMENT BILL

(Second reading debate adjourned on 26 February. Page 596.)

Bill read a second time.

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Insertion of new sections 11a, 11b and 11c.'

The Hon. BARBARA WIESE: I move:

Page 1, line 29—Leave out 'six' and insert 'five'.

There was a drafting error in the Bill. The Government intended that the proposed committee be made up of six members, three from the industry and three from the department, but one of the officers from the department was to be an executive officer to the committee with no voting right. That provision was not inserted in the Bill, and this amendment and the following two amendments overcome that omission.

The Hon. PETER DUNN: The Opposition supports the amendment. In fact, I had a similar amendment on file, but the Government's amendment goes one step further. There is a similar mechanism under the Swine Compensation Act, but through a gentlemen's agreement the Department of Agriculture supplies an executive officer who has no voting rights. If it came to a point of law and there was some disagreement, I am sure that he would be given the right to vote, and that could be rather awkward. This amendment ensures that funds raised from growers or producers of cattle are used and directed by them.

Amendment carried.

The Hon. BARBARA WIESE: I move:

Page 2, line 2—Leave out 'two shall be persons holding positions' and insert 'one shall be a person holding a position'.

This amendment is consequential.

Amendment carried.

The Hon. BARBARA WIESE: I move:

Page 2, after line 3—Insert new subsection as follows:

(2a) The Minister may appoint a person holding a position in the Department of Agriculture to be the secretary to the committee.

Amendment carried; clause as amended passed.

Title passed.

Bill read a third time and passed.

BIOLOGICAL CONTROL BILL

Adjourned debate on second reading.

(Continued from 26 February. Page 576.)

The Hon. J.C. IRWIN: It is a difficult time of the morning to be making a stirring and emotional speech about biological control. This is a most important measure, particularly for rural people. The Opposition supports the Bill, which introduces a new initiative that has evolved after lengthy discussions between the Commonwealth and the States and much public involvement, including a legal action from one group that was determined to stop the introduction of a biological control method to help to eradicate salvation Jane or Paterson's curse, depending on what State one comes from.

Biological control is not confined to salvation Jane; it could also have some effect on yellow burr weed, African daisy and hoarhound. African daisy is the weed that grows in the Adelaide Hills and is now so far out of hand that efforts to control it have been abandoned. There is no excuse for that argument for stopping the introduction of the biological control method, just as there is no excuse for the rapid spread of other pest plants in the suburbs, on roadsides and in rural areas.

The proposal in the Bill complements and is substantially the same as the 1984 Commonwealth legislation. It provides a nexus between the Commonwealth legislation and legislation to be enacted by the States and the Northern Territory. It also binds the Crown. The Bill provides an opportunity for equitably assessing the proposed biological control activities and ensuring that they are in the public interest by, first, requiring the unanimous approval of the South Australian Agricultural Council for any biological control program to be conducted under the proposed Act; secondly, publishing proposals with a view to obtaining public comment; thirdly, where appropriate ordering public inquiries to investigate and report on the implications of the proposal; and, fourthly, providing for a review of administrative decisions.

The 1984 annual report of the Pest Plant Commission in South Australia shows a payout to local government of $1.2 million to help pay pest plant operators. When one adds council's contributions, one comes up with something like $2.5 million. From my experience in local government, my council employed three pest plant inspectors and is now part of a joint pest plant board with another council.

In many rural council areas pest plants drain an enormous amount of revenue. All up costs can account for in excess of 10 per cent of income of rural councils. For individual landholders there is a real need in most areas to keep weeds under control. With this there is a real cost; and there is another cost in that a hefty fine is imposed on landholders who do not comply with the Act. The cost is not only an annual one for controlling weeds, but can be a very real high cost if the weed seeds are contained in grain and in product for sale and small seeds sold off the property.

If on-property grain is fed out containing contaminating seed, then we have a perpetuation of the on-farm weed situation. It has always amazed me, and I might add the council with which I was associated, that stronger action is not taken at the silos and in the transport area to enforce nil tolerance of weed seeds contained in grain being transported. Of course, that would be a fairly draconian measure, but there is no better way to ensure clean grain for markets here and overseas. When one considers the value of our overseas markets for grain and the income generated for this State, it is fair enough to ensure that we do not give our competitors (and it is a very competitive climate in which we work) any edge whatsoever.

An enormous amount of work has been done on costings in relation to the effect on and damage that weeds cause to the grazing and grain industries—in this case in relation to the effects of salvation Jane, which is not an easily controlled weed. Similarly, the honey bee industry has presented its potential financial loss submissions.

In summary, the financial analysis comes down heavily on the side of controlling salvation Jane by any means, including biological control. The Minister of Tourism, who is handling the Bill in this place, may well have received submissions on behalf of the tourist industry, referring to the beauty of salvation Jane when it is flowering: it is something to behold, and even more so when it is put with another lovely coloured weed, called Cape Tulip.

The Hon. M.B. Cameron: And we get prosecuted.

The Hon. J.C. IRWIN: We certainly get prosecuted for it, and that is evident in the North of the State, the South, and the Hills.

The Hon. M.B. Cameron: You should have highjacked those bugs a long time ago!

The Hon. J.C. IRWIN: They let them out in Victoria I think, but the State border section 92 did not come into operation. We support the Government in the belief that the economic benefit to South Australia from rural production that we hope will flow from the benefits of this Bill will far outweigh the economic loss that may be caused to the honey industry.

The Opposition congratulates the Government on biting the bullet on this issue and moving this State into line with the Commonwealth and, hopefully, the other States. I also congratulate the United Farmers and Stockowners for its hard work and persistence in relation to this matter. Let us hope that the Australian Agricultural Council will also bite the bullet, because as members would realise it must be unanimous in its decision to allow this measure to be first introduced, and its subsequent approval is most necessary. The Opposition certainly supports the Bill.

The Hon. BARBARA WIESE (Minister of Tourism): I thank the honourable member for his excellent contribution and the Opposition for its support of this measure.

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

ROAD TRAFFIC ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 26 February. Page 577.)

The Hon. M.B. CAMERON (Leader of the Opposition): I have no intention of holding up the Council on this matter. This Bill has the support of the Opposition. Its principal task is to set up a road traffic committee and in the process it abolishes the Road Traffic Board. That is a measure to which I give strong approval. No doubt the board has served some good purposes in this State but, as a person who has had to deal with constituents' inquiries about road traffic matters, I must say that from time to time it has been a difficult body to deal with.

I trust that now when we have problems associated with school crossings, lights and all sorts of other issues we will be able to allow local government some say in the matter. From time to time I have brought up matters of school crossing lights in areas that obviously needed them. I was told that the board had provisions where, if insufficient children crossed the road, it could not install lights. Of course, the reason why insufficient children crossed many roads was because it was too dangerous to allow them to do so, and they were transported by their parents by car. The lights were never installed although the road was so dangerous.

If ever anything frustrated me it was that issue, and that issue alone. Every time such an issue was taken by local government to the board it said, 'We operate on numbers crossing a road and, if you do not reach that criteria, you cannot get it.' If ever a Bill deserved my support it is this one, on that issue. True, there are other issues and it is important, when matters of traffic control arise, that local government has some say.

I am sure the Hon. Mr Irwin would agree with that statement, because he has had considerable experience in local government and I have no doubt that he has had such problems from time to time. Some very dogmatic individuals have been on the board in the past. I will not name them, but they have certainly been difficult to deal with.

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

ADJOURNMENT

At 1.15 a.m. the Council adjourned until Tuesday 4 March at 11.45 a.m.