LEGISLATIVE COUNCIL

Tuesday 25 November 1986

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

The Clerk (Mr C.H. Mertin) read prayers.

ASSENT TO BILLS

His Excellency the Governor, by message, intimated his assent to the following Bills:

Irrigation Act Amendment,
Statutes Amendment (Parole).

PETITION: TIME ZONES

A petition signed by 79 residents of South Australia praying that the Council reject any legislation which proposes the adoption of Eastern Standard Time for South Australia and the division of the State into two time zones during the summer period was presented by the Hon. Peter Dunn.

Petition received.

MINISTERIAL STATEMENT: ROYAL ADELAIDE HOSPITAL

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

Leave granted.

The Hon. J.R. CORNWALL: On Tuesday last I advised the Council of my intention to meet with the Chairman of the Board of the Royal Adelaide Hospital, Mr Lewis Barrett, the Administrator, Dr Brendon Kearney, and the chief of the surgery division, Dr Lehonde Hoare, to discuss allegations about the treatment of emergency patients requiring operations at the hospital. I now propose to report on the outcome of that meeting and further developments with regard to emergency services in metropolitan hospitals.

The South Australian Health Commission's preliminary report on the allegations made about the Royal Adelaide Hospital's treatment of emergency patients indicated there was no evidence of a crisis in the emergency services or the quality of care provided by the major hospitals in metropolitan Adelaide. I was happy to place that on the record last week. There was consensus at my meeting with Mr Barrett, Dr Kearney and Dr Hoare three days later that public statements made by Dr Kearney and Dr Hoare had resulted in the projection of a distorted picture of the hospital's emergency services. I want to emphasise, as Minister of Health, that any suggestion that patients with broken bones poking through their skin are left unattended and without examination is false. Further, I accept statements made to me by Dr Kearney and Dr Hoare that they regret the unnecessary damage to the hospital's reputation caused by certain statements they made.

In a press release issued on 15 November, Dr Kearney stated explicitly that the impression of a dispute leading to accusations of dumping of patients between Flinders Medical Centre and the RAH was, to quote his words, 'exaggerated and unfortunate'. Similarly, Dr Hoare wrote to me on 21 November 1986 to express his concern that because of terms he used in answering a reporter's questions 'erroneous inferences have been made in regard to present standards of care at the Royal Adelaide Hospital'. Dr Hoare's letter continues:

> Specifically, I reassure you that I know that all patients arriving at the Royal Adelaide Hospital as emergencies receive immediate primary attention and stabilization; and I know that the public of South Australia can have every confidence in this.

Members will recall that at the time that allegations concerning the treatment of emergency patients at the RAH were published a link was drawn between concerns about delays in conducting operations and pressure caused by transfers from Flinders Medical Centre and funding cuts. It is nonsense to suggest, Ms President, that delays in carrying out operations can be blamed on such factors. This is evident from the hospital's own review of waiting times in the emergency theatres conducted by the Senior Director of Emergency Services, Dr Mervyn Allen. That review identified a number of disturbing issues relating to periodic delays for patients being operated on in the emergency theatres in May and June—factors operating in the previous financial year and long before the across-the-board funding cut of 1 per cent which all hospitals and health services were asked to accept in the financial year 1986-87.

The review focussed on a number of regrettable features concerning the organisation, staffing and administration of emergency theatres. It may be helpful if I provide some examples of the sorts of things which can affect waiting time. Over a six-week period there were delays in the starting time of 8.30 a.m. for the first operating theatre quoting from the report 'almost every day of the week'. Late starts were caused by medical staff arriving late, patients arriving late from the ward and, in exceptional cases, theatre staff not being ready. It was not uncommon for anaesthetists not to have seen the first patient of the morning and for no pre-medication to have been ordered. On some occasions anaesthetists decided at 8.30 a.m. to carry out a major regional local anaesthetic block, which would, of course, take time to administer.

Other delays were caused by the non-availability of surgeons for a variety of reasons or because some medical staff were reluctant to start a new case just prior to a meal break or within an hour or so of their rostered time off. This reluctance, Dr Allen concluded, was sometimes related to the fact that the best meals in the canteen were available from 12 noon to 1.30 p.m. and from 5.30 to 7 p.m.

In other words, operations were not begun because canteen meals outside those hours, again to quote the report, 'leave a lot to be desired' and certain staff working in the emergency theatres like to have meals at reasonable times. Further delays identified by Dr Allen were caused by failure to adhere to the protocol for management of casualty patients who obviously required surgery in the next few hours. Although these patients should have been admitted directly to Emergency Surgical Services, Dr Allen found they were frequently sent to the X-ray Department, then re-assessed and then taken through the admission process. In his words:

> This can cause a delay in processing the admission by two hours and there is no doubt that registrars use this as a deliberate delaying tactic because they are already committed with other duties.

The problems described above cannot by any stretch of the imagination be attributed to issues such as funding or transfers from other hospitals. They are the sorts of problems which have been occurring in major hospitals for 50 years and they should be kept in perspective. It is to Dr Hoare's credit that he expressed concern about the long delays occurring periodically for patients being operated on in the emergency theatres and it is to the hospital's credit that Dr Allen was assigned to conduct a review which exposed shortcomings in organisation, administration and staffing. Mr Lewis

Barrett has personally assured me that the RAH Board, administration and staff are responding constructively to the important matters raised in the Allen review. The hospital, acting in concert with the South Australian Health Commission, has devised a strategy which is outlined in a statement formally approved by the RAH Board this morning. That statement, sent to my office by Dr Kearney, reads as follows:

At a meeting with the Minister of Health on 21 November 1986, attended by representatives from Royal Adelaide Hospital and the South Australian Health Commission, it was agreed that a consultancy would be established to advise Royal Adelaide Hospital on implementing measures to overcome deficiencies identified in a report, which reviewed delays in the emergency surgical services theatre. The report was prepared in June 1986 by Dr M. Allen, Director of Accident and Emergency, Royal Adelaide Hospital.

The consultancy is to be carried out by Mr D. Simpson, Emeritus Director, Neurosurgery, Adelaide Children's Hospital and Dr G. Phillips, Director, Accident and Emergency Services, Flinders Medical Centre.

The hospital has established a working party comprising the Hospital Administrator, Medical Director, Chairman of the Division of Surgery, Director of Anaesthetics and Intensive Care, Director of Accident and Emergency, and the Director of Nursing, to examine the suggestions for improvement identified in the Allen report and to develop a practical plan of implementation. In undertaking this excerise, the Administrator of the hospital will ensure that the advice of the consultancy is provided to the working party.

Mr Simpson and Dr Phillips are to report to Royal Adelaide Hospital and the South Australian Health Commission on actions recommended by the working party and to address any other matters that they identify of concern regarding accident and emergency services of the hospital.

The Administrator of the hospital is to keep the Executive Director of the Central Sector informed on actions taken by the hospital in addressing the deficiencies identified in the Allen report.

The working party and consultants are to bear in mind the provision and organisation of trauma services to the State of South Australia.

The consultants' report is to be submitted by 13 February 1987 to the Royal Adelaide Hospital and the South Australian Health Commission.

The Government has been sensitive to the need for our hospitals to provide the best possible emergency services. On 3 November (that is, more than three weeks ago) I met with Dr Gary Phillips who, in addition to his post as Director of the Accident and Emergency Services at Flinders Medical Centre, is Censor-in-Chief of the Australasian College for Emergency Medicine.

Dr Phillips called on me to discuss issues surrounding the training requirements of the college and possible future developments in emergency medicine in South Australia. Following that meeting I wrote to advise Dr Phillips that I had asked the Health Commission to instigate a review of the State's major accident and emergency departments early in 1987. I envisage that this review will be the first of a series of clinical program reviews that will be required under the Health Commission's new philosophy for planning clinical services in metropolitan hospitals.

The need for co-ordination of clinical services and programs across the metropolitan hospital system has been addressed by the Sax report and, more recently, the Uhrig report. The Royal Adelaide Hospital, of course, must play an important part in developing co-ordinated programs in conjunction with the Health Commission and our other major hospitals. Mr Barrett, Chairman of the RAH Board, has assured me that the RAH is committed to the concept of clinical program reviews to ensure we develop trans-hospital services in the best interests of South Australian patients. Work has already begun on a role and functions study on the hospital which will provide us with a corporate planning document by mid-1987.

The study is a major undertaking for the hospital and the Health Commission which will consider the range and level of services of the hospital in the context of the metropolitan and regional hospital framework, as well as the physical facilities and plant required for them. It will draw together material from a number of recent and existing studies including those addressing the rationalisation of operating theatres, the development of day surgical services, the State's strategy for managing booking lists for elective surgery, and capital works proposals.

MINISTERIAL STATEMENT: DUBLIN AND WINDSOR WATER SUPPLY

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

Leave granted.

The Hon. J.R. CORNWALL: Last month the member for Goyder in another place raised, on behalf of a group of his constituents, concerns that the water supply to the Dublin and Windsor regions may have caused a higher incidence of cancer in the two communities. In the Legislative Council on 23 October in response to a question, I said that, according to Central Cancer Registry statistics, the incidence of cancer in the region was no higher than could be anticipated elsewhere in South Australia.

Later, outside the Chamber, I gave an undertaking that the Public Health Service would further investigate the matter and prepare a report. That report has been completed and I seek the leave of the Council to table the document.

Leave granted.

The Hon. J.R. CORNWALL: I move:

That the report be printed.

Motion carried.

The Hon. J.R. CORNWALL: In continuing their investigations, the Public Health Service took action in four areas:

1. A further analysis of Central Cancer Registry data.
2. Visits to the region to discuss the situation with the Mallala District Council and Board of Health, local medical officers, and individuals from the community who had been publicly quoted in media coverage of the issue. Public Health Service officers also investigated the region to attempt to identify any potential environmental causes of cancer.
3. Discussions with Engineering and Water Supply officers, including officers from the State Water Laboratory.
4. Reviews of current literature relevant to the investigations.

The report concludes that the number of new cancer cases in the area from 1977-85 was not in excess of what could be expected in the general population. The Public Health Service, which initially analysed the statistics on a postcode basis for the postcode area 5501 (which includes Two Wells) also excluded Two Wells from the analysis and restricted their analysis to Windsor and Dublin. The exclusion of Two Wells did not reveal a recent excess of new cases in Windsor and Dublin. On the subject of chlorine in the water supply, which some residents suspected as a cause for cancer, the report notes that, since chlorination was established in the area in 1960, dosage and residual levels had adhered to recommended practice.

The report states that chlorine usage in the water supply did not account for cancer deaths in either Windsor or Dublin. There was also no evidence that the provision of a safe public water supply to the area through chlorination had exposed the residents to hazardous levels of chlorine or trihalomethanes (a by-product of adding chlorine to water

containing organic materials). The report makes four recommendations as a result of its findings. It recommends:

1. That the report's findings be discussed with the residents, the Mallala Board of Health and local medical practitioners.

2. That concerned residents of Dublin and Windsor be referred to their local medical practitioners for further personal advice, information and explanation.

3. That no specific action to control cancer be undertaken in the district, other than as part of ongoing State-wide initiatives.

4. That a public campaign be recommended to the Anti-Cancer Foundation to explain to the public basic principles about cancer occurrence and biology, causal factors and prevention.

PAPERS TABLED

The following papers were laid on the table:

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

Pursuant to Statute—

Regulations under the following Acts:

Legal Practitioners Act 1981—Practising Certificate Fees.

Local and District Criminal Courts Act 1926—Local Court Fees.

Supreme Court Act 1935—

Sheriff's and Marshal's Office Fees.

Probate Fees.

Justices Act 1921—Rules—Court Fees.

Australian Formula One Grand Prix Board—Report, as at 3 November 1985.

Classification of Publications Board—Report, 1985-86.

Department of Labour—Report, 1985-86.

By the Minister of Consumer Affairs (Hon C.J. Sumner):

Pursuant to Statute—

Liquor Licensing Act 1985—Regulations—Liquor Consumption—Port Augusta.

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

Pursuant to Statute—

Regulations under the following Acts:

Highways Act 1926—Highways Fund.

Road Traffic Act 1961—

Rear Marker Reflector Plates.

Seat Belt Exemptions.

Samcor Voluntary Contributions Fund—Auditors' Report and Accounts, 1985-86.

South Australian Health Commission—Report, 1985-86.

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

Pursuant to Statute—

Amdel—Report, 1986.

S.A. Teacher Housing Authority—Report, 1985-86.

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

Pursuant to Statute—

Corporation of the City of Burnside—By-law No. 32—Library Service.

QUESTIONS

Dr GAMAL YACOUB

The Hon. M.B. CAMERON: I seek leave to make a brief explanation before asking the Minister of Health a question on the subject of Dr Yacoub.

Leave granted.

The Hon. M.B. CAMERON: As reported in the *Advertiser* of 20 November, Dr Gamal Habib Yacoub of Port Adelaide has had his specialist registration as a surgeon cancelled by the Medical Board of South Australia's Professional Conduct Tribunal. This decision was handed down on 31 October this year—nearly 2½ years after matters were raised by Mr P. Munro of Elizabeth Vale in March 1984. In his complaint to the Medical Board Mr Munro said he wished to make a charge of gross incompetency against Dr Yacoub and he said:

On 25 February 1977 he did a cartilage operation on my son's knee. Upon his opening the knee, he could see no tear in the cartilage. But as it was discoid, he decided to remove it anyway. My son was discharged soon after the operation, even though he was in severe pain. Due to the rapid deterioration of my son's knee, and the intense pain, my son at my insistence was readmitted to Whyalla Hospital. I suggested to Dr Yacoub that he X-ray the knee, and do some blood samples and, in particular, to check for debris in the wound.

The tests, etc., were done and found to be negative. Dr Yacoub then aspirated the knee without an anaesthetic; it took eight nursing staff to hold my son down whilst this was done. Dr Yacoub said to me, 'Your son's troubles are all in his head.' Thereafter, for several weeks Dr Yacoub conducted what can only be described as psychological warfare. For instance, when the hospital's physiotherapist notified the ward sister in charge that the prescribed treatment was to no avail, Dr Yacoub then confined my son to bed and instructed the ward sister to give my son weightlifting exercises 50 times per hour from early morning through to retiring, that is, from 6 a.m. until 9 p.m. As it was very obvious to me that this was causing my son some distress, I went to see the hospital administrator, Dr Kearney, and said I wanted Dr P. Fry called in for a second opinion regarding my son's knee. Dr Yacoub refused to bring in Dr Fry, saying to my son, 'What do you need him for? I am better qualified and a damn sight cheaper than he is.' Eventually I asked the member of Parliament for Whyalla, Mr M.J. Brown to intercede with the hospital on my son's behalf. So, six weeks after my son's initial request for a second opinion, Dr Fry was brought in to give an opinion. Dr Fry did a McMurray test and diagnosed a torn cartilage. My son informed Dr Fry that the torn cartilage had been removed. Dr Fry replied, 'You may have had a cartilage taken out, but you still have a torn cartilage.'

The Hon. J.R. Cornwall: What is the document?

The Hon. M.B. CAMERON: That is what he gave to the Medical Board; his complaint. Mr Munro's son tried to sue Dr Yacoub for gross negligence back in 1977. However, he could not track him down. According to Mr Munro, Dr Yacoub went overseas and then to a small town in Western Australia. His son's case was eventually finalised in his favour in 1984. In the Western Australian *Government Gazette* of 18 December 1981, it is reported that Dr Yacoub was suspended from surgery for six months by the Western Australian Medical Board. It says the Medical Board of Western Australia had held an inquiry into allegations of gross incompetency relating to matters on 18 November 1981 and 2 December 1981. It was proved to the satisfaction of the Western Australian board that Dr Yacoub was guilty of gross incompetence, and his name was suspended from the medical register for a period of six months from 2 December 1981. The *Gazette* also stated that on restoration to the register he shall not practise surgery in Western Australia until he provides evidence of surgical competency acceptable to the Medical Board.

I have actually contacted the Western Australian Medical Board, and that evidence has never been provided, so he is still under virtual suspension in Western Australia. Dr Yacoub is now back in South Australia and practising as a general practitioner in Commercial Road, Port Adelaide. I understand that a woman whose 3½-year-old son was treated by Dr Yacoub in September 1985, when he was practising at Semaphore, has complained and given evidence to the South Australian Medical Board regarding the consultation. Previously, a Whyalla man had taken his case of gross negligence against Dr Yacoub to the South Australian Supreme Court. He had surgery for a disc scrape and alleged Dr Yacoub had cut a nerve while withdrawing a scalpel and was too shaken to complete the stitching. That man died before the Supreme Court case was completed.

I assure the Minister that I am fully aware of the fact that the Medical Board of South Australia is a statutory authority even though it comes under the medical Act. However, I do have some concerns: I guess that my questions will have to be referred by the Minister to the Medical Board for that reason. My questions are as follows:

1. In view of the continuing suspension of his surgical registration in Western Australia, because of his failure to provide evidence of surgical competency, and more particularly in view of the fact that there was a serious further complaint against him here, why was the allegation against Dr Yacoub which was recently resolved not acted upon with greater expedition?

2. Why was Dr Yacoub allowed to continue surgery in the interim period between the time that the complaint was made against him to the South Australian Medical Board and when his specialist registration was cancelled in view of this previous record when he has, as I have said, on my information a continuing suspension in Western Australia.

3. Why did it take so long for the Medical Board to decide to cancel Dr Yacoub's specialist registration as a surgeon?

4. Has the matter of the woman's 3½ year old son about which there has been a complaint been decided by the Medical Board and, if not, when will it be decided?

5. How is information relating to doctors who are struck off or suspended from the register made available to the public or to the medical profession?

The Hon. J.R. CORNWALL: I thank the Hon. Mr Cameron for bringing these matters to my notice and to the notice of the Parliament. As a matter of urgency I shall certainly pass all of those questions on to the President of the Medical Board and ask for his response. When that is available I will, in turn, make it available to the Parliament. As the Hon. Mr Cameron has said, the Medical Board of South Australia is endowed with appropriate autonomy under its Act. That Act is my responsibility and if there is a deficiency in it then I have a responsibility as Minister to ensure that it is amended appropriately.

However, the proceedings of the Medical Board and the Professional Conduct Tribunal under the Act are matters with which it would be completely improper for me to interfere. The Professional Conduct Tribunal, in particular, is a quasi-judicial tribunal. Indeed, I will be introducing amendments to that Act later this week which will make provision for us to appoint a judge or magistrate to the Professional Conduct Tribunal to hear every case referred to it by the board.

When something like this arises what happens is that, first, if it occurs in a hospital then the peer review processes in 1986 should be such that the medical staff are alerted very rapidly. The case to which the Hon. Mr Cameron refers actually occurred in 1977. I believe I was an active backbencher in those days, but I do not think that I could be held responsible in any way for what might have gone on at the Whyalla hospital. If that were to occur in 1986 I would hope that the peer review and quality assurance programs that we have been actively implementing in the wake of the Sax Report would be such that it would be picked up very rapidly.

Secondly, of course, there is an option for the patient or relatives of the patient to sue and take the matter through the processes of the civil court. Thirdly, of course, there is the recourse of reporting the matter to the Medical Board. In fact, the Medical Board, within the spirit and intent of the Act, should then expeditiously conduct a preliminary hearing and if matters are considered to be of such gravamen that they would perhaps result in suspension or some severe penalty then normally they should refer that matter expeditiously to the Professional Conduct Tribunal.

Finally, the Patient Information and Advice Service has been established, from recollection, since the middle of 1984. Adequate mechanisms are available, and certainly far more mechanisms are available in 1986 than there ever were nine years ago. However, on the face of it there appears to have been what might be considered a very considerable delay in the processing of this report by the Medical Board prior to its referral to the Professional Conduct Tribunal. I will further ask the President of the Medical Board to comment on that when he answers the five questions that have been raised by the Hon. Mr Cameron.

With regard to the Professional Conduct Tribunal, I have in front of me a letter from the Chairman dated 20 November in which he points out that the referral of the complaint was first made to that body on 28 April 1986, that, in fact, it was handled expeditiously despite an adjournment that was requested by Dr Yacoub's solicitor, and that the tribunal handed down its decision on 28 October 1986. Therefore, the tribunal acted as expeditiously as possible. There appears to have been a lengthy delay (and I will not comment further than that) between the time of its first being reported to the Medical Board and its referral to the Professional Conduct Tribunal.

With regard to interstate notifications, there have certainly been difficulties in the past. There have even been difficulties in not only reciprocal registrations but reciprocal suspensions. When people have been removed from the register, for example, in New South Wales historically it has been very hard to remove them in a reciprocal manner from registration in South Australia. I know those matters have been of some concern to the board. Again, when I refer to these other matters I will ask for a further report on that. If, in fact, the results of those inquiries indicate that we need any further fine tuning of the Act or, indeed, the administration of the Act so that it is administered within the spirit and intent of that bipartisan legislation, then we will certainly take appropriate action.

It is interesting to note with regard to the Medical Practitioners Act that it was developed during the period of my predecessor (Mrs Jennifer Adamson, as she then was) and was introduced into this Council late in 1982. The Parliament was then prorogued and we won the election. I took the Bill away and polished it up a little. In fact, the Bill as it reappeared in the Council was not different in any material way from the original legislation. Therefore, I hope that in this matter we can maintain a bipartisan approach.

BUSINESS MIGRATION

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

Leave granted.

The Hon. L.H. DAVIS: Australia's immigration program is administered by the Department of Immigration and Ethnic Affairs. One important category is the Business Migration Program which is designed to confer Australian citizenship on persons who have capital, business skills and experience that will benefit Australia. The second category of the Business Migration Program requires skills and the contribution of $150 000 or more. The department's pamphlet detailing the prerequisites for this second category specifically states:

> If you are entering into a joint venture with an Australian partner, a signed agreement must be submitted preferably in the form of a legal document to show how the joint venture will meet

the needs which have been demonstrated by the Australian partner.

The South Australian Department of State Development, along with other States, has used this Business Migration Program in an effort to boost investment in South Australia and build up skills in key industries.

However, I have received representations from a South Australian who has lost nearly $250 000—virtually his life savings—and who was forced to place a business in receivership and sell his family home as a direct result of a business migrant failing to honour a contract entered into with the knowledge and support of the Department of State Development. This business migrant earlier this year received Australian citizenship although he did not honour his contract.

The victim of this breach of contract has been involved in the clothing business for 20 years. He is highly regarded in the trade. He conducted a successful operation in Victoria before moving to South Australia. In December 1983 this person, in conjunction with other parties, purchased a clothing and manufacturing operation and within 12 months increased the turnover fivefold. However, two partners wished to sell their share of the business and the Department of State Development was approached at the end of 1984 with a view to attracting capital through the Business Migration Program.

A resident of Hong Kong was introduced by the department and he subsequently agreed to purchase the shares of the retiring partners and the factory that the company, at that stage, was leasing for its clothing operations. The investor subsequently gained citizenship and is now a resident of South Australia. By the end of 1985 it was decided to expand the operation, which was running profitably, by releasing a menswear label. The existing investor in the business, an ex-resident of Hong Kong, suggested another Hong Kong resident could be interested in injecting funds into the business under the Business Migration Program and, as a result of that investment, gaining Australian citizenship.

After discussions, a contract was signed in August 1985 with this new person and the Department of State Development was advised of these negotiations and received a copy of the contract. The contract meant the injection of additional funds into the business and on that basis staff were retained in the weeks leading up to and through Christmas 1985 and $100 000 of additional fabric and other material was ordered.

By the end of December 1985, the money had not arrived despite reassurances that it would be forthcoming. Large sums of money had been committed on the understanding that the contract would be honoured, and staff had also been retained. Not surprisingly, in an industry where cash flow is critical, the situation deteriorated rapidly. The money never arrived; the company was unable to pay its bills; it lost business; and by April 1986, operating on financial advice, the company was placed in receivership. Ironically, the person who was supposed to have invested his capital and provided his business skills received Australian citizenship on 1 March 1986. The money never arrived and after signing the contract in August 1985 this person was not sighted, apart from 10 minutes in the factory in January. The Department of State Development was kept informed on the non-payment of the moneys and the resulting desperate financial situation of the company. There is much more to this sorry saga. I have only provided some of the details.

The PRESIDENT: Order! You are only meant to provide what is necessary to explain your question, Mr Davis.

The Hon. L.H. DAVIS: Well, I have. The net effect is that the Business Migration Program, which is supposed to provide capital, skills and experience to assist Australia, has resulted in the demise of a flourishing clothing business, the loss of $250 000 to an Australian who has worked his guts out in a tough industry for 20 years, and also the loss of his family home. Fortunately, the victim is resilient and, notwithstanding this setback, has bounced back in a new venture in the past few months. With the Minister, I am a firm supporter of the Business Migration Program, but in view of this unhappy saga I ask the Minister:

1. What liaison exists between the Department of State Development and the Federal Department of Immigration and Ethnic Affairs with respect to ensuring that persons granted Australian citizenship under the Business Migration Program comply with the conditions of that citizenship?

2. Will the Minister investigate this matter and find out why Australian citizenship was granted to that person despite the failure to provide capital to a business, a condition prerequisite to the granting of citizenship?

The Hon. C.J. SUMNER: As the honourable member has said, the Business Migration Program is supported by him, as it is by this Government, by the Federal Government and, as I understand it, by the honourable member's Party in Federal Parliament, so this is not an issue about which there is any difference of opinion as to the desirability of the program.

From what the honourable member tells the Council, the person to whom he has referred has obviously had some difficulties with one of the people who was allowed entry to Australia under the program. I am not aware of the details of the matter, of course. There is liaison between State Development and the Federal Department as there would need to be for such a program as this. I will investigate the allegations made by the honourable member and bring back a reply in due course. Perhaps the honourable member may care to give me, privately, the names of the people involved so that I can have inquiries made.

VIDEO ADVERTISEMENTS

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

Leave granted.

The Hon. K.T. GRIFFIN: Madam President, *People* magazine of 8 September 1986, which circulates in South Australia, carried an advertisement for videos which appear to be either X-rated or to have been refused classification and in both instances are not available for sale or hire in South Australia. One part of the advertisement identifies videos on incest and another part identifies videos on spanking. The titles on incest are claimed to be 'Family movies for adults only' and have titles such as 'The kids teach dad a lesson he'll never forget' and 'Sometimes only your sister can give you what you need'. These titles and others in the advertisement are offensive, not only to me but, I suggest, to a large number of people in the community and do in fact reflect behaviour that is illegal.

The guidelines set by the Classification of Publications Board, as I recollect, ban depictions of incest and spanking, and there is provision in the South Australian Act creating an offence of publishing an advertisement contrary to conditions imposed by the Act. The Incest and Domestic Violence Resource Centre in Melbourne has drawn attention to this advertisement and has circulated a letter which, in part, says:

We believe that the promotion of these videos is extremely damaging as it not only condones illegal acts, but perpetuates violence towards women and children. We believe that sexual abuse and violence towards women and children are major problems in our society requiring a preventative approach. Not only must children be taught to protect themselves from sexual abuse; they also have the right to be provided with a safe environment. The general community needs to be made aware of the extent of these crimes, and the resulting costly and damaging effects.

Given the increased reporting of incidences of both incest and domestic violence, and the calls for more Government funding to provide services for victims of abuse, it seems extraordinary that the promotion of incest and domestic violence is permitted.

The Hon. C.J. Sumner: By whom?

The Hon. K.T. GRIFFIN: Just listen. I do not make any allegation against the Attorney or the Government in that sense. That was an observation of the Incest and Domestic Violence Resource Centre in Melbourne. What I want to do is draw attention to the fact that the advertisement is circulating in a magazine readily available in South Australia and would appear to contravene the law in this State. The circulation of the advertisement is a matter of concern. Therefore, will the Attorney investigate whether or not proceedings can be instituted against the publisher of *People* magazine for the advertisement of this illegal material? If it is possible to institute proceedings, will the Attorney consider doing so?

The Hon. C.J. SUMNER: As the honourable member has said, X-rated videos are not permitted to be sold in South Australia. Personally, I do not know of this particular advertisement, but I will have the matters raised by the honourable member investigated and I will bring back a reply.

TEACHER RATING

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister of Tourism representing the Minister of Education a question on teacher recruitment.

Leave granted.

The Hon. M.J. ELLIOTT: I have been concerned for some time that the system of ratings given to applicants for teacher recruitment has been rather arbitrary and certain complaints have been referred to me. First, ratings have fallen where people have spent 1986 upgrading their qualifications, that is, in going from a three year qualification—Dip.T.—to a four year qualification—B.Ed. In one instance such a teacher has done TRT work as well as voluntary work in schools, yet the rating has dropped.

There are at least two cases where women who have given birth to children in 1986 have had their ratings dropped. Ratings have fallen in cases where people have undertaken contract work in 1986 and have had positive reports from seniors and principals. In cases where ratings have not fallen, teachers have had previous service incorrectly documented: for example, previous contracts, TRT and such like have not been recognised.

One experienced teacher complained that she had received the same rating as a student teacher who had worked under her supervision in 1986. A decision was taken beforehand by Education Department administrators, it seems, that the vast majority of applicants would be placed in category 2, with category 3 being the highest, presumably because this would represent a so-called normal distribution curve. Many highly competent teachers who have given four, five and six years of contract service were given a category 2 rating. In other words, it was predetermined that most would be given a category 2 rating, regardless of their merit. Therefore, my questions are as follows:

1. Why have so many teachers applying for employment, who have previously had top ratings, been given only an average, or 2, rating?

2. Why have the ratings of women who gave birth to children in 1986 and who previously had a top rating, been reduced? Is this not a case of discrimination against women?

3. How much is the total rating, interviewing and recruitment exercise costing?

4. Why does the department not introduce a new system which avoids these anomalies, and which avoids this waste of money which could then be spent on something more productive?

The Hon. BARBARA WIESE: I will refer those questions to my colleague in another place and bring back a reply as soon as possible.

LAW AND ORDER

The Hon. CAROLYN PICKLES: I seek leave to make a brief explanation before asking the Attorney-General a question about law and order.

Leave granted.

The Hon. CAROLYN PICKLES: The *News* of Monday 24 November 1986 contained an article that included comments purporting to be made by the State National Party Leader, Mr Blacker, as follows:

It is only a matter of time now under the Bannon Government before we reach the chaos of some American cities where plea bargaining is normal and people literally get away with murder.

Mr Blacker goes on to state:

I believe that most people would still regard causing harm or damage to others or their property as a crime and that those responsible should be treated as criminals.

That is something with which I certainly agree. Mr Blacker is purported to have also stated:

The real answer [to all these problems] lies in restoring family life, restoring discipline to schools and restoring respect for other people and their property.

That is a rather simplified solution to the problems that we have in today's society. However, he goes on to state:

The next shock could be Government legislation to decriminalise house burglaries and car stealing.

Can the Attorney indicate what measures the Government has taken in the past 12 months to implement its policy on law and order?

The Hon. C.J. SUMNER: I thank the honourable member for drawing the attention of the Council to this extraordinary and ill informed statement by Mr Blacker. One can only assume that he really has not taken much notice of what has been the Government's policy in this area over the past three or four years.

Apparently, what prompted his statement—which I might add was floating around the media for about two weeks but no-one considered that it had any credibility and it was only the *News* yesterday that deemed it worth running—as I understand it, was a suggestion by my colleague in another place, Mr Keneally, that the Government was examining expiation fees for some other areas of offence. At that stage, Mr Keneally indicated to the House—

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: No, not really. He said that the Attorney-General had asked other departments to indicate what offences might be appropriate for the expiation notice procedure. That is proceeding. To suggest that that will apply to offences of violence or theft or that there will be decriminalisation of home burglary or car stealing is absolute arrant nonsense. Quite frankly, I would have thought it does not do Mr Blacker any good at all, in terms of his

credibility in the community, to make such ludicrous, outlandish and ill informed comments. The reality is that, if there is to be any extension to the expiation notice system, it would apply to offences which I am sure everyone would agree are appropriate and which would reduce the unnecessary time spent by departments in preparing prosecutions, by defendants in attending court and indeed by the courts themselves in having to handle these cases.

I refer in particular to offences such as failure to lodge company returns on time with the Department of Corporate Affairs or failure to lodge returns relating to changes of company names and the directors of companies or the principals of businesses. That sort of offence is the area that we are looking at; and some minor local government offences (such as sticking bills on public property and that sort of thing) are others. They are matters that can be dealt with quite sensibly by the expiation procedure. To suggest that that procedure is appropriate for offences such as those mentioned by Mr Blacker is, as I said, arrant nonsense.

The Government has acted already this year to toughen up the parole laws. I have given instructions to the Crown Prosecutor to launch test cases in lenient sentences in particular in the areas of rape and armed robbery and, indeed, over the past three years I have adopted a very active role as Attorney-General in appealing against lenient sentences—much more active than was the case with my predecessor in his term of Government—

The Hon. C.M. Hill: Here we go again.

The Hon. C.J. SUMNER: That is the fact of the matter.

The Hon. C.M. Hill interjecting:

The Hon. C.J. SUMNER: That is because I have to put up with this sort of nonsense from the honourable member's coalition bedfellow in another place. If he did not carry on with these ridiculous sorts of assertions, there would not be the need for me to repeat the Government's very good record in this area. As he seems to have not heard about it (perhaps because he is in another place) I feel that I ought to inform Parliament and the public once again. As I said, I have adopted a very activist role on appeals against lenient sentences; the Government has introduced legislation (debated last week) to provide for better laws with respect to the invasion of a person's private property; added resources in this year's budget for the police is another action taken by the Government; and, of course, tough new drug laws were passed by Parliament just recently. So the Government's record in this area is designed to ensure that people can go about their business peacefully and without being subject to physical abuse. Indeed, the drinking laws that were announced last week are another aspect, and a Bill to give effect to that announcement will be introduced today. I assure the honourable member that what Mr Blacker says is erroneous to the point of being ridiculous.

ENTREPRENEURIAL PHARMACY

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

Leave granted.

The Hon. R.J. RITSON: I was very alarmed to read in this morning's press and to hear on the radio of a lobby developing on the part of large retail traders demanding the legal right to enter the field of prescription drugs because, traditionally, pharmacies must be owned by pharmacists in the same way as incorporated medical practices must be owned by medical practitioners. It is not quite clear exactly what is proposed, but there are two quite distinct types of restrictions involved in the selling of drugs; on the one hand, there are preparations which do not require a prescription but which may be sold only by pharmacists or only in certain quantities by pharmacists (and one example of the latter is aspirin, which may be sold in certain small quantities by non-pharmacists but in larger packs by pharmacists); and, on the other hand, there is the question of prescription drugs themselves in which the prescription serves, first, as a written advice to the patient as to what to purchase, secondly, as a statutory document which entitles people to purchase and possess preparations that are subject to State legal controls and, thirdly, as an official document for the provision of certain welfare payments under the pharmaceutical benefits scheme.

So prescriptions are a rather complicated matter. My concern is that, in the first place, if the stores are lobbying to sell from their shelves what are now 'chemist only' lines. I am very alarmed indeed because there could be specials on Black and Gold cough mixture all over the place. Many people do not realise that an apparently simple drug like aspirin can be extremely complicated. Aspirin complicates surgery because it causes increased blood loss because of its effect on clotting time. Aspirin can also cause or aggravate stomach ulcers, yet people are known to take aspirin to relieve the pain of their stomach ulcers.

If these stores want to sell large packs of aspirin without the sorts of counselling that a proprietor/operator of a chemist shop normally offers, then I am extremely alarmed. Furthermore, as regards prescription drugs, as the Minister will know, there are many different brands of a given generic chemical and they vary in quality and absorption rates. I am concerned that, with profit as the principal motive and a tame, dependent salaried pharmacist in, say, Woolworths, Woolworths will make a worldwide decision as to what brand of digoxin will be dispensed when every generic prescription for the drug turns up and that that will be an unenlightened decision based on the dollar factor. It is a complicated area. I do not propose to analyse it any more at the moment—

The PRESIDENT: Order! You are only meant to give sufficient explanation as may be necessary to explain your question.

The Hon. R.J. RITSON: Yes, Madam, and as I was saying when you interrupted me, it is extremely complicated and I do not propose to analyse it further but in explanation it is necessary for me to indicate to the Minister the nature of the technological concerns. Has the Minister any personal view at the moment on the appropriateness or otherwise of the reported quest for large-scale entrepreneurial pharmacy? Does the Minister plan to take advice on it and will he advise the Council of his response to this lobbying?

The Hon. J.R. CORNWALL: I am not sure that I am allowed the luxury of a personal view; however, I will express one in any case. I will keep my view restricted to two particular areas. First, I would personally regret it if there was any further reduction in the number of community pharmacies. I think it is an obvious observation that the number of family chemists—the small pharmacies—has actually decreased over the past 10 or 15 years and I would not like to see that proceed to any further significant degree. Obviously, there have to be a number of such pharmacies which meet the demand and are able to continue to supply and you cannot prop them up artificially—market forces prevail to that extent. However, I would not want to see any further substantial reduction at all.

Secondly, I put forward the personal view that I would be concerned at any move that might reduce the viability of the seven day a week pharmacist (the 9 a.m. to 9 p.m.

seven day a week operator), of which there are a significant number in the suburbs, and also the additional pharmacies which provide virtually round-the-clock service. In those two respects I have strongly held personal views.

With regard to the other matters, I will now put on my hat as Minister of Health. Of course, these moves at the moment are confined to New South Wales. There has been no approach to me, as Minister of Health in South Australia, and as yet there has been no lobby at all. However, might I say that anything which would give an impression that cheap drugs were being made available in large quantities would obviously meet with resistance. It is not a question in this particular case of saying that that would be good for consumers. There is considerable evidence to suggest that, from the point of view of safety with some proprietary medicines and from the point of view of creating a climate which would perpetuate and indeed expand the 'pill for every ill' syndrome, I would have very considerable reservations.

Secondly, of course, there is the question of the access to the pharmacist. The pharmacists these days do a tertiary course; they hold degrees; they are well qualified to counsel customers who come to their pharmacies; and they are, I believe, one of the great untapped resources to expand the community health program, for example. For that reason also I think it is important that we retain the traditional family chemist or community pharmacy.

However, there is obviously some sort of countervailing view which no doubt can be put by the Australian Retailers Association in the event that they wish to put those matters to me. I would then take professional advice. As I say, at the moment that has not happened, so the question does not arise.

DRUG AND ALCOHOL CENTRE

The Hon. I. GILFILLAN: I seek leave to make a brief explanation before asking a question of the Minister of Health in relation to a drug and alcohol premise in St Peters.

Leave granted.

The Hon. I. GILFILLAN: Residents in the St Peters and Joslin areas recently held a meeting on the site of 81-83 Fifth Avenue, Joslin, with various Government representatives to voice their concern about the planned centralisation of the alcoholic services of the Drug and Alcohol Services Council. During that meeting an officer of the Department of Environment and Planning stated that a member of the Legislative Council, in asking a question about this issue, had demonstrated his lack of understanding of section 7 of the Planning Act. Incidentally, I think that the member was the Leader of the Opposition. As far as the Residents Action Group is concerned, section 7 seems to be open to interpretation to suit the perceived needs of Government departments.

Inquiries made by the residents indicate that the Drug and Alcohol Services Council invoked the power of section 7. A letter that the residents have received from the Department of Environment and Planning dated 20 November 1986 states that an environmental impact statement was not necessary because the proposed development did not have major social, economic or environmental importance. However, I want to make it plain that we are not questioning the need for the facility; nor are we making a specific criticism of this unit itself. I am questioning the manner in which this decision was arrived at: there was a lack of proper consultation and procedure. Since the on-site meeting on 14 November 1986 the Payneham council has sent a letter to the Drug and Alcohol Services Council asking it to prepare an environmental impact statement.

Did the Drug and Alcohol Services Council have the authority to invoke section 7 of the Planning Act? Who in the Drug and Alcohol Services Council made the decision that the development did not have major social, economic or environmental importance? Will the Drug and Alcohol Services Council prepare an environmental impact statement as requested by the Payneham council and what status will it have?

The Hon. J.R. CORNWALL: He is really parsimonious, this one, and also, I regret to say, on occasions quite irresponsible. The premises at Fifth Avenue, Joslin, were, of course, originally St Anthonys, and more recently Family Living, which I think was established in 1981 as a drug-free, therapeutic community for drug abusers. More recently the proposal is that under existing use—and it has always been used as a rehabilitation facility for either drug or alcohol abusers or, as was the case in the days of St Anthonys, for both—it is now proposed that we spend $500 000 upgrading the facility, which certainly needs some money spent on it. Also, it should be used for alcohol treatment and rehabilitation. It will be a continuation of existing use.

The Hon. I. Gilfillan: Extension of existing use.

The Hon. J.R. CORNWALL: No, not extension of existing use at all. Let me go through the program which is being put in place. We have purchased a property at Ashbourne, near Strathalbyn, to establish a drug-free therapeutic community for up to 20 residents and, where appropriate, members of their families. That will be a brand new facility in a most pleasant situation. It is a very attractive little property. We have had to contend with all sorts of ignorance in that area fostered, I might add, by one or two conservative politicians.

Despite that, it is now probable that Ashbourne will proceed as a drug-free therapeutic community. We have engaged the services of the director who was previously at The Buttery near Lismore. We will be spending a lot of money establishing that drug-free therapeutic community and, as a result of that and because we have also established half-way houses in suburban Adelaide for rehabilitation of both drug and alcohol victims, the family living centre at Joslin, formerly St Anthonys, is now being renovated and refurbished to continue existing use for treatment and rehabilitation, in this case of alcoholics. That is being done at a cost of $500 000.

We are also spending $500 000 to substantially refurbish and upgrade the premises at Osmond Terrace. That will provide in-patient facilities for 10 patients for drug treatment and, of course, will provide day patient and outpatient facilities for rehabilitation programs. The site will continue to be the place from which the methadone program is organised and conducted. So, the upgrading at Joslin—not a change of use but an upgrading—is part of a $2 million capital program for the treatment and rehabilitation of alcohol and drug addicts in this State.

We have been at some pains more recently to explain to the residents of Fifth Avenue just what is proposed. It will certainly be better from the residents' point of view than the family living arrangement which was there previously. There were numerous complaints about the family living centre. In my view and in the view of the people who are expert in these matters, it was not appropriate to have that in an inner suburban location. There was evidence that, inevitably, the place was by no means drug free, and one has to expect a fairly high recidivism rate if we have a

facility in a suburban—and, particularly, inner suburban—situation.

Of course, it is precisely for that reason that the new and very much upgraded drug-free therapeutic community is being established in a rural area. I would have thought that that would be very much to the advantage of the people who live in and about Fifth Avenue, Joslin. Quite obviously, the sort of client who will be resident at Joslin, and the sorts of people who come for day patient and out-patient support and counselling, should not cause anything like the same alarm to the local residents as might have been the case when they feared that there were drug peddlers around the area because family living was in those premises.

So, I hope that we can have a little compassion; that we can have a little common sense, and that we can have a little support for what we propose at Joslin, just as I have been looking for some support from the community at Ashbourne. The experience with these facilities has always been that, once they are well established, they get the support of local residents rather than their opposition—but there is some understandable apprehension at Joslin. As I understand it, the Drug and Alcohol Services people are talking to local residents. Of course, the decision to make the development was made primarily by the Drug and Alcohol Services Council. It certainly has my full support.

The Hon. I. GILFILLAN: As a supplementary question, does the Minister accept that the Payneham council was not consulted and, therefore, not part of any preparatory planning and discussion for this development, and would he indicate whether in fact section 7 of the Planning Act applied to this decision or not?

The Hon. J.R. CORNWALL: I am not an expert in planning law and have not gone into the fine details, but I am advised by the Chairman of the Drug and Alcohol Services Council that the proposed refurbishment at St Anthonys, more recently family living, was done on the basis of existing use.

FROST DAMAGE

The Hon. PETER DUNN: Has the Attorney-General an answer to a question on frost damage which I asked on 6 November this year?

The Hon. C.J. SUMNER: Frost damage has been assessed by the Department of Agriculture and the matter will be considered in Cabinet to determine the need for financial assistance. Cereal crops on about 200 farms have been affected by frost damage and reports received from about 60 of the farmers indicate that crop losses are likely to be: less than 25 per cent on 50 per cent of the farms affected; 25-50 per cent on 35 per cent of the farms affected; 50-75 per cent on 15 per cent of the farms affected. A proposal will be submitted to Cabinet by the end of the month.

INSURANCE BUSINESS LICENCE FEES

The Hon. Peter Dunn, for the Hon. J.C. BURDETT: Has the Attorney-General an answer to a question of the Hon. J.C. Burdett on insurance business licence fees?

The Hon. C.J. SUMNER: In asking his question, the honourable member implied that there is no counterpart in the other States of the licence fee paid by life insurance companies in South Australia. This is incorrect. Whereas life insurance companies in South Australia pay an annual fee based on net premiums, their counterparts in other States pay a stamp duty based on the sum assured in each policy. Comparisons between the two types of duty are not easy. Nevertheless, it is a fact that the insurance industry has argued for some time that the South Australian approach results in a greater liability for tax. This matter is being examined. The honourable member has also suggested that competing with SGIC in the life insurance area creates problems for the private sector. In order that there be no misunderstanding, I point out that SGIC is subject to the same State fees and duties as its private sector counterparts.

NATIONAL COMPANIES AND SECURITIES COMMISSION (STATE PROVISIONS) ACT AMENDMENT BILL

Returned from the House of Assembly without amendment.

SECURITIES INDUSTRY (APPLICATION OF LAWS) ACT AMENDMENT BILL

Returned from the House of Assembly without amendment.

QUESTIONS ON NOTICE

ABORIGINAL HERITAGE AND RESOURCE CENTRE

The Hon. M.J. ELLIOTT (on notice) asked the Minister of Tourism:

1. What hope does the Minister hold for an early resolution to the proposal for an Aboriginal Heritage and Resource Centre?
2. Who is currently involved in the consideration of the proposal for such a centre?
3. Has there been any action taken in relation to providing land or existing building for the centre?
4. Will the Minister undertake to provide a detailed summary of his department's present assessment of the proposed Aboriginal Heritage and Resource Centre?
5. With a view to the centre being established in the near future, has there been any consideration of the training needs for the Aboriginal employees?

The Hon. BARBARA WIESE: The replies are as follows:

1. The realisation of this proposal is dependent upon the success of an application to the Bicentennial Authority for funding.
2. The Bicentennial Authority, the State Government, a committee comprising representatives of the South Australian Aboriginal community.
3. Yes, Cabinet has authorised the Minister of Aboriginal Affairs to consider a suitable site.
4. Consideration will be given to providing further information when the current assessments are completed.
5. Not at this stage.

PUBLIC SERVANTS' SALARIES AND CONDITIONS

The Hon. R.I. LUCAS (on notice) asked the Minister of Tourism:

1. What is the estimated cost of the promise made by the Director-General of Education in a memo to members

of Senior Executive on 3 September 1986 to ensure that the salary and conditions of senior public servants will not be affected adversely?

2. *(a)* Will this promise of salary and conditions maintenance apply for the remainder of the public servant's working life?

(b) If so, for how long will it apply?

3. If an officer can suffer a salary reduction, what will be the affect on that officer's superannuation entitlement?

The Hon. BARBARA WIESE: The replies are as follows:

1. The memorandum referred to concerned management issues and criteria for relocation and reassignment of senior public servants. The arrangements that govern the retirement, resignations and/or alternative placement of those officers have not yet been finalised. As the staff concerned are already employed by the department there is no additional cost incurred for any of the officers affected. Officers will carry out tasks commensurate with their experience, and will be redeployed into more suitable positions at the earliest opportunity. The department plans to achieve these changes within resources provided to it during the current financial year.

The reduction of senior positions within the Education Department has been undertaken as an efficiency measure, and consequently the use of the word 'cost' is not an appropriate description. The full savings of these reductions will not be generated in the first year of the rearrangement, but will occur when they are ultimately absorbed into substantive positions.

2. Undertakings that salary and conditions will not be adversely affected apply to officers whose positions have been vacated as a result of the 1986-87 budget strategy. The undertakings will apply during the time of continuous government service of the officer, or until such time as the officer voluntarily applies for and is appointed to a preferred position at a different classification.

3. An officer suffering a salary reduction can apply to the Board of the State Superannuation Fund for maintenance of superannuation contributions on the basis of the higher salary level.

TEACHER PROMOTION POSITIONS

The Hon. R.I. LUCAS (on notice) asked the Minister of Tourism:

1. What is the age profile of promotion positions in both primary and secondary schools as well as the age profile of those waiting on promotion lists?

2. How many schools currently have two, three and four Deputy Principals?

3. Why does the 'Leadership Positions' paper recommend that Deputy Principals have permanent tenure whilst all other promotion positions will be limited tenure?

4. What would be the costs for guaranteeing salary maintenance for those Principals who reverted to lower level positions?

5. What will be the effect on a person's superannuation entitlement if after serving as a Principal they reverted to a lower level position?

6. Do the proposals mean that many small country schools would eventually lose their Principals?

The Hon. BARBARA WIESE: The reply to this question contains tables of statistics and I seek leave for it to be incorporated in *Hansard* without my reading it.

Leave granted.

1. The age profile of teachers in promotion positions in primary and secondary schools is shown in the table below.

AGE DISTRIBUTION OF TEACHERS IN PROMOTION POSITIONS AS AT OCTOBER 1986

Sector	Age	Position		
		Deputy	Principal	Senior
Primary				
	26-30	7	2	0
	31-35	27	31	0
	36-40	143	152	0
	41-45	117	191	0
	46-50	41	94	0
	51-55	13	57	0
	56-60	6	30	0
	61-65	3	2	0
Total Sector Primary		357	559	0
Secondary				
	26-30	0	0	25
	31-35	6	0	240
	36-40	38	7	587
	41-45	105	28	378
	46-50	71	29	137
	51-55	30	26	57
	56-60	11	12	29
	61-65	2	0	3
Total Sector Secondary		263	102	1 456
Total		620	661	1 456

The age profile of those waiting on promotion lists is on manual records. It would take several weeks to compile the information and the time and effort required could not be justified.

2. The number of schools having 2, 3 or 4 Deputy Principals is shown below:

No. of deputies	No. of schools
2	48
3	41
4	7

3. The Leadership Position Paper divides positions in schools into two broad bands, with the bottom level of each band being retained as a permanent position. As band two comprises Principals and Deputy Principals, the bottom position of Deputy Principal is retained as a permanent promotion position. This model, however, is only one of several alternatives presented in the Leadership Paper.

4. The cost of guaranteeing salary maintenance to Principals who revert to the lower level position of Deputy Principal would be:

	Salary Difference— per person/per annum $
Principal (1) Secondary	6 296
Principal (2) Secondary	2 977
Principal (1) Primary	7 685
Principal (2) Primary	4 708
Principal (3) Primary (no change—same salary level.)	

5. Superannuation provisions would be the same as those which currently exist for a Principal A who reverts to Principal 1, *viz.* the individual has the choice of continuing to contribute at the higher rate (thus qualifying for a pension based on the higher salary level) or contributing at the level appropriate to the reduced salary, with the pension being based on that salary.

6. There are no current plans to remove principals from small secondary schools.

PRIMARY EDUCATION REVIEW

The Hon. R.I. LUCAS (on notice) asked the Minister of Tourism:

1. What is the current status of the primary review and when will it report?
2. Will recent staffing changes in the department affect the progress of the report?

The Hon. BARBARA WIESE: The replies are as follows:

1. The primary education review is progressing as planned.
2. No.

TEACHER HOUSING AUTHORITY

The Hon. R.I. LUCAS (on notice) asked the Minister of Tourism: What action is the Minister taking in response to the questions raised by the Auditor-General in his 1985-86 report about the operations of the Teacher Housing Authority?

The Hon. BARBARA WIESE: The Teacher Housing Authority has provided a report on the Auditor-General's report which the Minister of Education is considering.

JOINT HOUSE COMMITTEE

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

That pursuant to the Joint House Committee Act 1941 the Hon. C.M. Hill be appointed as a representative of the Legislative Council on the Joint House Committee in place of the Hon. R.J. Ritson, resigned.

Motion carried.

LIQUOR LICENSING ACT AMENDMENT BILL (No. 2)

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Liquor Licensing Act 1985. Read a first time.

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

That this Bill be now read a second time.

It makes several amendments to the Liquor Licensing Act aimed at reducing liquor abuse by minors and incidence of disorderly behaviour related to liquor use. There has been serious concern recently at the level of liquor consumption by minors. Social workers in the field consider that liquor abuse is the most serious problem facing minors, especially in urban areas. Excessive use of liquor by minors can seriously affect their growth and development. Recent surveys have revealed an increasing incidence of heavy drinking by young people.

For example, a 1984 study by the New South Wales Drug and Alcohol Authority on drug use by secondary students showed that 14.3 per cent of 12 year old males and 11.8 per cent of 12 year old females had consumed alcohol during the previous week. It also showed that 58.6 per cent of 16 year old males and 53.4 per cent of 16 year old females had consumed alcohol during the previous week. Surveys in Victoria and South Australia strongly confirm these results.

While much of this abuse undoubtedly occurs in private homes, in many cases minors obtain liquor from licensed premises or have adults obtain it for them. In some cases, minors consume liquor on licensed premises and in others the consumption occurs in motor vehicles and public places, especially in groups.

The number of prosecutions for unlawful drinking of liquor by minors on licensed premises has increased by about 60 per cent over the past 5 years, due mainly to an increase in the number of females detected. However, on the most recent figures, males still comprise about 64 per cent of those minors prosecuted.

Many people expressed concern at the incidence of minors openly consuming liquor in the city on New Year's Eve in 1985. As a result, the Liquor Licensing Commissioner was appointed to undertake a review of laws relating to liquor consumption by minors in public places. His recommendation that regulations be made under existing sections of the Liquor Licensing Act to prohibit the consumption of liquor, by both minors and adults where appropriate, in specified problem areas is being implemented.

This Bill contains further measures aimed at countering this problem. It substantially increases monetary penalties applicable to licensees and others who unlawfully supply liquor to minors on licensed premises. Where disciplinary action is brought against a licensee before the Licensing Court upon a conviction for supplying liquor to minors or allowing them to consume liquor on licensed premises, and the conviction follows a previous conviction for the same offence, the licensee will be required to show cause why the licence should not be revoked or suspended. The message to licensees is clearly that they must take all possible steps to ensure that minors do not obtain or consume liquor on their licensed premises, or else their licence will be in jeopardy.

For the first time minors will be prohibited from consuming or possessing or being supplied with liquor in any unlicensed public place (including a motor vehicle). However, the prohibition will not apply where the minor is in the company of an adult parent, legal guardian or spouse. Nor will it apply in private residences and other non public places. This recognises the primary responsibility of parents and others in similar positions of supervision to control liquor consumption by minors in their charge but still provides a clear indication that unsupervised liquor consumption by minors in public places will no longer be acceptable. It indicates that, while the law should not be the primary tool for preventing liquor abuse by minors, it should control the situations where minors often gather to consume liquor, frequently subject to peer pressure, leading to unforeseen and undesirable consequences.

The Bill also includes provisions to allow greater control over the behaviour of people, both adults and minors, who may gather in large numbers at special events and consume too much liquor. The Liquor Licensing Commissioner is given power on such occasions to impose conditions at short notice on licensees of nearby licensed premises, for example, to prohibit sales of take-away bottles which may later be used as missiles. Licensees themselves are empowered to refuse entry to the premises to any person who is intoxicated or acting in an offensive or disorderly manner, and if requested police officers will be required to assist licensees to refuse entry to such persons. I seek leave to have the detailed explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clauses 1 and 2 are formal.

Clause 3 amends section 50 of the principal Act, which sets out the powers of licensing authorities to oppose licence conditions.

Provision is made for the authority to impose conditions to ensure public order and safety at events expected to attract large crowds.

The Commissioner is empowered to impose such a condition on his own initiative at any time he thinks desirable. Specifically, such a condition may limit the sale of liquor for consumption off licensed premises.

Clause 4 amends section 118 of the principal Act by increasing penalites for the provision of liquor to minors.

Clause 5 amends the principal Act by inserting new sections 199a.

The new provision prohibits minors from entering or remaining in any part of licensed premises subject to a late night permit or any premises subject to an entertainment venue licence at certain times. If a minor enters premises contrary to this prohibition, the licensee, an employee of the licensee or a member of the police force may remove him. Where a minor enters or remains in premises contrary to the prohibition, the minor and the licensee are guilty of an offence. The licensee must erect notices at each part of the premises to which the prohibition applies.

Clause 6 provides for the insertion in the principal Act of new section 123a. The new provision prohibits consumption or possession of liquor by a minor in a public place.

A person who supplies liquor to a minor in a public place is guilty of an offence. The provision does not apply to the possession or supply of liquor by, or the supply of liquor to, a minor who is in the company of an adult guardian or parent. A 'public place' is defined as a place (not being licensed premises) to which the public has access.

Clause 7 amends section 125 of the principal Act. The effect of the amendment is to provide that where a licensee is convicted of a second or subsequent offence against section 118 the court must suspend or revoke the licence unless the licensee shows cause why that action should not be taken.

Clause 8 is a consequential amendment.

Clause 9 amends section 128 which authorises the refusal of entry to, or the removal from licensed premises of persons guilty of offensive behaviour.

The effect of the amendment is to enable an authorised person to prevent the entry of a person who is intoxicated or behaving in an offensive or disorderly manner. Reasonable force may be employed for that purpose.

It is an offence to attempt re-entry where entry has been refused within the previous 24 hours.

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

OCCUPATIONAL HEALTH, SAFETY AND WELFARE BILL

In Committee.

(Continued from 20 November. Page 2154.)

Clause 2—'Commencement.'

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

Page 1—

Line 18—Leave out 'This' and insert 'Subject to this section, this'.

After line 19—Insert new subclause as follows:

(1a) Section 24 is suspended until a day to be fixed by proclamation being a day falling at least two years after assent.

Line 21—After 'specified provisions' insert '(except section 24)'.

Clause 2 deals with the commencement of the operation of the Bill, which is to come into operation on a day to be fixed by proclamation. There is also provision for the Governor to suspend the operation of specified provisions until a subsequent day fixed in the proclamation or to a day to be fixed by subsequent proclamation. I recognise that there needs to be perhaps some differential proclamations so that parts of the Bill come into effect earlier than others.

One area that has caused concern is in relation to clause 24. The amendments I have moved need to be read in conjunction with clause 24 and with an amendment I will move to that clause. Clause 24 deals with the duties of manufacturers, designers, importers or suppliers of plant for use and the obligations which are placed on them to take into consideration the requirements of the plant to be designed and constructed so as to be safe when properly used and maintained and when subjected to reasonably foreseeable forms of misuse.

There is no difficulty with the general principle but there is a problem, as I understand it, with the farming community in particular and the importers of machinery also. As I understand it the problem is that, while importers and manufacturers generally have been complying with existing standards in Australia, it is possible that this Bill will require different standards and the requirement to comply, if introduced immediately, will undoubtedly made obsolete overnight a large amount of machinery and equipment that is currently in use.

In the farming community there are also problems with design in certain machinery where, unless the guards are removed for the purpose of operating on a hot day out in an open paddock, there is a real prospect that the plant will overheat and cause fires. A lot of the machinery on farms is already outdated in the sense that it does not carry the necessary guards and a requirement bringing this Bill into operation immediately in so far as it relates to guards on machines in existence on farming properties, in particular, will create a great deal of hardship.

I am told that it will cost approximately $1 500 to $2 000 to effectively bring a header up to standard and, on a farm, there are usually four or five large pieces of machinery and equipment which may need those guards. Therefore, the cost for each farmer is likely to be about $10 000 per farm. The Liberal Party does not propose that there be an indefinite postponement of the obligations being placed on manufacturers, importers and farmers, but believe that some breathing space ought to be given to the bringing into operation of clause 24.

The breathing space we propose is two years after the day when assent is given to this Bill. I notice that the Hon. Mr Gilfillan has some alternative proposal and I am certainly willing to listen to that, but the suspension of the operation of what is to be section 24 will alleviate the immediate hardship that will occur if the Bill is brought into operation fairly quickly.

The Hon. C.J. SUMNER: The Government opposes this amendment. A restricted duty of care already applies to those who sell or hire machinery to ensure that such machinery is properly guarded and meets other requirements as may be prescribed, for instance, under section 32 of the current Act. The provisions proposed in the Bill are more extensive and also apply to designers, manufacturers, and importers who are not presently covered. It is not reasonable for any of these groups to distribute, design or manufacture plant that is unsafe and any delays in the

introduction of proper standards in this area only put the work force unnecessarily at risk—indeed, not just the work force in the instance put forward by the honourable member of farm machinery. The amendment is not acceptable. I point out that the cost of accidents far exceeds, if they occur, the cost of correcting machinery which may not at present comply with the Act.

The Hon. I. GILFILLAN: We oppose the amendment. The Hon. Mr Griffin referred to an amendment that I have on file which is considering the position of the rural sector. It is an amendment to the second schedule aimed specifically at recognising the time required for changing in some cases relatively old farm equipment which has been legally used by the farmer and/or his family and which, with the impact of this Bill, unless there is consideration given to it, would become illegal to use virtually overnight. We will be discussing this matter in more detail at the time of my amendment, but I believe the Hon. Mr Griffin's amendment is too extensive and we will not support it.

The Hon. K.T. GRIFFIN: What the Hon. Mr Gilfillan says is correct in the sense that the obligation also placed upon a self-employed person under clause 22 will be operative from the day when the Bill comes into effect and that will apply also to the sorts of machinery to which I am referring in this amendment and which is also covered by clause 24.

I do not resile from the amendment that I have moved. I do indicate that, because the Hon. Mr Gilfillan has indicated that he will not support my amendment, it is not one of those amendments on which I will divide. There is an alternative at a later stage to which we will give consideration. There are those other issues upon which we will divide, notwithstanding any indication that the Hon. Mr Gilfillan gives as to the way the Australian Democrats will vote. There are some matters on which we are of the one mind. I am pleased to see that, but there are other issues where obviously we will have to fight tooth and nail throughout the Committee stage. I indicate that, if the voices are not in my favour, I will not call for a division on the amendment.

Amendment negatived.

The Hon. K.T. GRIFFIN: Can the Attorney indicate the date on which the Bill will be proclaimed to come into effect if it passes? What proposals are under consideration for suspension of any particular sections, and what are the sections which might be suspended and for what reasons?

The Hon. C.J. SUMNER: I understand the Act will be proclaimed early next year. At present, there is no intention to suspend any specific provisions.

Clause passed.

Clause 3—'Objects of Act.'

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

Page 1:

Line 30—Leave out 'and'.

Lines 31 and 32—Leave out 'workers, employers and their representative associations' and insert 'employees and employers'.

After line 32—Insert new paragraph as follows:

and

(e) to encourage registered associations to take a constructive role in promoting improvements in occupational health, safety and welfare practices and assisting employers and employees to achieve a healthier and safer working environment.

The amendments are all related. There are a number of issues. One is the description of persons as 'workers'. I made the point on second reading that employers are as much workers as those who are out on the shop floor and that there is something offensive about describing only one group of people in the workplace as 'workers', and ignoring the contribution that others in the workplace will make to the wellbeing of any business enterprise.

It is in a sense reminiscent of the old class struggle concept which causes some people to refer to those on the shop floor or in the workplace who are employees as 'workers' and those who are the employers or in the management structure of a business as the 'bosses'. I believe that it is time for us to recognise that there are employers and employees, and they are the proper descriptions by which we describe those who are operating together in the workplace. I know that the description 'workers' in the context of this Bill is also designed to encompass subcontractors and, in some instances, contractors.

However, that is another issue unrelated, I would suggest, to the clause and the amendments we are considering. At the moment we are considering the way in which those who are employed are described and to some extent the scope of this legislation. We are also considering questions of involvement of registered associations, whether they be trade unions or employer associations. It is my very strong view and that of my Party that the responsibility of registered associations—be they employer or employee bodies—is not to be directly involved in exercising power in the workplace. There is a very heavy emphasis on trade union power within the workplace in this Bill.

Trade unions have a legitimate role in the consideration of terms and conditions of employment and conditions in the workplace. No-one would deny otherwise. However, in my view, they do not have a predominant role which should determine the relationship between employers and employees in the context of occupational health, safety and welfare. This Bill seeks to place undue emphasis on the role of registered associations, particularly trade unions. Later, as we come to consider other clauses, we will find that it is a prerequisite to belong to a trade union, if one is to be a safety representative, unless there are no union members who seek election to that position. Trade unions play a disproportionate part in the formation of safety committees, and there are other consequences that flow from that.

In looking at the objects of the legislation, which this clause refers to, my amendments are designed to try to place the emphasis not so much in the context of industrial disputation but in the context of providing a safe working environment and relating it to occupational health, safety and welfare. There are other aspects of that issue to which I will direct attention when we come to the definition of 'Industrial Commission'. One of my concerns is that some emphases of this Bill are on disputation rather than on health, safety and welfare in the working environment.

If the objects are properly structured, focussing on employees and employers and giving a consultative role to registered associations and requiring them to play a constructive role in promoting improvements in occupational health, safety and welfare practices in supporting both employers and employees, I would suggest to the Committee that there will be a much more appropriate balance within the working environment on these issues of health, safety and welfare; further, the relationship of all those involved in the working environment and in the workplace will be that much better established than would be the case if disproportionate emphasis is given to the role of trade unions in the area of occupational health, safety and welfare.

The Hon. C.J. SUMNER: This amendment is opposed. It changes the object of the legislation. The amendment changes the emphasis in the Government's Bill on the real involvement of trade unions and employer organisations in occupational health and safety matters and attempts to reduce their involvement to a peripheral level. This is

unrealistic and ignores the reality of the already active involvement of unions in safety matters. The whole thrust of the legislation will be lost without trade union and employer association support. Accordingly, the Government cannot accept the amendment.

The Hon. I. GILFILLAN: I have an identical amendment on file. I recognise that the Hon. Mr Griffin's remarks extended a little wider than the specific application of these amendments. I do not intend to follow him along that track. I do not agree that these amendments, taken as they are on their own, will in any way diminish the potential very effective role that registered associations can (and I hope will) play. Personally, I do not believe that the amendment is of dramatic significance. What is much more significant is what is actually embodied in the legislation.

Several of our amendments will attempt to remove the automatic involvement of registered associations in the health and safety area of the workplace because we believe that it is primarily a situation for the employer and employee to be involved with; they should have the assistance and contribution of the best help available. In most cases the registered associations will have a very substantial contribution to make, and that will be welcomed. It is only in that context that this amendment is intended to vary the original wording. I do not believe that the amendment will diminish at all the Democrats' aim: the effectiveness of this very important Bill. As can be seen, we have an amendment identical to the one now being debated by the Committee and, therefore, we support it.

The Hon. T.G. ROBERTS: I oppose the amendment. Employee participation is needed at the workshop level in a real way using the supportive mechanisms provided by both employer and employee associations. I refer to a seminar run recently that required a $450 registration fee. That seminar looked at international and national trends on occupational health and safety. There would be very few workshop based organisations or employee organisations that could afford that registration fee for a start. Of course, they can obtain the papers after the event and become involved in that way but, in terms of employee and employer based organisations on an equal footing, I am afraid that is just not going to happen. Employers will have far more resources than individual based organisations at the work face level to discuss some of the implications of many of the occupational health and safety problems that occur directly.

Employers will have access to all sorts of information from channels open to them naturally, and employees will not have too many resources available to have equal access to debate or argue their position. I give the example of Dr John Coulter, who has been of direct assistance to trade unions in terms of information gathering. He has been able to provide information to individual groups and organisations at request. If employers only have access to their specialists and information channels, that will not be on an equal footing with the information channels of workers and unions. Employees will have a far stronger, heavily biased information gathering and channelling service that will be run on a patronising basis rather than on the basis of free flow of information and equality with employees. I think the whole philosophy of the document would be lost if that was to be overruled.

The Hon. K.T. GRIFFIN: I do not accept that, because the Occupational Health and Safety Commission is, in fact, to have a wide range of responsibilities, which will include this sort of educational role, the development of policies, the promulgation of guidelines and a variety of other functions which are set out in clause 14 of the Bill. In addition to that, if it comes to financial resources, as I understand it, employers have, in fact, paid for the attendance of employees at those sorts of conferences to which the honourable member referred.

Putting that to one side, I am not saying that there should be no involvement of registered associations in this area. In fact, in the additional paragraph which I seek to add, my amendment specifically refers to the involvement of registered associations and the nature of their involvement in a supportive and cooperative role in improving occupational health and safety in the workplace. The proposals which I have in my amendments do not in any way alter the fact that a registered association may give support to an employee, whether a member or non member, in dealing with this issue in the workplace. Therefore, I do not see this as a dramatic undercutting of employee safety in the workplace but more an amplification of the relative roles of various people in the workplace in ensuring that there is a safe working environment.

Amendments carried; clause as amended passed.

Clause 4—'Interpretation.'

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

Page 2, lines 14 to 17—Leave out all words in these lines after 'employee' in line 14 and insert 'authorised by the Minister to exercise the powers of Chief Inspector of Occupational Health and Safety under this Act:'.

When this definition was inserted in the Bill in the House of Assembly there appeared to be some confusion over the appointment of the Chief Inspector. The position is that the Chief Inspector is and will remain a Public Service employee who is from time to time appointed by the Minister to the statutory position of Chief Inspector. This amendment mirrors this situation by providing that the Chief Inspector is a Public Service employee 'authorised by the Minister to exercise the powers of Chief Inspector of Occupational Health and Safety under this Act'.

The Hon. K.T. GRIFFIN: On this particular definition of Chief Inspector there was some debate in the House of Assembly particularly in relation to the Mines and Works Inspection Act. The amendments which were moved there to the definition of the Chief Inspector now identify that, in relation to mines, the Chief Inspector is, in fact, the Chief Inspector of Mines. Under a later definition, the definition of 'inspector' refers to an inspector of mines under the Mines and Works Inspection Act.

While my questions do not directly impinge upon the amendment which the Attorney-General proposes and which I support, it is relevant to the definition and I wonder whether the Attorney-General could indicate where the lines of authority are in respect of, say, the Chief Inspector of Mines, both under the Mines and Works Inspection Act and this Bill.

The Hon. C.J. SUMNER: 'Chief Inspector' as defined means, with respect to the Mines and Works Inspection Act, the Chief Inspector of Mines.

The Hon. K.T. Griffin: But to whom is that person responsible?

The Hon. C.J. SUMNER: It would be the person to whom the Act is committed—the Mines and Works Inspection Act, presumably.

The Hon. K.T. GRIFFIN: Whilst I do not disagree with the definition, I think there needs to be some clarification, because under this Bill the Chief Inspector is responsible to the Occupational Health and Safety Commission, yet the Chief Inspector of Mines must surely be responsible to the Director-General of the Department of Mines under the Mines and Works Inspection Act. Could the Attorney-General give clarification as to whether the Chief Inspector of Mines, for example, has dual accountability?

The Hon. C.J. SUMNER: I am advised that the Chief Inspector is not responsible to the commission, whether he be the Chief Inspector of Mines or the Chief Inspector of Occupational Health and Safety. The Chief Inspector is the Chief Inspector operating under the Mines and Works Inspection Act; his responsibity is to the Director of Mines and thereby to the Minister of Mines and Energy. If we are talking about the Chief Inspector—namely, a person assigned under the Government Management and Employment Act to the position of Chief Inspector of Occupational Health and Safety—then that person at present is responsible to the Director of Labour and, through him, to the Minister of Labour.

The Hon. K.T. GRIFFIN: I take it from that that the Chief Inspector of Mines is required to carry out responsibilities of inspection of mines and works complying with the provisions of the occupational health and safety legislation and, in complying with that legislation, is accountable only to the Director-General of Mines and Energy?

The Hon. C.J. SUMNER: Yes.

Amendment carried.

The ACTING CHAIRPERSON (Hon. C.M. Hill): The Hon. Mr Griffin and the Hon. Mr Hill have identical series of amendments on file. As the Hon. Mr Griffin's amendments were on file first, I call on him to speak to them.

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

Page 2—
Line 21—Leave out '(the worker)'.
Line 22—Leave out '(the employer)'.
Line 25—Leave out '(the worker)'.
Line 26—Leave out '(the employer)'.
After line 26—Insert new definition as follows:
'employee' means a person who is employed under a contract of service or who works under a contract of service:
Line 27—Leave out 'a worker' and insert 'an employee'.

This series of amendments deals with the definition of contract of service and here the contract is between one person described as 'the worker' employed by another described as 'the employer'. To some extent the description 'the worker' has been overtaken by the amendment which has been supported by a majority of the Committee in considering the objects in clause 3.

To that extent, I do not believe that it is necessary for me to repeat the arguments I put in relation to the description 'worker' being inappropriate and the description 'employee' being more appropriate. When I was debating the amendments to the objects I also referred to the fact that I thought it inappropriate that subcontractors, in particular, be caught by this Bill and be regarded as employees for the purposes of the Bill. To some extent this definition of the contract of service picks up that extension of the impact of this legislation to cover subcontractors.

My amendment is designed to replace the description 'worker' with the description 'employee' and also to include a definition of 'employee' as a person who is employed under a contract of service or who works under a contract of service, so that the scope of the definition is clear. I move such of those amendments as you, Mr Acting Chairman, deem related and appropriate at this time.

The Hon. C.J. SUMNER: This amendment is opposed. It has been moved to delete reference to the word 'worker' and replace it with the term 'employee'. As such, it seems to me to be one of pure semantics and therefore, although the honourable member says it may have some consequences later in the Bill, we will debate the substance of those later. Frankly, at this point it is purely semantic whether one refers to someone as an employee or as a worker, and I reject the amendment.

The Hon. K.T. GRIFFIN: It is not semantic. It is an amendment of substance and I enunciated earlier the reasons why I believed there was a significant distinction. Employees are certainly workers, but there are also employers who are workers, and I think it is unreasonable to seek to perpetuate a worker-boss distinction when, in fact, all of those involved in the working environment—employers and employees—are workers and are playing their part in running what one would hope to be a successful business enterprise which provides benefits to the employer but also provides a job and, hopefully, benefits to the employee. So, I see that the amendment is one of some significance and is not merely semantic, as the Attorney-General suggests.

The Hon. J.C. BURDETT: I support the amendment. It is certainly not merely semantic; it is a matter of philosophy. I think we should depart from the philosophy of confrontation where we have the workers against the bosses and the workers against the employers. The accurate term in this case is employers and employees. That is an accurate distinction. There are people who are employed and there are people who employ and, as the Hon. Mr Griffin has said, very many—I suspect, most—employers do work.

They are workers and they work very hard. Any suggestion that they do not work is ridiculous, and it seems to me that this is a sensible amendment to try to take us out of the philosophy of confrontation and to advert to facts. The facts are that there are persons who employ and there are persons who are employed, and I support the amendment.

The Hon. I. GILFILLAN: I am assuming that we are dealing with amendments up to the amendment after line 26 with the new definition as follows?

The Hon. C.J. Sumner: Yes.

The Hon. I. GILFILLAN: And not any further than that?

The ACTING CHAIRMAN: Twenty-seven and 28.

The Hon. I. GILFILLAN: Quite obviously, we support these amendments as they are also on file in our name. I consider that it is an improvement in the wording and the understanding that a reader would get from the legislation.

Amendments carried.

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

Page 2, lines 34 and 35: To strike out '"the Industrial Commission" means the Industrial Commission of South Australia.'

This amendment deals with the Industrial Commission, and is a definition referring to the Industrial Commission of South Australia under the Conciliation and Arbitration Act. This definition, I recollect, was inserted in the House of Assembly and is in the Bill because certain disputes which might arise in relation to the appointment of safety committees and other issues are to be referred to the Industrial Commission for resolution. I want to delete the definition of Industrial Commission, because I do not believe that the commission is the appropriate place in which to resolve disagreements relating to occupational health and safety. This Bill is about trying to work together to improve the working environment, not about industrial disputation. The difficulty I see is that if the concept of the Industrial Commission resolving disputes is to be imported into this Bill, it will very much then become a matter of industrial disputation rather than occupational safety, health and welfare.

It seems to me that the Occupational Health and Safety Commission can and should have a role in the establishment of committees and resolving any disagreements which might occur in the way in which the Act is administered or implemented in the work place, and it is quite unreasonable then to import the very complex and extensive dispute resolution mechanisms within the Industrial Commission into the occupational health and safety field.

So, my amendment is to delete the reference to the Industrial Commission in this definition clause, and I would

regard it as a test case for other references to the Industrial Commission in at least some parts of the Bill, although not necessarily in others, and each will have to be looked at on its respective merits as we deal with them during the consideration of the Bill. It is an issue on which we feel fairly strongly, and I move accordingly.

The Hon. C.J. SUMNER: This is opposed by the Government. This is an attempt to remove the involvement of the Industrial Commission in the resolution of disputes by placing such action in the hands of the SA Occupational Health and Safety Commission. However, I do not think that that is appropriate. Clearly, we cannot dissect an industrial dispute necessarily, into a safety aspect or wages aspect or whatever. There are often industrial disputes which involve elements of a whole range of matters which might cause arguments at the workplace.

Therefore, I do not think that it is a tenable argument to say that the Industrial Commission cannot be involved in any industrial dispute which may have a safety aspect to it. Furthermore, the Occupational Health and Safety Commission is supposed to be completely impartial and removed from disagreements and disputes. If that commission is to overview the delivery of services and other aspects of occupational health and safety it is necessary for it to operate at arms length from matters upon which it will be called to review. Accordingly, I consider the amendment inappropriate.

The Hon. I. GILFILLAN: I oppose the amendment. I was a little bemused that there seemed to be a change of heart that the commission would no longer be regarded by the Government as a potential adjudicating body. I have had discussions with representatives of the Government on this matter. Regardless of that, and whether or not it is in fact better that the commission be completely removed from any adjudicative role, it is essential that the Industrial Commission be recognised in this legislation. It would seem to be the appropriate body to determine some of the issues that could arise. One hopes that the consequences of this legislation will in the majority of instances be resolved by discussion and commonality of purpose, but I think that it is naive not to expect that quite significant disputes will arise from time to time which need resolving with the force of law. The Industrial Commission seems an appropriate forum in which such issues should be sorted out.

The Hon. K.T. GRIFFIN: I feel fairly strongly about this matter, but as I do not have the numbers I indicate that in this instance I will not call for a division if the voices are against me. However, there may be occasions, if I lose on this definition, during the course of consideration of the Bill when it is not appropriate for the Industrial Commission to be involved and when I will certainly take the opportunity to raise that issue as we consider each occasion where the Industrial Commission is referred to. I do not accept that the Industrial Commission is the appropriate body to resolve disagreements about occupational health and safety under this Bill: I believe that it is the more appropriate body to become involved.

I am not naive enough to believe that there will not be disagreements under this Bill, but the Occupational Health and Safety Commission is the more appropriate body, I would have thought, to deal with that sort of issue.

Amendment negatived.

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

Page 2, line 42—Leave out 'authorised officer' and insert 'inspector'.

This amendment corrects an incorrect cross-reference to the position of inspector under the Petroleum Act 1940.

The Hon. K.T. GRIFFIN: I point out that under the definition of 'Chief Inspector' there is reference to the Petroleum Act 1940, but under the definition of 'inspector' it mentions the Petroleum Act 1944. I am sure that there is an error there, but have not had time to look up which is correct.

The Hon. C.J. SUMNER: It is 1940.

Amendment carried.

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

Page 3, lines 1 to 4—Leave out all words in these lines after 'employee' in line 1 and insert 'authorised by the Minister to exercise the powers of an inspector under this Act:'.

This amendment is similar to amendments to the definition of 'Chief Inspector'. Inspectors are to remain as officers of the Public Service appointed to the position in accordance with normal procedures that apply to Public Service employees.

Amendment carried.

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

Page 4, lines 34 and 35—Leave out paragraph *(a)* and insert new paragraph as follows:

(a) the physiological needs and well-being of employees while at work;'.

This amendment seeks to include a definition of 'metropolitan area' and relates to later provisions which require the attendance of an inspector. Under a later provision of the Bill where there is a notice placed by a safety representative which stops work—and, hopefully, we will be able to change that—under clause 37 an inspector is to attend within two business days. My proposal, when we get to that clause, is to ensure that attendance is within one business day if in the metropolitan area and two business days if outside the metropolitan area.

The amendment that we are currently considering to include a definition of 'metropolitan area' is necessary to enable my amendment to clause 37 to work effectively. If work is stopped in the workplace as a result of a safety representative acting—although I hope that we will be able to change that—then it ought to be possible for an inspector to attend within one business day, because there is a cost involved in keeping a business idle as a result of such a notice.

The Hon. I. GILFILLAN: We are obviously in favour of the amendment.

The Hon. C.J. SUMNER: The Government opposes this amendment. Obviously, it is important that an inspector attend the worksite as quickly as possible after there has been a direction to stop the job. The Government would envisage that this would occur as soon as possible. The period of two days is provided as a maximum to ensure that no problems arise in getting a person there within the prescribed time.

Amendment carried.

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

Page 3, after line 17—Insert new definition as follows:

'prescribed information' means—

(a) information that is privileged on the ground of legal professional privilege;

(b) information that would tend to incriminate the person who has the information of an offence;

(c) information that is relevant to proceedings that have been commenced under this Act;

(d) information that relates to the personal affairs of a person;

(e) information that relates to trade secrets:.

This amendment, to insert a new definition of 'prescribed information', is in this part of the Bill because it relates to the powers of inspectors and others who may enter the workplace, question persons and seize documents and records. The later provisions of the Bill which give those wide powers (Part V) do not in any way afford protection from

self-incrimination; nor do they protect legal professional privilege; nor do they adequately protect trade secrets and other information. What I could do is move the amendments to the relevant clauses later in the Bill, but it seems appropriate to have one general clause which deals with 'prescribed information' which is protected when inspectors go into the workplace or when a review committee summonses documents and papers and requires persons to answer questions.

The 'prescribed information' for the purposes to which I have referred means information that is privileged on the ground of legal professional privilege; information that would tend to incriminate the person who has the information of an offence; information that is relevant to proceedings that have been commenced under this Act; information that relates to the personal affairs of a person; and information that relates to trade secrets.

It may be that an employer or even an employee safety representative or a safety committee may have sought legal advice for the purposes of dealing with a matter which might have arisen under the Act and, ordinarily speaking, that information would be privileged. The difficulty is that, even if that legal advice is sought in the context of pending, threatened, or current legal proceedings, the powers to require disclosure of that information are paramount under the provisions of the Bill.

In a lot of legislation where inspectors have the right to go in, there is at least a right to decline to answer questions on the grounds that those questions might tend to incriminate, or to produce documents on the basis that they might tend to incriminate. I raised this issue last week in considering another Bill and I referred to the fact that only two or three weeks ago the Law Council of Australia and the Federal Tax Commissioner came to an arrangement which would protect legal professional privilege but would nevertheless provide a mechanism for the Tax Commissioner to gain access to documents and papers, provided certain procedures were implemented by the person claiming privilege or other protection.

That has really highlighted the constant dilemma that I think people are placed in in dealing with powers of inspectors. I will be raising it again in another debate later this week when we talk about the powers of the Commissioner for Prices and authorised officers under the Prices Act. There has to be some recognition that individuals whose premises are entered without warrant, whose documents are seized without warrant, or who are required to answer questions without any protection are at risk and that questions of civil liberties are relevant to those matters.

As I have indicated, it may be that an inspector wants produced all documents, papers and records which might be legal opinions, for example, gained in the course of retaining a legal practitioner for the purpose of defending proceedings under this legislation. It seems to me that it is quite improper for a power of inspection to be used to gain access to that sort of information, but there is no protection against that in the Bill. There are other provisions in the Bill which provide that the Occupational Health and Safety Commission (an inspector) cannot gain access to the personal affairs of a person unless it is with the approval of that person, and I think that is quite proper; and information that relates to trade secrets ought to be also protected.

The definition is important because of those other protections which I propose to have considered by the Committee at a later stage in the debate. However, while it is important for the definition to go in I would not regard the failure of this definition to gain the majority support of the Committee to be an indication that I should no longer persevere with my desire to provide some basic protections in later parts of the legislation. However, it seems tidier to deal with it now and to approve this definition.

The Hon. C.J. SUMNER: The Government does not have problems with the first three paragraphs of the honourable member's definition of 'prescribed information', but we do have great concerns about, in effect, saying that inspectors or safety representatives cannot have access to information that relates to the personal affairs of a person or information that relates to trade secrets. With respect to personal affairs, medical records particularly could not be obtained under the Bill, but other records may be of great use in terms of occupational health and safety issues.

Information may be required on the health problems of a worker where that may be relevant to the accident, and if the honourable member's amendment is passed then that sort of information could not be sought by a safety representative, the commission or an inspector. With respect to trade secrets there is the possibility of using them as a defence and this could be called up over a wide range of situations, for instance, when information is sought concerning toxic or other chemicals. Any substance can be analysed within about one hour by a competent analytical chemist. Therefore, as a potential defence, it should be firmly rejected.

It would be quite wrong if the personal affairs of a worker could not be obtained where they might be clearly relevant to an accident. It would also be wrong if an employer could use a trade secrets excuse not to provide information which may be relevant to an accident and which may provide information even regarding the prevention in the future of another accident.

Both these aspects of the honourable member's definition cannot be accepted by the Government, as the definition of 'prescribed information' is designed to lead to a situation where the commission, inspectors and safety representatives cannot get access to certain information. I point out that, with respect to the personal affairs of someone, there are provisions later in the Bill dealing with anonymity, in particular, clause 54.

The Hon. I. GILFILLAN: We would be diffident about supporting this amendment, led by the Government's analysis of it. If in the Government's wisdom it supports the first three paragraphs and considers that they are helpful, that is one way of dealing with it. I do not believe that it is up to us to take that initiative and consequently, unless there is an amendment to this amendment, we will oppose it.

The Hon. K.T. GRIFFIN: Certainly, I did not propose that the commission or inspectors should not be able in any context to obtain information that relates to the personal affairs of a person. What I was really trying to identify was that that information should be available only with the consent of that person. It may be that, if the Government and the Democrats are not going to support that part at the moment, during the course of our consideration of the Bill it may be appropriate to reconsider those clauses which could give access to personal information if, in fact, the injured employee does not consent to it.

I can see the difficulty if there is to be an investigation of a particular incident within the workplace. Certainly, I do not want to stifle the opportunity to investigate it fully. However, if for some reason an employee is of the view that he or she does not want the commission prying into his or her affairs and to have access to personal information, that person ought to be able to say, 'Hang on, that stuff is confidential.' As I said, other provisions later in the Bill address that issue, but not as widely as I believe it ought

to be addressed. Perhaps that is the appropriate place to deal with it.

In terms of trade secrets, I am really trying to identify, without seeking to provide any defence on the part of employers, that a measure of security has to be respected by review committees, the commission and others. I suppose the penalties imposed for unlawful disclosure of that sort of information might be appropriately the disincentive to disclose. Certainly, I want to increase those penalties anyway, but one has to remember that, with some commercial processes, there is a great deal more financial incentive to make them available to competitors than to keep them disclosed, even running the risk of a prosecution. So, it is a matter of concern. In light of the Attorney's intimation, I suggest, Mr Acting Chairman, that you take each paragraph of the definition individually, which will mean that we are likely to have at least the first three paragraphs included, but not the last two, on the basis of the intimation from the Attorney and the Democrats.

The ACTING CHAIRPERSON (Hon. C.M. Hill): The question is that paragraphs *(a)*, *(b)* and *(c)* be agreed to.

Amendments carried.

The ACTING CHAIRPERSON: The question is that paragraphs *(d)* and *(e)* be agreed to.

Amendments negatived.

The ACTING CHAIRPERSON: We now have the same amendment moved by the Attorney, the Hon. Mr Griffin and the Hon. Mr Gilfillan to lines 28 to 30.

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

Page 3, lines 28 to 30—Leave out the definition of 'secondary injury'.

In debate on the Bill in another place the Minister of Labour indicated that a possible amendment to 'work-related injury' would be considered. As part of that process it has been decided to delete the definition of 'secondary injury' and include in the definition of 'work-related injury' what was contained in the definition being deleted.

The Hon. K.T. GRIFFIN: I support the amendment, which is identical to the amendment I have on file. 'Secondary injury' as defined in the Bill really seems to be embarking upon worker compensation issues rather than occupational health, safety and welfare issues. To that extent it was the view of the shadow Minister of Industrial Affairs, Mr Baker, in another place, and it is my view here, that it is inappropriate for consideration in this Bill. To some extent the secondary injury definition has been picked up in my proposed amendment to 'work related injury'. It is different in some respects from that of the Attorney-General, but the principle is at least similar.

Amendment carried.

The ACTING CHAIRPERSON: We have amendments on file to lines 3, 4 and 5 by both the Hon. Mr Gilfillan and the Hon. Mr Griffin.

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

Page 4—
  Lines 3 and 4—Leave out the definition of 'worker'.
  Line 5—Leave out 'workers' and insert 'employees'.

These amendments are consequential upon amendments earlier accepted in regard to a change from 'worker' to 'employee'.

The Hon. C.J. SUMNER: We oppose the amendment but we accept it consequentially.

Amendments carried.

The Hon. K.T. GRIFFIN: I have a question on the definition of 'South Australian ship', which is defined as:

. . . a ship—
(a) that is registered in the State;
(b) that is owned or under charter by the Crown;
or
(c) that is owned or under charter by a body corporate or other person—
  (i) whose principal office or place of business is in the State;
  or
  (ii) whose principal office or place of business with respect to the control or management of the ship is in the State:

In practice, that definition could apply to a ship registered in, say, Victoria but owned or under charter by the Crown in this State. So there is the very real possibility that it would be covered by two sets of occupational health and safety laws. Of course, it may be that it is registered in the UK and is under charter to a body corporate with its principal office or place of business in this State. Can the Attorney-General identify how that sort of overlap of jurisdictions will be resolved for a ship in those circumstances?

The Hon. C.J. SUMNER: What the honourable member says may be correct with respect to there being more than one set of laws that might be applicable. However, that situation arises in a number of circumstances generally. Where it does, there are rules designed to determine what law is applicable. Rules of private international law are brought into play to determine what law is applicable to a particular situation. What the honourable member says is correct, but I do not believe that it has any consequence as far as an amendment to this Bill is concerned.

The Hon. K.T. GRIFFIN: I accept that there are rules of private international law to overcome a lot of conflict between the laws of various States or nations. However, I would not have thought that they were appropriate here. After all, the statute provides for this law to apply. My recollection of private international law does not suggest that that is something that is so easily resolved. I do not propose any amendment because I do not have the resources to develop a mechanism by which that conflict can be overcome. I think it is certainly something that has to be addressed, particularly if South Australia is to develop its port facilities and if we want to encourage ships to come to Port Adelaide and to Outer Harbour in particular. So I see it as a conflict. However, I do not see such an easy answer to it. I can see some difficulties if we seek to overlap with the laws of other countries or States which might apply to a ship presently in South Australia.

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

Page 4, lines 14 and 15—Leave out all words in these lines and insert 'that is attributable to work and includes the aggravation, exacerbation or recurrence of a prior work-related injury'.

This amendment deals with the definition of 'work-related injury', which I have addressed previously.

The Hon. I. GILFILLAN: My understanding is that my amendment on file is identical, so the eloquence of the Attorney stands for me, too.

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

Page 4, lines 7 to 15—Leave out the definition of 'work-related injury' and insert new definition as follows:
  'work-related injury' means an injury, disease or disability that is suffered by a person and that is attributable to his or her work and includes—
  (a) death;
  (b) the aggravation, exacerbation or recurrence of a prior work-related injury;
  and
  (c) the loss or destruction of, or damage to, an artificial limb or other prosthesis or a medical or surgical aid or appliance:.

My amendment is not identical, but I believe that it is preferable. However, I suspect from the indication given by the Hon. Mr Gilfillan that I will not have the numbers. I think that certainly the definition of 'work-related injury' needs to be attended to. My amendment would tidy it up so that it is clear that it relates to injury, disease or disability

which is suffered by a person and which is attributable to his or her work. However, I think the principle we share in this area is the same. I do not have the numbers but I think the principle at least has been recognised.

The Hon. K.T. Griffin's amendment negatived.

The Hon. C.J. Sumner's amendment carried.

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

Page 4, line 17—Leave out 'a worker' twice occurring and substitute, in each case, 'an employee'.

The amendment is consequential on the earlier resolution of a change from 'worker' to 'employee'.

Amendment carried.

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

Page 4, lines 19 to 27—Leave out subclause (2).

Subclause (2) is a very critical aspect of the Bill and, whatever the indication from the Hon. Mr Gilfillan, I intend to call for a division, if it is not awarded to me on the voices. Subclause (2) relates to contractors and seeks to extend the obligation to the principal for the contractor and employees employed by the contractor. I do not believe that this Bill ought to be extended to contractors and subcontractors; it is about employers and employees and safety in the workplace. I hold the very strong view that a contractor certainly has a responsibility for his or her employees, as does a subcontractor, and that is where the obligation should rest and not with the principal.

The arguments have been canvassed in the Industrial Conciliation and Arbitration Act, in the Workers Compensation Bill and now in this Bill, in the other place, publicly and here. I do not believe there is much more weight that can be brought to bear on the subject to ensure that the Bill deals only with employers and employees.

The Hon. I. GILFILLAN: We are content that the clause stand as part of the Bill and do not believe that it has any undesirable consequences as far as contractors *vis-a-vis* principals and their employees are concerned. It is important that the intention of the Bill is to provide a safe workplace and, if there is a situation over which a principal has control and the principal is at fault and death or injury is caused to an employee, there is no reason, in our opinion, for that situation to be exempt from the consequences of this Act.

I have looked at the wording very closely and I have been assured that certainly its intention is purely the application of health and safety measures and that there is no surreptitious intrusion into the relations between contractor, principal and employee. I trust I have not been duped in this. Therefore, I feel that the clause, as it stands, is an appropriate and contributing factor to the intention of the Bill. The last three lines of the subclause state:

... extend only to matters over which the principal has control or would have control but for some agreement to the contrary between the principal and the contractor.

I am not keen for any device to be contrived that will excuse a principal through an unscrupulous contractor coming into an arrangement which would exempt certainly the principal, and possibly both of them, from exercising proper care for employees in the situation.

We will oppose the amendment, but I indicate that the amendments I have on file are purely consequential on the word change and in no way alter the intention of the clause and we will deal with them, one assumes, if the clause survives in the Bill.

The Hon. C.J. SUMNER: The Government regards this as an important matter and opposes the amendment. The subclause that the Hon. Mr Griffin is seeking to amend sets out the responsibilities for health and safety in contractual relationships. The subclause is very specific about the responsibility of principals and resolves the subcontractor dilemma by limiting the responsibility of principals to those matters over which they have control. This limitation to matters over which the principal has control was inserted in response to a submission from employer organisations. Subcontractors have been covered in Victoria for many years with no legal or other problems and, interestingly enough, this was as a result of amendments moved by a previous Liberal Government in that State.

Subcontractors are also covered under the current Act where the activity they are engaged in has been declared by proclamation to be a relevant industry under the Act. For example, the construction industry is already covered in this State. I reject the amendment.

The Hon. DIANA LAIDLAW: I totally support the amendment moved by the Hon. Trevor Griffin. It has been my view that when subcontracting provisions have been talked about in this place on numerous occasions, and principally in relation to the Occupational Health, Safety and Welfare Bill, there is a distinction between employees and subcontractors and I regret to see in this Bill that the Hon. Ian Gilfillan seeks to make some small amendments to this clause taking out the word 'workers' and inserting 'employees'. I would argue that by that move in future there will be no distinction between subcontractors and employees in terms of occupational health and safety, and I find that regrettable. I believe that the distinction has been upheld in this Parliament in the past and that it should be in the future.

The Hon. K.T. GRIFFIN: The real difficulty is to identify who has control, and I think that is going to be the major concern if this clause remains in the Bill. I would suggest that a principal does not have effective control of employees and of contractors and subcontractors and certainly not over any of the actions which they might take. If, in fact, it is argued that the principal should have control but the contractor or subcontractor has the control because of an agreement between the principal and the contractor, I think that is not facing up to reality. The contractor agrees with the principal to undertake a particular task; the subcontractor agrees with the contractor to undertake a particular task; and it is really a matter for the contractor or subcontractor as to how that is to be implemented.

However, it seems to me that it is possible that the very fact of all of the responsibilities being those of the contractor or subcontractor (as the case may be) under the agreement with the principal might, in fact, be construed to be an agreement to the contrary between the principal and the contractor. So, I am very concerned about the clause. I do not think that it deals effectively with the question of control, and it certainly ought to be removed from the Bill.

The Hon. I. GILFILLAN: Unfortunately, the Opposition has a paranoia about every move the Government makes or any piece of legislation attacking this contractor versus unionised labour issue. I am afraid that this has blurred its vision so that it cannot see that the clause is specifically aimed at reducing accidents and creating safe workplaces. To be semantic about how difficult it will be to interpret where the division of control lies, if that is the ground for deleting the clause, to me distorts the priorities of this legislation completely.

I was hoping I might have seen some disquiet from some members of the Opposition that, if it is deleted, it virtually give open slather for people to take on certain work and activities on a contractual basis simply so that they can avoid responsibility for the safety of the people working in that work place. There are many occasions where a contracting situation is outside the control of the individual contractor or the employee of that contractor, such as people

working in a factory or in locations where there are hazards which are quite outside the control of the contractor or the employee of the contractor. To exempt the principal from any responsibility for that is quite irresponsible behaviour towards the health and safety of the employees. I strongly regret what I see as the quite petty argument of the Opposition.

The Hon. K.T. GRIFFIN: We are in the mud slinging business, are we, Madam Chair? We are not paranoid or being petty about it: we have a genuinely held view on this clause, based on our experience with other legislation the Government has brought into the Parliament about contractors and subcontractors. I do not believe that the deletion of this clause will result in the sort of ills to which the Hon. Mr Gilfillan refers. I think, with respect, he has a naive appreciation of what is involved in this subclause, and far be it from him to start casting stones at the Liberals for our view, which has been long held and is not paranoid but is reasonably and genuinely held, and reflects the real concerns of people out in the community.

The Committee divided on the amendment:

Ayes (9)—The Hons J.C. Burdett, L.H. Davis, Peter Dunn, K.T. Griffin (teller), C.M. Hill, J.C. Irwin, Diana Laidlaw, R.I. Lucas, 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. M.B. Cameron. No—The Hon. B.A. Chatterton.

Majority of 1 for the Noes.

Amendment thus negatived.

The Hon. I. GILFILLAN: I move:

Page 4—
Line 23—Leave out 'workers'.
Line 24—Leave out 'such workers' and insert 'them'.

Amendments carried.

The CHAIRPERSON: There are amendments to line 30 on file from both the Hon. K.T. Griffin and the Hon. I. Gilfillan.

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

Page 4, line 30—Leave out 'a worker'.

Amendment carried.

The Hon. K.T. GRIFFIN: I just raise a question here about subclause (3) with the Attorney-General. What ambit is proposed by subclause (3) and what sorts of persons does this subclause propose to cover?

The Hon. C.J. SUMNER: It applies to situations where there are volunteer workers, and I suppose the honourable member is in as good a position as I am to indicate the sorts of areas that would be covered.

The Hon. K.T. Griffin: Is it only employees who do work gratuitously out of hours for that employer?

The Hon. C.J. SUMNER: It says someone who performs work for an employer gratuitously. Such person is an employer and must have an employee. It refers to person, not employee.

The Hon. R.I. LUCAS: I have two questions: first, one I want to raise in relation to that particular provision. I take it from discussions that 'workplace' as defined in clause 4 certainly covers schools, school environments and other learning environments. I seek confirmation from the Attorney about this matter. I take it that subclause (3) is to cover parents and friends who work in canteens or in classrooms as unpaid aids assisting teachers and school staff in the provision of educational services in our schools.

The Hon. C.J. SUMNER: The answer to both of the honourable member's questions is 'Yes'.

The CHAIRPERSON: I understand that a redraft of amendments to lines 34 and 35 has been circulated by Parliamentary Counsel that the Hon. Mr Griffin seeks to leave out paragraph *(a)* and insert a new paragraph, and that the Hon. Mr Gilfillan seeks to leave out paragraph *(a)* and insert a new paragraph. I suggest that these amendments be canvassed at the same time.

The Hon. K.T. GRIFFIN:

Page 4, lines 34 and 35—Leave out paragraph *(a)* and insert new paragraph as follows:

(a) the physiological needs and well-being of employees while at work;.

Subclause (4) of this clause provides:

The following matters are aspects of occupational health, safety and welfare:

(a) the physiological and psychological needs and well-being of workers while at work:

That, of course, will one way or another be changed to 'employees'. The clause then goes on to mention the prevention of work related injuries and fatalities, investigation of the causes of work related injuries and fatalities, and rehabilitation and training of workers who have suffered work related injuries. One of the concerns which I hold, and which has been expressed to me by a variety of people including employers, is the requirement to have regard to the psychological needs and well-being of workers while at work.

The difficulty is that there is no definition of those psychological needs and the emphasis upon needs can make this a particularly vague and probably very wide obligation which is to be placed on employers. Whilst it is immediately related to work, it may not necessarily be so in terms of the consequences that flow from that description 'psychological needs'. Quite obviously, it is subjective in its assessment; there are no objective standards by which this can be judged and that in itself makes it extraordinarily difficult for employers and those concerned with the safety, health and welfare of employees to identify what are appropriate standards.

How does one identify those psychological needs? How does one set a standard for all employees? How does one deal with every employee, say, in a large factory, or even in an office environment, where they all have different psychological attitudes, maybe problems, different IQs, different attitudes and different aspirations? How are all of those sorts of things to be assessed in relation to each individual employee and the employer to take on responsibility for those needs?

As human beings we all have different needs expressed in different ways, both mentally and physiologically and it seems to me to be quite inappropriate to place upon employers a burden of having responsibility for psychological needs which cannot be easily identified. It is to be contrasted with physiological needs. Toilet facilities, appropriate rest and dining facilities, noise, dust and fumes are all matters that can be physically identified and standards set, but psychological needs cannot be so assessed. It may be that an employee's family environment or home environment impinges upon that person's psychological needs.

If a person comes from a happy domestic environment the needs will be much more limited than those of somebody whose domestic environment is not a happy one. How is that to be assessed by an employer and taken into consideration, because although the home environment is not directly related to the workplace in that sense, nevertheless, problems at home can impinge upon an employee while at work and if they are evident while at work it seems to me that there is an obligation upon the employer.

It is much too vague, subjective and quite inappropriate to be included in occupational safety, health and welfare legislation for an employer to be required to carry what might be a particularly onerous responsibility for something over which that employer has no control. My amendment seeks to delete any reference to psychological needs, and in my view that is the most appropriate way to deal with this issue.

The Hon. I. GILFILLAN: You referred to the fact, Ms Chairperson, that I have an amendment on file in relation to this matter. I have misgivings about including the word 'psychological' in this clause, but not for the same reasons as those expressed by the Hon. Trevor Griffin. I think that he has contributed quite substantially to our understanding of the issue by pointing out how significant stress and upset in family situations from other causes can have on the well-being of an employee in the workplace. I point out that subclause (4) states:

The following matters are aspects of occupational health safety and welfare:

There is no doubt that stress is a very important aspect of occupational health, safety and welfare and there are copious psychological assessments and studies which show that the incidence of accidents rises dramatically if people in the workplace are under stress, from whatever cause, so it is quite pointless and blind not to recognise that psychological factors are important in occupational health and safety.

However, I think that there are some misgivings about picking it out as a specific word to go into partnership with the work 'physiological'. My wording is broader and more tolerant of interpretation. It is not designed to exclude the stress factor, physiological factors or any other factor that impinges on occupational health, safety and welfare, because the purpose of this legislation is—and I hope remains—to improve the health, safety and welfare of people in the workplace.

As a result of that there will be, if we deal with the causes of stress and the treatment of people under stress from whatever cause, and recognise those situations, a reduction of accidents. That is a very substantial goal for this legislation. I urge members to recognise that my amendment concerns the wording of subclause (4) *(a)* and to oppose the amendment that is currently before us and, in due course, support my amendment.

The Hon. R.J. RITSON: I support the Hon. Mr Griffin's amendment. I ask the Attorney-General what he understands by the meaning of 'physiological' in this context?

The Hon. C.J. SUMNER: As it is understood by the Hon. Dr Ritson. I am sure he knows what the word 'physiological' means. Presumably it refers to the physical well-being of the individual and the physical needs and well-being of the workers, in broad terms.

The Hon. R.J. RITSON: My concern here is that certainly in medical parlance the word 'physiological' is used in contradistinction to the word 'pathological'—the normal versus the abnormal. Of course, the normal physiological needs of people include going to the toilet. If a person does physical work their physiology is distressed. They may get an aching muscle from lifting a weight or a muscular tension headache from being at a draftsman's board all day. Many of these things, because they are physiological (that is, a normal response to a day's work) will be universally present.

I would be very disturbed if a safety committee required the elimination of physiological responses of doing a day's work. People's physiology differs widely. Obviously, a person with diabetes may need to go to the toilet 10 times a day—that is pathological. Perhaps the workplace need not pay attention to his pathological needs in the disciplines imposed on that person at work and that, of course, would make that person fairly unemployable. However, even within the range of physiology there may be people with a wide variety of needs. I wonder whether each individual will be entitled to be made physiologically comfortable according to his needs, or whether some objective standard of what is reasonable and unreasonable to subject people to in the way of physiological discomfort will be determined.

Everyone who goes to work will be made uncomfortable. I used to have blisters on my back from lumping lime around when I was an undergraduate working my way through university. Having taken that job, I did not expect that the boss had any obligation to stop me getting blisters on my back from lumping lime.

The Hon. T.G. Roberts: What about now?

The Hon. R.J. RITSON: I would do it again if I had to; it was a salutary experience for me. It disturbs me that the Government apparently has not much idea of why it has put that word in or of the consequences that will flow from it.

As far as the psychological care of people is concerned, I can see some measure of argument for any employer providing some care for the emotional well-being of employees. I recall many years ago that the position of police doctor consisted of a part-time former Army officer who attended a few crimes and instances of driving under the influence, signed a few forms, and that was it. Now the police have a very experienced general practitioner and social workers who assist police officers who may be in psycho-social distress.

However, to provide those facilities as a service, which is a very sensible thing for an employer to do, is not the same thing as being potentially subject to penal provisions and law suits as a consequence of not eliminating psycho-social stress from the workplace. There are two different levels at which this word 'psychological' might have meaning. The first meaning it might have is the emotional well-being in the terms of simple happiness or unhappiness. Every human being has moments of happiness and moments of unhappiness. The moments of unhappiness and worry can be very acute, but that is normal psychology; it is not psychiatric illness. Does the Government believe that 'psychological needs' here includes the need not to be unhappy and worried about anything, or does it wish to restrict the meaning of 'psychological needs' to those circumstances where a person suffers a frank psychiatric disability such as reactive depression, endogenous depression, anxiety states, phobias or psychotic states? I do not know.

If the words are going to mean ordinary freedom from worry and so-called stress as a consequence of going to work, that puts an appalling obligation on an employer. If it means psychiatric illness, then I reiterate what has been said before, that it is seldom caused by work; it is a product of, in the case of the neurotic illnesses, nature and nurture. We all have a life story of where we have been and what has happened to us. If people become acutely disabled with anxiety or depression they will sometimes take on themselves in an obsessive fashion additional work and then blame the work when, in fact, the causes are far more fundamental.

As a medical practitioner I fear that the creation of a culture where work is blamed for these ills will shift the financial responsibility for support of people with such illness from the taxpayers as a whole, where it rightly belongs, to the responsibility of industry, further crippling industry and eroding our job market. Certainly, the general care provisions of the legislation have been interpreted by many as to mean that employers ought to have their workers

physically examined before employing them to ensure that they are physically fit to withstand the physical stresses of the job that they are going to do. I now wonder, with this provision, whether it would be prudent for employers to have people psychiatrically examined to see whether they are psychiatrically fit to withstand the stresses of going to work in the particular job that is proposed for them.

If they are liable to be precipitated into incapacity by the normal process of shiftwork or late nights, stress with a grumpy boss, that is going to be a secondary injury under other provisions in this legislation. Frankly, the potential consequences of paragraph *(a)* are very dangerous, and the Government seems unaware of what it is doing here.

I support the amendment. Does the Attorney know whether the intention of 'psychological needs' is to embrace the normal fears and worries and inter-personal conflicts that go with doing any job in any organisation, or does he mean to restrict the operation of those words to frank psychiatric illness and psychopathology?

The Hon. C.J. SUMNER: My understanding is that there is a distinction between 'psychological' and 'psychiatric' and that, as the word 'psychological' is used, it is the broader notion of stress that may be caused at work. Members opposite are being somewhat over-alarmist about the effect of this provision. All it does is to give some broad idea about what matters come within the notion of occupational health, safety and welfare. It refers to the following things as being aspects of occupational health, safety and welfare.

The second thing that needs to be said is that it refers to the 'physiological and psychological needs and wellbeing of workers while at work'. One would have expected that attention would be given in any occupational health, safety and welfare legislation to the physiological needs of workers while at work.

The Hon. K.T. Griffin: I would have thought that stress was more physiological than psychological.

The Hon. C.J. SUMNER: That is a matter the honourable member can debate, if he wishes. As I understand it, it refers to those matters that are related to the physiology of the individual as opposed to the psychology of the individual. Matters relating to the physical wellbeing of the individual are referred to and the psychological wellbeing is also mentioned, that is, the mental wellbeing. I would not have thought that there was any concern that that was considered to be part of occupational health, safety and welfare at the workplace. After all, 'welfare' is a broad term. The very objects of the legislation refer to securing the health, safety and welfare of persons at work. That has already been approved in clause 3. It refers to welfare, which is a broad concept.

I do not believe 'psychological' means those psychiatric conditions that are identified and medically described. It refers more to the mental concerns which would have to have a detrimental effect on the worker's capacity in the workplace. I cannot see any difficulty with that problem. In any event, as I understand it, the Democrats have an amendment to take out the word 'psychological' and to refer to the 'general wellbeing of the worker', and we are agreeing to it, because it is broader than the word 'psychological'. 'Psychological' narrows it. Members want the definition to be broader, so we are accepting it.

The Hon. K.T. GRIFFIN: If I do not have the numbers on the voices, I do not intend to divide.

Amendment negatived.

The Hon. I. GILFILLAN: I move:

Page 4, lines 34 and 35—Leave out paragraph *(a)* and insert paragraph as follows:

(a) the general well-being of employees while at work;.

Amendment carried.

Progress reported; Committee to sit again.

[*Sitting suspended from 6.2 to 7.45 p.m.*]

STATUTES AMENDMENT (EXECUTOR COMPANIES) BILL

Adjourned debate on second reading.

(Continued from 19 November. Page 2065.)

The Hon. L.H. DAVIS: This Bill seeks to amend enabling Acts of five South Australian private sector executor and trustee companies, that is, the ANZ Executors and Trustee Company, the Bagot's Executor Company, the Elder's Executor Company, the Executors Company and the Farmer's Cooperative Executors. The amendments in the Bill have been introduced after consultation with the trustee companies and also discussion between those companies and the Corporate Affairs Commission. The trustee companies have lost much of their traditional business following the abolition of death duties in 1980. They have expanded into other areas, including investment for living clients.

These amendments are relatively straightforward and the Government can be assured of the Opposition's support for each of them. The first amendment permits companies to charge an administration fee for their common funds. Whereas other private sector investment institutions obviously seek to receive compensation for the cost of administering those common funds, trustee companies under their current legislation are hindered from charging an administration fee. They have had to compete with other institutions in the private sector in the provision of common funds. It has meant the introduction of sophisticated EDP systems and more qualified staff to manage investments in a variety of common funds and so, understandably, there is an administrative cost associated with the operation of these common funds.

The second amendment deals with the ability of trustee companies to value their funds more often than monthly. Traditionally, they valued their common funds on the first day of each month. This amendment gives them the ability to value their funds more often than monthly. Quite often these common funds will provide for an investor to withdraw money at relatively short notice, for example, 24 hours. In some cases an investor could well be disadvantaged because the fund had not been valued for, say, 24 or 25 days. In a volatile market it could mean that there has been a substantial variation in the value of that common fund.

The third amendment again recognises the fact that financial markets, following deregulation, have become much more competitive. Not only are the markets deregulated but they are much more competitive and much more sophisticated. At present trustee companies are hindered in their ability to charge a reasonable fee for living clients. This amendment is designed to enable them to negotiate directly with living clients outside the provisions of the legislation. Obviously the trustee companies in setting a fee will be cognisant of what the market rates are. The trustee companies will still be required to seek court approval when setting fees in relation to services provided to beneficiaries who are minors or disabled persons. So there is a necessary degree of safety with respect to that matter.

The final amendment simply seeks to correct a long standing anomaly, that is, that the legislation as it now stands restricts trustee companies when acting under a power of attorney to exercise powers and discretion by the use of the

manager or any two directors of the trustee company. Quite clearly it is not always practical for those persons to be available to exercise that power. It is not unusual to see such a power delegated to officers of the trustee company. So this restrictive provision is removed. The Opposition is pleased to support the amendments knowing that they have been fully considered by the Trustee Companies Association of South Australia and that there has been full consultation with the Government.

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

ANIMAL AND PLANT CONTROL (AGRICULTURAL PROTECTION AND OTHER PURPOSES) BILL

Consideration in Committee of the House of Assembly's disagreement to the Legislative Council's amendments Nos 2, 4 and 5; and the House of Assembly's amendment to the Legislative Council's amendment No. 15.

Legislative Council's amendment:

No. 15. Page 31, after line 33—Insert new clause 74a as follows:

74a. Where a person is convicted of an offence against section 52 (2) *(b)*, 53 (4) or 54 (2), the court by which the conviction is recorded shall order the person to pay to the Crown an amount estimated by the Court to be the amount of the profit that has accrued to the convicted person, or any other person with whom the convicted person has a business or personal association, in consequence of the commission of the offence.

House of Assembly's amendment thereto:

Insert '41, 43,' after the words 'against section'.

Amendment No. 2:

The Hon. J.R. CORNWALL: I move:

That the Council do not insist on its amendment No. 2, to which the House of Assembly had disagreed.

The Hon. M.J. ELLIOTT: I move:

That the Legislative Council do not further insist on this amendment but make in lieu thereof the following amendment to the Bill:

Clause 7, page 4, after line 35—Insert new subclause as follows:

(2a) The Minister should, in nominating members for appointment to the Commission, endeavour to ensure that the various regions of the State are adequately represented.

The reason why we find ourselves in this somewhat difficult position—and I have had the Liberals running to me all upset about a few things—is that there was a rather foolish arrangement made that perhaps everything that was a bit doubtful would be sent down to the House of Assembly and then what was not agreed to would come back. That policy has led to a few things being messed up. That was a rather foolish agreement and I hope the Liberals do not forget they made that agreement. I am sure it has been recorded in *Hansard.* That is why we have had a few funny things come back to us at this time. The Liberals made an agreement which at the time seemed to make the Council work a little bit better. I hope they do not forget that, because I certainly have not.

An honourable member interjecting:

The Hon. M.J. ELLIOTT: You were the person who made the comment across the floor—it was either you or the Hon. Mr Dunn, but I can check *Hansard* about that. I have two major concerns about clause 7; one is that we have a representation which as far as possible comes from all parts of the State and the other is that we have people as far as possible who have local pest board experience. The amendment I am now proposing requires the Minister, in nominating members for appointment to the commission, to endeavour to ensure that the various regions of the State are adequately represented. That is somewhat vague in that it does not specifically define regions but even my original amendment left it up to the Minister to prescribe regions anyway. The important thing is that we will have within the Bill a requirement that the Minister endeavour to ensure that there is representation across the State. I would expect that the Minister, if he obeyed the wording of that, would choose a person from pastoral areas and would endeavour to get a person from the South-East, one from Eyre Peninsula, and so on. I believe that this will certainly address one of the major concerns that I had when the Bill was initially before us.

The Hon. PETER DUNN: The amendment moved up by the Hon. Mr Elliott would be without a doubt the softest and weakest amendment I have seen come into this Chamber. The amendment states:

The Minister should, in nominating members for appointment to the commission, endeavour to ensure that the various regions of the State are adequately represented.

In other words, he can say, if the sun is in the right position, if he has had two beers and if he is feeling comfortable, he can consider it, and that is about all it means. It is a pity that it has the word 'endeavour' in it. It should state that, 'The Minister should, in nominating members for appointment to the commission, ensure that the various regions of the State are adequately represented. However, the amendment arrived on my table and I have the same criticism of the Democrats as they had of me the other day of not having an amendment out early enough. We could have made something of this amendment.

This amendment is back to what the Bill does and that is give the Minister the total say. There are seven members of the commission, of whom the Minister has a say in appointing six. One member will be a public servant who, in the opinion of the Minister, has an appropriate knowledge of agriculture—and I find that quite acceptable. He would be a person, no doubt, with knowledge of pest plants and would be a valuable adviser to the commission. One member shall be an employee of the Public Service nominated by the Minister for Environment and Planning; that is fair enough, as there is a large area in this State that comes under the control of the Minister for Environment and Planning and needs to be kept free of pest plants and pest animals. I agree that that is a fair and reasonable provision. Two members shall be persons chosen by the Minister from a panel nominated by the Executive Committee of Local Government and the remainder shall be nominated by the Minister. It does not say that in the Bill. It really does not say who will nominate those people. What it does say is that the Minister will have a choice. I do not know where the Minister is going to get that pool of people with knowledge of pest plants and pest animals, if he does not get some guidance. It is fine for him to get guidance from his own officers but they are not out in the field having to administer and pay for the legislation. Indeed, I believe that this commission is really a whitewash. There are no guidelines to it at all and the Hon. Mr Elliott's amendment lets it go back to just that—he shall 'endeavour' to ensure that the various regions of the State are adequately represented. No doubt the Minister, under his own steam, will get some representation, but it is just as likely that they will all be from the Adelaide Hills or the South-East or Eyre Peninsula.

As far as I am concerned, I find that totally unacceptable. Who is going to represent that vast 80 per cent of the State in the northern regions, where there is a consistent pool of infection by pest plants and pest animals that is transmitted back into the incorporated areas? Who is going to see that there is a representative from that area? Under this Bill and under this amendment there is no direction at all to get people from those areas. I do not agree that either of these

is acceptable in any way and I am sure that the Minister will finish up floundering to find people who can fill the positions. I spoke at some length when the Bill was debated in this Council the first time. I did not believe that clause 7 was a workable clause under the circumstances. For those reasons, I oppose the amendment.

The Hon. M.J. ELLIOTT: Perhaps I need to remind the Hon. Mr Dunn as to what amendments I originally put up. He said that this amendment does not have any requirement that the people come from the body which administers and pays for pest control. The people who administer and pay for pest control are local government, and they are exactly the amendments I put up to start off with. Members of the Opposition went and knocked the damn thing off. They made this agreement to send it down to the Lower House so that their amendments might be agreed to. The amendments I put forward in fact included the people who administer and pay for pest control, which is local government.

It was members of the Opposition who did this deal to send it down to the Lower House to see if they liked what the Opposition had. The other thing is the pastoral areas: I had taken those into account in my amendments. There is also the question of regions and spreading across the State. The amendments members of the Opposition put forward, which the Government said, 'Take to the Assembly' did not create any regions whatsoever. They are saying how weak it is because it is not doing it: my amendments had regions in them—theirs did not. They did a deal with the Government, sent it to the Lower House, and now they are coming back and complaining. That is just not consistent. The amendments I had had the people who administer and pay for it—local government; they had regions clearly defined, all those things, and members of the Opposition knocked those off.

They now stand up complaining that this is weak. That is really inconsistent. When they are doing deals with the Government, that leaves us in the position of having two votes. I am in a position now where I do not know what members of the Opposition will do next, and at least this is better than nothing at all. It has some requirement on the Minister to come back and justify why he had not chosen people from across the State.

Clearly, if he comes up with two or three people concentrated in one area, he has not obeyed this clause and, as such, has gone against the spirit of the Act, and the Minister should be held accountable for that. I do not see it as being weak: it is certainly a lot weaker than what I originally intended, but we know very well why what I intended is not here—members of the Opposition voted against it. They voted against what was an extremely strong clause, and that is why we are in the position of considering this now.

The Hon. J.C. IRWIN: It is a pity we have got to the stage where we are now accusing each other of doing deals with the Government. I do not think we have been part of that in this process, and I think the Hon. Mr Elliott would realise that. I do not want to add very much more to what the Hon. Mr Dunn has said. He covered in the amendment now before us the use of the words 'endeavour to ensure that the various regions of the State are adequately represented.' I will not go over that again but I would like to add another couple of points to which perhaps the Hon. Mr Elliott might address himself.

That relates to what regions would satisfy his thoughts on this matter, because we can divide the State up into a number of agricultural regions: the South-East, the Riverland, the Mid-North, the far North and the West. Those are five regions which are reasonably geographic and understood by most people. It does not account for the city at all, and perhaps he may care to comment on that, because we are getting down to four people that I think the Minister must, if he is directed by this amendment, find to satisfy at least five regions that I have nominated. There may well be more. I could go on to ask the mover, does this clause relate to local government and UF&S nominees for the commission, or just the UF&S; whether the Minister has to balance the nominees from the UF&S and from local government to get the regions satisfied, or whether we are just looking at the one clause which deals with the nominees put forward by the grower group represented by the UF&S.

I think we have in common that we want to make sure that the pastoral areas of the State are represented by at least one representative, and that would not be under local government, because they are unincorporated areas. Hopefully it would come under the UF&S, but I would not be in favour of the amendment.

The Hon. J.R. CORNWALL: I can only say, having listened without prejudice to the various arguments advanced, that I am attracted to the logic of the Hon. Mr Elliott's argument.

The CHAIRPERSON: I would need to put this in the positive form: first, that the Council insist on its amendment. If that is lost, I can then put the Hon. Mr Elliott's motion.

Motion negatived.

The CHAIRPERSON: I can now put that the Council, in lieu thereof, supports the amendment moved by the Hon. Mr Elliott.

Amendment carried.

Amendments Nos 4 and 5:

(After line 101).

The Hon. J.R. CORNWALL: I move:

That the Council do not insist on its amendments Nos. 4 and 5, to which the House of Assembly had disagreed.

Since we have rejected Amendment No. 2 it should follow, as the night follows day, that we reject Nos. 4 and 5.

Motion carried.

Amendment No. 15:

The Hon. J.R. CORNWALL: I move:

That the amendment made by the House of Assembly to amendment No.15 be agreed to.

The Hon. PETER DUNN: This amendment is an unfortunate one. I am no guru on legislation, but, from my inquiries, I know of nowhere where there are such harsh penalties for the things covered here. The sad fact is that it could occur that someone, through no fault of his own, can have the profits of his endeavours taken away purely because of this legislation. If, for instance, the wind were to blow in a very dangerous weed which propagates on a property—and this is likely to happen because in drought years there usually is considerably more wind than in good years—and that farmer in that same year purchases hay or fodder, I can see a very good case being put up by the inspectors of the Pest Plants Commission—that the farmer introduced that weed with that hay when, in fact, it may not have happened.

This clause allows that farmer's profits for that year, or the profit that may have been made out of the crop which may have been on that piece of ground, to be confiscated. I believe that is totally draconian. If the penalties are not high enough, raise the penalty in the Bill, but this is for deeds other than small problems that would probably be very grey, anyway, in the eyes of the law. I do not believe that it is very effective. I believe that we should not insist on this amendment. The Bill was adequate before the amendment was made.

I can see what the Hon. Mr Elliott is aiming at: he is aiming at people who might decide to grow cannabis or some other drug, yet he voted to allow people to expiate the offence of smoking marijuana by paying a fine. However, he turns around and says that in this Bill he is endeavouring to take away those profits. What happens in the case of people who grow marijuana—people who have not much money, anyway? I do not see the point in it. They will give up their profits, which might be ten dollars or a hundred dollars, but until the drug hits the streets it is not worth anything. If a person gets caught with it, it is not worth anything. The same applies to a market gardener or a rural producer—he will usually find he does not have much money until his product hits the street. Who then can determine where it was grown? This clause is not one that I think is in its right place. I think that the Bill was far better as it was.

The CHAIRPERSON: I point out to the Hon. Mr Dunn that what we are discussing is the House of Assembly's amendment to the Legislative Council's amendment. The Council made an amendment to page 31, after line 33, to insert new clause 74a as follows, and the House of Assembly has amended that amendment. Its amendment is to insert 41 and 43 after the word 'section'. The question we are concerned with is whether we accept or reject the House of Assembly's amendment. We are not further debating our own amendment, which we have already passed. What we are debating is the House of Assembly's amendment to our amendment.

The Hon. Peter Dunn: I agree, but the argument still stands.

The Hon. M.J. ELLIOTT: I think that the amendment which the Council accepted, and which the Liberals accepted at the time and sent to the House of Assembly, is even more relevant with the insertion of 41 and 43 because in them we are not talking about plant pests but about animal pests and included amongst those is reptiles and birds, which have high value on the black market. People can be knowingly involved in the trade of those types of animals and can certainly make profits far in excess of the maximum penalty of $2 000 or six months imprisonment. I have always thought that the weakness of setting penalties with a maximum value is that the rich can afford the penalty and the poor cannot. If the profit exceeds the penalty, then there is no penalty. For that reason, I believe that there should be a high penalty, which the maximum fine of $2 000 is.

However, where a person has with intent knowingly flouted the law and taken profits beyond the penalty then I think it is only reasonable that that person loses the profit of that intentional act. I think that that is just as reasonable under the clauses that the Hon. Mr Dunn was complaining about. There are quite large profits to be made in moving stock, particularly during a drought period when they can be moved from a place carrying declared weeds and when stock can be picked up cheaply and moved to another area. I think that it is fair and reasonable that a person who is prepared to put all the other farmers in his area at risk should face losing profits. I cannot see what is draconian about people losing the profits of crime.

The Hon. Peter Dunn interjecting:

The Hon. M.J. ELLIOTT: What is the profit from driving at over 110?

The Hon. Peter Dunn: Getting there quickly; first there.

The Hon. M.J. ELLIOTT: That is an absolute nonsense. I think that perhaps some people allow themselves to get in a bit of a twist over this. It is perfectly reasonable for people to lose the profits of crime, which should happen in more cases.

The CHAIRPERSON: The Minister has moved that the amendment moved by the House of Assembly to the Legislative Council's amendment No. 15 be agreed to, so I put the question.

Motion carried.

The Hon. M.J. ELLIOTT: I have another amendment which should be before the Chair.

The CHAIRPERSON: I rule that that amendment is out of order. Standing Orders provide that when the House of Assembly makes an amendment to a Legislative Council amendment our possibilities are to agree with the House of Assembly's amendment, to amend the House of Assembly's amendment—which we have not done—or we may disagree thereto. We have no other options: we cannot, under our Standing Orders, make further changes to the amendment which we passed the last time the Bill was in this Council.

The Hon. M.J. ELLIOTT: Can I explain why I disagree with your ruling?

The CHAIRPERSON: Are you formally disagreeing with my ruling?

The Hon. M.J. ELLIOTT: If you do not want me to do it in a more friendly fashion. Might I make a submission first?

The CHAIRPERSON: Yes, make your submission first.

The Hon. M.J. ELLIOTT: Under Standing Order 336, when the House of Assembly agrees to amendments made by the Legislative Council with amendments, then the Council may agree to the Assembly's amendments (which we have done) with or without amendment. The part that I think is important states 'making consequential amendments to the Bill if necessary'. It does not say to which parts of the Bill—it just says 'to the Bill'. It seems to me that in accepting the amendments, that is, the insertion of 41 and 43 as we have just done, it has an effect elsewhere in the Bill, or another part of the Bill has an effect on it. Any clause which operates upon that part that we have just amended I believe is open to what we might call a consequential amendment, and that is what I have suggested we should be doing.

The CHAIRPERSON: I maintain my ruling that that is contrary to Standing Orders, that the House of Assembly has agreed to one of our amendments with an amendment to it, and that what we can do in that situation is agree to the House of Assembly's amendment, which we have done, or we could have amended its amendment, or could have disagreed with its amendment. However, the section of Standing Orders states:

> Agree to the House of Assembly's amendment with or without amendment making consequential amendments to the Bill if necessary.

I interpret 'making consequential amendments' as indicating changes elsewhere in the Bill resulting from amending the amendment from the House of Assembly. We have not amended the amendment of the House of Assembly. The amendment of the House of Assembly has been agreed to by this Chamber. If there were, as a result of that, consequent amendments required elsewhere in the Bill to make sense of the whole legislation we would now proceed to do so. However, the consequent amendment would be consequential on amending the amendment from the House of Assembly, which we have not done; we have agreed to the House of Assembly's amendment.

The Hon. M.J. ELLIOTT: If I may take that further, I feel that if consequential amendments were necessary elsewhere in the Bill, simply in mechanical terms, surely the House of Assembly would have done that, anyway. I think that in our being willing to accept the amendment we may

consequentially want to make alterations elsewhere. I see that as quite different. If there are mechanical consequential amendments that should have occurred in the House of Assembly and not here. We are saying that we will accept that, but want a consequential change elsewhere in the Bill.

The CHAIRPERSON: I still insist on my ruling on the basis that the House of Assembly made an amendment and could have made any amendments consequent on that had it wished to do so. It did not do so because none were necessary. We have then considered the House of Assembly's amendment, which we have accepted. However, had we amended its amendment, as a result of our amendment to its amendment it may have required consequential amendment elsewhere. However, we did not amend the House of Assembly's amendment: we accepted it. Therefore, no consequential amendments are required. Do you formally wish to disagree with the ruling?

The Hon. M.J. ELLIOTT: I can see that the Liberals are agreeing with you, Ms President, so I will not pursue it.

Committee's report adopted.

STEAMTOWN PETERBOROUGH (VESTING OF PROPERTY) BILL (No. 2)

Second reading.

The Hon. J.R. CORNWALL (Minister of Health): I move:

That this Bill be now read a second time.

Members may recall that in November 1984 the House of Assembly established a select committee to inquire into and report upon a dispute involving the operators of the Steamtown Peterborough Railway. The select committee was appointed because of irreconcilable differences over the ownership of society assets and difficulties with membership rules and their application. The Parliament became involved because significant amounts of public funds had been involved.

In October 1985 the final report of this committee recorded that it had been unable to resolve the dispute. The committee noted its preference for a resolution without resort to legislation. However, the situation at Peterborough has not changed and there now appears to be no alternative, other than legislation, to settle the matter equitably. The formal description of the clauses of the Bill follows and I seek leave to have it inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal.

Clause 2 sets out a number of definitions. By the deed of 9 October 1984 the society purportedly sold the greater part of its locomotives and rolling stock and other property to Mrs Mellis (clauses 1 and 3 of the deed). Clause 2 of the deed sets out rolling stock and other equipment that was to remain the property of the society. Clause 4 of the deed provides that a purchase price of $500 is payable by Mrs Mellis.

Clause 3 provides that the major assets of the society (being those transferred to Mrs Mellis and those retained by the society) be vested in the corporation of the town of Peterborough. The assets required for the continued operation of the society are vested in the society—clause 3 (2). The property vested in the corporation by the Bill cannot be sold or transferred by the corporation without the approval of the Minister—clause 3 (3).

Clause 4 requires the return of the purchase price paid by Mrs Mellis.

Clause 5 removes liability for stamp duty on the deed.

The Hon. PETER DUNN secured the adjournment of the debate.

FRUIT AND PLANT PROTECTION ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 19 November. Page 2092.)

The Hon. J.C. IRWIN: The Opposition is pleased to support this Bill, and I will be brief in outlining our support. I understand that the Bill gives the Minister more flexibility in dealing with pest and disease outbreaks, and that of course can include fruit fly outbreaks. Indeed, I understand it will give flexibility for any outbreak of a nature that would endanger or affect our horticultural industries, and there is no need to remind the Council of the special position South Australia has in the horticultural industries, even though some of those industries are going through pretty hard economic times at present.

Indeed, I could say that it is at times like these, when hardships are about, that every effort must be made to keep South Australia the leader in the Australian horticultural field.

The Bill allows the Minister to have notices placed in the *Gazette* instead of going through the procedures of proclamation; and it speeds up the operation of this legislation. I understand that during the passage of amendments in 1985 to the Fruit and Plant Protection Act mention was made of proposed subordinate legislation which would bring plant quarantine procedures in line with contemporary technical knowledge and trends in interstate commerce in fruit and plants. Accordingly, further provisions are contained in the Bill to enable subordinate legislation under the principal Act. We support the measures contained in the Bill and wish it a speedy passage.

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

ENFIELD GENERAL CEMETERY ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 18 November. Page 1967.)

The Hon. DIANA LAIDLAW: The Opposition supports this Bill, which seeks to amend the Enfield General Cemetery Act to empower the trust to acquire, establish and operate cemeteries in addition to its operation within the Enfield area. The cemetery itself was established by Act in 1944, and since then the board has acquired a great deal of skill in the management of cemeteries, which has become a very specialised area. It is apparent that a number of other metropolitan cemeteries owned by local councils are becoming a burden to those councils, and many members would recognise that a number of cemeteries not only in the metropolitan area but in country areas are in a state of disrepair and subject to vandalism. That is an enormous pity when so many of our cemeteries are such a source of historical and heritage information and are important to our past and to our future.

The amendments in the Bill will enable the trust to acquire Cheltenham cemetery from the city of Port Adelaide. The city council has found that the cemetery has become a liability. It was interested in possibly building a crematorium, but there is little reason for Adelaide having two crematoriums. Therefore, it has opted to sell or hand over to Enfield the management and operation of Cheltenham cemetery.

I understand that in this arrangement the Enfield Cemetery Trust has provided Port Adelaide council with an undertaking that the cemetery will be redeveloped in future with empathy for the families whose relatives are interred at Cheltenham cemetery. That is an important condition. I understand that other cemeteries which have approached the trust in the past remain keen to obtain the expertise in management and operations that the trust has acquired over the years.

This is a hybrid Bill and will be referred to a select committee of this Council. During the select committee stage many of the questions about acquisition and the terms of acquisition for that and other cemeteries can be pursued. The Opposition supports the Bill.

The Hon. C.M. HILL: I support the Bill. I am very pleased to see it before Parliament. As the Hon. Diana Laidlaw has said, the Bill's purpose is to allow Enfield General Cemetery Trust to acquire Cheltenham cemetery. It gives the right to that same cemetery trust to expand its activities in regard to other cemeteries elsewhere. As the Hon. Diana Laidlaw said, the trust has acquired much expertise in the administration and management of cemeteries. I can recall when I was a Minister back in 1968 when this organisation was in its infancy at Enfield that many difficulties, problems and pitfalls were encountered by that organisation but, as the years went by, it got on to its feet and now does a very good job.

It is absolutely essential that cemetery trusts exercise this expertise because there can be nothing worse than a cemetery trust which receives income by way of funeral fees and so forth and does not place some of that income aside in reserve for the maintenance of the cemetery in perpetuity. Funeral fees must not only be spent on expenses in regard to the one funeral, but that grave and graveside must be attended and cared for properly by the trust in the future. This trust has acquired that skill, and I am sure it will do a good job.

I do not believe the Bill should passs without reference to the historical cemetery at Cheltenham which is known well to many families in the western regions of metropolitan Adelaide. It is unfortunate that the cemetery has fallen into disrepair and that nothing has been done about it. Certainly, that will not be the case if this Bill passes. I have vivid memories of Cheltenham cemetery because as a young sailor of 18 years—

The Hon. T.G. Roberts: Don't tell us too much.

The Hon. C.M. HILL: I can tell you this story without any worry. I was part of a funeral service at Cheltenham cemetery. A local seaman based at Port Adelaide was killed by a mine in the vicinity of Robe, and it was an absolute tragedy at the time. I was in the depot: I had only been there a few weeks and we had to organise his funeral. We had a very long march from the Naval Depot at Port Adelaide up the Port Road with rifles over our shoulders to Cheltenham Cemetery. It was a very moving and yet sad experience for me. That is the only time I have actually been in the cemetery grounds.

It will be pleasing to see the cemetery cared for properly by the Enfield trust, and I place on record my admiration of that trust because of the job it has done at Enfield and for its enterprise in becoming involved in this expansion of its responsibilities into Cheltenham and no doubt elsewhere in the future. I support the second reading.

Bill read a second time and referred to a select committee consisting of the Hons. J.C. Burdett, M.S. Feleppa, C.M. Hill, Diana Laidlaw, T.G. Roberts, and Barbara Wiese; the quorum of members necessary to be present at all meetings of the committee to be fixed at four; Standing Order 389 to be so far suspended as to enable the Chairman to have a deliberative vote only; the Council to authorise the disclosure or publication by the committee, as it thinks fit, of any evidence presented to it prior to such evidence being reported to the Council; the committee to have power to send for persons, papers and records, and to adjourn from place to place; the committee to report on 12 February 1987.

LAND AGENTS, BROKERS AND VALUERS ACT AMENDMENT BILL

In Committee.

(Continued from 18 November. Page 2003.)

Clause 2 passed.

Clause 3—'Interpretation.'

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

Page 1, after line 34 insert word and paragraph as follows:
'and
(d) by inserting after subsection (5) the following subsection:
(6) Where a contract for the sale of land or a business that is subject to the fulfilment of a condition precedent fixes a day for settlement by reference to a certain period that commences on fulfilment of the condition, the day on which that period ends is, for the purposes of the definition of "date of settlement" in subsection (1), the day fixed by the contract for settlement.'

The point I made during the second reading debate was that it was not clear as to the date fixed for settlement. The Attorney-General responded and said that as far as he was concerned a fixed day for settlement was relatively clear. However, my amendment to insert an additional subclause seeks to put that question beyond doubt. My area of difficulty focused on those contracts which provided that there was no fixed day for settlement as being an identified specific fixed date but that settlement would occur on a certain day, say a month after a condition precedent had been satisfied—such as a purchaser selling his or her existing property or when all consents had been obtained.

I take the view that this amendment really does what I understand the Attorney-General believes is the position already, that is, to provide that, where a contract is subject to the fulfilment of a condition precedent and fixes a day for settlement by reference to a certain period that commences on fulfilment of a condition, the day on which that period ends is, for the purposes of the definition of 'date of settlement' and, for the purposes of subsection (1), the day fixed by the contract for settlement. I see no difficulty with that. I hope that the Attorney-General will support my amendment because it clarifies the grey area to which I referred during the second reading debate.

The Hon. C.J. SUMNER: I am not prepared to support this amendment. My concern is that it has not been discussed by way of an exposure draft to anyone. Amendments to this legislation were passed only in 1985 giving virtually a new regime for dealing in this area, including the Commercial Tribunal and so on. This matter was not raised at that time. It has been raised now by the honourable member but without the opportunity to canvass the amendment with

interested parties. I am concerned whether or not there may be some unintended consequences; there may not be, but I would prefer that the law be left as I assume it has been for many years now, without apparently any difficulty arising, and that the matter be looked at at some appropriate time in the future.

I repeat: this Bill really deals with the provision of greater interest to the Agents Indemnity Fund. That was the principal reason for the introduction of the Bill. While that issue was being considered, Parliamentary Counsel did some statute revision of the legislation with a view to a consolidation—

The Hon. K.T. Griffin: Your amendment is not statute revision.

The Hon. C.J. SUMNER: I am not sure about that. It seems to me that the introduction of this amendment at this stage without further exposure and discussion with the industry is not appropriate.

The Hon. K.T. GRIFFIN: The fact is that what was exposed for consideration by the industry were the arrangements relating to the new Agents Indemnity Fund. What surprised the industry—land brokers, land agents, the legal profession and others—was that a number of these matters were tacked on to the Bill which had been circulated for comment by the industry in relation to the Agents Indemnity Fund. Some of the Attorney-General's amendments deal with the cooling-off period. It is all very well to say that my amendments have not been part of any exposure draft; the fact is that the Attorney-General's own amendments in the Bill were not subject to exposure, either. So we have an attempt by me to clarify provisions which, on all the information I have, were not circulated for comment by the industry.

Members of the industry were taken by surprise when they saw this in the copy of the Bill that I sent them. I would have thought that my proposed amendment is no great problem; that it merely picks up a deficiency which the industry itself has picked up in the Bill introduced by the Government. The industry believes that the Bill has a deficiency in this area. My other amendments all relate to those issues which generally speaking were not the subject of any exposure draft.

All I want to do is assist the consideration of this and ensure that the Attorney-General's amendments do not have any unintended consequences. That is the reason why I think there needs to be some clarification. I know that the principal Act has only been through the Parliament in 1985 and came into operation on 10 November but there has been no previous discussion on issues like the cooling-off period and the changes which were made there and some of the other issues contained in this Bill.

What I would suggest to the Attorney-General is that we ought to, in fact, pass my amendment to clarify the problem which has been drawn to my attention by members of the industry when they saw this Bill, some parts of which they had not seen before. That is the issue and I would see no difficulty in attacking it in that way. Some of these issues are not, in fact, in the nature of statute law revision. They do effect changes of substance which relate to matters like the cooling-off period. With statute law revision it is really only an updating of the drafting rather than the introduction of any substantive provisions. To describe those parts of the Bill unrelated to the Agents Indemnity Fund as being in the nature of statute revision is, in my view, stretching the statute revision matters to an inordinate length.

I suggest to the Attorney-General that the amendments I am proposing on this and a number of other clauses ought to be picked up and made now. If there is any worry about them, their operation can be suspended until the Attorney-General has had a chance to discuss them before bringing them into effect.

Presumably the Council will be sitting again in February and this Bill is not likely to come into effect for several months anyway. So I would suggest that we take the opportunity now of tidying up these matters, that they be the subject of consultation over the recess, if any is needed, and that, if necessary, we finalise them again in February or make such other amendments as may be necessary.

Merely to put these off on the basis that they have not been the subject of any exposure draft is, in my view, not sufficient reason in the light of the history of some parts of this Bill and, with respect to the Attorney-General, I just do not support it.

The Hon. C.J. SUMNER: I think the best approach is not to accept the amendment. Parliamentary Counsel advises me it is not necessary; they have been responsible for drafting this legislation and correcting what was a problem with the original provision dealing with the cooling-off period. Therefore, I would prefer to examine it subsequently, if a problem arises.

The Hon. I. GILFILLAN: I would like to indicate that we will vote with the Government to oppose the amendment.

The Hon. K.T. GRIFFIN: All I can say is that I am disappointed at that. I would have thought that the very fact that it has been raised with me by the Real Estate Institute and by some members of the legal profession indicates that there is an area of doubt and that it ought to be resolved, rather than postponing it and expecting that one day, if there is a problem, it can come back. As I have said, I expect we will be sitting again in February and, if there is a problem, the Attorney-General can just suspend the operation of this, if he wants to bring it into effect before February, and resolve it then.

I would suggest that there is a difficulty which ordinary people out in the community working with this Bill when it becomes law will in fact experience. I think we ought to anticipate the misunderstanding and resolve it by express provision now.

Amendment negatived; clause passed.

Clauses 4 and 5 passed.

Clause 6—'Repeal of Part VIII and substitution of new Part.'

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

Page 3, after line 11—Insert definition as follows:

"record" includes a record made by an electronic, electromagnetic, photographic or optical process:

The amendment deals with a clarification of the term 'record'. I indicated during the second reading speech that there had been some question raised as to whether computer recorded trust account information was within the definition. I think it probably is, but it seems to me important to put that beyond doubt.

The Hon. C.J. SUMNER: This is not necessary in the view of the drafters of the Bill, but there is no difficulty with it apart from the fact that it is not necessary.

Amendment carried.

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

Page 3—

Line 18—Leave out 'An' and insert 'Subject to subsection (1a), an'.

After line 23—Insert new subsection as follows:

(1a) Where the vendor and purchaser under a contract for the sale of land or a business jointly give directions to an agent as to the manner in which the agent should deal with a deposit paid under the contract or with any income arising from investment of the deposit, the agent shall comply with the directions.

My amendment seeks to ensure that, where the vendor and purchaser for the sale of land or a business jointly give directions to an agent as to the manner in which the agent is to deal with a deposit or with any income arising from the investment of the deposit, the agent is to comply with the directions. As I said during the second reading debate, there are many occasions where vendors and purchasers agree that a deposit may be invested and the income applied either to the vendor or to the purchaser or in some proportions between them. It seems to me that this Bill prevents that and means that the deposit is left in a trust account and earns interest for the Agents Indemnity Fund. I have had a number of cases where there are very large deposits paid. In one instance it was $60 000 and the settlement was not going to occur for several months because of planning consents which were required. The parties agreed that the deposit should be invested on a term deposit with one of the banks and the interest applied to the benefit of the vendor, if settlement proceeded, and to the purchaser, if it did not proceed, because consents may not have been granted. In those circumstances it seems to me to be perfectly reasonable that the parties can agree that the deposit should not sit idly in a trust account but should be working for the benefit of the parties. It is for that reason that I am moving this amendment.

The Hon. C.J. SUMNER: This is strongly opposed. If this amendment is passed, it will defeat the entire purpose of the section of the Bill dealing with the Agents Indemnity Fund. Over 12 months of preparation and discussion of this question with the industry would be frustrated. One could ask why the Bill was even prepared, if this is passed, because it will basically maintain the current system. The explanation of the Bill in the second reading stage was perfectly clear on the reasoning behind the proposed changes to the current Act, which were as follows:

> This proposal is aimed at eliminating weaknesses in the current scheme and has the potential to stimulate the size and growth of the fund. While this approach will deprive some principals of income when they direct their agents to hold moneys in separate trust accounts, it is not unreasonable for principals to forgo this source of income, if they are to share in the benefit of being able to be adequately compensated if they find themselves in the unfortunate position of having their money misappropriated.

This amendment would distort the entire function of the Bill, therefore I oppose it. It is interesting to note that a similar provision is not in the Legal Practitioners Act with respect to the payment of interest on legal practitioners' trust accounts, which goes to some extent to a similar purpose.

The Hon. K.T. Griffin: But trust funds and estate funds do not have to be kept in the trust account. They are out invested in the name of the trustee, and the solicitor organises that.

The Hon. C.J. SUMNER: The purpose of this is to try to build up the trust fund money, so that defalcations such as that caused by Mr Hodby can result in some return to the person who has been aggrieved by that defalcation. I understood that this is something which the industry had been pressing for for some time to try to increase the size of this fund, and that it could be used for this purpose and for educational purposes, possibly, but the reality is that if this is passed, then presumably people will ensure that the money is directed in such a way that interest is earned not for the fund but for the vendor or purchaser. As I said, with respect to solicitors' trust accounts, there is not such a section in the Legal Practitioners Act, and the interest on trust accounts is used to fund the guarantee fund and legal aid.

One might be able to argue about the principle of that, but it has been accepted in this State. If it is not valid in principle, I suppose one could mount an argument that it is not, on the basis that the clients ought to be entitled to the interest on this trust money. That would, of course, be somewhat difficult to organise, but the principle has been accepted that the interest on trust accounts ought to go into a fund, and I do not see where the difference is with respect to this matter. Suffice it to say that, if this is passed, there will probably be the potential for there to be no additional benefit to the fund.

The Hon. K.T. GRIFFIN: In respect of the legal practitioners' combined trust account, it is a different mechanism, because it is based on a proportion of the minimum balance in a solicitor's trust account in any period of six months, I think it is now, which is required to be paid to the credit of the combined trust account, and it is the interest on that combined trust account which is then paid to the guarantee fund. So, it is a totally different concept from that proposed in this Bill. That is administered by the Law Society, which is required to gain certificates from auditors if, in fact, that provision is not honoured.

Under the Legal Practitioners Act practitioners are able, where they act for deceased estates, to put out on deposit for the benefit of the estate or, by way of some other investment, funds held in that deceased estate. It happens all the time. That is for the benefit of the estate. I am not suggesting that that ought to be the case here. All I am suggesting is that, where there is an arrangement for the payment of a deposit, where there are large deposits involved, it is appropriate for the parties to make some arrangement which will continue the present practice with respect to at least some of those deposits.

If the Attorney-General will not accept it, I cannot do much about it: I have put the proposition. I believe that it will have a disastrous effect on the fund. This agents' indemnity fund and the provisions in this Bill are designed to tighten up on audit—including spot audits and a variety of other provisions which are not in the agents' compensation fund at the present time—as much as earning further income.

It tightens up on the control of it, although it does not do it in the same way as the Legal Practitioners Act approaches the establishment of the legal practitioners' combined trust account. So, I would suggest that there is a need for this sort of provision in this Bill to cope with the situation where there is an agreement as to the payment of large deposits. What might happen ultimately is, if there are large deposits payable in the hundreds of thousands of dollars range, there will be mechanisms identified to ensure that that does not come near the agent and is invested in other ways without the intervention of the agent, pending settlement. That will effectively deal with the problem to which I refer.

The Hon. I. GILFILLAN: I indicate that we will be opposing the amendments.

Amendments negatived.

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

> Page 4, after line 2, insert new subsections as follow:
>
> (2) Where an agent has received opposing claims to trust money the agent may, by one month's notice in writing, require one of the claimants to institute proceedings before a court of competent jurisdiction in respect of the claim.
>
> (3) If the claimant fails to comply with the notice the agent may pay the money in dispute into a local court of full jurisdiction and any proceedings in respect of the money must then be instituted before that court.

These new subsections deal with the concern which has been expressed to me by the Real Estate Institute, a concern in which I think there is some merit. That is a mechanism to deal with opposing claims to trust money. This merely provides the mechanism by which the agent can give notice

to the parties to institute proceedings in a court of competent jurisdiction and, if they do not do so within a month, then the agent can pay the money into a local court of full jurisdiction.

I think that is reasonable. To some extent it is already allowed by the local court and Supreme Court rules, but this spells it out for the benefit of those who perhaps do not have familiarity with the Supreme Court Act, Supreme Court rules and the Local Courts Act and rules.

The Hon. C.J. SUMNER: I oppose this amendment. It seems, again, that the honourable member is attempting to place something in the legislation which ought to be the subject of further discussions with the Courts Department, industry representatives and the like. The law already provides a remedy in these situations, and the question is, if people do not avail themselves of the remedy, should the law intervene to force them to do so.

There are a number of defects with the amendment. What is meant by the term 'opposing claims'? Does it mean a claim to all the money or any part? One month's notice in writing may not be enough time for a party to bring a well-considered action. How does one pay money into court when a dispute has not been instituted? What if the money in dispute is not within the jurisdictional limit of the full jurisdiction of the local court? This matter was raised by the Real Estate Institute, but only shortly before the Bill was introduced, and I point out that these provisions relating to the indemnity fund were the subject of discussion for a considerable time prior to that. If there is a problem it should be the subject of comprehensive review, and I do not think it is appropriate for us to attempt to deal with the matter in this way at this time.

The Hon. I. GILFILLAN: We oppose the amendment.

The Hon. K.T. GRIFFIN: The Attorney-General has said on several occasions now that certain amendments ought to be the subject of discussion with the industry. In the light of the indication from the Hon. Mr Gilfillan with this and other amendments to which he refers the same judgment, will the Attorney-General take it up with the industry with a view to trying to have these matters resolved?

The Hon. C.J. SUMNER: There is no problem with that. If something further is needed it can be dealt with at some future time. I am happy to undertake to do that.

Amendment negatived.

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

Page 5, after line 46—Insert new subsection as follows:
(2a). An agent shall, at the request of a person who has an interest in trust money, provide that person with a statement setting out details of dealings by the agent with the money.
Penalty: $5 000.

My amendment, which I hope will gain more support than some of the others, really requires an agent to account to the person who has an interest in trust money. We have already passed clause 5 which repeals sections 42 and 43 of the principal Act which do, in fact, require the agent to account to the principal for trust moneys. I made the point in my second reading contribution and it has also been made by the Law Society, the Real Estate Institute and, from my recollection, by land brokers, that there ought to be a requirement on an agent to account, when requested to do so by a person who has an interest in trust money. This amendment is in the spirit of sections 42 and 43 which are being repealed and is not inconsistent with the other provisions of this Bill.

The Hon. C.J. SUMNER: The only query with this is whether or not this is more appropriately to be included in the code of conduct that is to be developed.

The Hon. K.T. Griffin: Put it in the Statutes.

The Hon. C.J. SUMNER: I suspect that it is stating the law anyhow.

The Hon. K.T. Griffin: We have enough trouble with people like Hodby and Field and all those other guys.

The Hon. C.J. SUMNER: Well, there was something in the old legislation to this effect anyhow, as I understand it.

The Hon. K.T. Griffin: There was, but you are repealing it.

The Hon. C.J. SUMNER: As I say, that is the only query. I suppose it can be in the code of conduct as well as in the Statutes. I will raise no further objection.

Amendment carried.

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

Page 8—
After line 38—Insert paragraph as follows:
'(ca) in payment to prescribed persons or bodies for education programs conducted for the benefit of agents or members of the public;'
After line 39—Insert new subsection as follows:
'(5) Payments made under subsection (4) (ca) must not exceed the prescribed limit.'

I gather that in one of the earlier drafts of the Bill there was a specific provision which enabled some proportion of the funds to be made available, in that instance, to the Real Estate Institute for the purpose of conducting education programs for the benefit of agents or members of the public in respect of this area of the law; and that was deleted in the Bill that came before us. What I am providing is a mechanism by which that principle can be recognised, but it is still subject to prescription by regulation both as to the persons or bodies to whom it may be applied and as to an amount which is to be prescribed.

I would have thought that there was no difficulty with it. I think there is real value in ensuring that there are adequate education programs for real estate agents particularly and, if some portion—and a small portion at that—can be available for that purpose, then I would have thought that that would be a good thing for the community at large, as much as for the industry. The Attorney-General should recognise that this still retains control over it in the Government's hands—the Government of the day—and the Parliament.

The Hon. C.J. SUMNER: The major concern with this was that it was felt better to leave it so that in regulations the purpose for which the funds could be used would be able to be more specifically prescribed with respect to education purposes or whatever else, and to whatever people or bodies. It was felt that it was not really possible to make a sensible definition out of what the honourable member has attempted to make sense out of; that it was therefore better to leave it at large rather than have this clause relating to prescribed persons or bodies for education programs conducted for the benefit of agents or members of the public, which may run into difficulties in the regulation not being able to comply precisely with that prescription.

The Hon. K.T. GRIFFIN: I appreciate that, but proposed section 75 (4) provides that money standing to the credit of the fund is to be applied for only four purposes, that is:

(a) in payment of the costs of administering the fund;
(b) in satisfaction of orders of the tribunal to reimburse persons who have suffered loss by reason of the fiduciary default of an agent;
(c) in payment of insurance premiums under this Division;
(d) for any other purpose prescribed by this Act.

It seems to me that that does not mean prescribed by regulations but prescribed by the Act itself, and there is a problem there that regulations could not be used for the purpose of dealing with this issue to which the Attorney-General referred. That is the difficulty that I see in paragraph *(d)*, in that it is not wide enough to allow that sort of regulation to be promulgated.

The Hon. C.J. SUMNER: Parliamentary Counsel says that, in their view 'prescribed by this Act' does mean the Act, including the regulations made under it.

The Hon. K.T. GRIFFIN: That may be so, and I accept that under the Acts Interpretation Act reference to an Act includes regulations. However, I would have thought that there would have to be some authority under the principal Act by which regulations could be made for that purpose. The Attorney-General knows that what I want to try to do is (and he is apparently on the same wavelength in terms of the objective) make sure that it is legally possible. I want to persist with my amendment. It may be that if it is carried, and I hope it will be, the Attorney can consider it between now and when it gets to another place. If it needs tidying up, he can deal with it there. There had to be some specific head under which it had to be provided.

The Hon. C.J. SUMNER: As I understand it, this matter was canvassed in discussion with the Real Estate Institute and the provision that the honourable member has moved was taken out.

The Hon. K.T. Griffin: Not at its request; it wants it in.

The Hon. C.J. SUMNER: I do not know at whose request it was taken out. No-one seems to know what they want in it, and I am starting to get to the point where I do not care whether or not it passes. This matter has been discussed with the industry for about 12 months.

The Hon. K.T. GRIFFIN: But the first draft had a specific provision which referred to education purposes that was not included in the Bill introduced into Parliament. It was in the first draft sent out for comment, but was not in the Bill that came in here. That is what created the problem: it is in one but not the other. Your objective and mine is the same. It is merely a question of how we get to it, and I just want to put it beyond doubt.

The Hon. C.J. SUMNER: The objection put to me is that it is not specific enough. The provision in the Bill is not specific enough, but at least one can tie it down in the regulations. The amendment refers to 'education programs conducted for the benefit of agents or members of the public.' What programs? One cannot prescribe the programs as at present. All one can do is to give it to certain bodies in regard to education programs conducted for the benefit of agents—whatever one thinks is all right.

The Hon. K.T. GRIFFIN: I seek leave to move the first part of my amendment in a slightly amended form.

Leave granted.

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

Page 8, after line 38—Insert paragraph as follows:
(ca) in payment to prescribed persons or bodies for prescribed education programs conducted for the benefit of agents or members of the public;

Amendments carried; clause as amended passed.

Clauses 7 to 11 passed.

Clause 12—'Cooling off period for sale of small business.'

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

Pages 12, lines 18 and 19—Leave out paragraph *(a)* and substitute the following paragraphs:
(a) by striking out paragraph *(b)* of subsection (4) and substituting the following paragraph—
(b) a deposit in respect of the sale of an amount not exceeding ten per cent of the total consideration for the sale or $2 000 whichever is greater.

This paragraph deals with the maximum amount of deposit that might be required by a vendor or the agent for the vendor of a business. The 1985 Act, which is the principal Act, provides for 25 per cent of the price. The Government's Bill provides for that to be reduced to 10 per cent. I propose that it be a deposit not exceeding 10 per cent of the total consideration or $2 000, whichever is greater. This is one of those amendments which was not circulated for comment, and the first that anyone in the industry knew about it was when it was in the Bill introduced into this Chamber. They were surprised that it occurred.

The point raised with me has some substance. With small businesses there is a high cost proportionate to the amount of consideration in a vendor being tied up in a contract for the sale of a small business; agents have experienced situations where a purchaser has merely walked away from a contract. It has not been worth the while of the vendor to sue for specific performance because the costs would be too high and the whole matter has taken a long time to resolve. That has been to the detriment of the vendor who has not been able to offer it for sale until the whole matter has been resolved, deposits forfeited and so on.

The suggestion is that a deposit of up to $2 000, at the discretion of the vendor and the agent of the vendor, might be a reasonable deterrent to purchasers from taking that course of action, and I agree with it. It still maintains the 10 per cent for larger contracts, but the $2 000 or 10 per cent, whichever is the greater, is the maximum in my amendment which might be required by way of deposit for sale of small businesses.

The Hon. C.J. SUMNER: This matter can be further discussed with the industry, but I gave a response in the second reading reply indicating that I was not happy with the honourable member's amendment. The rationale for the amendment apparently is that he has been informed that purchasers of very small businesses, where the legal formalities and appropriate notices have been delivered and where the cooling off period has been expired, frequently attempt to avoid their obligations, although they have not exercised their rights during that cooling off period. That is a problem for which there is a remedy in law at present. It is doubtful whether prescribing a minimum deposit level will solve the problem. Again, I can only suggest the matter be examined before we solve one problem and perhaps create another.

The Hon. K.T. GRIFFIN: I think it is important. We have to keep in mind that the Government actually provided for 25 per cent of the consideration as the maximum deposit. As I understand it, that is presently in force under the 1985 Act, which came into effect on 10 November (unless the operation of that provision has been suspended). If it is in force, we are now reducing it to 10 per cent. I would have thought that that was reasonable and that the $2 000 is not a bad threshold in those circumstances where it is a fairly small contract. I disagree with the Attorney-General when he says that the vendors presently have their remedies and he does not think that the $2 000 deposit will solve the problem, because I suggest that it will. Of course, there is a remedy at the moment but it can involve very heavy costs and time, whereas $2 000 is an effective deterrent against anyone who decides to walk away from a contract even though the cooling-off period has expired. I very much believe that this ought to go in. I am not sure what will happen with the Hon. Mr Gilfillan: perhaps he can indicate and I can then decide whether or not I will call for a division.

The Hon. I. GILFILLAN: We oppose the amendment.

Amendment negatived; clause passed.

Clause 13 passed.

Clause 14—'Regulations.'

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

Page 12, lines 34 to 37—Leave out paragraph *(b)*.

I do not believe that it is appropriate to make regulations having effect by reference to determinations or opinions of the tribunal, the registrar or the commissioner. What are we really coming to when we include in regulations, which

in effect make law, a reference to a determination or opinion of the tribunal, the registrar or the commissioner? I very strongly oppose this provision, and I see no justification for it. If a decision is taken by the tribunal, the registrar or the commissioner, the legislative impact of it can be included in the regulation. I certainly do not support the provision.

Amendment carried; clause as amended passed.

Clause 15 passed.

Schedule.

The Hon. K.T. GRIFFIN: The general question on the schedule in relation to transitional provisions is the position of those agents and brokers who might currently have trust moneys on term investment. The moment this Bill comes into operation, if there are term deposits current, those agents or their respective clients (but more likely the agents) will have to carry the cost of terminating the term deposit earlier than the due date for payment of that deposit. The point made to me was that there ought to be a capacity for agents and brokers to retain the term investment until the period of the term expires, to ensure that neither they nor their clients lose as a result of having to terminate the investment to pay it into the appropriate trust account pursuant to the provisions of the Bill.

To some extent this was tied up with an earlier amendment which I lost relating to vendors and purchasers agreeing that certain deposit moneys may be invested outside the trust account. However, that has now been defeated and the problem still remains as to what happens to those agents and brokers with term deposits of trust moneys who are suddenly required to terminate those term deposits for the purpose of complying with the provisions of this measure.

The Hon. C.J. SUMNER: The problem of not having a section like this as far as the transitional period is concerned is that people may, seeing the Act come in, put all the money in term deposits and therefore deprive the fund of moneys that it ought to have. Maybe the interest which accrues under a term deposit from the time that the Bill passes should accrue to the fund in any event. What I will undertake to do is examine that particular clause with Parliamentary Counsel when the Bill is in the Lower House.

The Hon. K.T. GRIFFIN: I accept that undertaking. It seems to me that there are some important issues involved where, if there is a contractual arrangement currently in existence involving the agent, vendor and/or purchaser, then what this Bill effectively does is override that contractual arrangement without being sensitive to the fact that the agent may well have a liability arising out of the statutory responsibility to terminate the deposit and pay the moneys into the Agents Indemnity Fund or allow the interest to accrue to the Agents Indemnity Fund.

It may be that some provision which might have a terminating point on, say, 31 March, and which is advertised now throughout the professions, might be an appropriate mechanism for giving four months notice or reasonable notice that anybody who invests in term deposits which go on after that might then be on notice that they stand to lose if they do not act in accordance with the Bill. However, what the Attorney-General's officers might care to do is have some discussion with the Real Estate Institute and the Land Brokers Society on the telephone to try to get some indication as to what length of term deposit is current at the moment. It may be that there are some which are on six or eight months term deposit already, not in anticipation of this Bill coming into effect, but just as part of the normal course of investment of clients' moneys. I think that that needs to be sorted out and I would appreciate it if the Attorney-General did that before the Bill was considered in the other place.

The ACTING CHAIRPERSON (Hon. R.J. Ritson): I point out to members that the schedule of transitional provisions is, in fact, not a schedule to the whole Bill but a schedule to clause 15, which we have just passed, and the other schedule labelled 'schedule' is a schedule to the whole of the Bill. I want to make that clear, so that, if there had been any objection to debating the first schedule after we passed it, the objection would show.

Schedule passed.

Title passed.

Bill read a third time and passed.

SECOND-HAND MOTOR VEHICLES ACT AMENDMENT BILL

In Committee.

(Continued from 18 November. Page 2002.)

Clauses 2 to 4 passed.

Clause 5—'Dealer must be licensed.'

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

Page 2, line 7—After 'subsection (2)' insert 'and substituting the following paragraph:

(a) a licensed credit provider—

(i) whose business as a dealer is incidental to the credit business;

and

(ii) who, in carrying on business as a dealer, observes any requirements imposed by regulation for the purposes of this paragraph;'

In the principal Act section 9 provides at subsection (1):

A person shall not carry on business as, or hold himself out as being, a dealer unless he is a licensee. Penalty $5 000.

It is provided in subsection (2):

This section does not apply to—*(a)* a licensed credit provider whose principal business is not the selling of second-hand vehicles.

So, such persons were provided with a statutory exemption expressed in the Act. Clause 5 provides:

Section 9 of the principal Act is amended by striking out paragraph *(a)* of subsection (2).

So, that statutory exemption is taken away. The Attorney-General in his second reading explanation said that, while that exemption was to be taken away (and it is an exemption that has applied since 1971, when the legislation was first brought in), it would be provided by way of regulation under the existing power in the Act, which is section 6, which states:

The Governor may, by regulation, exempt a specified vehicle or class of vehicles; a specified person or class of persons; or a specified transaction or class of transactions, from compliance with this Act or a specified provision of this Act either unconditionally or subject to conditions.

Previously, credit providers were provided with a statutory exemption but now that is taken away and the Minister has said that he will provide them with a conditional exemption under the existing powers by way of regulation. The main problem with this is that, while I accept that this Attorney-General will do what he says he will do—that he will provide an exemption—it is a pretty poor substitute for a statutory exemption to have one which the Minister said he is going to provide subject to conditions by way of regulation and you do not know what sort of conditions.

He has said that he will go further than the existing exemption because the existing exemption is only in regard to the licensing provisions. Of course, he can do that already under the existing section 6. He can go further and grant wider exemptions and subject to conditions.

As I say, I have no hesitation in accepting the Attorney-General's undertaking, but the problem that I have is that,

if exemptions are provided only by way of regulation, then, as all members of this Council know, when the regulation comes before Parliament and lies on the table of both Houses for 14 sitting days, it cannot be amended. It can only be accepted or rejected. That really means that it is taken right out of the hands of Parliament, because, if the exemption is not satisfactory, Parliament cannot strike down the regulation because, if it does, it takes away the exemption—and some exemption is better than none.

What I propose to do in this amendment is, first, to slightly change what is in the existing section 9 (2), which provides:

This section does not apply to a licensed credit provider whose principal business is not the selling of second-hand vehicles.

I want to make the exemption apply to a licensed credit provider whose business as a dealer is incidental to the credit business. That is somewhat stricter than the provision in the principal Act. Secondly, the amendment provides:

... who, in carrying on business as a dealer, observes any requirements imposed by regulation for the purposes of this paragraph.

So, instead of doing what the Bill does and saying that the exemption is to be provided by way of regulation, I want to say that there shall still be a statutory exemption provided to the credit provider, but that conditions may be imposed by way of regulation. That seems to me to give the Government the same powers while retaining the powers of the Parliament.

The Attorney-General, in his second reading explanation, said that the present provision in the Act was wide enough to allow credit providers who were not really connected with the motor car industry to, in effect, act as unlicensed second-hand motor vehicle dealers. I have made inquiries about that. While the Motor Traders Association says that it supports the Bill in its present form, it acknowledges that there is no evidence that credit providers are acting, in effect, as unlicensed second-hand motor vehicle dealers.

I have also spoken to the Finance Conference of Australia, which represents credit providers, and which supports what I am doing. I think it would like me to do something further than that. There is no evidence of any abuse.

The Hon. C.J. Sumner: That's not right. I told you you were wrong before. You aren't taking any notice.

The Hon. J.C. BURDETT: No doubt, the Attorney-General in a moment will tell me that there is evidence of abuse, but the motor traders were not able to tell me that and, certainly, the credit providers were not able to tell me that. Whether or not there is evidence of abuse, I would have thought it would be much more effective and sensible to adopt the procedure which I have suggested, namely, that we provide a statutory exemption and enable the Government to impose conditions on it if it wants to. I can see no objection to that—that we make sure the credit providers have an exemption, but the Government can provide by way of regulation any exemption it wants to.

The reason for the exemption in the principal Act, of course, was where credit providers are selling repossessed vehicles or vehicles which have been returned pursuant to contract. For those reasons, I move the amendment.

The Hon. C.J. SUMNER: The evidence is direct evidence that someone who is a credit provider wrote to the Department of Public and Consumer Affairs wanting to establish a second-hand car business, and asked whether they had to be licensed. Under the existing law, we had to say that they did not. That is the evidence. So, someone actually wanted to do it. I do not know what more definite evidence one can get than that. We responded by saying, 'It is not in our view appropriate, and, if you want to conduct yourself as a second-hand motor vehicle dealer, you ought to get the appropriate licences.' I think they have accepted that, and we have now had the potential loophole identified, so we are acting to close it.

The Government does not accept the amendment. The Hon. Mr Burdett may object to the proposal to provide the exemptions, subjects and conditions entirely by regulation under section 6 of the Act, but Parliament has already passed section 6 of the Act which explicitly contemplates leaving some exemptions to be made wholly by regulation. That is already in the existing Act.

The Hon. Mr Burdett himself, shortly after this Government took office, introduced a Bill which included the same proposed section 6 explicitly contemplating exemptions of vehicles, persons or transactions to be made entirely by regulation. So, he has proposed a Bill in this House, and I think it was his Bill that was picked up. Now he is saying it should not be used.

The Hon. J.C. Burdett: No, I am not, because under section 9 of the principal Act there was a statutory exemption—in the same Bill, the same Act.

The Hon. C.J. SUMNER: Now the exemption will be provided by the use of section 6, which is in the Bill and was in the Bill introduced by the Hon. Mr Burdett.

The Hon. J.C. Burdett: So was section 9.

The Hon. C.J. SUMNER: I am not quite sure of the point of that. Section 9 is now indicated as being a potential loophole which needs to be closed. In any event, if we pass the amendment moved by the Hon. Mr Burdett we will end up with a dog's breakfast of monumental proportions. His proposed amendment would create a situation of some complexity and difficulty. It is, in effect, an exemption from the requirement to be licensed subject to conditions to be prescribed by regulation, but that only relates to the requirement to be licensed. There remain all the obligations on people who are by definition dealers, whether licensed or not, such as the obligation to give the statutory warranties and to repairs.

The Government actually proposes to go further than the Hon. Mr Burdett's proposal. It is proposing to exempt licensed credit providers who are selling vehicles acquired as a direct result of their credit providing business not just from the licensing provisions, but from the whole of the Act.

I said, in introducing the Bill, that it is proposed to put one condition on that exemption—that when credit providers conduct their own auctions of their own vehicles they will have to give written notice making clear that they are not offering consumers the statutory warranties given by the dealers under the Act. That notice is already given by auctioneers when auctioning vehicles on behalf of non dealers. It simply means that consumers get the same information, regardless of who is conducting the auction. The Consumers Association has supported the proposal; finance industry leaders, including some directly involved in the area, have also informally indicated their support.

The amendment has two defects: first, it does not do what the Hon. Mr Burdett wants it to. He says he wants to anchor the exemption in the Act and then modify it, if necessary, by regulation, but all that is anchored is the exemption from licensing. The amendment does not and cannot affect the proposed exemption from the rest of the Act, notably the warranty requirements.

The second defect is that if the amendment is carried it will create untidiness and possible confusion. The credit providers will have an exemption from licensing under section 9 of the Act, and an exemption from the rest of the Act in the regulations. People will have to look in two places for what is really the one exemption. I am not quite

sure how that assists clarity in industry in dealing with the Act.

I have received a letter from the Australian Finance Conference which indicates some uncertainty about whether the Government's proposal would have the effect of continuing the licence exemption as well as extending the exemption to the rest of the Act. However, the matter has been discussed with the finance industry leaders of this State. They are content for me to say that they are quite satisfied with the Government's proposal and its approach to giving effect to the proposal; so is the Consumers Association, and so, as the Hon. Mr Burdett has told the Committee, is the Motor Traders Association.

I would have thought that the matter could be left to the provision that was in a Bill introduced by the Hon. Mr Burdett, namely, section 6, which provides for exemptions to be made by regulation and to be made wholly by regulation, instead of having this dog's breakfast of half an exemption by the Act and the other half by regulation.

The Hon. J.C. BURDETT: The Bill which I introduced did two things in this regard: it provided, as I said before, in section 6 (which I quoted before) that the Governor may, by regulation, exempt. It also said, in section 9:

(1) A person shall not carry on business as, or hold himself out as being, a dealer unless he is a licensee. Penalty $5 000.

(2) This section does not apply to—

(a) a licensed credit provider whose principal business is not the selling of second-hand vehicles;

So, two things were done by the Bill I introduced. It gave the Governor a power by regulation to exempt, but it also provided a statutory exemption to a credit provider to which he was absolutely entitled. I am saying that we should retain that situation. We should tighten up slightly the definition of a credit provider to say 'whose business as a dealer is incidental to the credit business,' which is a tightening, and to say, further, in the amendment which I have moved, 'who, in carrying on business as a dealer, observes any requirements imposed by regulation for the purpose of this paragraph.'

The Government can do what it could not do before. It can exempt by regulation—which it always could. It must provide—as it always had to—a statutory exemption to credit providers, but I am saying in this amendment that the Government may impose any conditions by way of regulation. For the first time in the Committee debate the Attorney-General has said that there is evidence that someone was trying to evade the Act, namely, that a credit provider had asked whether they had to be licensed as a second-hand motor vehicle dealer, and that that was evidence that they were trying to evade the Act.

I am not sure that it was. Even if it was, that is taken care of in the amendment I have moved because conditions can be imposed. The Attorney-General says that he is proposing to go further than the present exemption, and that is fine. The power is already there, and the Government can provide any exemption that it likes under section 6. However, I am saying that credit providers should not be restricted to such exemptions as may be granted by the good grace of the Government and which Parliament cannot effectively strike down; and that they should be provided with a statutory exemption.

In regard to what the Attorney-General said about the Finance Conference of Australia, I have received its letters; also, I have received letters from a number of its members which indicate that those members do not accept what the Government is doing and that it does restrict them. In fact, most of the letters that I have received have suggested that I should have gone further than I propose to do. For those reasons I continue with the amendment.

The Hon. I. GILFILLAN: I believe that there is good sense in the amendment. We have consistently said that we view with some concern provisions in any Bill which are left to regulation, and that applies to either Party that may be in government.

The Hon. C.J. Sumner interjecting:

The Hon. I. GILFILLAN: I have not received any letters from anyone, so I come into this fairly clean skinned. It seems to me that the exemption in the simple form that the amendment is intending is reasonable to put in the Bill, if it is the intention of the Attorney-General and the Government, and the Attorney has made quite plain that it is; then the detail and particulars that will be imposed by regulation will be spelt out, and that capacity is here as well. I support the amendment.

Amendment carried; clause as amended passed.

Clause 6—'Application for a licence.'

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

Page 2, line 39—After 'conditions' insert '(being conditions that the tribunal is authorised by the regulations to impose)'.

New subsection (10) provides:

A licence may be granted under this section on such conditions as the tribunal thinks fit.

Other Bills have contained provisions like this and the Opposition has objected to them on those other occasions as well because the provision is so broad and concerns any condition that the tribunal can impose. It may be that you do not sleep with your wife, or whatever you can imagine—any condition whatsoever. While that may be an exaggeration, the conditions could be totally unrelated to what is required.

I suggest that the nature of the conditions that the tribunal may impose shall be set out in the regulations which come before Parliament and may be disallowed by Parliament, so that one has a set of rules and guidelines. The regulations indicate the kind of conditions that the tribunal, in its discretion, may or may not impose, and then the tribunal can do what it likes about that; it can impose conditions, or it may not. However, the tribunal is a quasi-judicial authority and should not be able to set out policy. Policy is for the Parliament or, at least, subject to the power of the Parliament. Policy should be set out in the Act and if that cannot be done because of reasons of detail—and there are many occasions when that cannot be done—it should be done by regulation, which Parliament still has some control over. However, courts and tribunals should not be able to impose policies. What I suggest in the amendment is compatible with what, I think, was the intention of the Bill in any case—that the kind of conditions that may be imposed should be prescribed by regulation and then the tribunal can either impose or not impose them as it sees fit.

The Hon. C.J. SUMNER: The Government opposes the amendment. It seems to me to be reasonable that the Commercial Tribunal (which is after all chaired by a judge of the District Court) should be able to set down conditions that can be applied to a licence. The proposed amendment seems to suggest that the Commercial Tribunal cannot be expected to exercise discretions properly according to law and the dictates of reasonableness.

There are the usual requirements of providing fair notice to an applicant of issues which the tribunal may want to be satisfied about. I do not accept that. Apart from that, the purpose of providing such flexibility is to allow the tribunal to respond appropriately to an unusual situation that does not fit neatly into the normal categories. Without this flexibility applicants may be disadvantaged. Where there is no flexibility there is common experience in this and

other jurisdictions that an authority will tend, when faced with a difficult choice between granting or refusing an unusual application, to refuse it.

The effect of the amendment would be that some applicants who are otherwise in a general way fit and proper persons to enter the business of selling used motor vehicles could be prevented by this lack of flexibility from doing so until and unless a suitably accommodating regulation could be made. It ought to be noted that this proposed general power to impose conditions does not stand alone. The companies quote specific criteria for licensing and specify conditions for some predictable situations.

The Hon. I. GILFILLAN: I oppose the amendment. The status of the tribunal is certainly adequate for it to be entrusted with this responsibility; it is given other quite substantial decision-making powers in subclause (9), and it seems unnecessarily restrictive for it to be obliged to make its decision only on conditions which have been put out by regulation. I oppose the amendment.

The Hon. J.C. BURDETT: The matters raised by the Attorney I cannot agree with; nor with those raised by the Hon. Mr Gilfillan, because even a court cannot determine policy. A court has to act according to the law and according to the guidelines prescribed. As I say, that is what the tribunal ought to have to do. It should not be able to impose any kind of condition at all. The conditions ought to be set out by the Legislature, the law maker, or at least be subject to the scrutiny of the Legislature. I pose this: clause 6 substitutes the new section 9 and new section 10, which provides:

> A licence may be granted under this section under such condition as the tribunal thinks fit.

New section 11 goes on:

> If the financial resources, or the knowledge or experience, of an applicant who is a natural person are in the tribunal's opinion insufficient to justify granting a licence to the applicant under subsection (9), the tribunal may nevertheless grant a licence to the applicant but on the condition that the licensee will not carry on business as a dealer except in partnership with some other licensed dealer approved by the tribunal.

I approve entirely of that provision, but in this case that condition was written into the Bill, and conditions that the tribunal ought to be able to apply or not apply should either be written into the Bill, as this one is, or else be prescribed by way of regulation. I just cannot accept that the tribunal ought to be able to impose any kind of condition that one can imagine. It is a responsible body; it is headed by a judge but, as I have just said, a judge has to apply the law as it stands, and the judge would be in a better position to carry out his function if the law which he has to apply and the guidelines which he has to follow are set out either in the Bill, as they are in new section 11, or in regulations which I propose.

Amendment negatived; clause passed.

Clause 7 passed.

New clause 7a—'Registration of dealer's business premises.'

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

> Page 3, after line 14—Insert new clause as follows:
> 7a. Section 12 of the principal Act is amended—
> *(a)* by striking out from subsection (1) 'A' and substituting 'Subject to this section, a';
> and
> *(b)* by inserting after subsection (3) the following subsection:
> (3a) The Tribunal may, on the application of a licensee, permit the licensee on a day, or over a period, specified by the Tribunal, to carry on business as a dealer at a place (other than the registered premises of the licensee) specified by the Tribunal.

This amendment is being put forward to provide for the future a simple way of dealing with a situation which was raised with the Government very recently. Under the Act as it stands, licensed dealers are only permitted to deal from their registered premises. That limitation is part of the scheme within the Act designed to discourage so-called 'back-yard' trading by dealers. There is no provision in the Act for making any exception to that rule, apart from going through the processes of making a regulation to give an exemption.

An application has been received from a group of dealers who wish to conduct a joint sale over a period of a day or so, as a special one-off exercise, at a separate venue from any of their own registered premises. The arrangements have been scrutinised and the Government is satisfied that the proposals will enable consumers to have all the information and protections intended to be given under the Act. An exempting regulation is being prepared to allow those dealers to conduct that sale at the proposed time and place, and subject to the normal safeguards of the Act. As things stand, that is the only way the special sale can be legalised under the Act.

It is reasonable to expect similar applications in future, and undesirable to have to make an exempting regulation on each occasion. However, to preserve the integrity of the Act's scheme of registered premises, such events should be treated as special occasions requiring individual assessment. Accordingly, this amendment would allow applications for special sales of this type to be heard by the Commercial Tribunal. It would also empower the tribunal to make stipulations about the time and place of any trading away from registered premises. It would not allow any dilution of the other obligations under the Act.

The amendment adopts, in closely similar terms, the substance of section 12 (5) of the Second-hand Goods Act 1985. The Motor Traders Association has been consulted about the proposal to make this amendment.

The Hon. J.C. BURDETT: The Opposition accepts the amendment. Generally speaking, I am somewhat cynical about amendments introduced by the Government shortly after a Bill is introduced into Parliament, but in this case there was the reason set out by the Attorney that that particular organisation did seek this exemption shortly after the Bill was introduced. I must thank the Attorney for his courtesy, because his officers informed me of this last week at some time, and I certainly have no objection to the amendment, which was explained by the Attorney. I will not repeat that. The Opposition supports the new clause.

New clause inserted.

Remaining clauses (8 to 10), schedule and title passed.

Bill read a third time and passed.

SUMMARY OFFENCES ACT AMENDMENT BILL (No. 4)

Adjourned debate on second reading.

(Continued from 18 November. Page 1968.)

The Hon. K.T. GRIFFIN: The Opposition supports the Bill. In the last session of Parliament a Bill was passed in this place dealing with the rights of children upon arrest. As I understand it, it did not pass the House of Assembly. That amendment provided for the mandatory presence of a solicitor, relative, friend, or nominee of the Director-General of the Department for Community Welfare to be present at any interrogation or investigation of a minor in custody. Since then the Attorney-General has indicated that there are potential practical problems in requiring the attendance of an adult witness on every occasion that a child is arrested.

Further, it should be noted that at the end of the first session this year there was some public debate about the amendments which had been considered by the Legislative Council in that session and concern was expressed by some lawyers, particularly the Criminal Law Association. As I understand it, the police do have in their general orders a provision which requires them to interview a child in the presence of the child's parent or guardian when practicable. The Attorney-General suggests that the attendance rate of parents at interviews is one in 10. That does not suggest a particularly high level of concern by parents for the welfare of their children. In these circumstances the Government has identified that the primary burden of providing an adult witness under the earlier Bill would fall on the Department for Community Welfare.

As the Attorney-General indicates, there is apparently some difficulty in providing numbers of these officers after hours in the far northern areas of the State to adequately provide the service required by the statute. In view of this potential practical problem this Bill makes it mandatory that an adult be present at an interrogation where a minor is arrested on suspicion of having committed a serious offence. Where a child is arrested for an offence which is not a serious offence, there is an onus on the member of the Police Force conducting the investigation to make reasonable attempts to secure the attendance of an adult at the interrogation.

According to the Bill a serious offence is one that is punishable by imprisonment of two years or more. The category of adult persons who can be called on to be present with a child has been widened to include any other suitable adult representative who is not a police officer or an employee of the Police Department. The Attorney-General notes that this will ease the burden on the Department for Community Welfare in being called on in the last resort.

The Bill also makes another significant change: under section 78 of the Summary Offences Act an adult person may be held for four hours after arrest and a further four hours if a magistrate extends that initial period. Under the Bill that period is not to include any period of delay occasioned in arranging for a solicitor or other person to be present. That really reflects one of the concerns I expressed when section 78 was amended, that there was a question particularly in outlying parts of the State as to whether that four hour detention would expire before a solicitor or adult person was present. That has now been effectively overcome by this Bill.

The only comment made to me in referring out the Bill for comment in the very short time that it has been available is in relation to the apparent inflexibility of the provision. My attention has been drawn to a Supreme Court case, the *Queen v. Conley*, 1982, 30 SASR, in particular at page 240. In that case the Chief Justice gave consideration to the requirement of the then section 78 that a person apprehended be forthwith delivered into the custody of the member of the Police Force. The Chief Justice commented that that is undoubtedly strict and was intended by Parliament to be strict. He also then observed that the obligation imposed on arresting police officers must be understood reasonably, and he went on to say:

> Nevertheless the word 'forthwith' cannot be ignored. No matter how reasonably the obligation is interpreted, the word 'forthwith' leaves little latitude. It means that the arrested person must be taken to the police station in the shortest time which is reasonably practicable in the existing circumstances.
>
> Some delay may be necessitated by the circumstances and may therefore be consistent with the obligation to deliver 'forthwith'. There is a competing obligation to keep the peace, to investigate the commission of crime, and to collect evidence. It may be imperative to put some questions to the arrested person without delay in order to clarify some aspect of the situation. It may be necessary to obtain the names and addresses of witnesses at the scene or to take steps to preserve evidence, perhaps even to conduct a quick search of the locality. It may be necessary to cope with an emergency situation. For example, a suspect may be able to lead immediately to a victim who is being held captive, or to money or other property which is in danger of dissipation or destruction, or to accomplices who might otherwise escape. Deviations from the direct route to the police station in order to identify objects or places, or to collect articles from the arrested person's place of residence, place of business or motor vehicle may be regarded as permissible provided that the delay involved is brief. It is not possible to specify exhaustively the examples of delay which may be consistent with compliance with the requirements of the section. It can be said, however, that some delays are not so consistent. It is not permissible to delay delivery of the arrested person to the officer in charge of the police station in order to conduct a systematic interrogation.

He also said:

> Generally speaking, it will not be proper to delay delivery simply to pursue further inquiries into the suspected crime or to make a protracted search of the arrested person's home or of other places or for the purpose of an identification parade.

This really draws attention to the difficulties which police officers may face as a result of the strict application of the amendments proposed in the Bill. The reference in the *Queen v. Conley* identifies problems with the old section 78 but, I suggest, certainly does not deal with the new amendments to section 79.

I would like the Attorney-General to consider the flexibility, if any, which might be available in the sense that a minor is apprehended and the police are then required to arrange for an adult to be present unless that is not possible and the offence is not punishable by imprisonment for two years or more. There are circumstances where it may be appropriate to divert from the letter of the law encompassed by this Bill, and the circumstances to which I have referred may be among them. In those circumstances, while I raise the question mark over some application of the Bill, I do not oppose it. I think it is reasonable. I support the second reading because it is reasonable and because it is generally consistent with what I supported in February and March of this year and it does make for greater protections for young offenders who are interrogated by the police. So, with those reservations—which are not central to the consideration of the Bill but are still relevant to it—I indicate my support.

The Hon. C.J. SUMNER (Attorney-General): I am not quite sure what those reservations relate to as this Bill applies to children procedures that were passed by the Parliament with respect to adults some 12 months or so ago. The honourable member did not raise those issues at that time.

The Hon. K.T. Griffin: I am not raising them in any sense other than to suggest that the mandatory requirement for an adult to be present—and I have no quarrel with it—in practical terms might create the sort of problems referred to in that case to which I have referred, where there might be a need immediately to deal with the question of the location of a victim, or whatever, and the mandatory requirement may preclude that sort of diversion from the letter of the law embodied in this Bill. That is all. I am not critical of the thing.

The Hon. C.J. SUMNER: The principle, in any event, in police general orders now is that an adult is to be present when a juvenile is being questioned. I think that the exceptions allowed in the Bill—that is, the people beyond the parent who are entitled to be the adult that enables the requirements of the Act to be satisfied—are sufficiently broad as to indicate that that would probably not be a problem with any practical effect.

Nevertheless, I thank the honourable member for his support of the Bill. The only other issue I wish to put on

record is one which relates to a concern that has been expressed that the definition of 'serious offence' means that the arrest and detention provisions can apply for comparatively minor offences. The definition of 'serious offence' is one that is in the adult law, namely, imprisonment for two years or more, and that picks up the offence of larceny.

The offence of larceny, of course, may involve a substantial amount of money or may involve a very small amount of money—but it is still picked up under the definition of 'serious offence', both with respect to adults and now with respect to children. Even though that provision exists with respect to adults, the police obviously do not arrest in every case of simple shoplifting.

I have raised this concern about the definition of 'serious offence' with the South Australian Police, with a view to the possibility of including something in police general orders to the effect that the power to detain children for questioning after arrest should not be used in relation to offences which, though falling within the definition of 'serious offence', are not really serious because of the amount involved. I believe that this will ensure that anomalies are not created in the legislation where the actual offence may involve a very small amount of money but be brought within the definition of 'serious offence', because it is defined by reference to its being an offence involving imprisonment for two years or more.

I have been advised that the Police Commissioner is happy to include in general orders an instruction to the effect that the power to detain children for questioning after arrest should not be used in relation to offences which, though falling within the definition of 'serious offence', are not really serious because of, for example, the amount involved. The Commissioner will also include a provision similar to that which relates to the arrest of a child. General orders provide that a member of the Police Force shall obtain the permission of the appropriate commissioned officer before arresting a child. If prior approval cannot be obtained, an arresting member must advise the appropriate commissioned officer as soon as practicable of the reasons necessitating the arrest.

General orders will also stipulate that a similar provision will apply to a child detained for questioning—that is, a child may not be detained without the permission of the appropriate commissioned officer. If prior approval cannot be obtained, the appropriate commissioned officer must be advised of the reasons. That general order ought to overcome the concerns that the detention procedures could apply to comparatively minor offences because of the amount of money involved, although technically being within the definition of 'serious offence'. I think provision in police general orders to this effect will overcome the problems that have been expressed about this possible effect of the Bill which, I point out, is an effect that already applies in respect of adults in any event.

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

COMMERCIAL TRIBUNAL ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 19 November. Page 2064.)

The Hon. K.T. GRIFFIN: This Bill deals with the Commercial Tribunal Act. Members will recall that it was established in 1982 by the Tonkin Liberal Government to bring together disparate jurisdictions exercised by a variety of tribunals and boards. Generally speaking, it now comprises a Chairman who is a judge and in some areas sits with two other lay persons, one of whom is drawn from a panel of members of a class which might be affected by a specific piece of legislation, and the other from a panel of persons who might generally be described as consumers. There is a Commercial Registrar, who must be a legal practitioner, but the Bill seeks to provide for deputy commercial registrars to be appointed. That is largely because the Commercial Tribunal has been given jurisdiction this year in relation to commercial tenancies, second-hand motor vehicles, second-hand goods, land agents, brokers and valuers, and is to acquire at least the jurisdiction relating to travel agents.

To handle the administrative aspects of that workload, the Attorney-General is proposing that there ought to be deputy registrars. There is also a provision that they need not be legal practitioners but, if they are not, they are not entitled to exercise any of the jurisdictions of the tribunal but may only act in an administrative capacity. I see no difficulty with that restriction. It is an important one because, if registrars are to exercise any quasi-judicial responsibilities, then they ought to have the benefit of some legal training.

In conjunction with the appointment of deputy registrars, the Bill provides for a procedure for review by the Commercial Tribunal of decisions made by any registrar. Again, that seems to me an appropriate safeguard and there is no difficulty with that. In the principal Act, there is no mechanism for enforcement of orders of the tribunal other than orders for the payment of pecuniary sums. The Bill proposes overcoming that apparent difficulty by making a failure to comply with a non-pecuniary order a contempt of the tribunal. That contempt may be punishable by a fine, upon prosecution for a summary offence, or by the tribunal itself. If it is punishable by way of prosecution for a summary offence, then of course all the rules of evidence apply in the court of summary jurisdiction. The wider areas by which the Commercial Tribunal can ordinarily inform itself do not have any application to that prosecution, and the offence has to be proved beyond reasonable doubt.

The Bill also is providing for the tribunal itself to punish the contempt, and that is quite a significant addition to the tribunal's power. I think it raises some areas of concern if there are not adequate rights of appeal or if the evidence dealing with the contempt is to be limited to that material which may ordinarily be regarded as evidence within a court. Because a finding of contempt is a matter of considerable seriousness there ought to be an appeal as of right to the Supreme Court, and that ought not to be limited as it is under the principal Act at present where the rights of appeal may be as of right to the Supreme Court on matters of law but only by leave of the tribunal or the Supreme Court on other matters.

My proposal (and I will be seeking to move an amendment to effect this) is that in this area of dealing with contempt there should be a broadening of the right of appeal of affected parties by allowing an appeal as of right on questions of law and fact to the Supreme Court. In addition, I want to move an amendment which provides that the tribunal, in dealing with a contempt of the tribunal, is to be bound by the rules of evidence. That would then place the person being dealt with for contempt in no worse a position than if that person were dealt with in a court of summary jurisdiction where material which may be presented must be evidence and comply with the normal rules of evidence applicable in the courts. They will be two amendments I will be raising during the Committee stage.

The Commercial Tribunal Act, as I have indicated, provides for an appeal on questions of law as of right, but

otherwise only by leave of the Commercial Tribunal or the Supreme Court. The sort of jurisdiction that has been conferred on the tribunal, even this year, has broadened the responsibilities of the tribunal quite significantly and allows it to make orders which can be worth a considerable amount of money. In those circumstances it seems to me that wider rights of appeal to protect the litigant should be considered.

Where disciplinary questions are being resolved under any of the licensing or registration provisions of Statutes, I propose that the *status quo* remain. However, where the tribunal is determining disputes between citizens on breaches of contract or other issues involving what could be large amounts of money or which could have quite serious consequences for either one or both of those litigants, I believe that we should now move to the point where there ought to be a right of appeal to the Supreme Court automatically, rather being limited as it presently is. I will be seeking, also, to widen that right of appeal as we consider the Bill in Committee.

As I say, the tribunal now has quite extensive jurisdiction. Those who are affected by its orders ought to be in no worse a position than persons in the ordinary courts who might have matters before those courts of similar seriousness to matters before the Commercial Tribunal. Those people appearing before the ordinary courts have rights of appeal which are unlimited to a very large extent and therefore the same provisions ought to apply in relation to the Commercial Tribunal. I support the second reading of the Bill and I indicate that, during the Committee stage, I wish to move the amendments which I have outlined.

Bill read a second time.

In Committee.

Clause 1 passed.

Progress reported; Committee to sit again.

LOCAL GOVERNMENT ACT AMENDMENT BILL (No. 4)

Adjourned debate on second reading.

(Continued from 19 November. Page 2063.)

The Hon. DIANA LAIDLAW: The Opposition supports this Bill, which seeks to make a number of amendments to the provisions of the Local Government Act relating to the conduct of local government elections. The amendments are based on the recommendations of the Local Government Election Review Working Party. In 1984 Parliament extensively revised the electoral provisions of the Local Government Act and this step was part of the first stage of an exercise to rewrite in five stages the whole of the Act, the process commencing with the Hon. Murray Hill in 1981.

In 1984 debate on the Bill was long and at times heated, with a conference of both Houses being required to resolve a number of the issues which, as I recall, included the electoral system to be employed, the method of marking voting papers, whether all or a proportion of the members should face the electorate at each periodic election, the term of office for aldermen and councillors, the times that the council could meet and the role of the Local Government Advisory Commission. During that debate in 1984 the then Minister of Local Government (Hon. Gavin Keneally) promised the establishment of a working party following the May 1985 election to review all aspects of that election. The working party was duly appointed and comprised representatives of the Local Government Association, the Institute of Municipal Management, the Municipal Officers Association and the Department of Local Government.

The working party received and assessed a large number of submissions—65 in all—recommending variations to the administrative arrangements for the conduct of the elections, and it conceded that most of the variations sought in the submissions had merit. Examples of some of the measures that were raised in submissions upon which the working party recommended no change are worth noting in this second reading debate. They include:

1. Transferring responsibilities for the preparation and maintenance of voter rolls to the Electoral Commissioner.
2. Empowering an electoral officer to vary the voters roll where it was found that an elector was enrolled in the wrong ward.
3. Changing the date for the conduct of periodic elections from the first Saturday in May.
4. Admitting to the court ballot-papers correctly marked but not contained in ballot-boxes.
5. Reducing the number of scrutineers per candidate at the counting place from two.
6. The obligation on all candidates to submit a copy of all electoral material to the returning officer.
7. The reintroduction of restrictions on candidates canvassing on the day of the election.

As I indicated, all those matters were raised in submissions to the working party, but in each instance it recommended against alteration to the Act, and the Government has accepted those recommendations. The working party's report was released for public comment in June 1986, and in her second reading speech the Minister notes that the recommendations received widespread support, with the exception of two examples. I quote, as follows:

> . . . the first, a recommendation that where a group of persons had failed to nominate an agent that the first member of the group in alphabetical progression should be enrolled. The second, a recommendation that advanced polling places, which would operate in the same manner as a polling place on the day of the election, be established to receive votes prior to the day of the election. Neither of these matters has been included in the Bill.

The Liberal Party endorses that decision. In relation to the working party's report, I was particularly interested to note the inclusion in relation to the performance of new electoral systems which permitted councils to elect to use either the proportional representation counting system or the optional preferential system. The conclusions that the working party reached are as follows:

> Where the proportional representation system was used, a greater percentage of voters had a candidate of their first preference elected. The working party is therefore of the view that the proportional representation system is the fairest and most equitable system where two or more candidates are required to be elected. However, the working party does not consider it necessary to recommend that use of the system be made mandatory as there is evidence that councils where such a situation exists are moving to adopt proportional representation.

Whilst I support the conclusion that the working party reached, namely, that it was not necessary to recommend that the system of proportional representation be made mandatory, I was particularly interested in evidence to support the reference that the council was moving to adopt proportional representation, because it seemed to me, from the observations made by the working party and noted in paragraph 6.2.3, that the facts were contrary to the conclusion reached by the working party. I would just like to note some of those observations in relation to the counting system, as follows:

> First, at the 1985 periodical election in all but two cases the majority of voters had a candidate of their first preference elected, no matter which system was used.
>
> Secondly, the optional preferential system is simpler to count and in the working party's experience more easily understood by voters.

Thirdly, the proportional representation system worked well at the 1985 elections.

Fourthly, the proportional representation system is more difficult to count and in an election where there are a large number of candidates with a small population of votes the count can be complex. In one such count reviewed by the working party where there were 12 candidates for five positions and only 382 votes, 30 separate counts and sub-counts were required to obtain a result.

Fifthly, where under the proportional representation system there were identifiable groups contesting the election, candidates from the groups were elected in the proportion that the total number of the votes received by the group represented as a proportion of the total population of votes.

Sixthly, that the optional preferential system discourages 'ticketing'. Finally, no matter which system of counting is adopted a candidate to have any chance of election must obtain first preference votes and both systems encourage personal effort.

As I indicated earlier, I believe that those observations by the working party give rise to questioning. In the 1985 election, only 32 councils, or 27 per cent, elected to use the proportional representation method of counting, while 92 councils, or 73 per cent, chose to use the optional preferential method.

Before considering specific amendments, it is interesting to note some of the other statistics that the working party cited in relation to the 1985 election: 620 469 electors were entitled to vote in council elections where elections were held and of that number 199 628 took the opportunity to vote. Voter turnout varied significantly from area to area, with the lowest turnout being 5.88 per cent and the highest 80.9 per cent. The working party noted that the percentage turnout of voters was highest in rural areas, but it is important to recognise that the number of enrolled voters in rural areas is significantly less than in the metropolitan area.

One interesting statistic was the very low informal vote, being only 1.61 per cent of total votes cast. Not only is that an interesting statistic but also it is very important for us all to note in our efforts to ensure that we adopt an electoral system that provides the least room for error. As I noted at the outset, the Bill makes a number of important amendments to the provisions of the Act relating to the conduct of local government elections.

One such provision inserts a new section 106, which allows councils in rural areas with a small number of electors to use a postal ballot in lieu of opening polling booths. This provision would apply where the Governor was satisfied on the application of a council that a postal ballot should be held in lieu of opening polling booths. This is an important amendment, because it recognises that high costs are incurred by some councils where there is a small number of electors.

I understand that a similar provision already exists in Queensland. A further important provision aims to amend section 121 of the Act to permit the primary count to be conducted in the polling place in lieu of a central polling place to assist the speeding up of the counting process. This amendment had been sought by a number of the submissions to expedite the count. Clause 20 clearly lays out the procedure which must apply in relation to this amendment.

Another important new section is section 112a which relates to how-to-vote cards, which can now be displayed in polling booths. Again, this change was sought in many of the submissions. It will bring local government electoral procedures into step with practices already applying in Federal and State elections. Since it has been employed in both State and Federal elections in recent years I understand that it has been found to provide positive benefits to candidates and voters alike. Controls similar to those prescribed in section 66 of the Electoral Act are incorporated within this amendment to limit any abuse.

One electoral provision dealt with in the Bill which did not arise from submissions to the working party or recommendations by the working party seeks to allow the Governor to suspend the periodic elections in an area affected by a proposal for amalgamation of areas which is before the Local Government Advisory Commission. I understand that currently 25 of the 126 councils in South Australia (including the newly established councils of Roxby Downs and Coober Pedy) have proposals before the Local Government Advisory Commission to rationalise council boundaries.

In her second reading explanation the Minister provided the following rationale for this amendment:

It will allow the Governor to suspend the periodical elections in any area affected by a proposal for amalgamation of areas which is before the Local Government Advisory Commission. Honourable members will be aware of moves emanating from within local government to rationalise the boundaries of councils and presently there are a large number of proposals before the Local Government Advisory Commission. It is clear that the commission will not be in a position to deal with all of these matters before the May 1987 periodical election and it would be unreasonable to ask the councils affected to conduct an election in May 1987 and if any of the proposals for amalgamation are accepted to conduct a further election in the short term thereafter.

In part, the Opposition appreciates the circumstances that the Minister has outlined in her second reading explanation, especially in cases where neighbouring councils are united in their wish to amalgamate. There are (and have been in the past) such instances of councils that have no qualms in this area. One such application currently concerns the council areas of Blyth and Snowtown. However, it is the norm that most amalgamation proposals are received with considerable dissatisfaction by one party or the other. I suggest that it is conceivable, in relation to the proposed Government amendment, that council elections could be suspended in up to 20 per cent of council areas in South Australia.

We therefore intend to move a number of amendments in relation to this provision, the first being a requirement that elections only be suspended with the consent of the councils to which the amalgamation proposal relates. I stress in relation to this amendment that it is only in terms of amalgamation and not mere boundary changes. The second amendment we will be moving is that, for the suspension to be considered, the application for the amalgamation must have been before the Advisory Commission for at least three months. The Opposition believes that this is an extremely important amendment and it aims to avoid manoeuvring by one council or another to frustrate an electoral process that could occur if the protagonists in one council lay claim to another council just prior to the election period.

A further amendment that the Opposition intends to move is on file already in the name of the Hon. Murray Hill and relates to the Advisory Commission and amalgamation of councils. It would provide for the proposal before the Local Government Advisory Commission to be submitted to electors for a poll by those electors. I understand that the Hon. Mr Hill will speak in the second reading debate and outline at greater length the amendments which have the support of the Opposition.

In addition to the amendments based on the working party report there are a number of other matters that the Government has included in this Bill. One such amendment is to section 303 of the Act which is to enable councils to declare public pathways and walkways as public roads. A further amendment to section 359 is to close some public pathways and walkways on a temporary basis. I had assumed that that amendment related to street fairs and the like, but it has been suggested that there are in some council areas a number of laneways between houses.

Clarence Park has been suggested as one such area, and we will be questioning during the Committee stage the

impact of this amendment on obligations of adjoining ratepayers to the maintenance of those laneways: if the council wants those laneways improved, paved, or such like, will a burden be imposed on adjoining landowners and ratepayers by this amendment? In general terms the Opposition supports this Bill but will be moving a number of amendments. I support the second reading.

The Hon. C.M. HILL: I also support the second reading and do not intend to repeat the detailed information that the Hon. Diana Laidlaw has provided to the Council in her contribution. The general headings that the Minister is endeavouring to introduce into the Act have resulted, as was just mentioned, from a working party and deal with general questions on elections and means by which procedures involving elections can be improved. I make two points only from the Minister's contribution in introducing the Bill.

The first deals with the matter of the possible suspension of periodical elections, and I think that that matter should be looked at very carefully by Parliament. The previous speaker has given notice that some amendments will be introduced in an endeavour to improve that part of the Bill. The second matter I query is another issue that was mentioned by the Hon. Diana Laidlaw. That deals with the opportunity for roads to be declared under the Roads (Opening and Closing) Act as public streets.

The Legislature has always been very careful in regard to declaring thoroughfares of this kind to be public streets. I notice that the existing Act, for example, deals with three separate means by which such declarations can be made. The first one deals with the question of a street or road which has had uninterrupted use by the public for at least 10 years. In that situation, that street can be declared as a public street.

The second heading concerns streets or roads which have been formed up by the council and used as public thoroughfares. In that case, if they have been used for five consecutive years, they can be declared public streets. The third provision in the Act on this point deals with land which is used as a street or road but is in private ownership, and the owner is not known and the adjacent owners request that that roadway be declared a public street.

In the Bill we are certainly taking a jump ahead into a rather *laissez faire* approach by simply saying that any public thoroughfare can be declared public for the purposes of the Roads (Opening and Closing) Act. I would ask the Minister if, in her reply, she would give a little more information and the reasons why she feels that a measure so different from the existing Act is needed. One can imagine some situations such as a laneway, walkway or pathway adjacent to urban houses and, if this is suddenly and without notice to adjoining owners declared a public street, it is quite possible, as I see it, that the local governing body could pave that area, perhaps kerb it for purposes of drainage, and then a cost would immediately be placed upon the adjoining owners.

In some cases, the length of the boundaries of adjoining owners would be quite long, because we are talking about pathways that run down along the side boundaries of building allotments, and sometimes these are quite deep. I doubt whether it is fair and just for an owner to be encumbered with that kind of cost completely unbeknown to the owner that such a charge is going to be made. So, at this stage I just seek some more information on that matter.

I make very brief reference to the contingent notice I gave today concerning adding a further clause to this Bill. This proposed clause, which I have already placed on members' files, states that, if a report to the Minister under the South Australian Advisory Commission recommends that two or more councils shall be amalgamated, then the Minister must immediately notify the councils.

It then goes on to state that the recommendation within the report that the Minister has must not be referred to the Government for proclamation for at least two months, and then during those two months a council affected by that recommendation would have the right to put the question to a poll within its area. A council is given six weeks in which to carry out the poll and, if one affected council within the recommendation objects through the machinery of the poll to that amalgamation, then the Minister shall not make any proclamation and the amalgamation shall not proceed.

Local government is becoming more sophisticated in its organisation generally. It has improved communication between councils and local citizens. It is emerging into a human services era in which more and more services will be supplied at the local or grassroots level. As a result, citizens will be more involved in what is emerging right across Australia as community government. As a result, too, more and more local groups will be having their say on local issues. There is a groundswell of public interest in community matters generally. Sensible debate and discussion—although perhaps emotionally charged—can take place and indeed on local issues it should be encouraged. That, surely is part of the democratic process. That groundswell will be reflected in areas where amalgamations are being imposed on some communities. I believe that such communities should have the right to say, by way of a poll, whether they want an amalgamation or not. But I hasten to say that, whereas a few years ago such polls would tend to give a 'No' vote, the electorate is now more educated, more involved and more realistic about the financial situation than was the case previously.

We now have the Local Government Advisory Commission in operation. This relatively new machinery has been introduced and indeed it is a vehicle to hasten amalgamations. It also, of course, takes some responsibility off the shoulders of the government of the day. From the Minister's reply to a question that I asked and another comment that I made, she has convinced me that her general policy is to accept the recommendations of the commission and to proceed to give effect to those recommendations by proclamation. The emotions being stirred up by this commission's activities throughout South Australia at present are very real, and quite serious, and people affected are saying, 'What can we do to have more say in the question, which affects us greatly at the local level?'

As I explained in my proposal, the commission must give every council involved in a commission's report (assuming that the commission recommends amalgamation) the opportunity to hold a poll of citizens in relation to the support or non-support for an amalgamation and if a simple majority of those voting reject an amalgamation proposal, under my amendment the commission's intended recommendations would proceed no further. I have come to believe strongly that in the future this practice will spread right across Australia. Indeed, we have already seen evidence of it in Victoria, where there was nothing short of a local community revolution against the suggested amalgamations imposed by the State on local government. As a result, of course, as we all know, the State government retreated and gave up its whole proposal of enforced amalgamations in Victoria.

The Hon. Barbara Wiese: These proposals are coming from the local areas: they are not being imposed by the State at all.

The Hon. C.M. HILL: They are coming from the local areas through the machinery of a Government appointed committee going into that local area and carrying out its investigation.

The Hon. Barbara Wiese: After it had requests to do so.

The Hon. C.M. HILL: Naturally some councils will request it, but there are the councils who do not request it and find themselves caught up in it.

The Hon. Barbara Wiese: They have a fair and adequate opportunity to put their case. That is what the question is about.

The Hon. C.M. HILL: They have had a fair and adequate opportunity to put their case before this Government appointed commission—that is as far as it goes. Then it comes to a stage of imposition, of amalgamation, by the Government upon those people. That happens when they read in the *Government Gazette* that as a local council they are no more.

I take the example of a large council A adjacent to a small council B. Council A asks the Minister for amalgamation with council B—and that is the point that the Minister was just making. The Minister agrees that the proposal should be investigated, the commission carries out that task and recommends amalgamation, and both A and B are then proclaimed the one council.

Under my amendment, each council could consider a poll. Council A could say, 'There is no need for a poll in our area because generally speaking all our citizens are happy.' Council B says, 'Yes, we will hold a poll.' Arguments for and against are canvassed within the B area. Indeed, proponents from council A will put their case relative to the advantages. The financial facts would be canvassed and all aspects discussed. If the people from B say 'No', there shall not be amalgamation. If the people say 'Yes', the matter would proceed.

It might well be that one or two strong personalities—for example, long serving councillors who object very strongly to amalgamation—might be overridden by a poll, and I would ask the Minister to keep that point in mind. However, the basic fact is that the local people would be able to have a say through the ballot box. I believe that local government generally would strongly support this proposal.

Indeed, I am told that at the Northern Local Government Association regional meeting early in November this year, a motion was passed that there should not be amalgamations unless they were voluntary, and I believe, too, that the recent annual general meeting of the Local Government Association passed that same motion. I hasten to point out that I am not interfering with the mechanism of local council select committees investigating amalgamations. My poll proposal would be a check only in the advisory commission mechanism, and it would not affect annexations of portions of council areas. It only deals with the question of whole councils which might find themselves suddenly written off the map, so to speak.

At the present time throughout the State, there is a great deal of feeling, as I mentioned a moment ago, on this question. I do not know exactly the number of councils which at the moment are under consideration by the commission, and I do not want to be chasing around finding out the exact number, but I am told that it is somewhere in the vicinity of 20.

The Hon. Diana Laidlaw: There are 25, I think—

The Hon. C.M. HILL: The honourable member interjects and says she thinks it is 25 applications. One naturally hears a little bit from local government people on the question. I have been informed that problems and serious concern exists in the Naracoorte area, at Jamestown, at Georgetown, and in the Clare area generally where a whole group of councils are looking at this question. Blyth and Snowtown were mentioned as two councils that were interested in it. If, as I think the previous speaker said, those councils both have sought amalgamation then they would not concern themselves with this question of a poll.

Spalding and Laura councils have also been mentioned to me. I do not want to become involved with specific situations; I only want to try to give the opportunity to local people who feel deeply about this question to have that final say through the ballot-box as to whether or not they want to be amalgamated. I can mention further details on this matter when I have another opportunity to speak to it.

I support the second reading. However, two issues should be more closely looked at: first, the suspension of periodical elections; and, secondly, the question as to whether there is a real need to declare public pathways and walkways to be roads under the Roads (Opening and Closing) Act.

The Hon. J.C. IRWIN: I was not listed to speak on this Bill tonight but, with the indulgence of the Council, if I spend five minutes on it now it will save time later. I congratulate the Hon. Miss Laidlaw for her speech on behalf of the Opposition in laying down the Opposition's position on this Bill and, similarly, the Hon. Murray Hill for his contribution. Any revision of this nature is a good thing and I commend it, in particular following as it has the first local government elections under the new Act and rules in 1984. It is a good thing to revise what has been run through. I will not go through many points, and I will be brief.

Clause 15 inserts new section 106a which will allow voting to be carried out by post in a proclaimed area or ward. Under the proposed scheme voting papers will be delivered by post to all electors and, in turn, electors will be able to vote and return the papers by post. That needs more explanation. It does not say whether that applies to rural councils or wards, although I admit that I am reading only from the second reading explanation and not the Act. Who will define whether these areas will be proclaimed? How will that advice be received? How small will some of these areas be? I imagine that it will occur in rural areas only. However, because I cannot see that in the explanation, it must apply to any council, whether rural or urban.

If we go back to a rural council area with a small number of electors being permitted to use a postal ballot, I would like to know who will define that small area and how small it will be. It will be an interesting experiment. I believe that it allows some area for manipulation and abuse, because it does not take much imagination to see a couple of candidates rushing around a small area of rural or urban electors and trying to manipulate their votes in a postal voting sense because electors do not have to go to the poll and just post their votes.

In relation to a permit for the primary count to be conducted in the polling place in lieu of a central polling place to assist in speeding up the counting process, I do not see anything wrong with that, provided that it is properly supervised by the polling staff in that polling area. One of the sources of amusement about a rural election in local government with which I have some experience is the central counting process in the local hall or the local council area where people can gather and all votes are brought in and counted in that one central place. Again, I can imagine the whispering campaign and the bush telegraph doing a rather

good job as those votes are being counted in the outlying areas and, as they come into the central area, a portion of that vote will be known well before anything is declared. I suppose there is nothing new about that.

With regard to the recommendation allowing the Government to suspend periodical elections in any area affected by a proposal for amalgamation, which is the one upon which the Hon. Mr Hill has spent some time, I will not go over it in any detail, but I support the proposed amendment by the Hon. Mr Hill. It will be interesting to hear what the Minister has to say when she replies to that issue.

In relation to the provision regarding the Chief Executive Officer presiding at a meeting at which a Chairman must be elected, or a member appointed to preside, I am somewhat surprised, because I always thought that the Chief Executive Officer was in fact the person who took the elections for the local council Chairman at that first meeting. Maybe that was taken for granted, or it may have been left out of the old Act, but I am somewhat surprised that it was left out completely and that we are now inserting it. I support that.

Clause 7 *(b)* provides for the Chief Executive Officer to request a person who is enrolled as a resident to indicate whether he or she is still resident at the relevant address and, if a reply is not received within 28 days, or the reply is that the person is no longer resident at the address, it may be assumed that the elector is not resident in the area or ward. I cannot cite examples at short notice, but I can say that I thought that the challenges as to whether people are resident or whether they are entitled to vote were usually made by the candidates. The challenge will now be made by the Chief Executive Officer, but the Minister may be able to enlighten us on that matter. It may be that the Chief Executive Officer does that on behalf of the candidates, who bring that point to the Chief Executive Officer's attention. In my own case, I spend a lot of time in Adelaide and my principal place of residence is at an address at Keith. I therefore take some exception to having to answer to a Chief Executive Officer, who may write to me to establish whether or not I am still a resident of that area. I believe that I am entitled to vote, because it is my principal place of residence and therefore I find it very difficult to come to any sensible conclusion that anyone needs to write to me to establish that. I imagine that a lot of people could be in that same position.

That raises the question of how many letters the Chief Executive Officer will in fact write. Does that person, as the Chief Executive Officer, sit down and decide to write to a number of people at random to establish whether or not those people are resident, or are those people brought to the attention of the Chief Executive Officer? I hope that the Minister will address that point and allay my fears on the matter, not only for my own sake, but also for the sake of the expense and the time that will be required in discovering these people who have to be written to by the Chief Executive Officer.

In relation to the amendment to alter the date for the revision of the voters roll to be in February and August in lieu of March and September, I find no problem with that. As the second reading explanation points out, it is one month earlier; that gives people seeking election in local government more time to study the rolls. My only comment is that I hope there is no additional cost for local government to have these rolls prepared earlier because, as we now know, councils are being asked to help defray the costs of preparing voter rolls. I imagine that there is no problem in going back that month in the two halves of the year, but I have not undertaken any research on that and there may be some reason why costs would be greater in producing a voter roll at those times of the year.

I turn now to the amendment that requires each nominated candidate to be given a copy of Division X, (Illegal Practices). The second reading explanation on clause 10 states:

> New provision must be made for the close of nominations and new subsection (15) provides that each candidate nominated must be given a copy of Division X (Illegal Practices), thus ensuring that a candidate cannot subsequently claim that he or she did not know of the provisions that apply under that division.

Again, my comments are fairly obvious. It is an additional cost for councils. What will it be next? Are we going to give all candidates the Local Government Act so that they cannot claim that they do not know its contents? I imagine that candidates for local government ought to have the initiative to know what they are required to do, and they should get that advice from the clerk or the Chief Executive Officer or his or her assistant, and I do not see why we have to mollycoddle candidates by demanding in the legislation that they be given a copy of Division X. It is not good training for the start of a career in local government.

I now turn to the amendment allowing for the use of electronic equipment in counting votes. That appears to be an innovative amendment to the Act. The Minister might care to tell the Council in more detail exactly what is envisaged. Does it mean some mechanical electronic process of physically counting the recordings on a bit of paper put through a machine, or are we looking at the future electoral system of electors coming and pressing a button and recording a vote in that way? I guess that that is some time off yet, but I hope it will come. I seek further explanation on that matter.

My closing comment is that this is the fourth Local Government Act Amendment Bill that we have had before us this year. I made some comment on the last amending Bill when it came in that, because that Bill was not compatible with the next one, it could be dealt with singly. At least two of the amendments deal with public pathways, walkways and public roads and streets, which have nothing at all to do with changing the electoral system or how it actually worked at the last election.

It is difficult to have one's mind tuned in to how a very representative committee has looked at how the Local Government Act worked at the last election and then suddenly one must consider pathways, walkways and declared public roads. Having commented about that when the last amending Bill was before us, I feel I have to say how unfortunate it is, although these might be called rats and mice issues, that we cannot get them all in one amending Bill that says the one thing, so that we can handle such matters on a one-off basis rather than doing a bit in one Bill and then a bit more in another Bill. Generally, we support the Bill but seek explanations on certain matters, and amendments will be moved in Committee. I look forward to having the explanations given and I generally support the Opposition's stand on the Bill.

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

STAMP DUTIES ACT AMENDMENT BILL (No. 2)

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.

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

Leave granted.

Explanation of Bill

The provisions contained in the Bill propose measures which recognise established commercial practices, which more clearly establish the extent of the liability for stamp duty, which provide some concession in stamp duty for specific types of transactions and which provide more effective powers in obtaining access to records and other information and in recovering outstanding duty.

It has been a long standing practice for insurance companies upon cancellation or revocation of an insurance policy to be permitted to deduct the premiums returned to policy holders from the total premiums received if adjusted within the calendar year in which the premiums were originally paid. The Government has accepted that the level of clerical work required to identify the year in which the premiums were paid, is not justified by the minor loss of revenue which may result and proposes to legislate for the deduction of all such premiums irrespective of the year in which they were returned.

Greater flexibility has been sought by life insurance companies to allow a range of Insurance/Investment options to be offered in South Australia which have not been viable under the existing stamp duty provisions. It is intended to permit transfer of moneys between investment accounts and insurance premium accounts without losing the concession applicable to invested amounts. As duty will be assessed on any moneys transferred to the premium account such action will not prejudice revenue.

The removal of stamp duty on international marine insurance, in respect of hulls of commercial vessels, and on international ocean cargo and air freight is seen as a means of promoting the competitiveness of the Australian insurance industry. The South Australian Government is joining several other States in exempting this type of insurance and is extending the exemption to include the insurance of all goods carried by land, sea and air.

At present an exemption from payment of stamp duty on the transfer of marketable securities applies to stockbrokers trading on their own account provided the securities are not held for more than two clear days. A consistent approach is being sought in all States and Territories to extend this two day exemption to ten days and South Australia supports such action which has been endorsed by Victoria and New South Wales. Similar action is to be taken in respect of securities handled by the Talisman system for securities traded on the Stock Exchange of the United Kingdom.

It is proposed to extend the period during which purchasers of motor vehicles, with the acceptance of the vendor, may return vehicles and receive a refund of stamp duty paid on an application to register or transfer the registration of the vehicle. The Government accepts that the seven day period is sometimes insufficient and a 30-day maximum period is considered to be more realistic. Measures to allow recovery of rental duty in commercial transactions were inadvertently removed in a Statute Law Revision Act in 1984. The necessary provisions are reinserted and are retrospective.

An amendment is necessary to update the definition of a second-hand motor vehicle dealer consequent upon the introduction of the Second-hand Motor Vehicles Act, 1983. Action is also taken on the advice of the Crown Solicitor to clarify that exemption No. 2 in the second schedule expressly excludes new motor vehicles which had never before been registered. Exemption No. 2 was intended to exempt a second-hand vehicle intended for resale but has been used as a means of purchasing and using vehicles outside of the range of normal car dealing.

Modifications to the rental duty provisions are necessary to allow the issue of a default assessment based on estimates where a registered person fails to lodge a statement of rental received. Existing provisions only allow duty to be recovered within 12 months but a new provision is included to apply to all stamp duties enabling recovery of unpaid duty to be made within five years, or after five years with the Minister's approval. An anomaly which exists in relation to an annual return of rent received is removed.

A Commonwealth instrumentality may not be required to register and pay rental duty. In such circumstances special provisions are proposed to apply to those persons paying rent unless the rental organisation undertakes to lodge statements and pay duty. The proposals in this Bill are comparable with those introduced recently in other areas of State taxation.

The Bill provides for a definition of value in respect of both new and second-hand motor vehicles to be declared at the time of application for the registration or the transfer of a registration. Stamp duty is payable on the value stated but without an appropriate definition, there are opportunities to avoid payment of the correct amount of duty. It is proposed to remove the uncertainty which now arises in determining the value because of any optional features and accessories fitted to a motor vehicle. Only optional transmission and power steering are to be included for the purposes of calculating stamp duty. Action is also taken to ensure that the person by or on whose behalf the application is made, is responsible for the value stated.

Certain exemptions were given earlier this year to permit the computer settlement and transfer of Australian marketable securities on the Stock Exchange of London to be extended to South Australian securities and to enable this State to receive stamp duty on share transfers on companies incorporated in South Australia. It is necessary to provide that transfers into and out of the trustee, Sepon (Australia) Pty. Ltd., be exempted from stamp duty. Duty becomes payable upon the transfer of the beneficial interest between transferor and transferee.

In line with the recommendations of the recent Hancock report into Australian industrial relation laws and systems, the Bill provides relief from stamp duty on the conveyance of property between registered unions or employer bodies upon amalgamation. Powers of inspection and access to instruments and records are sought to be extended to include search warrant provisions. The powers of the Commissioner to obtain information and evidence to enable him to determine whether duty is payable, or for any other matter relevant to the enforcement of the Act, have been clarified and restated. The modified provisions in this Bill are consistent with those in more recent State taxation legislation.

The amendments seek to empower the Commissioner to express an opinion regarding the amount of tax payable of his own volition on any instrument and in any particular case. The existing legislation, which is primarily aimed at dealing with the stamping of instruments, does not adequately cover a number of circumstances which arise in respect of the payment of duty by way of return. For this reason rewording of those clauses relating to the conduct of an inquiry have also been included in the Bill.

Clause 1 is formal.

Clause 2 provides for commencement.

Clause 3 amends section 4 of the Stamp Duties Act, 1923 which is the interpretation section, and insets new definitions of 'authorised officer' and 'records'. An 'authorised officer' will be a person appointed under the proposed new section 6 (4) (see clause 4) and will have functions under the proposed new sections 27a, 27b and 27c (see clause 7). 'Records' is defined to mean records in documentary form or any other form and will apply to various sections of the Act, including the proposed new sections 27a, 27b and 27c.

Clause 4 substitutes section 6 of the principal Act and inserts a new section 6a. The new section 6 restates the existing section 6 (1) and (4) and provides for the appointment of the Commissioner of Stamps, Deputy Commissioner of Stamps and other staff and, in addition, authorised officers. The new section 6aa restates the existing section 6 (3) and allows the Commissioner to sue and be sued as Commissioner.

Clause 5 amends section 23 of the principal Act which provides for the Commissioner to give opinions on liability to pay stamp duty. The new subsection (1) extends this function of the Commissioner to cases where duty is payable otherwise than in respect of an instrument and also allows the Commissioner to perform this function upon request, as is now the case, or upon his or her own initiative. The new subsection (la), which is based on the existing section 25, permits the Commissioner to require relevant information from a person requesting an opinion. The new subsection (lb) restates the existing rule that opinions are not to be given in respect of unexecuted instruments. Consequential amendments are made to subsections (2) and (3).

Clause 6 repeals section 25 of the principal Act. This is consequential on the enactment of the new subsection (la) of section 23 (see clause 5).

Clause 7 substitutes sections 27a, 27b, 27c and 27d of the principal Act: The new section 27a provides for the obtaining of information in relation to liability to pay stamp duty or other matters relevant to the enforcement of the Act. The Commissioner may require a person to furnish information, to attend for examination or to produce instruments or records. Evidence or information may be on oath or verified by a statutory declaration. Persons attending for examination may have their expenses reimbursed. Instruments or records may be retained by the Commissioner or authorised officer but may be inspected while retained. There is an offence of not complying with a requirement made by the Commissioner attracting a maximum penalty of $10 000.

The new section 27b provides for entry and inspection of premises for the purposes of enforcing the Act. Instruments and records may also be inspected. There is an offence of hindering or failing to afford assistance to the Commissioner or an authorised officer attracting a maximum penalty of $10 000. The new section 27c provides for the issue by a justice of a warrant to enter and search premises and seize instruments or records. The warrant may be issued if there is reasonable ground to suspect that instruments or records relevant to the assessment of stamp duty are on the premises. The warrant may be executed by an authorised officer. Instruments and records may be retained but may be inspected while retained. There is an offence of obstructing a person acting in execution of a warrant attracting a maximum penalty of $10 000. The new section 27d restates the existing section 27b and provides that an instrument that comes into the possession of the Commissioner and that is unstamped or insufficiently stamped must be retained by the Commissioner until the duty and any penalty are paid.

Clause 8 amends section 31f of the principal Act which requires persons registered to carry on rental business in South Australia to lodge monthly or annual statements of the rent received by them and to pay duty on those statements. The effect of the amendment is to provide that the 'threshold' amount of rent above which monthly rather than annual statements are required is the same as the 'threshold' amount of rent attracting duty (that is, $1 250 per month or $15 000 per year).

Clause 9 amends section 31l of the principal Act which prohibits the 'passing-on' to a lessee of stamp duty payable in respect of rental business. The new subsection (3) provides for proclamations to be made by the Governor to exempt certain transactions from the prohibition. Subclause (2) is a transitional provision and its effect will be to confer retrospective operation on the first proclamation made after the new subsection (3) comes into operation. The Statute Law Revision Act 1984 repealed the then exemption provision contained in this section of the principal Act.

Clause 10 inserts new sections 31m and 31n into the principal Act:

The new section 31m empowers the Commissioner to assess the duty payable in respect of rental business where the registered proprietor of the business does not lodge statements as required by the Act.

The new section 31n relates to proprietors of rental businesses who are not required to be registered and provides that such a person may enter into an agreement with the Commissioner under which he or she lodges statements of his or her receipts of rent and pays duty as if registered. If such an agreement is not made, the liability to pay duty passes to the lessee, except if the total rent payable is $100 or less or the transaction in question is not a South Australian transaction.

Clause 11 repeals sections 37 and 38 of the principal Act the provisions of which are now to be covered by the proposed new section 27a and amended section 23 respectively (see clauses 7 and 5 respectively).

Clause 12 amends section 42a of the principal Act which contains definitions related to the collection of stamp duty on registration and transfer of registration of motor vehicles:

The new definition of 'applicant' provides that the person in whose name a motor vehicle is to be registered will be the applicant for registration and liable to pay duty even though another person may actually make the application to the Registrar of Motor Vehicles.

The new definition of 'dealer' is consequential on the enactment of the Second-hand Motor Vehicles Act, 1983. The definitions of 'list price', 'market value', 'new motor vehicle', 'optional equipment' and 'secondhand motor vehicle' are provided for the purposes of the amendments to be made to section 42b in relation to the assessment of the value of a motor vehicle and the amount of stamp duty payable (see clause 13).

Clause 13 amends section 42b of the principal Act. The existing subsection (1) provides that the value of a motor vehicle for the purposes of assessing the stamp duty payable on registration is the amount stated by the applicant for registration. The new subsection (1) provides for an objective assessment of value according to whether the vehicle is 'new' (that is, not previously registered) or 'secondhand' (that is, previously registered)—for a new vehicle, the value is the sum of the list price (that is, the price fixed by the manufacturer, importer or principal distributor) of the vehicle and the list price or actual price of its optional equipment; for a secondhand vehicle, the value is the price at which it was sold or the market value, whichever is higher; in any case not caught by these provisions, the value of the

vehicle is its market value (that is, the amount for which the vehicle could be sold, free of encumbrances, in the open market). The new subsection (4) provides that the Commissioner may assess the duty payable if in any case he or she considers that the value as stated is not correct within the terms of subsection (1). The Commissioner may request further information, if necessary, from the applicant (see the new subsection (5)) and the new subsection (6) provides for recovery of unpaid duty and refunding of overpaid duty.

Clause 14 amends section 42d of the principal Act to provide that refunds of overpaid duty in respect of the registration of motor vehicles may be made within 30 days, rather than the existing seven days, after registration.

Clause 15 repeals subsection (9) of section 90c of the principal Act the provisions of which will be covered by the proposed new section 27b (see clause 7).

Clause 16 amends section 90g of the principal Act which relates to transactions in South Australian shares and securities on the London Stock Exchange. Subsections (6) and (7) are amended so that exemptions from duty in respect of transactions between brokers and jobbers apply where the transactions took place within 10 days of each other, rather than the existing two days. Subsection (8) is substituted in order to remove an internal inconsistency in language (the present reference to both records and books) and to adopt the term 'records' as in the new definition (see clause 3).

Clause 17 amends section 110a of the principal Act to insert a new subsection (2) which provides that summary prosecutions may be commenced within five years after the alleged offence was committed (instead of the usual six months limitation period under section 52 of the Justices Act 1921). In addition, a summary prosecution may be commenced after the expiration of five years after the date of the alleged offence, if the Treasurer authorises the prosecution.

Clause 18 amends the second schedule to the principal Act. The effect of the amendment in paragraph *(a)* will be to provide that in the assessment of duty payable in respect of insurance business the amount of any premiums returned by an insurance company will be deducted, whenever the returns were made. Paragraphs *(b)* and *(c)* also relate to duty payable in respect of insurance business and the new provisions clarify that premiums relating to investment under a life insurance policy, rather than insurance of a risk, will not be counted for the purposes of assessing duty. If an amount is transferred from an 'investment account' to a 'risk account', it will, however, be treated as a premium received for insurance of a risk.

Paragraph *(d)* inserts a new exemption which provides that premiums paid for marine insurance of commercial vessels or for insurance in respect of goods carried by railway, road, air or sea will not attract duty. Paragraph *(e)* relates to duty payable on the registration of a motor vehicle and restricts the exemption in question (in respect of registration in the name of a secondhand dealer) to vehicles previously registered in South Australia or elsewhere in Australia (that is, used vehicles).

Paragraphs *(f)* and *(g)* contain similar amendments. First, transactions to bring shares or securities into the scheme envisaged by section 90g and transactions to remove shares or securities from that system are exempted from duty (section 90g provides for transactions within the system to be dutiable). Secondly, conveyances or transfers of property arising out of the amalgamation of associations under the South Australian Industrial Conciliation and Arbitration Act 1972, or the Commonwealth Conciliation and Arbitration Act 1904 are exempted from duty.

Paragraphs *(h)* and *(i)* relate to transactions in shares by brokers on their own account and, as is proposed in clause 15 in respect of section 90g, duty will not be payable if the transactions took place within 10 days of each other, rather than the existing two days.

The Hon. L.H. DAVIS secured the adjournment of the debate.

TRAVEL AGENTS ACT AMENDMENT BILL

Returned from the House of Assembly without amendment.

DAIRY INDUSTRY ACT AMENDMENT BILL

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

METROPOLITAN MILK SUPPLY ACT AMENDMENT BILL

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

PAROLE ORDERS (TRANSFER) 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.

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

Leave granted.

Explanation of Bill

This small Bill is designed to correct a wrong cross-reference inadvertently included when the Act was passed in 1983. The opportunity is also taken to remove a reference that has since been rendered obsolete.

Clause 1 is formal.

Clause 2 amends the definition of 'designated authority' so that the corresponding powers that an interstate authority must have (in order to be held to be such a designated authority) are those powers that the Minister has under sections 6 and 8 of the Act. The current reference is to section 5—a provision which merely gives the Minister the power to delegate. Section 6 deals with the power of the Minister to request the transfer of a parole order from this State to another, and section 8 deals with the power of the Minister to have an interstate order registered in this State.

Clause 3 deletes a reference to conditional release. The system of conditional release for prisoners was never brought into operation and so the reference to it is now obsolete.

The Hon. DIANA LAIDLAW secured the adjournment of the debate.

TERTIARY EDUCATION 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.

In view of the Hon. Mr Lucas's keen interest in the area of education, I will read this second reading explanation.

The Tertiary Education Authority was established by Government in 1979 at a time when it was crucial that Government took maximum advantage of Commonwealth Government funds for tertiary education and to put together in a coordinated way a rational plan for future development of tertiary education in this State. Prior to 1979 there was a period of extreme rapid expansion of services in tertiary education with large sums of Commonwealth money particularly being allocated to new buildings, increased staff and extension of course offerings. By 1979 Commonwealth funds in tertiary education were decreasing and it became apparent that a period of rationalisation and consolidation had begun.

From 1979 the Tertiary Education Authority of South Australia took responsibility for this rationalising and coordinating tertiary education in this State. Indeed, one of the authority's main duties was to present the Commonwealth Government with a 'State view' of developments in tertiary education, and they did this very effectively. Honourable members will notice that I will refer to this 'State view' a little later on when I refer to the roles and responsibilities of the Office of Tertiary Education.

Developments in tertiary education in South Australia have been considerable since 1979, to the point now where South Australia has two universities, an Institute of Technology, the South Australian College of Advanced Education, the Roseworthy Agricultural College and the Department of Technical and Further Education forming the tertiary education sector. The eight years have witnessed consolidation of the colleges of advanced education and the development of a regionalised college structure within the Department of Technical and Further Education.

Similarly, there have been developments in the process of accreditation of courses to the stage now where the institutions themselves are responsible to a large extent for this process, working within approved and accepted guidelines. This development has meant a changing role for the Tertiary Education Authority. Again, there have been similar developments in other areas of tertiary education management for which the authority had a degree of oversight and responsibility.

The time has arrived where the need for a body such as the Tertiary Education Authority of South Australia has to be questioned, for its roles and functions have changed considerably since its creation. Cabinet has considered a number of possible alternatives for a new structure which will meet the Government's requirements for the next decade. It has opted for a smaller sized Office of Tertiary Education as its preferred option. To this end the legislation before the Council seeks to abolish the Tertiary Education Authority of South Australia and vest its powers and responsibilities in the Minister. In so doing, Cabinet has established an Office of Tertiary Education as an administrative unit under the Government Management and Employment Act 1985, with a Chief Executive Officer and staff of nine persons to perform the administrative functions associated within the Minister's responsibilities.

I would now like to direct my comments to this Office of Tertiary Education, even though it is not specifically part of the legislation before you. Tertiary education is important to achieving Government's social and economic objectives, by providing an educated and skilled work force. The South Australian Government must be informed of the extent and nature of the State's needs for tertiary education. As well it must be knowledgeable of the directions which any development should take in relation to its social and economic objectives in order to enable it to determine and justify the allocation of public resources. Similarly, since the Commonwealth funds much of tertiary education, the State Government must be advised on, and persuaded of, the State's requirements. In this connection, South Australia is inevitably in a competitive relationship with other States and with demands on Commonwealth resources from fields other than tertiary education.

Within the State, coordination and monitoring of tertiary education programs and the use of available resources are necessary to ensuring that public money is used to maximum effect in achieving the planned aims of Government. As well there must be accountability to both State and Commonwealth Governments.

An honourable member interjecting:

The Hon. BARBARA WIESE: In view of the fact that the Opposition now seems to be uninterested in education issues, I seek leave to have the remainder of the explanation incorporated in *Hansard* without my reading it.

Leave granted.

Remainder of Explanation

The Office of Tertiary Education would be responsible for advising the Minister on these matters and in doing so would perform the following functions:

- collection and analysis of data on demand (i.e., how many people are seeking to enter what kinds of tertiary study), participation (what people from what demographic, social, geographic and economic backgrounds are undertaking what kinds of study), work force and community requirements (i.e., how many people having particular education and training are needed in South Australian society):
- identification and evaluation of the alternative ways of meeting need and demand as far as possible bearing in mind Government objectives;
- evaluation of the resource requirements of the tertiary education system, including advice on rationalisation proposals that may arise from time to time.
- preparation and maintenance of a broad State plan for development of tertiary education;
- negotiation and advocacy of the State's requirements from the Commonwealth;
- monitoring and coordination of academic programs;
- promotion of social and equity initiatives by various means (e.g., access for women and girls, rural people, Aborigines, transfer with credit). This relates, of course, to the State's ability to win a share of special initiative funds from the Commonwealth, and to pursue collaboration and cooperation between institutions in this area.
- relate as appropriate with matters pertaining to national/State development.
- support to the Minister in providing advice, reports and correspondence on tertiary education matters; and
- support to Minister and representation of the State with respect to national bodies such as the Australian Education Council, the Australian Council on Tertiary Awards, the Commonwealth Tertiary Education Commission/States Consultative Meeting.

In many ways these responsibilities are similar to those presently with the Tertiary Education Authority of South Australia. However, they now differ in kind and degree as a result of the many recent developments in tertiary education which I spoke of earlier. There will be a much greater emphasis on the sharing of responsibilities between the office and the tertiary institutions than was the case before. Investigative work, forward planning and initiatives to remedy particular difficulties will now depend largely on collaborative efforts with the institutions.

The present authority is responsible for approving courses of advanced education and certain TAFE courses (a regulatory means of coordination). The proposed legislation gives the Minister the power to accredit courses acting upon the advice of the office of Tertiary Education. It is important that the State has a capacity to prevent an institution proceeding with academic developments which are grossly inconsistent with general planning. It is thought that the existing system is sufficiently developed and stable to dispense with a requirement for approval of every course. Accordingly, it is proposed that the final approval for major developments should be vested in the Minister, and any veto power to be exercised rarely and only after advice. The legislation before you indicates an important role for the advisory committee in advising the Minister in this regard.

I now turn to the creation of an Advisory Council on Tertiary Education. Under the proposed legislation the Tertiary Education Authority with a considerable independence and a staff responsible to it is abolished. The new Office of Tertiary Education will be responsible to the Minister and its staff appointed under the Government Management and Employment Act 1985.

Nevertheless the institutions of tertiary education in the Australian system have a high degree of autonomy in managing their affairs and it is necessary under the new arrangement that there be formal means by which they, together with appropriate persons nominated by the Government, may be consulted by and offer advice to the Minister and the Office.

It is proposed therefore to establish an Advisory Council on Tertiary Education (ACOTE) with the function of advising the Minister on such aspects of the planning, development, coordination and administration of tertiary education as it considers necessary or as the Minister refers to it.

The proposed membership of the council is a nominee of each of the universities, the colleges of advanced education and the Department of TAFE (six), and nine other persons appointed by the Minister (one of whom shall be the presiding officer) so as to include knowledge and experience of employee concerns, industry and commerce and State development objectives.

It is my intention that these nine persons be selected in such a way that they represent the broad spectrum of our multi-cultural society with special interests in tertiary education. As Minister, it would be my intention to appoint appropriate persons to represent multi-culturalism, industry and commerce, the trade unions, agricultural and rural communities, the professions, aboriginal education, adult education and the education of women and girls.

The members will serve on a part-time basis. Secretarial support will be provided by the Office of Tertiary Education, the Chief Executive Officer of which would attend meetings of the council as secretary but not be a member.

An additional aspect is that the functions of the proposed new advisory council will largely subsume the broad functions of the South Australian Council of Technical and Further Education. It is thought that a further simplification of structures in this area can be achieved by discontinuing the SACOTAFE.

I would now like to mention that in the proposed legislation clause 10 relates to the establishment of standing committees. It is my intention to have the following standing committees in the first instance: the Tertiary Multicultural Education Committee; an Advisory Committee on Post Secondary Education for Women and Girls; an Advisory Committee on Non-Award Adult Education; and a Working Party on Tertiary Education Programs for Aborigines.

Clauses 1 and 2 are formal.

Clause 3 defines certain terms used in the Bill.

Clause 4 requires that courses of tertiary education accredited by the Minister.

Clause 5 sets out the basis on which the Minister may accredit a course.

Clause 6 requires the principal tertiary institutions (other than universities) to inform the Minister of any proposals of a prescribed kind. The Minister may direct the institution not to proceed with the proposal for the reasons set out in subclause (3).

Clause 7 enables the Minister to obtain information from principal institutions of tertiary education. Subclauses (2) and (3) deal with information related to funding:

Clause 8 provides for the establishment of an Advisory Council on Tertiary Education.

Clause 9 sets out the functions of the council.

Clause 10 provides for the establishment of committees by the Minister.

Clause 11 provides for reporting by the Minister.

Clause 12 is an offence provision.

Clause 13 provides for the making of regulations.

Schedule 1 repeals the Tertiary Education Authority Act 1979 and makes consequential amendments to other Acts.

Schedule 2 makes transitional provisions.

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

COMMONWEALTH POWERS (FAMILY LAW) BILL

Returned from the House of Assembly without amendment.

ADJOURNMENT

At 12.2 a.m. the Council adjourned until Wednesday 26 November at 12 noon.