HOUSE OF ASSEMBLY

Tuesday 23 February 1982

The SPEAKER (Hon. B. C. Eastick) took the Chair at 2 p.m. and read prayers.

PETITION: POLICE

A petition signed by 164 residents of South Australia praying that the House oppose any proposals to increase the power of the South Australian Police Force was presented by the Hon. J. D. Wright.

Petition received.

PAPERS TABLED

The following papers were laid on the table:

By the Chief Secretary (Hon. W. A. Rodda)—

Pursuant to Statute—

I. Friendly Societies Act, 1919-1975—Amendment of General Laws—South Australian United Ancient Order of Druids Friendly Society.

II. Independent Order of Oddfellows Grand Lodge of South Australia.

III. Friendly Societies' Medical Association Incorporated.

IV. Independent Order of Rechabites Albert District No. 83.

By the Minister of Environment and Planning (Hon. D. C. Wotton)—

Pursuant to Statute—

I. History Trust of South Australia—Report 1980-81.

II. Planning and Development Act, 1966-1981—Metropolitan Development Plan—Corporation of the City of Kensington and Norwood Planning Regulations—Zoning.

III. State Theatre Company of South Australia—Report, 1981.

IV. Town of Thebarton—By-law No. 50—Dogs.

V. District Council of Crystal Brook—By-law No. 27—Traffic.

VI. District Council of Willunga—By-law No. 35—Penalties.

QUESTION TIME

STAMP DUTIES

Mr BANNON: Can the Premier say whether the Government will consider making retrospective this afternoon's intended legislation covering the Stamp Duties Act, in order to ensure that consumers do not have to pay additional stamp duties charges now being charged on their bankcard and on other credit transactions? In asking this question, I am aware that the Government intends to introduce special legislation this afternoon to correct the Government's mistakes of last October, but I understand that the amendments do not include retrospectivity. I am told that, if assurances were actually given to the Premier, then there is a strong argument for retrospective legislation, but it is not clear. Last evening on the A.B.C. television news the Premier agreed with the General Manager of the Bank of New South Wales that no assurances were given. However, on channel 9 news, half an hour earlier, the Premier still maintained that assurances were given.

Last week in television interviews, on 17 February the Premier made three statements in three separate interviews which cast even more confusion on the matter. On channel 2 the interview went as follows:

> Premier: At this stage I'd prefer to think there'd been some misunderstanding and that this step has been taken as a result of that misunderstanding. Certainly I'll be having detailed discussions and consultations with the ABA and the bankcard people. This is not what was intended when the legislation was introduced and I think the situation's got to be resolved one way or the other.
>
> Interviewer: Can you give a guarantee now that South Australians will not pay that stamp duty?
>
> Premier: Well if you're asking me to suggest that they don't pay the charge now I can't do that because the law in fact is quite clear on the matter and they are liable for it. But in the light of the guarantees and undertakings which were given by financial institutions, I can say that one way or another whether it's because they act responsibly and remove those charges or we have to bring in the legislation again, people will not be saddled with those extra burdens.

On the same night on channel 9 the interview was as follows:

> Premier: Oh, the assurances are quite tangible, they're on paper. I don't think there's any . . .
>
> Interviewer: They were not verbal assurances?
>
> Premier: I don't think there's any question of having tangible assurances, they're both verbal and written.

On channel 10, on Wednesday 17 February 1982, the same evening, the interview was as follows:

> Premier: Well I would sincerely hope that we'd reach a resolution on the matter one way or the other. Yes, you could say one way or the other South Australians can expect not to be paying it.
>
> Interviewer: What about those who've already received their bills and have paid it?
>
> Premier: Well again that's something . . . I've arranged for urgent discussions with members of the bankcard organisation and the ABA; that was done as soon as we realised that there'd been some sort of misunderstanding. I repeat, that's what it looks like at present. Obviously we can't let the matter go on.

The Hon. D. O. TONKIN: Very briefly, no, there will be no retrospective legislation applying to the charges currently being levied. This is something that the Leader has made great capital out of in recent days. I repeat that I believe that, once passed, the law must stand until it is changed. It is passed by this Parliament, and the point I have made—and there is no inconsistency in any of the statements he has read out—is that the people of South Australia, on the passage of the legislation which he knows will be introduced today, hopefully will not have to pay the charges from now on. In respect of those charges which have been levied already, I think it is a matter for the institutions themselves to act responsibly, and that is what I have said.

TREASURY OFFICIALS' VISIT

Dr BILLARD: Can the Premier inform the House regarding the proposed visit to South Australia of senior officials of Federal Treasury? I understand that in Canberra last week the Prime Minister suggested to the Premier that Federal Treasury officials should come to South Australia to study certain aspects of financial controls, with particular reference to programme performance budgeting and cost cutting in the public sector.

The Hon. D. O. TONKIN: Yes, I was delighted that, when I went to talk to the Prime Minister and the Federal Treasurer last Thursday, in the course of conversation, I talked about the success which South Australia had had in controlling its own financial affairs in very stringent times, and the fact that, by adopting programme performance budgeting techniques and efficient management techniques, in managing the Public Service, it had been able to make considerable savings to the taxpayers of South Australia. That was recognised not only by the Federal Treasurer and the Prime Minister, but it has been the subject of increasing comment in financial circles around Australia.

As a result of that, I have been able, on behalf of South Australians, to speak to the Federal Government with a great deal of authority, especially compared to other States, such as the State of New South Wales, where management techniques have been so poor and the grasping of the nettle

has been so tentative that expenditure has got completely out of hand. I remind honourable members that New South Wales has been termed the 'bankrupt State', and one commentator said that if it were a private enterprise it would by now have had the receivers in.

The Commonwealth Government has expressed to me its desire to make some cuts and give some relief in taxation. I made the point very strongly that, to do that, it would have to cut and curtail its own expenditure. I outlined the ways in which that has been achieved by this Government, particularly by the activities of the Budget Review Committee. That committee has been working most effectively and, indeed, in large part, the success of the programme performance budget format, the Estimates Committees, and the tight personnel management adopted by the Public Service Board and its officers has been complemented in a very fine fashion by members of the Budget Review Committee who keep a continual watch on expenditure generally.

The Prime Minister was particularly impressed by this and, indeed, has agreed that officers of his Department of Prime Minister and Cabinet and of the Federal Treasury will within the next few weeks attend and investigate all those aspects in South Australia. I very much hope that they will learn a great deal from the success that we have had here and that they will be able to return and institute similar provisions in the Public Service generally and in the management of the Australian economy, to allow them to make the same sort of savings that we have made in proportion and be able to pass on those savings to the Australian people.

FOREIGN INVESTMENT

The Hon. J. D. WRIGHT: What explanation does the Premier have regarding the massive slump in proposed foreign investment in South Australia? The latest figures—

Mr Gunn: I thought you were opposed to foreign investment.

The SPEAKER: Order!

The Hon. J. D. WRIGHT: The latest figures from the Foreign Investment Review Board show a staggering 98.8 per cent drop in proposed estimates last financial year compared to 1979-80. The figures show that last financial year, when the Premier was telling the public that there was a renewed investment confidence in South Australia, only $13 600 000 of the foreign capital was proposed for this State. That compared with more than one billion dollars proposed in 1979-80, and is below the 1978-79 figure.

The present Premier, when Leader of the Opposition, described South Australia as a leper colony for investment. I now quote his own words to Parliament in May 1979, as follows:

> S.A. (is) squarely on the list of high-risk places of capital investment, a list which includes such progressive centres as Haiti, Chad, San Salvadore, Afghanistan, Iran and now South Australia . . . South Australia is at rock bottom . . .

The Foreign Investment Review Board statistics show that things are worse at present. I am told that the big figure of more than one billion dollars was the loan approval for Roxby Downs, if it goes ahead. However, companies have not yet completed their feasibility studies to determine whether actual mining should proceed. On 7 November 1980, the Premier told this House that South Australia was attracting record levels of investment in new projects, while recording fewer take-overs of local companies. I am told that recent events have shown that both statements were illusions. The figures from the Foreign Investment Review Board show that our share of national foreign investment is also pitiful. Last year, South Australia got only—

The SPEAKER: Order! The Deputy Leader of the Opposition is being careful to put odd words of comment amongst other factual material. I ask him to desist and get on with the explanation.

The Hon. J. D. WRIGHT: Thank you, Sir. I apologise for that. Last financial year, South Australia got .38 per cent of Australia's new financial investment. In a speech to the Resources Development Symposium in London in March 1981, the Premier said that the more than one billion dollars proposed in foreign investment was equivalent to $900 per head of South Australia's population in 1979-80. Does the Premier agree that the figure of only $10 per head of South Australia's population, proposed last financial year, amounts to a massive fall and a loss in confidence, when the Australian average is $244 per head?

The Hon. D. O. TONKIN: I am delighted with the Deputy Leader's question, because it gives me an opportunity once again to point out the differences between the former Government and this Government. When the Liberal Party was in Opposition, I said that South Australia was high on the list of high risk areas, and that situation was indeed true. That was because of the policies of the former Government, involving worker participation or union control (whichever way one likes to look at it), more and more intervention in private enterprise areas, and more and more interference with the running of companies—the sort of policies, indeed, that we have seen reiterated only recently in the Labor Party Conference. I would have thought that they had learnt a lesson, but they have not.

Those policies drove investment activity from these shores, and we had a very poor record indeed. Let us examine the figures for 1978-79, because I am sure that the Deputy Leader would like to compare the situation under the previous Government with the situation under this Government. We see that in the 1978-79 financial year, the Australian Foreign Investment Review Board received and approved $17 000 000 in applications for further development in South Australia. The interesting point, and the point that the Deputy Leader seems to have glossed over with some facility—

The Hon. J. D. Wright: I thought I gave a good explanation.

The Hon. D. O. TONKIN: As far as it went, but it missed out some of the more important factors. In the following year (1980), that figure jumped to $1.18 billion, a 6 800 per cent increase in investment. Yet the Deputy Leader has the gall to stand in this House and say that there has been a decrease of 97 per cent since last year, and therefore things must be terrible. There was an increase of 6 800 per cent after this Government came to office. That increase in investment represents a jump from $13 per head of population in 1978-79 to more than $900 a head in the following year. The Deputy Leader makes something of the fact that Roxby Downs may or may not go ahead and that, therefore, that has some effect on the figures that have been given. The figures as they are now given do not include the projected investment from Roxby Downs, because that study, quite properly, is classified as being at the study stage, and it is therefore not classified under those figures as committed investment.

The Hon. J. D. Wright: Are you saying that there is no drop?

The Hon. D. O. TONKIN: I do not mind terribly what the Deputy Leader wants to go on about, but at present he is highlighting for everyone to see exactly how much better off this State is under a Liberal Government than it was under a Labor Government. There will be changes. We have had enormous inflows in respect of Bridgestone and Mitsubishi. Projects coming forward, including Stony Point, involve a great deal of overseas funding, $1 billion ultimately,

and all these matters will eventually come through in the figures. Certainly, there was a great boost from the developments that took place immediately after we came to office. There will be a flattening off from time to time, but I would have thought that the Deputy Leader might be more interested in encouraging further and higher levels of investment instead of going around this State, as he and his Leader do almost incessantly, playing down the opportunities that South Australia has by pointing out quite clearly that, in their opinion, South Australia has no future. I totally and absolutely refute that point of view, and I and the other members on this side of the House will continue to be proud of South Australia and the potential it offers overseas investors.

RENTAL ACCOMMODATION

Mr GLAZBROOK: Is the Minister of Health aware of, and will she request the Minister of Community Welfare and Consumer Affairs and the Minister of Housing to look into, the problems of flat and home-rental seekers who are obliged to pay a fee to certain companies that appear to have cornered the market on flat and home-rental vacancies?

It has been drawn to my attention that certain companies involved in the home and flat-rental business are monopolising the market and requiring home and flat seekers to lodge a $40 fee for the privilege of having a look at prospective properties. Apparently, no composite list of vacancies is given, and an applicant is still required to spend a great deal of time and money travelling around to inspect the various properties advertised. It has been put to me that those who can least afford it, that is, the unemployed and the disadvantaged, are being penalised and required to pay several lots of $40 to a number of agencies without any guarantee of help other than being given permission to look at a property which in some cases has even been let prior to the day of their inquiry.

The contract, or policy, that the inquirer is asked to take out for $40 usually lapses after three months and must be renewed before a person is allowed to view further properties. I am further told that, unless one can quote a policy number, any inquiry as to flats available is greeted with a polite refusal of help. I have also been told that substantially all the vacant flats and homes as shown in the *Advertiser* and *News* 'Houses and flats to let' section are listed under the control of three agencies, namely, Centalet, the Housing Referral Agency and Homelocators.

The Hon. JENNIFER ADAMSON: I know that the responsible Ministers, as indeed all of us, are very aware of the matters raised by the honourable member and are very concerned about them. I will ask my colleague for a report and see that it is provided for the honourable member.

NORTH-SOUTH TRANSPORT CORRIDOR

Mr TRAINER: Will the Minister of Transport announce what action the Government plans to take regarding the north-south transport corridor that was proposed in the MATS plan, and which was shelved by the Labor Government when it came to office in 1970 and, in particular, will the Minister say whether the Government's plans include a freeway through inner south-western suburbs, such as Glandore, Edwardstown and Clovelly Park? The original freeway plan would have involved the demolition of an estimated 700 houses in the Edwardstown area. My constituents in Ascot Park, as well as constituents of the member for Mitchell and others, have been justifiably alarmed by recent press speculation, as well as by public demands to revive the old freeway plan which have been made by members of some vested interest groups who live nowhere near the proposed area of destruction.

The SPEAKER: Order! The honourable member will come back to factual detail, or he will be refused leave to continue.

Mr TRAINER: Well, Sir, I list a few of those interest groups as being the Chamber of Commerce, the R.A.A. and the Australian Road Federation. It would be factual, I believe, to point out that speculation has been fuelled by a recent series of press statements indicating that an announcement is imminent. In the *News* of 15 October it was stated:

> The State Government has promised a decision on north-south roads by the end of the year.

It was stated in the *News* of 20 December:

> A decision on a $300 000 000 north-south Adelaide freeway will be made soon.

It was stated in the *News* of 7 January this year:

> Transport Minister, Mr Wilson, confirmed today the Government had reached a decision on some sections of the freeway. However, a final decision on the main principles of the plan would not be announced for three to four weeks.

That four weeks has expired, and an article in the press last Thursday headed 'Super-road options for Cabinet', stated:

> Alternative plans for a new north-south road link will be considered by State Cabinet on Monday.

Constituents have asked me to request the Minister to clarify the matter and to seek an assurance from him that residents of inner south-western suburbs will not be treated as freeway fodder.

The Hon. M. M. WILSON: I am pleased that the member for Ascot Park has asked the question. In his explanation I think the honourable member said that the MATS freeway was shelved by the former Government. In fact, the former Government put a 10-year moratorium on freeway development, and, because of that, what we term 'planning blight' has arisen, because of the uncertainty existing in the community about what will happen—uncertainty not only among those residents that the honourable member mentioned but also among business and other sections of the community. I believe very strongly that if the former Government had been returned to office at the last election we would have seen another 10-year moratorium placed on freeway building. That is not being decisive at all because, while there is a moratorium on freeway construction, acquisition must go on on a hardship or owner-approach basis.

As I have said before, either publicly or in this place, the Highways Department already owns some $40 000 000 worth of property in the north-south corridor.

It is an extremely serious matter that that property is owned and is not being put to good use, especially when in the next decade we can expect to have a markedly reduced allocation for road funds from the Commonwealth Government. I assure the member for Ascot Park that he will see no announcement of an eight-lane high-speed MATS freeway, but he will see an announcement in the next couple of days.

LOWER NORTH-EAST ROAD

Mr ASHENDEN: Will the Minister of Transport please outline the reasons for the apparent protracted delay on widening of the Lower North-East Road between Valley Road and Torrens Road and installing traffic lights at the junction of Valley Road and Lower North-East Road? Constituents have expressed concern to me at the delays that are occurring in the extensions to the roadworks on the

Lower North-East Road. Not only are they being inconvenienced by the way in which the road has been left at present but some months ago lights were supposed to have been installed at the junction of Valley Road and Lower North-East Road. This would have provided an opportunity for children who live south of the Lower North-East Road to safely cross the road to attend the Highbury Primary School and it would also provide a safe crossing for children who live north of the Lower North-East Road and need to cross the road to the Turramurra Recreation Centre which is on the southern side.

I have also been told by a constituent that when she contacted the Highways Department yesterday she was advised by an officer that 'the resources that should have been used here are being deployed elsewhere'. I believe that it is imperative that the roadworks be completed without undue delay and that the traffic lights be installed immediately because of the difficulties that are being encountered in that area. Also, will the Minister comment on the point made by an officer of the Highways Department?

The Hon. M. M. WILSON: As to the purported statement by an officer of my department that the construction was being delayed because of priorities elsewhere, or because of a reallocation of priorities, I assure the honourable member that that is not the case. The delay in construction of this particular section of the Lower North-East Road involves other reasons and has nothing to do with the reallocation of priorities. I mentioned in answer to an earlier question that there is a shortage of road funds, but that has no bearing on this particular road construction project.

The major construction work between Valley Road and Torrens Road cannot commence until council agreement is reached. Plans are already on view at the council chambers for public comment. Once council agreement is reached, we then have to get a clearance from the Department of Environment and Planning. Once the clearance is obtained from that department, we have to arrange for the relocation of services such as those involving Telecom, ETSA, and the like, and that in itself will take time. I reiterate that we cannot even move to that until we get council agreement. We have already altered the plans at council's request, and the sooner we can get council's concurrence the sooner we can move ahead with this project.

As to the installation of traffic signals, once again we need council's concurrence. We believe that the traffic signals ought to be installed at that particular junction, and as soon as council agrees that that is a priority within its area then, once again, we can move towards installing those traffic signals.

AUSTRALASIAN OAKS LOTTERY

Mr SLATER: What investigations is the Minister of Recreation and Sport or his department likely to undertake in regard to the conduct of a lottery associated with the Australasian Oaks carnival and licensed in the name of the South Australian Jockey Club? I understand that considerable public disquiet surrounds the conduct of this lottery, which offered for sale 50 000 tickets at $2 each with the first prize of $20 000. The lottery was extensively advertised but it did not attract great public support, even though the T.A.B. took the unprecedented step of acting as selling agents for the lottery. It is reported that, on the eve of the lottery draw, only some 20 000 tickets were sold to the public, and that persons associated with the venture as the underwriters purchased the remaining 30 000 tickets. One of the tickets purchased by the underwriters won the first prize and, as a consequence, it is open to doubt whether the first prize was actually paid. A small advertisement appeared in the press indicating the results of the lottery. It states:

> The S.A.J.C. lottery result, $20 000 prize: winning ticket No. 44868. 'I am in it to win it' syndicate, 37A South Terrace, Adelaide 5000.

I ask the Minister to note that 37A South Terrace is at present a vacant or uncompleted block of home units or townhouses. This information will no doubt add to the further disenchantment by members of the public who purchased tickets in the lottery, believing that the proceeds would benefit the racing industry and the conduct of the Oaks carnival. Will the Minister say, in the public interest, whether it is acceptable for persons who are sponsors or promoters of a lottery licensed by the Division of Recreation and Sport to participate to the extent of purchasing the majority of tickets in the lottery, and whether investigations or inquiries will be undertaken to ensure that the lottery was legitimate and whether an offence was conducted in regard to its conduct?

The Hon. M. M. WILSON: I have already asked my officers to investigate this matter and I asked them to do it on the day following the draw, or within a couple of days of that. I am also awaiting a report from the auditor. The honourable member will realise that for all such lotteries there needs to be an auditor, and the audit report is required within 30 days of the drawing of the lottery, and I am expecting that soon. The investigations of my officers show that at this stage there appears to be no breach of the Lottery and Gaming Act. I can give the honourable member no more concrete information than that.

Mr Abbott: Did you buy a ticket?

The Hon. M. M. WILSON: I do not think I did buy a ticket. Many of the facts given by the member for Gilles are correct. It is my understanding that $60 000 worth of tickets was purchased by the promoters. That does happen from time to time with lotteries. It means that the lottery is filled and obviously there were arrangements between the lottery promoters and the South Australian Jockey Club as to the underwriting of the Australasian Oaks. I am not privy to those details at this stage, but I can assure the honourable member that the investigation has been and is being carried out, and at this stage we see no reason to believe that there has been a breach of the Lottery and Gaming Act.

P.S.A. MEETING

Mr GUNN: Is the Minister of Industrial Affairs aware of the concern and dissatisfaction being expressed by public servants at the manner in which the Public Service Association conducted a public meeting last Friday? I wish to explain my question by quoting the concerns expressed, which were that many members were not allowed to speak; motions were put without adequate debate; motions were put in the negative; it was assumed that those who did not vote were voting 'No'; and many of the members were most dissatisfied that they had been rail-roaded into a decision.

The SPEAKER: Order!

Mr GUNN: Other members were concerned that the meeting reflected the wishes of the union hierarchy and not that of the general membership. Further, no persons were checking the people as they entered the meeting to ensure that they were members of the Public Service Association.

The Hon. D. C. BROWN: First, I am aware of at least some of the complaints to which the honourable member has referred. A number of people have contacted me or my office asking questions or complaining about the conduct of the meeting.

Mr Hamilton: How many?

The SPEAKER: Order! If the honourable member for Albert Park is still in the Chamber, his question comes up two places on.

Mr Mathwin: He's the tiger in the tank.

The SPEAKER: Order!

The Hon. D. C. BROWN: I hope that the member for Albert Park is here to hear the rest of my reply to this question. I must emphasise that the P.S.A. has apparently failed to understand the changed circumstances that now go with wage fixation, not just in South Australia but throughout Australia. The days of wage indexation and centralised wage-fixing principles were abolished in about July last year.

Wages in this State are now determined under the principles set down by the South Australian Industrial Commission, and those principles are basically those of comparative wage justice and, if one is going to have comparative wage justice, it means sitting down and examining each classification as one goes through each award. It is quite inappropriate for the Public Service Association to make a claim on the Government or on the Public Service Board for across-the-board wage increases for everyone, whether they happen to be public servants or not, whether they happen to be public servants or weekly-paid staff, whether they happen to come under other industrial awards, whether there happen to be other trade unions involved in similar areas of classification, or whether (as occurs) some of the employees involved happen to be outside the immediate area of Government and in statutory authorities.

I highlight that the demand put at the meeting last Friday by the leadership (indeed, by a rather radical element of that leadership) of the P.S.A. was that there be a 10 per cent wage claim across the board, plus full wage indexation for the July and September quarters. I highlight also that not even the A.C.T.U. in the national wage case is asking for that sort of increase. If it was granted, the increase would cost South Australian taxpayers literally tens of millions of dollars a year. I think everyone would realise that a claim across the board, irrespective of the classification, of 10.5 per cent plus full wage indexation for six months in retrospect is certainly not on, as the Premier has said.

My request is that the Public Service Association sit down with the Public Service Board, as we have been willing to do throughout, and go through each classification. I am the first to admit and recognise the need for salary increases. That is why we are processing claims as quickly as we possibly can. However, we certainly cannot process them when a particular group such as the P.S.A. makes an outrageous claim on the State Government and says, 'Unless you give us this outrageous claim, which goes against the principles of wage fixation set down by the State Industrial Commission, we will go on strike by next Friday.' No responsible person would back that sort of claim.

For that reason, over the weekend I said that I believed that a certain radical element in the leadership of the Public Service Association was spoiling for a strike on this issue and that they had no concern in wanting to obtain genuine wage increases for their members on the principles laid down by the State Industrial Commission. I was amazed to find in this morning's *Advertiser* a report that the Deputy Leader of the Opposition has now joined the leadership of the Public Service Association in supporting its claim. In other words, we find that a politician of the State—

The Hon. J. D. Wright: I am opposing your stand and your action.

The SPEAKER: Order!

The Hon. D. C. BROWN: I am fascinated that the Deputy Leader is opposing my stand, which is that the State wage-fixing principles as laid down by the commission should apply and that, if the issue is not resolved by conciliation, it should go to the Industrial Commission. How many times have we heard the Deputy Leader say that disputes should be solved in the Industrial Commission, yet in this issue we find that he is openly encouraging public servants to go on strike in support of one of the Labor Party's own candidates at the next election.

The real issue is that the spokesman in this industrial dispute happens to be a Labor Party candidate for the next election, and he has spent thousands of dollars through the P.S.A. in spoiling for this dispute in the hope of trying to embarrass the Government. I again plead with the P.S.A. to be willing to abide by the wage-fixing principles laid down by the State Industrial Commission and to act in a responsible manner to use the processes of conciliation and arbitration.

Members interjecting:

The SPEAKER: Order!

The Hon. D. C. BROWN: I am delighted to say that the P.S.A. has come to the Public Service Board, and a meeting was to have been held at 2 o'clock this afternoon. I hope that at that meeting the P.S.A. is prepared to withdraw the gun from the Government's head, sit down, and abide by the normal wage-fixing principles. We have had little trouble in regard to the dozens of other trade unions that have made claims on this Government: we have processed those claims under the normal procedures, practices and principles that apply throughout Australia, and as adopted by the State Industrial Commission. All we ask is that the South Australian Public Service Association understands that there has been a change in circumstances, that wage indexation went out some seven or eight months ago, and that we now have comparative wage justice. The other point I raise in answer to the honourable member is that work will be available on Friday for those people who decide to come to work.

The Hon. W. E. Chapman: All day?

The Hon. D. C. BROWN: Yes, all day. I stress the point—and it disappoints me—that a number of people have telephoned my office or the Public Service Board and have said that the P.S.A. has used threatening if not blackmailing techniques to try to force them to go on strike on Friday. In fact, one group of people came to me and said that the P.S.A. stated that, unless they go out on strike on Friday, the very legitimate points that this group of people would like to take up with the Government in a variation to their award will be put at the very bottom of P.S.A. matters in order of priority. This is a classic case of saying that, if people do not go out on strike next Friday, the P.S.A. will ignore the industrial interests of sectional groups of their members. Again, that disappoints me, and I believe that it truly reflects the characteristics displayed by this militant leadership of the P.S.A.

Finally, I find it interesting that the Deputy Leader of the Opposition attacked me in the paper this morning. If ever I wanted justification that this is a political stoppage or strike, it was the fact that the Deputy Leader stepped in this morning and made the statements he made. Again, I urge the members of the P.S.A. to put pressure on the leadership to act responsibly to ensure that the matter is settled as quickly as possible. Finally, I highlight what has been offered by the Government already to clerical and administrative officers (which really covers the large bulk of the P.S.A. membership and the public servants in this State). For all adults, the minimum offer has been about 9.3 per cent or 9.5 per cent.

I stress that that is graded up perhaps because of injustices that have developed, or a lack of relativities that has developed under wage indexation over that five-year period, and it is now necessary to make variations of 9 per cent up to

about 13 per cent. The 4.5 per cent was offered to juniors; we are prepared to negotiate that point, but we would stress that juniors have had their relativities changed because of wage indexation. There has always been a long standing relativity as a percentage of the adult wage, and Government offered that increase based on that long-standing practice. These are points that the Government is prepared to talk about at the negotiating table, and I ask for moderation and some responsible behaviour by the leadership of the P.S.A.

COUNTRY CLINICS

Mr MAX BROWN: Will the Minister of Health say when the Government is likely to finally establish dental and optical clinics in country areas, along the lines promised in press statements by herself and by the member for Rocky River? I am sure the Minister is aware that, in my own electorate, provision was made for a dental clinic when the former Labor Government went ahead with the Whyalla Hospital extensions, but as yet no finality has been reached. Similarly, to my knowledge no progress has been made in this area in other country towns. Likewise, no progress has been made with optical clinics. Aged pensioner groups are concerned that no action has taken place, and I hope that the Minister can assist in clarifying the position.

The Hon. JENNIFER ADAMSON: In regard to the provision of dentures for pensioners in country areas, the honourable member will be aware that late last year I announced that the Australian Dental Association and the South Australian Health Commission had reached agreement on a scheme whereby pensioners who are on the Royal Adelaide Hospital waiting list for dentures would be provided with dentures by the private practitioner of the pensioner's choice throughout country areas, and that, when country pensioners who are on the waiting list have been provided with dentures, the scheme would extend to the metropolitan area.

That scheme has been working extremely well, and the extension has now been made to the metropolitan area. I can see the member for Whyalla shaking his head. I can only assume that, in doing so, he must be referring to pensioners in his electorate who were not on the Royal Adelaide Hospital waiting list. However, I can assure him that the waiting list for the Royal Adelaide Hospital has been progressively diminished.

Mr Max Brown interjecting:

The Hon. JENNIFER ADAMSON: Yes, indeed, it was a long waiting list. When the Government came to office it inherited perhaps the most scandalous waiting list that any Government had ever inherited from another Government in regard to the provision of health services. There was a three-year waiting list at the Royal Adelaide Hospital for pensioners who wanted dentures, which was indeed a scandalous situation in regard to the health of pensioners in South Australia. By the provision of additional peripheral clinics in the Adelaide metropolitan area, and by the establishment of the scheme with private practitioners, the Government is progressively reducing that list to manageable proportions.

Unfortunately, in respect of the provision of spectacles, as the honourable member and his colleagues know, that is a matter of long standing dispute between ophthalmologists and optometrists which the previous Government found literally impossible to resolve. The present Government believed that the matter had been resolved at the end of 1980, when, in good faith, I announced that the scheme would commence. However, it was discovered at that time that there were still matters of dispute between optometrists and ophthalmologists and, when these matters seemed close to resolution, the State Government found itself very much starved for funds as a result of Federal Government decisions, and it has not been possible to proceed in the current financial year with the provision of spectacles. No-one regrets that more than I do, because I am very conscious of its effect upon elderly people who are not able to have spectacles when they need them, which can lead to all kinds of social and physical disadvantages.

I am hoping that funds can be made available in the forthcoming financial year for the provision of spectacles, and I am also hoping for the co-operation of both the opthalmologists and the optometrists in the development of a workable scheme. Concerning dentures for pensioners, the Government has made greater strides in this direction than any previous Government, and I am hopeful that the existing waiting lists in a few months time will be down to what can be considered to be perfectly manageable and acceptable lengths.

SAND DUNES

Mr OSWALD: Can the Minister of Environment and Planning say whether any investigation by the coastal management branch of his department into the management of the coastal sand dunes has been completed and, if it has, can the results be made available to the public for perusal? As members are aware, I have a coastal area in my district which is affected by excessive depositing of sand south of the groyne at Glenelg, whilst on the northern side of this groyne there is an excessive erosion of sand, and this happens on an annual basis. As the studies involving management of the coastal sand dunes form the basis for the development of strategies for the management of our urban coastal areas, many of my constituents and I are keen to consider any report that is available so that we can better evaluate the Coast Protection Board's proposals to ensure that our metropolitan coastline is adequately protected.

The Hon. D. C. WOTTON: The member for Morphett has referred particularly to the need to make information available to the public on the matter of coast protection. In the Department of Environment and Planning we have placed a high priority on the need to be able to make information available to the public. When we first came into Government we were particularly concerned that that facility was not made available and that members of the community were not able to find out for themselves just what was happening in regard to matters such as coastal management. The section dealing with community information has made it its business to be aware of the many reports and much work that has been conducted by the department in many areas, including coast management.

The coastal management branch of my department has carried out a number of surveys into coast protection generally and particularly in regard to the sand dunes. All these reports are available for consideration, and they can be seen in the library in the Department of Environment and Planning. The officers are always prepared to discuss with members of the public or with any member of Parliament any issues that are raised in these reports. Since the Government came into power in 1979, the following reports have been completed: the Coast Vegetation and Planting Techniques Report was introduced in May 1981; Coastal Vegetation in South Australia Report was published in February 1981; the Management of Coastal Dunes in South Australia Report by Peter Cullen and Eric Bird, which is an excellent report, was published in May 1980; and currently Amdel is assisting the department in carrying out a

study dealing with metropolitan sand tracing, referred to as the Metropolitan Sand Tracer Study.

These reports are important in relation to coastal management in South Australia. The department certainly recognises its responsibility in this matter because of the vast areas of coastline within the State. Other reports are available, but I particularly recommend those to the member for Morphett, and I would be only too happy to have him or any other member of the House look at those reports.

WEST LAKES BOULEVARD

Mr HAMILTON: Will the Minister of Transport say what negotiations have taken place between the Corporation of the City of Woodville and the Highways Department in relation to the preferred transport route for the extension of West Lakes Boulevard from Tapleys Hill Road, Seaton, through to Port Road, near G.M.H. at Woodville and the anticipated commencement and completion dates of that extension? The Minister will recall that since becoming a member I have written repeatedly to him about the extension of West Lakes Boulevard. On 15 May last year, I again wrote to the Minister on behalf of a constituent seeking information on the extension of West Lakes Boulevard and also to ascertain how many houses to be demolished had been purchased by the Highways Department. I said in that correspondence:

> I realise that I have had correspondence pertaining to this matter prior, and I have been assured that work will not commence before the year 1990 but [my constitutent] has requested that I correspond with you again as she feels work may start some time before that.

On 25 June 1981 the Minister replied, in part, as follows:

> While this project is currently under consideration the Highways Department has no short-term plans to extend West Lakes Boulevard to Port Road but at the same time is retaining all holdings acquired in relation to the project.

I have been further informed that the Highways Department has been in contact with the Corporation of the City of Woodville in relation to the extension of this road, and that a letter was sent to the Woodville council asking it to comment on the reopening and extending of the former Hendon rail spur or, by the utilisation of land occupied by this rail spur, as a road link. I am further informed that in November 1981 the reply was sent to the Highways Department acknowledging its letter and advising that it was understood that the final West Lakes Boulevard road extension was likely to be along the old railway reserve. I was told that the Highways Department had contacted the Woodville council indicating that the department required a firm decision by council as to the preferred route, the object being that the Highways Department would then dispose of the unwanted land.

I am further informed that the Woodville council was of the opinion that at that stage it seemed that a road access would be more suitable than a rail access and that its experts believed that to be the case. I am told that council does not object to the disposal of the Highways Department surplus land, provided the communication route is extended via the Hendon rail spur to service West Lakes by either rail or road.

The Hon. M. M. WILSON: The honourable member has explained at some length the history of the correspondence on this matter. Resolving the question concerning West Lakes Boulevard is another problem that we have inherited and, like the north-south corridor question, it is one that has to be resolved because, as the honourable member rightly points out, people are living in houses on the supposed route of that extension.

My instructions to the Highways Department were to investigate to see whether we could do away with that plan and whether there was an alternative. I instructed my officers to talk to all the parties concerned—the council, West Lakes Ltd, and other people—to see whether we could find an alternative route (in fact, one that had been mentioned before, as the honourable member knows) and to see whether we could resolve the problem, without giving any commitment as to when construction would start, because that is not appropriate. The important thing was, once again, to resolve the planning block, and the honourable member—

Mr Hamilton: You said before that it wouldn't go ahead before 1990.

The SPEAKER: Order!

The Hon. M. M. WILSON: I point out that if the West Lakes Boulevard extension is left on its present course until 1990 the honourable member is going to have many more upset constituents than he has now. The important thing is for us to resolve this problem, and we are resolving it. The Highways Department is discussing it with the relevant authorities, and when a solution is reached the honourable member will be one of the first to be told.

DUCK SEASON

Mr BECKER: Can the Minister of Environment and Planning say whether there have been any infringements by persons taking ducks from game reserves prior to the opening of the 1982 duck season? I refer to an article on page 3 of the *Advertiser* of 17 February 1982 which details the questioning of a person about the taking of ducks from the Coorong National Park prior to the opening of the 1982 duck season, which I understand is this Saturday, 27 February.

The Hon. D. C. WOTTON: Yes, there have been reportings of offences of people shooting ducks prior to the opening of the season, and action has been taken in that regard. The taking of ducks outside the open season has quite a heavy penalty being imposed of up to $1 000 for a single offence, with a possible additional penalty being imposed of $100 per bird. This year particularly the department has been very keen to inform the public on just what is required both prior to and during the duck season. We have taken steps to ensure that the public is well informed about the opening dates for the duck season and that hunters, particularly those in the South-East of the State, are aware of the requirements under the law. We are also advertising and placing press advertisements in a number of the regional and city papers covering the opening dates, protected species and the sources of further information. There are also radio advertisements, particularly in the regional areas (Renmark, Mount Gambier and Murray Bridge) providing similar information.

I would offer a warning to those people contemplating going out prior to the opening date that they do recognise that there is a heavy penalty if they are caught shooting wild game before the opening date, that this is treated very seriously by the National Parks and Wildlife Service, and that they should heed the advice that is provided for their own benefit regarding the opening dates and various species.

KANGAROO ISLAND KETCH TRADE

Mr MILLHOUSE: Will the Minister of Transport think again about his refusal of my request to save the ketch trade between Kangaroo Island and the mainland? A couple of weeks ago I was told that C.S.R., which owns and has been running the ketches between the mainland and Kangaroo Island, proposed to sell them and to transport the

gypsum, which they have been taking from the island by the ketches, in some other way. I think that one of the ketches may already have been disposed of. I was told that up until now the backloading of the ketches from the mainland to Kangaroo Island has been of very great importance and, of course, if the ketch trade goes altogether the island is absolutely dependent on the *Troubridge*: if there is any industrial trouble and any mechanical trouble—if the wharf falls down, or something—the island is completely cut off.

I therefore wrote to the Minister with the suggestion that the cheapest way out of it and to make sure that all the Kangaroo Island eggs were not in the *Troubridge* basket was to ensure that the ketch trade continue by, if necessary, giving some sort of financial assistance to C.S.R. to encourage it to continue. To my dismay, only yesterday (for some reason or other, whether it was a practical joke, just a mistake, or what) I had a letter from the Minister, but it was sent to the member for Mitchell's electorate office. If the Minister had addressed me in the way in which I signed the letter, that is, as State Parliamentary Leader of the Democrats, instead of simply as the member for Mitcham, the mistake may not have occurred. I eventually got the letter, and to my dismay I found that the answer overall was 'No', but he said this:

> These ketches no longer carry general cargo. In recent times they existed solely for the carrying of gypsum, but did carry fuel from Port Adelaide as backloading.

I had made inquiries, as my earlier explanation shows, and I checked today and found that that is entirely inaccurate and that, in fact, over half the superphosphate from Kangaroo Island has been carried by the ketches and that thousands of bales of wool have been brought back to the mainland on the ketches. If the Minister is as scanty in his knowledge of the ketch trade—

The SPEAKER: Order! The honourable member for Mitcham has already been advised that comments when making a factual explanation will not be tolerated by the Chair.

Mr MILLHOUSE: No, Sir, I will do my best to conform in future. If the Minister does not know any more about the ketch trade than that, I have little confidence in the assertions in his letter—

The SPEAKER: Order!

Mr MILLHOUSE: —and I was going on just to make the assertions in the letter—factual matters—when the Minister said this:

> The M.V. *Troubridge* is able to transport motor fuel to Kangaroo Island—

that is not one of the things—

> and is expected to maintain satisfactory supplies. The *Troubridge* is also available for all other freight required on the island.

Then he goes on to say what is the Government's contribution to the island trade. The thrust of my question is that the Minister is quite wrong in saying that the ketches have not been carrying general cargo. This will be a very serious matter for the island, and in the light of the information I have given him today, which for some reason did not get through to him before—

The SPEAKER: Order!

Mr MILLHOUSE: —I ask the Minister to think again. Finally, I have been obliged to ask this question, because the member for the district has done absolutely nothing about it—

The SPEAKER: Order!

Mr MILLHOUSE: —to help his own island.

The Hon. M. M. WILSON: First, let me apologise to the member for Mitcham for addressing my letter to the wrong electorate office. I should have put a stamp on it or franked it myself; I can see that, but I do apologise to the honourable member, and I hope that he found the letter to be in the same courteous vein as that in which I normally reply to him. However, the honourable member says that I appear to be unaware of some facts. I will certainly have that checked, because I would not want to mislead him.

Mr Millhouse: It's the people of Kangaroo Island who count, even though their member doesn't think so.

The Hon. M. M. WILSON: I was just trying to apologise to the honourable member, but I will have the matter checked. It is true that it is a sad thing to see the end of the ketch trade. As I understand it, the initial problem outlined to me by the ketch owners themselves, when they came to see me some time ago, was that the freight rates charged on the *Troubridge* were far too competitive for them, and the only way they could have kept going was by a subsidy. I think the honourable member mentioned the question of a Government subsidy. I will certainly have to think very carefully before recommending to the Government that we apply a subsidy, bearing in mind the $1 900 000 a year that we already apply as deficit funding for the operation of the *Troubridge*. Nevertheless, I will have the matter investigated for the honourable member and let him have a report.

LOXTON WATER SUPPLY

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

Loxton Water Supply Improvements.

Ordered that report be printed.

At 3.10 p.m., the bells having been rung:

The SPEAKER: Call on the business of the day.

STAMP DUTIES ACT AMENDMENT BILL (1982)

The Hon. D. O. TONKIN (Premier and Treasurer) obtained leave and introduced a Bill for an Act to amend the Stamp Duties Act, 1923-1981. Read a first time.

The Hon. D. O. TONKIN: I move:

That this Bill be now read a second time.

This Bill is to amend the Stamp Duties Act to prevent stamp duty on certain transactions from being passed on to the consumer. Honourable members will recall that sections designed to prevent the duty payable on credit or rental business or instalment purchase agreements from being passed on to the consumer were removed from the principal Act by Parliament last year. The decision to introduce the necessary legislation followed several years of representations from financial institutions to successive Governments.

At first sight, the former sections 31l and 31p offered a decided benefit to consumers entering into consumer credit transactions in South Australia. However, closer examination of actual practice showed that this benefit was more often than not illusory. The great majority of transactions offered ways in which the effect of sections 31l and 31p could be avoided without actually breaking the law. Higher selling prices, interest charges, and loan establishment fees were among the adjustments which were made.

Complaints had also been received by the Department of Public and Consumer Affairs resulting from the provision that a credit provider could recoup part and, in some cases, the whole of the stamp duty paid, when a purchaser decided to terminate a contract before the due date. This was not

in the best interests of the purchaser. In the light of these considerations it appeared that, in spite of the provisions, the overall cost of credit to the consumer was frequently as high, or higher, than if the credit duty had been passed on directly to the consumer.

At the time that the legislation was introduced, South Australia was the only State with such provisions remaining on the Statute Book, and it was considered this had some adverse effect on the availability of funds to South Australians. The principal advantages of repeal were seen to be:

(1) Proper disclosure to borrowers and purchasers of the real costs of credit transactions;
(2) Less confusion on the part of borrowers and purchasers when rebates of credit charges were calculated in the event of an early termination of a credit contract; and
(3) A possible reduction in interest rates charged where the rate had been increased to cover the stamp duty incurred, or a reduction in other charges.

In 1977, when this matter was raised with them by a previous Government, members of the Australian Finance Conference agreed to make some reduction in their rates of interest to allow for the stamp duty component if the sections were repealed. No action was taken at that time, but when considered again, in 1980-81, further contact was made with the Australian Finance Conference and other affected institutions asking if they would be prepared to give assurances that their charges or rates affected by the duty payable would be reduced if the legislation were amended.

The Finance Conference replied with assurances in relation to the majority of transactions where interest rates had been adjusted to compensate for stamp duty. It also referred to what it called a significant minority of transactions where companies had absorbed the stamp duty, and where no change downwards was expected. It was, in fact, subsequently ascertained that this was some 2 per cent of the total finance company lending in South Australia. A number of other responses, both written and verbal, were received from banks and other institutions, indicating that rates would be appropriately adjusted if the sections were repealed, or assuring that a borrower's 'all up' cost of borrowing would be less if credit business duty which would otherwise be payable on a particular transaction were to become no longer payable by the provider.

The trading bank body, the Associated Banks in South Australia, advised that its interest rate charges did not carry a component to compensate for the stamp duty cost, and that therefore the question of adjusting charges downwards was not appropriate. The responses were considered to be largely in keeping with the spirit of the concept. It was not until last week that bankcard's decision became known. It is now apparent there was a misunderstanding as to the roles of the Associated Banks in South Australia, representing the trading banks, and the bankcard organisation, with the assumption by the Government that any proposed changes in bankcard charges, controlled nationally, would have been included in the response of the Associated Banks in South Australia.

It was not the intention or expectation of the Government that bankcard charges would increase. Subsequent discussions with banking officials have been made difficult by the need to comply with the provisions of the Trade Practices Act, but the banks have been made aware of the Government's concern, and of its decision to introduce this legislation. While the simple solution is to reintroduce the sections previously repealed without any qualification, it must be recognised that this will have the effect of negating the general benefits to the consumer which are conferred by the repeal and which have been previously outlined. Some finance providers already have reduced their charges to consumers, for example, in housing finance.

It may be possible to devise a procedure involving, for instance, the prescription of certain credit transactions which comply with the spirit of the Government's intention to be exempted from the provisions of the two new sections so that the benefits already conferred can be preserved. This situation will be examined by the Government as a matter of urgency. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 provides that the measure is to come into operation on a day to be fixed by proclamation. Clause 3 provides for the insertion of a new section 31, which is in the same form as the previous section 31 repealed by section 3 of the Stamp Duties Act Amendment Act, 1981. The section provides that it is an offence if the person liable to pay duty in respect of credit business or rental business adds the duty or a part of the duty to any amount payable by any other person with whom he has entered into or is conducting any credit business or rental business and provides for the recovery of any amount received in breach of the provision. The proposed subsection (4) of the new section provides that the section is not to apply except in relation to duty payable by virtue of a transaction entered into after the commencement of this measure.

Clause 4 provides for the insertion of a new section 31p, which is in the same form as the previous section 31p repealed by section 4 of the Stamp Duties Act Amendment Act, 1981. The section provides that it is an offence if the vendor liable to pay duty in respect of any instalment purchase agreement adds the duty or a part of the duty to any amount payable by the purchaser and provides for the recovery of any amount received in breach of the provision. The proposed subsection (4) of the new section provides that the section is not to apply except in relation to duty payable by virtue of a transaction entered into after the commencement of this measure.

Mr BANNON secured the adjournment of the debate.

CONSTITUTION ACT AMENDMENT BILL (1982)

Second reading.

The Hon. H. ALLISON (Minister of Education): I move:

That this Bill be now read a second time.

There has been for many years a degree of confusion and debate surrounding the issue of public servants standing for State elections. There is no requirement in the Public Service Act that a public servant resign prior to contesting a State election. A public servant may resign prior to an election in which he is a candidate and be reinstated if unsuccessful. This is not merely a matter of policy. Section 44 of the Public Service Act obliges the Public Service Board to recommend the reappointment of the officer. A similar provision is made in respect of teachers by regulation 143 of the education regulations.

There are, however, some constitutional difficulties. Section 45 of the South Australian Constitution Act provides that a member of Parliament cannot accept any office of profit or pension from the Crown. There is then a difficulty: if a public servant did not resign and found himself elected there would then be an argument that his seat should be immediately declared vacant.

A further difficulty arises in the interpretation of section 49a of the Constitution Act, which provides in essence that a person who holds a contract entered into with any person or on account of the Government of the State 'shall be incapable of being elected . . .'. The view may be taken that employment by the Crown constitutes a contract within section 49 of the Constitution Act. If a contract within the meaning of section 49 does exist in such circumstances, the section in all probability precludes a public servant from even nominating for an election. In the view of the Crown Solicitor, the expression 'shall be incapable of being elected . . .' must be construed as meaning taking part in any election process (which includes nomination). It is therefore desirable that a public servant who is to contest a State election should resign. But the question then arises as to when this resignation should take place.

It is proposed that the last date for resignation should be the day prior to the declaration of poll. This means that a successful candidate who resigns before the declaration of poll will not be in any danger of having his seat declared vacant.

It should be noted that the Bill leaves open the question of the effect of section 58 *(i)* and *(j)* of the Public Service Act in relation to a public servant who is a candidate for election. This question is complex: the Crown Solicitor has expressed the opinion that it is difficult to escape from the dilemma that the nature of the employment of a public servant (particularly a public servant employed in a senior or sensitive position) is inconsistent with his running for election as a member of Parliament. That fundamental dilemma in the Crown Solicitor's opinion cannot be resolved by legislative means. It will remain a question for determination by the Public Service Board in each individual case whether a public servant can properly perform his duties and at the same time stand for election.

The present Bill amends the Constitution Act and the Electoral Act to make clear that, so far as those Acts are concerned, there is no obstacle to a public servant's standing for election and that, providing he resigns before the date of declaration of poll, he may, if successful at the poll, be duly elected as a member of Parliament. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 amends section 45 to deal expressly with the case of a candidate for election who holds an office of profit from the Crown. It provides that he must resign the office before the date of the declaration of poll if he is to be elected.

Clause 3 inserts a similar amendment in section 49 which deals with contracts with the Crown. Clause 4 amends the forms prescribed by the Electoral Act to make it clear that the declaration of qualification for election which must be made by a candidate is unrelated to the question of whether or not the candidate holds an office of profit from the Crown.

The Hon. D. J. HOPGOOD secured the adjournment of the debate.

ELECTORAL ACT AMENDMENT BILL (1982)

Second reading.

The Hon. H. ALLISON (Minister of Education): I move:

That this Bill be now read a second time.

It amends the Electoral Act on a number of miscellaneous subjects. The requirement that the Electoral commissioner should have the last print of the roll for any subdivision or district available for sale at a prescribed price is removed. There is minimal public demand to purchase these prints and the cost of producing copies for sale does not seem justified. In future the Minister will determine whether copies are to be made available for sale and, if so, at what price. An amendment is proposed by the Bill relating to objections to enrolment. The period of non-residence in a subdivision that may justify such an objection is reduced from three months to one month. This brings the State legislation into line with the relevant Commonwealth provisions.

A new provision is proposed under which the death of two or more candidates for election to the Legislative Council on or before polling day would render the election invalid. An amendment is proposed under which powers and discretions of the returning officer in relation to the preliminary scrutiny of postal ballot papers may be exercised on his behalf by a deputy returning officer. The present requirement of the Act that groups of candidates for election to the Legislative Council be arranged from left to right across the ballot paper has resulted in a physically cumbersome ballot paper. The Bill proposes an amendment under which all groups comprising only one candidate can be listed vertically in a position to the right of all other groups. Provision for expiation of the offence of failing to vote is included in the Bill. The Bill provides for the address of the printer to be included in certain published electoral material. This proposal is consequential upon the proposed repeal of the Imprint Act. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clauses 1 and 2 are formal. Clause 3 removes the requirement that the last print of each electoral roll should be available for sale. Clause 4 reduces from three months to one month the period of non-residence on which an objection to enrolment may be based. Clause 5 renders invalid any election for the Legislative Council where two or more candidates die on or before polling day. Clause 6 provides that the deputy returning officer may exercise on behalf of the returning officer certain powers and functions in relation to the preliminary scrutiny of postal votes.

Clause 7 provides for the vertical grouping of candidates for the Legislative Council where each candidate constitutes a group. Clause 8 provides for the expiation of the offence of failing to vote. Clauses 9 and 10 provide for the inclusion of the name of the printer in electoral material. This requirement does not apply in relation to newspapers, magazines, journals and similar publications that are issued at periodic intervals of less than one month. Clause 11 amends section 182 of the principal Act. The amendment merely brings the wording of this provision into consistency with other provisions relating to onus of proof in cases of disputed elections.

The Hon. D. J. HOPGOOD secured the adjournment of the debate.

COMPANIES (ADMINISTRATION) BILL

Second reading.

The Hon. H. ALLISON (Minister of Education): I move:

That this Bill be now read a second time.

It deals with the Corporate Affairs Commission and the Companies Auditors and Liquidators Disciplinary Board. The present Corporate Affairs Commission and Companies Auditors Board are constituted under the Companies Act, 1962-1981, which will be superseded by the Companies (South Australia) Code. If this Bill is not introduced, it will be necessary to retain parts of the old Companies Act on the Statute Book alongside the new Companies Code. This would create confusion amongst practitioners.

Part II of the proposed legislation preserves the existing Corporate Affairs Commission, and provides for a Commissioner, Deputy Commissioner and Assistant Commissioner. The commission and its employees would continue to be constituted in its present form, with employees subject to the Public Service Act, 1967-1981.

Part III of the Bill provides for the constitution of the Companies Auditors and Liquidators Disciplinary Board to replace the Companies Auditors Board set up under the Companies Act, 1962-1981. The Companies Auditors and Liquidators Disciplinary Board is intended to perform the functions and exercise the powers conferred on it under the Companies (South Australia) Code of disciplining auditors and liquidators after investigation and hearing. Provision is also made in the Bill for transition to the operation of the Companies (South Australia) Code, so that inquiries by the existing Companies Auditors Board which are under way at the time of the commencement of the Companies (South Australia) Code may be completed.

The board has been re-named in recognition of the true nature of its function, that is, to supervise and discipline registered auditors and liquidators. Under the new Companies Code its registration function will be undertaken on a national basis by the N.C.S.C.

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

Leave granted.

Explanation of Clauses

Clauses 1 and 2 are formal. Clause 3 sets out the arrangement of the Bill. Clause 4 defines a number of terms used in the Bill. Clause 5 repeals certain provisions of the Companies Act, 1962-1981. The provisions of Part XIII and section 8 of that Act are replaced by Parts II and III of this Bill respectively. Section 9 is replaced by Division 2 of Part II of the Companies (South Australia) Code. Clause 6 continues the Corporate Affairs Commission in existence.

Clause 7 provides for delegation by the commission of its functions, powers, authorities and duties. Clause 8 requires the commission to keep proper accounts and requires the Auditor-General at least once in each year to audit the accounts. Clauses 9, 10 and 11 provide for the appointment of a Commissioner, Deputy Commissioner and Assistant Commissioner for Corporate Affairs respectively. Clause 12 provides for the appointment of officers of the commission.

Clause 13 establishes the Companies Auditors and Liquidators Disciplinary Board. Clause 14 provides for the membership, deputy membership and Chairman of the board. Subclauses (6) and (7) provide that members and deputy members of the Companies Auditors Board holding office immediately before the commencement of the Act shall be members and deputy members of the new board respectively. Clause 15 provides that the board may operate through any two of its members. Clause 16 provides for a three-year term of office and lists the ways in which a member's term of office may terminate.

Clause 17 provides for remuneration of members of the board. Clause 18 provides for the continued existence of the Companies Auditors Board for the purpose of completing inquiries (if any) under section 9 (9) of the Companies Act, 1962-1981. On completion of such an inquiry, the board must make a report to the National Companies and Securities Commission.

The Hon. D. J. HOPGOOD secured the adjournment of the debate.

COMPANIES (APPLICATION OF LAWS) BILL

Second reading.

The Hon. H. ALLISON (Minister of Education): I move:

That this Bill be now read a second time.

Members will recall that, when introducing the National Companies and Securities Commission (State Provisions) Bill and associated legislation for the co-operative companies and securities scheme on 28 August 1980, I described in detail the obligations of this State under a formal agreement entered into between the Commonwealth and the six States on 22 December 1978.

That agreement sets out the obligations of the parties in respect of a scheme for the Commonwealth and the six States to enact legislation for the purpose of establishing a uniform system of law and administration regulating companies and the securities industry in the six States and the Australian Capital Territory. A copy of the agreement appears in the schedule to the National Companies and Securities Commission (State Provisions) Act, 1980.

The agreement establishes a Ministerial council, comprising a Minister from each State and the Commonwealth, which is responsible for the formulation and operation of the uniform companies and securities laws provided for under the agreement and which will exercise general control over the implementation and operation of the scheme. Pursuant to the agreement a first package of substantive laws relating to the regulation of the securities industry and company takeovers came into operation in all States and the Australian Capital Territory on 1 July 1981.

The Bill now before the House relates to the introduction of a second package of substantive laws required by the agreement: laws relating to the regulation of companies. Under the direction of the Ministerial council, officers from each State and the Commonwealth have for the past two years worked together to formulate the companies legislation which will be applied uniformly in each jurisdiction under the scheme. This legislation has become commonly known as the Companies Code.

In accordance with the agreement, the companies code is based on the uniform companies Acts presently in force in those States which are parties to the interstate corporate affairs agreement: the States of New South Wales, Victoria, Queensland and Western Australia. The changes which the Companies Code will make to the existing laws of these States relate mainly to those changes which are expressly authorised by the agreement or which are required to take into account the co-operative nature of the scheme. All changes have received the unanimous approval of the Ministerial council.

The Companies Code has been exposed for public comment on two occasions and on each occasion the Code has been amended to take account of public submissions received. To ensure that the content of the substantive provisions of the code will apply uniformly in each jurisdiction, the agreement provides for the Companies Code to be firstly set out in Commonwealth legislation that will apply to the A.C.T. Once this has been done each State is then required to pass an Act which will apply the provisions of the Commonwealth legislation as laws of the State to

the exclusion of its present Companies Act. Those Acts will make only such changes to the Commonwealth legislation as are required to reflect necessary local legal and administrative differences.

Pursuant to its obligations under the agreement, the Commonwealth earlier this year passed its Companies Act, 1981. That Act embodies the provisions of the Companies Code and applies those provisions as laws of the A.C.T. It will not come into force until all the participating States are ready to proclaim their legislation. Each State is now required to apply the provisions of the Commonwealth Companies Act, 1981, as laws of that State and the Bill now before the House will achieve that purpose for South Australia. Each other State has introduced, or will soon be introducing, similar legislation into its Parliament.

So as to distinguish the A.C.T. companies laws as they apply in each jurisdiction from the A.C.T. laws themselves, the applied laws will be known as a 'code'. Thus, the A.C.T. companies legislation as it applies in South Australia will be known as the Companies (South Australia) Code. In addition to providing for uniform company law the Companies (Application of Laws) Bill of each State will ensure that the companies codes of each State remain uniform in each jurisdiction by automatically applying any amendments to the A.C.T. Companies Act as amendments of the State laws. It is noted, however, that under the terms of the agreement, the Commonwealth is not free to amend its A.C.T. laws which form part of the scheme without the approval of the Ministerial council.

Pursuant to the agreement the Commonwealth has established a body known as the National Companies and Securities Commission. The N.C.S.C. is responsible for the uniform administration of the substantive scheme legislation. The functions and powers of the N.C.S.C. were described in my speech introducing the National Companies and Securities Commission (State Provisions) Bill.

Although the N.C.S.C. will be responsible for the overall administration of the companies code, the N.C.S.C. is required to have regard to the need to decentralise its administrative activities to the maximum extent practicable. Therefore, it is expected that the South Australian Corporate Affairs Commission will continue to carry out most of the administration of the Companies (South Australia) Code.

As I have mentioned previously, this Bill amends the substantive provisions of the Commonwealth Companies Act, 1981, to comply with local legal and administrative requirements. The Bill also permits the printing of the provisions of the Companies (South Australia) Code. Copies of the Commonwealth Companies Act, 1981, which contains the substantive provisions of the code, an explanatory memorandum relating to the provisions of the Companies Act, 1981, and clause notes explaining the provisions of this Bill are available on request.

Members will notice that clause 6 of the Bill makes two significant changes to the applied provisions. First, it excludes the application of sections 1 to 4 of the Commonwealth Companies Act, 1981, because those provisions are only relevant to the A.C.T. In their place the introductory provisions set out in schedule 4 of the Bill will appear in the printed code. Secondly, the applied provisions are adapted in the manner specified in the first schedule to meet local, legal and administrative requirements. Thus, for example, references in the Commonwealth Act to the 'A.C.T.' are replaced with references to 'South Australia'.

The Bill will overcome any local problems which might arise as a result of the amendment of the Commonwealth Companies Act, 1981. As amendments to the Commonwealth Act will apply automatically as laws of the State, those amendments may also need to be adapted to meet local requirements. The Bill overcomes this difficulty by providing for regulations which have become commonly known as 'translator' regulations to be made amending schedule 1. This State's existing Companies Act, 1962-1981, is not to be repealed outright by the proposed legislation, under which it is intended that the existing provisions of the Companies Act, 1962-1981, only be excluded where those provisions have been superseded by the terms of the Companies Code or the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981.

Power to amend the provisions of schedule 1 by regulations will be necessary to allow amendments to the uniform companies laws to be implemented quickly in the State, and to maintain uniformity with the laws of other jurisdictions participating in the scheme. Similar provision is also made in relation to any amendments to the Commonwealth regulations which may be approved by the Ministerial Council.

In addition to applying the provisions of the Commonwealth Companies Act, 1981, the Bill also applies regulations made under the Commonwealth Companies Act, 1981 and fees regulations made under the Commonwealth Companies (Fees) Act, 1981, as regulations in South Australia governing matters required to be prescribed by regulations for the purpose of the Companies (South Australia) Code.

The Commonwealth Companies Act, 1981, to be applied by the proposed legislation does not provide any radical alterations to the structure of company law, but some aspects of existing company legislation have been substantially amended. I shall list and detail six proposed areas of amendment.

First, section 67 of the existing South Australian Companies Act prohibiting a company financing dealing in its shares will be replaced by sections 129 and 130 of the Companies Code. The provisions of section 67 have been broadened to include acquisitions (not merely purchases) of company shares, and to include units of shares. Section 67 (3) provides that, upon any contravention of section 67, both the company and the officer in default shall be guilty of an offence. Section 129 (5) of the Commonwealth Companies Act however makes only the defaulting officer liable for a breach of section 129 (1), on the rationale that if the company is penalised under this section, it is the members and creditors who will suffer. The maximum penalty under section 129 (5) is $10 000 or two years imprisonment or both, a substantial increase on the three months imprisonment or $1 000 provided for under section 67 (3) of the existing South Australian Companies Act.

Section 130 of the Commonwealth Companies Act contains entirely new provisions dealing with the consequences of a company financing dealings in its shares. Contracts made by a company for giving financial assistance to a person for the acquisition of shares in that company would not be invalid in consequence of section 130 (1) *(a)*, but contracts by a company which actually effected the acquisition of shares in that company, or effected a loan on the security of shares in that company, would be invalid. A contract not invalid in consequence of section 130 (1) *(a)* would be voidable at the option of the company which gave the financial assistance for the acquisition of its shares. I seek leave to have the remainder of the explanation inserted in *Hansard* without my reading it.

Leave granted.

Remainder of Explanation of Bill

Secondly, section 374c (1) of the existing South Australian Companies Act makes it an offence for an officer of a company to have the company contract a debt when the officer has no reasonable or probable grounds of expectation

that the company would be able to pay the debt. This provision would be replaced by sections 556 (1) and (2) of the Commonwealth Companies Act which expands the scope of the offence to cover the ability of the company to pay all its debts at the time that a particular debt was contracted. The offence would be committed not merely by the contracting officer, but by any person who was a director or concerned in management of the company when the debt was incurred. Such persons would have a defence if the debt was incurred without their express or implied authority or consent. The concept of 'probable grounds' for expecting that the debt will be met has been dropped from the existing legislation, so that section 556 (1) of the Commonwealth Act makes it an offence for a company to incur a debt where there are reasonable grounds to expect that the company will not be able to pay all its debts. The penalty for the offence has been increased from three months imprisonment or $500 to imprisonment for one year or $5 000 or both. Moreover, the officer will be personally liable to the creditor where section 556 is infringed.

Section 374c (2) of the existing Companies Act makes it an offence to carry on the business of a company with intent to defraud the company's creditors. This provision would be substantially replaced with section 556 (5) of the Commonwealth Companies Act, which, however, has increased the maximum penalty for the offence with imprisonment for one year or $2 500, to imprisonment for two years or $10 000 or both.

Thirdly, section 124 (1) of the existing South Australian Companies Act imposes a duty on company directors to act honestly and use reasonable diligence in the discharge of their duties. Sections 229 (1) and (2) of the Commonwealth Companies Act has replaced this provision. The new code provides that an officer of a corporation shall act honestly in the performance of his duties. The maximum penalty is $5 000, or where the offence is committed with intent to deceive or defraud, $20 000 or five years imprisonment or both. Section 229 (2) provides that an officer of a corporation shall exercise a reasonable degree of care and diligence in the performance of his duties. The maximum penalty is $5 000; the penalty under section 124 of the existing legislation is only $2 000.

The provisions of section 124 (3) in the existing legislation (which provide for repayment to the company of profits made by an officer offending against the section, or the payment of compensation to the company for any losses it incurs) are substantially re-enacted in section 229 (7) of the Commonwealth Act.

An important amendment is the expansion of the duty in section 229 of the Commonwealth Act to embrace all company officers, a term widely defined in section 229 (5). Under the present law, the comparable duty only applies to directors.

Fourthly, the registration of company charges. The present law is found in sections 100 to 110 of the existing South Australian Companies Act. The Commonwealth Companies Act deals with the machinery of registration of charges in sections 199 to 215, and with the order of priority of registrable charges in schedule 5 of the Act.

The major difference imported by the Commonwealth Companies Act is the substitution of a system of priorities for the existing provisions making charges invalid if not registered within 30 days after creation. The order of priorities is set out in schedule 5 of the Commonwealth Act. Priority is basically established by the time of registration. However, it can be defeated if the chargee had notice of a prior charge or was not dealing in good faith.

The other major change implemented by the Companies Code is that a charge will be registrable only in the home jurisdiction of a company. The order or priorities in the home jurisdiction will apply and will be registered for the purposes of priority throughout every State and Territory participating in the co-operative scheme (throughout all Australian jurisdictions except the Northern Territory).

Fifthly, a further major change to be effected by the proposed legislation is that of a national system of registration. It is intended that a party wishing to reserve a company name, or to incorporate a company, or to lodge documents, may do so at one corporate affairs office. At present, these tasks must be duplicated at corporate affairs offices in each jurisdiction in which the company carries on business. Section 14 of the Companies and Securities (Interpretation and Miscellaneous Provisions) Code (which is already in force) provides that registration of company documents in a company's home jurisdiction shall be deemed to be registration with the N.C.S.C. and shall be adequate notice of registration in all participating jurisdictions. As a result, a company will need only to register and lodge annual returns in one jurisdiction, rather than being required to register in all Australian jurisdictions in which it is doing business.

These provisions for the uniform availability of company documents allow for a system of simplified company searches, in which only the register in the home jurisdiction has to be searched.

The only Australian jurisdiction at present not participating in the co-operative scheme is the Northern Territory, with the result that the above remarks on the availability of 'one stop shopping' for registration and company searches do not apply to that jurisdiction.

Complementing the simplification of registration and search procedures is the provision in clause 29 of the proposed Companies Code for the registration of an auditor or liquidator in any participating State or Territory to be effective registration in all other participating jurisdictions. Court orders and the exercise of administrator's powers both with respect to liquidations and schemes of arrangement are made applicable in all participating States and Territories under sections 465 and 468 of the proposed Companies Code, providing further simplication of the administration of company law throughout Australia.

Finally, there has been a general review of penalties throughout the Companies Code with a view to providing more realistic sanctions. The examples set out above with respect to a company trading in its own shares, entering debts when there are reasonable grounds to expect that the company cannot pay all its own debts, and the duties of company officers to show honesty, care and diligence in the performance of their functions, all illustrate the trend in the proposed legislation towards increasing penalties for serious misconduct. The increase in corporate crime Australia wide, and the necessity to emphasise the need for honest corporate practices have promoted the proposed increases in penalties.

Conclusion

The Bill now before the House represents the last and most significant step taken by this State in relation to the introduction of the co-operative scheme legislation. Over many years there have been calls from all sections of the business community for increased uniformity in both company law and its administration. There have also been calls for a reduction in the duplication of requirements inherent in a system where each jurisdiction imposes its own requirements. The co-operative scheme will establish an effective procedure for securing and maintaining a uniform system of law and administration relating to companies and securities industry matters throughout the six States and the A.C.T. The scheme legislation will also significantly reduce the duplication of requirements inherent in the present companies laws. The scheme is designed to promote a stable

and uniform business environment and to encourage investor confidence.

The Bill now before the House has been approved by the Ministerial Council for introduction into the South Australian Parliament. Similar legislation has been approved for introduction into each of the other five State Parliaments.

I commend the Bill to the House.

Clauses 1 and 2 are formal. Clause 3 sets out the arrangement of the Bill. Clause 4 contains general interpretation provisions. Some of the more important definitions are as follows:

'Agreement' means the Commonwealth/State Agreement (the Formal Agreement) made on 22 December 1978.

'Commission' or 'National Commission' means the National Companies and Securities Commission established by the Commonwealth National Companies and Securities Commission Act, 1979.

'Ministerial Council' means the Ministerial Council for Companies and Securities established by the Formal Agreement.

'State Commission' means the Corporate Affairs Commission. This Commission was established by Part XIII of the Companies Act, 1962-1981, but as that Act is to be superseded, the Companies Administration Bill, 1981, has been prepared to continue the Commission in existence.

'the applied provisions' means the provisions of the Commonwealth Companies Act, 1981, as amended, and regulations made thereunder applying in South Australia by virtue of clauses 6 and 7.

'the Commonwealth Act' means the Commonwealth Companies Act, 1981, as amended (see subclause 4 (2)—the result is that amendments to the Commonwealth Act will be automatically applied in South Australia).

Clause 5 provides that the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981, will govern the interpretation of the provisions of the Commonwealth Act applying by reason of clause 6 of the Bill. Clause 6 applies the provisions of the Commonwealth Act, except the first four sections, as laws of South Australia. Preliminary provisions will, by virtue of schedule 4, replace the first four sections when they are published as a Code pursuant to clause 10. Clause 10 provides that the applied laws may be cited as the 'Companies (South Australia) Code'. The Commonwealth provisions will be applied with the amendments set out in schedule 1 and will be interpreted in accordance with the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981. This Bill, however, when it has been enacted, will be interpreted in accordance with the South Australian Acts Interpretation Act, 1915-1975, because it will be a solely South Australian Act, as distinct from a Commonwealth Act applied in South Australia. The Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981, will not affect the interpretation of this Bill. By reason of clause 4 (2) the reference in clause 6 to the Commonwealth Act includes reference to future amendments of that Act. Future amendments of the Commonwealth Act require prior approval of a majority decision of the Ministerial Council and will apply automatically in South Australia by virtue of this clause.

Clause 7 provides that regulations in force for the time being under the Commonwealth Act will apply in South Australia as regulations under the provisions of the Code. The regulations will apply with the amendments set out in schedule 2 and will be subject to the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981. This clause has a similar effect in respect of Commonwealth regulations as clause 6 has in respect of the Commonwealth Act.

Clause 8 provides for the payment to the State Commission of fees arising from the administration of the applied provisions. The services for which fees will be paid will be substantially performed by the State Corporate Affairs office on behalf of the National Commission and it is part of the agreement between the States and the Commonwealth that these fees be paid to the States. Subclause (2) provides that these fees must be paid before a document is deemed to be lodged and subclause (3) provides that the National Commission (acting through the State Corporate Affairs office) must not supply a service that has been requested until these fees have been paid. The State Corporate Affairs office by subclause (5) may waive or reduce a fee or refund it in any particular case. The fees payable will be those in the schedule to regulations under the Companies (Fees) Act, 1981, of the Commonwealth amended in the manner set out in schedule 3 of the Bill.

Clause 9 deals with the amendment of:

(a) the Commonwealth regulations which are applied as regulations under the Code.

(b) the Commonwealth regulations made under the Companies (Fees) Act, 1981, of the Commonwealth which are also applied in South Australia.

Amending regulations must be initiated by the Commonwealth in accordance with a decision of the Ministerial Council. Normally amendments to the Commonwealth regulations or fee regulations are applied automatically in South Australia. However, if the Commonwealth regulations are delayed for more than six months or are disallowed or subject to disallowance after six months, the Governor may make the proposed amendments for the purpose of application in South Australia. By subclause (3) regulations amended in pursuance of this clause are read as regulations applying by reason of, or adapted by, clauses 7 and 8.

Clause 10 provides for the publication of the Commonwealth provisions applied as law in South Australia by, and as adapted by, clause 6 of the Bill. The document may be cited as the 'Companies (South Australia) Code' (paragraph 10 (2) *(d)*) and by subclause (3) the printed Code shall be *prima facie* evidence of the provisions of the Commonwealth Act applying by reason of, and as adapted by, clause 6. The printed Code is to contain the headings and sections set out in schedule 4 in replacement of sections 1-4 of the Commonwealth Act which are not applied by clause 6 in South Australia. The replacement provisions are introductory and informative in nature, and condition the printed Code for use in South Australia.

Clause 11 is a provision similar to clause 10. It provides for the publication of the Commonwealth regulations applied in South Australia as regulations under the Code as adapted by clause 7 of the Bill. The document may be cited as the 'Companies (South Australia) Regulations' (paragraph 11 (2) *(d)* of the Bill) and by subclause 11 (3) the printed regulations shall be *prima facie* evidence of the Commonwealth regulations applying by reason of, and as adapted by, clause 7. The printed regulations are to contain the headings and provisions set out in schedule 5 in replacement for the provisions of those Commonwealth regulations, providing for the citation or commencement of the regulations, which are not applied by clause 7 in South Australia.

Clause 12 is also similar to clause 10. It provides for the publication of the fees schedule prescribed by regulations made under the Commonwealth Companies (Fees) Act, 1981, and applied in South Australia as fees payable under the Code as adapted by clause 8 of the Bill. The document may be cited as the 'Companies (Fees) (South Australia) Regulations' (paragraph 12 (2) *(d)* of the Bill) and by subclause 12 (3) the printed fees regulations shall be *prima facie* evidence of the Commonwealth fees schedule applying by reason of, and as adapted by, clause 8. The printed

regulations are to contain the headings and provisions set out in schedule 6 in replacement for those provisions of the Commonwealth regulations to which the fees schedule is attached.

Clause 13 facilitates the publication of amendments to the Code, the regulations or the fees regulations as they occur from time to time. This provisions will avoid the need to re-publish the entire document each time an amendment is made by permitting the text of the amendments to be published in a separate document in similar fashion to an amendment Act.

Clause 14 makes it clear that a reference in an Act, regulation or other instrument to the Companies (South Australia) Code is a reference to the provisions of the Commonwealth Act applying by reason of clause 6, and that a reference to a section of the Code is a reference to the corresponding provision of the Commonwealth Act. The clause makes similar provision in respect of the Companies (South Australia) Regulations and the Companies (Fees) (South Australia) Regulations.

Clause 15 provides for the amendment of schedules 1, 2 and 3 by regulations. Those schedules spell out the necessary adaptations that must be made to the Commonwealth Act and regulations for their proper application to conditions in South Australia. Further amendments to the provisions of the Commonwealth Act and regulations are likely to require the inclusion of further provisions in schedules 1, 2 and 3. Amendments to the schedules of each States' Companies (Application of Laws) Act spelling out these additional adaptations would normally require the passage of amending legislation through the Parliaments of each State. This procedure would greatly delay the implemention of amendments to the applied laws as amendments could not be implemented uniformly in each jurisdiction until such amending legislation has passed through such Parliaments. To avoid these delays clause 15 provides for the amendment of schedules 1, 2 and 3 by regulations. These regulations are commonly referred to as 'translator' regulations. They are required to be approved by the Ministerial Council before they are made and will generally be made before amendments to the Commonwealth Act are proclaimed to come into effect.

Clause 16, by subclause (1), empowers the Governor to make regulations exempting a particular company or a company of a particular class from the provisions of Division 6 of Part IV of the Companies (South Australia) Code. Subclause 16 (2) empowers the Governor to make regulations declaring certain bodies to be 'prescribed corporations' for the purposes of the definition of that term in section 189 (1) of the Companies (South Australia) Code. Subclause (3) empowers the Governor, with the approval of the Ministerial Council, to declare, by regulation, that interests are exempt interests for the purposes of the definition of 'prescribed interest' in section 5 of the Code. The effect is to remove those interests from the operation of Division 6 Part IV of the Code which regulates prescribed interests. This subclause is the converse of subclause (1) in that it exempts the interest instead of the the company controlling the interest. Subclauses (4) and (5) are transitional.

Clause 17 applies the interpretation provisions of the Companies (South Australia) Code and the Companies and Securities (Interpretation and Miscellaneous Provisions) (South Australia) Code to the expressions used in Part III of the Bill.

Clause 18 provides that the provisions of the Commonwealth Act applying by reason of clause 6 apply to the exclusion of the Companies Act, 1962-1981, the Marketable Securities Act, 1971, and the Securities Industry Act, 1979-1980.

Clause 19 enacts provisions that ensure that the operation of the Companies (South Australia) Code will not affect the previous operation of the Companies Act, 1962-1981, the Marketable Securities Act, 1971, and the Securities Industry Act, 1979-1980, or revive any law or matter not in force at the commencement of those Acts. Provisions similar to these are found in the Acts Interpretation Act, 1915-1975, but it is necessary to make specific provision in this Bill to cater for the introduction of the Code. Subclause (2) continues the inspection powers of the office of the Corporate Affairs Commission established under Part XIII of the Companies Act, 1962-1981.

Clause 20 is a general transitional provision ensuring that all things existing under the old Act continue under the new provisions unless it is made clear in the Bill or the Code that this is not intended.

Clause 21 is of like effect to clause 20 except that it particularises certain acts and events. Clause 22 provides for proceedings commenced or entitled to be commenced by or against the State Commission under the Companies Act, 1962-1981, to be continued by or against the National Commission under the Code. Clause 23 is of like effect to clause 22 providing for property vested in the State Commission under the Companies Act, 1962-1981, to vest in the National Commission under the Code. The provisions of the Code in relation to that property apply as if the property had vested in the National Commission under the Code.

Clause 24 provides for the continuation of registers, funds, deposits and accounts kept under the old Act at the time of the commencement of the Code by deeming them to be kept under the corresponding provision of the Code. Clause 25 lists a series of acts performed by the Minister under the Companies Act, 1962-1981, and deems those acts to continue in force and in effect under the Code as if they were acts performed by the Ministerial Council or National Commission, as the case may be. Matters or notices which were required to be published in the South Australian *Government Gazette* are now required to be published in the *Commonwealth of Australia Gazette*.

Clause 26 provides for the legal effect of names under which companies were registered pursuant to the Companies Act, 1962-1981, to continue in force and in effect as if registered under the equivalent provisions of the Code. This also applies to names reserved within 2 months before the commencement of the Code.

Clause 27, by subclause (1), states that the provisions of the Code do not affect the operation of tables A or B of the fourth schedule of the Companies Act, 1962-1981, in their application to a company existing immediately before the commencement of the Code. However, this does not prevent the articles of such a company adopting the regulations in table A or B of schedule 3 to the Code—see subclause 27 (2).

Clause 28, by subclause (1), provides that a prospectus registered under the Companies Act, 1962-1981, within six months of the commencement of the Code will be deemed to be registered under the Code until the expiration of six months from the date of registration. Subclause 28 (2) is of similar effect in relation to a statement under section 82 of the Companies Act, 1962-1981.

Clause 29 preserves the transferability of partnership interests created before 5 October 1972 which would otherwise be caught by section 169 of the Code. This mirrors subsection 81 (2) of the Companies Act, 1962-1981.

Clause 30 makes provision for those charges registered or about to be registered under the Companies Act, 1962-1981, in relation to the Code. In recognition of the 'one place of registration' concept, charges will now all be kept on a register kept in the jurisdiction in which the particular

company is registered. Subclause 30 (2) provides that if a charge was registered under the Companies Act, 1962-1981, immediately before the commencement of the Code it will be deemed to be registered under the provisions of the Code and the Commission will be required to enter the relevant details in the Register of Company Charges. Subclause 30 (3) provides that where a charge was lodged for registration under the Companies Act, 1962-1981, not later than thirty days before the commencement of the Code but had not been registered under the Companies Act, 1962-1981, and had not been refused registration, it will be deemed to be registered under the Code from the date of commencement of the Code.

Subclause (5) provides that where two or more charges on the same property of a company are deemed by subclauses (2) and (3) of this clause to be registered under the Code, those charges, as between themselves, have the respective priorities that they would have had if this Bill had not been enacted. Subclause (8) deals with those charges which were unregistered under the Companies Act, 1962-1981, and are capable of registration under the Code. Subclause (9) deals with those charges which were required to be registered under the Companies Act 1962-1981, but which are no longer required to be registered under the Code. Subclause (10) makes provision for charges which have become void under the Companies Act, 1962-1981, because of non-registration within the required period and in relation to which the court makes an order that subclause (8) is to apply in relation to that charge.

Clause 31 provides that where it appears from a return lodged with the State Commission under the Companies Act, 1962-1981, or any previous law of South Australia that a person was at a particular time a manager of a company then the Commission may give a certificate under the corresponding provision of the Code that the person was at that time a principal executive officer of the company, a concept similar to that of the old concept of manager.

Clause 32 relates to the new definition of 'financial year' in section 5 (1) of the Code. Part of the definition relates to a company incorporated under the Companies Act, 1962-1981, and provides for the continuance of that company's obligations under the Code in respect of holding annual general meetings and the lodging and reports of accounts. This provision is of particular relevance to directors who have consistently failed to fulfil their obligations to lay annual accounts before the company in general meeting. In essence clause 32 obliges directors to provide an 'up-to-date' record of the history of the company's accounts.

Subclause 32 (4) provides that where directors have been granted exemptions under the Companies Act, 1962-1981, from complying with specified requirements as to the form and content of accounts or directors reports if lodged within time, which are deemed to be exemptions granted under the Code, those exemptions will also apply to the accounts and reports required to be lodged under this clause.

Clause 33 provides that where a company has failed to comply with an obligation under the Companies Act, 1962-1981, to lodge an annual return in relation to an annual general meeting held before the commencement of the Code then the obligation to lodge that return will continue to apply in relation to that company as if this Bill had not been enacted.

Clause 34 states that the investigation provisions of the Code will apply to any investigation to which the equivalent provisions of the Companies Act, 1962-1981, applied before the commencement of the Code. Subclause 34 (1) states that inspectors appointed to carry out investigations and so carrying out investigations under the Companies Act, 1962-1981, will be deemed to be appointed and the investigations deemed to be carried out under the equivalent provisions of the Code. Subclause 34 (2) provides that all matters and things done in the course of an investigation under the Companies Act, 1962-1981, will have the same effect and operation as if done under the Code. Subclause 34 (3) refers to particular instances.

Clause 35 provides that where a person was appointed to administer a compromise or arrangement before the commencement of the Code then that person shall be deemed, for the purposes of the Code, to be appointed at the date of commencement of the Code.

Clause 36 states that the provisions of the Code with respect to winding up, other than subdivision F of Division 4 of Part XII, will not apply to a winding up of a company which was commenced prior to the commencement of the Code—such a winding up will continue as if the Companies Act, 1962-1981, remained in force.

Clause 37 provides for certain auditors and liquidators registered under the Companies Act, 1962-1981, to be deemed to be registered under the new Code. Subclause 37 (1) provides that a person registered as an auditor or liquidator, or appointed as an official liquidator under the Companies Act, 1962-1981, will be deemed to be registered under the Code for a period of six months after the commencement of the Code, subject to the cancellation or suspension provisions in section 27 of the Code. By subsection 20 (6) of the Code a liquidator's registration will only come into force after he has lodged any required security under section 22 of the Code with the National Commission. Where a person is deemed to be registered as an auditor, as a liquidator or as an official liquidator under a provision of a State or Territory law that corresponds with subclause (1) he shall be deemed to be registered under the Code, thus giving that person the benefits of Australia-wide registration—see subclause (4).

Clause 38 provides that, where the institution of a proceeding under the Companies Act, 1962-1981, was subject to the consent of the Minister and the proceeding was not instituted before the commencement of the Code but may be instituted after its commencement by reason of the operation of section 18, the power of the Minister to consent is preserved in relation to those proceedings.

Clause 39—Where a corporation that is a recognised company for the purposes of the Code was before the commencement of the Code registered as a foreign company under the Companies Act, 1962-1981, then subclause 39 (1) deems the registered office of the corporation in South Australia to be its principal office within South Australia for the purposes of the Code. This provides for certain corporations that are currently registered as foreign companies in South Australia and which will become recognised companies on the commencement of the Code.

Clause 40—Section 501 (1) of the Code provides that a company that has established a place of business or commenced to carry on business within another jurisdiction covered by the co-operative scheme is required to lodge with the commission a notice in the prescribed form setting out the situation of its principal office in that other jurisdiction. The notice must be so lodged within one month after establishing a place of business or commencing to carry on a business in the relevant jurisdiction or, in the case of a foreign company, within one month after doing so or becoming registered as a foreign company, whichever is the later.

Subclause 40 (1) deems a company, having before the commencement of the Code, already established a place of business or commenced to carry on business, for the purposes of the Code to have done so at the commencement of the Code. Thus the notice must be lodged within one month after the commencement of the Code.

Where a company, incorporated under the Companies Act, 1962-1981, had before the commencement of the Code, been registered in another jurisdiction covered by the co-operative scheme as a foreign company and in compliance with the law of that other jurisdiction relating to registered foreign companies, had lodged certain notices and maintained a branch register, then by virtue of subclause 40 (2) the notice lodged concerning the hours during which the registered office would be open is deemed to be compliance by the company with section 501 (2) of the Code and by virtue of subclause 40 (3) the branch register will be deemed to be a branch register kept by the company under section 262 of the Code.

Clause 41: Under the Code a company, formed outside Australia which is registered as a foreign company in South Australia and in other jurisdictions, will be entitled to carry on business in other participating jurisdictions simply by notifying the Commission of the one jurisdiction in which it wishes to be registered. Then by notifying the commission of its principal place of business in the other participating jurisdictions where it will be carrying on business, it will be entitled to carry on business in those other jurisdictions. This is another feature of the 'one place of registration' concept.

Clause 42 provides that the National Commission will be able, if it considers it appropriate to do so, to destroy or dispose of any documents lodged by a recognised company or a recognised foreign company under the Companies Act, 1962-1981.

Clause 43: Clause 17 provides for the exclusion of the Marketable Securities Act, 1971, on the commencement of the Code. However, clause 43 makes provision for certain actions and things done under the Marketable Securities Act, 1971, to continue to operate and have the same force and effect as if this Bill had not been enacted.

Clause 44: The South Australian Supreme Court will be given power to resolve any difficulty that may arise in the application to a particular matter of any of the provisions of the Code, the Companies Act, 1962-1981, the Marketable Securities Act, 1971, or the Bill and any orders made under this provision will have effect notwithstanding anything in the foregoing legislation.

Clause 45: The Governor will be able to make any necessary regulations that are in accordance with advice that is consistent with resolutions of the Ministerial Council. They may be made by reference to the regulations for the time being in force under the Commonwealth Companies (Transitional Provisions) Act, 1981, or otherwise in the normal course.

Schedule 1 makes a number of alterations to the provisions of the Commonwealth Companies Act, 1981, which are applied as laws of South Australia regulating companies in the State. The schedule sets out the adaptations to the Commonwealth Act, as amended, which are required to take account of local conditions. The main adaptations are as follows:

Paragraph 1—adapts the general terminology of the Commonwealth Act for use in South Australia. For example, for the words 'the Territory' whenever appearing in the Commonwealth Act, the words 'South Australia' are substituted.

Paragraph 2—as well as adapting the definitions of certain terms certain additional definitions are included in the Commonwealth provisions to take account of the special position of the Code. For example, there is a definition of the 'Companies (South Australia) Code'. Some of the main changes include:

(i) definitions of 'State Commission' 'Commonwealth Minister' and the 'Companies (South Australia) Code'.

(ii) The definition of 'corporation' excludes all bodies incorporated under South Australian legislation other than the Code or a corresponding previous enactment.

(iii) The definition of 'lodged' includes an added paragraph referring to things lodged with the State Commission under the previous law before the commencement of the Code.

(iv) 'Minister' will mean the State Minister responsible for company matters except when the 'Commonwealth Minister' is specifically referred to.

(v) 'Regulations' means the provisions applying as regulations made under the Code by reason of section 7 of the Companies (Application of Laws) Act, 1981.

Paragraph 3—References in the Code to a previous law corresponding to a provision in the Code includes a reference to a provision of the Companies Act, 1962-1981. Also a reference in the Code to a previous law of another State or Territory corresponding to a provision of the Code includes a reference to a provision of the law of that State or Territory corresponding to the Companies Act, 1962-1981.

Paragraph 4—The powers of the Commission to require production of books under the Code must be exercised—

(a) for the purposes of performing a function or exercising a power under the Code, or a Code of a participating State; or

(b) where the requirement relates to a matter that constitutes or may constitute a contravention, etc., of the Code or Code of a participating State, or the Companies Act, 1962-1981, or previous law of a participating State or Territory that corresponded with that Code or to an offence relating to a company that involves fraud, etc.

Paragraph 5—Warrants issued under clause 13 of the Code can only be issued to a member of the South Australian Police Force or another person named in the warrant.

Paragraph 6—The Companies (Administration) Bill, 1981, when it becomes a law, will continue the Corporate Affairs Commission in existence and will re-establish the Companies Auditors Board under the name of the Companies Auditors and Liquidator Disciplinary Board. This paragraph adapts the terminology of the Commonwealth Act to take note of this fact for the purposes of the Code.

Paragraph 9—This paragraph takes account of the fact that the corresponding office or body to the 'Corporate Affairs Commission for the Territory' in the Commonwealth Act, for the purposes of the Code in South Australia, is the State Commission.

Paragraph 12—In South Australia under the Code documents will have been lodged either with the Commission, the Registrar of Companies or the State Commission. Paragraph *(b)* inserts an evidentiary provision similar to section 12 (5a) of the existing Act.

Paragraph 14—References in section 33 of the Commonwealth Act to companies formed pursuant to that Act or to another Act will be translated to refer to those bodies formed pursuant to the State Code or a State Act.

Paragraph 20 inserts section 73a into the South Australian Code. This section is similar to section 28a of the existing Act and allows a company incorporated with a deed of settlement to adopt a memorandum and articles in place of the deed.

Paragraph 23—The relevant transitional provisions in South Australia providing for the transition from the Companies Act, 1962-1981, to the Code, are contained in Part III of the Bill.

Paragraph 26—Again, this paragraph takes account of the fact that the Codes operating in South Australia are

not really Acts and it is not semantically correct to refer to them as a law of South Australia but rather as the law in force in South Australia. Similar reasoning applies for referring to regulations applying under the Code. The regulations are made under the Commonwealth Act and will apply under the Code by virtue of the Bill. They are not made under the Code. Also the provisions of the Companies (Acquisition of Shares) Act, 1980, operates in South Australia as the Companies (Acquisition of Shares) (South Australia) Code and hence the change in wording.

Paragraph 27—Subsection 123 (16) is added to the Code and deems any transfer of a strata title unit by a company that is registered as the proprietor of land comprised in a plan of strata subdivision registered under the Strata Titles Act, 1966, that is made in exchange for certain rights, not to be a reduction of the share capital of the company.

Paragraph 28—This paragraph takes account of the fact that the Companies and Securities (Interpretation and Miscellaneous Provisions) Act, 1980, applies as a Code in South Australia.

Paragraph 30—Subsection 152 (7) of the Commonwealth Act provides that the provisions of subsection 1152 (5) do not affect the operation of any debenture etc., for the purposes of Section 74 of the Companies Act, 1962-1981. Section 74 of the Companies Act, 1962-1981, dealing with the issue of debentures, etc., came into operation on 1 January 1965 and hence the reference to that date.

Paragraph 34—This paragraph takes account of section 16 (2) of the Bill by providing that a 'prescribed corporation' for the purposes of the definition of 'prescribed corporation' in section 189 (1) of the Code shall be a body approved by the Ministerial Council and prescribed by the Governor for that purpose pursuant to regulations made by him.

Paragraph 38 - replaces section 211 of the Commonwealth Act with a provision suited to South Australia. The purpose of the section is to ensure that a charge requiring registration under the Code does not have to be registered under other State legislation.

Paragraph 40—The provisions of the Commonwealth Act will apply in South Australia as adapted and applied by the Bill. Hence references to the enactment of the Commonwealth Act, in relation to South Australia, will be references to the enactment of the Companies (Application of Laws) Act, 1981.

Paragraph 46—

(a) and *(b)* For the purposes of sub-clause 291 (2) of the Code the relevant Minister is the Commonwealth Minister. In relation to sub-clause 291 (4) the relevant Minister is a State or Commonwealth Minister.

(c) This sub-paragraph reflects the change made to subclause 291 (2) of the Code by subparagraph *(a)* above.

Paragraph 48—Both the Commonwealth Minister and the State Minister can now act under section 306 of the Code. The provisions of clause 306 of the Code do not affect the protection given to witnesses under the Evidence Act, 1929-1979.

Paragraph 49—Part VII of the Code binds the Crown in right of South Australia only, as it cannot bind the Crown in right of the Commonwealth.

Paragraph 68—Section 552 of the new Code corresponds to section 374 of the existing Act and subsection (17) which is inserted in section 522 by this paragraph corresponds to subsection (14) of section 374 of the existiing Act. The present exemption of insurance contracts from the operation of this provision is not to be continued under the Code because such an exemption does not exist in either jurisdiction and is not considered necessary.

Paragraph 70—Division 3 of Part XIV of the Commonwealth Act provides for the making of Rules of the Supreme Court and regulations. Neither power is required in South Australia. Adequate power exists in the Supreme Court Act, 1935-1981, to make the necessary Rules for the purposes of the Code and the regulations required will be made by the Governor-General under the Commonwealth Act and applied in South Australia by virtue of clause 7 of the Bill.

Paragraph 71—Subparagraph *(b)* saves the operation of section 62a of the Law of Property Act, 1936-1980, which is similar but wider in its ambit than section 578 of the Code. Subparagraph *(c)* saves the operation of the Industrial Conciliation and Arbitration Act, 1972-1981, in relation to associations under that Act from being affected by the operation of the Code.

Schedule 2

This schedule sets out the adaptations that are required to be made to regulations made under the Commonwealth Act before those regulations can be applied as regulations under the Code. The adaptations are interpretive in nature.

Schedule 3

This schedule also sets out the adaptations that are required to be made under the Commonwealth Companies (Fees) Act, 1981, before the schedule to those regulations can be applied in South Australia. Again, the adaptations are interpretive in nature.

Schedule 4

This schedule provides the headings and introductory provisions for the Companies (South Australia) Code.

Schedule 5

This schedule is similar to schedule 4 and provides the headings and introductory provisions for the Companies (South Australia) Regulations.

Schedule 6

This schedule is also similar to schedule 4 and provides the headings and introductory provisions of the Companies (Fees) (South Australia) Regulations.

The Hon. D. J. HOPGOOD secured the adjournment of the debate.

COMPANIES (CONSEQUENTIAL AMENDMENTS) BILL

Second reading.

The Hon. H. ALLISON (Minister of Education): I move:

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

It is part of the Co-operative Companies and Securities Scheme, and has two distinct purposes. Firstly, it amends four pieces of scheme legislation already in force. These were enacted pursuant to the formal agreement entered into between the Commonwealth and the six States on 22 December 1978 with a view to establishing a comprehensive, uniform code of company and securities laws throughout Australia. The four Acts are:

(1) The National Companies and Securities Commission (State Provisions) Act, 1981;

(2) The Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981;

(3) The Companies (Acquisition of Shares) (Application of Laws) Act, 1981;
and

(4) The Securities Industry (Application of Laws) Act, 1981.

The second purpose of the proposed legislation is to effect amendments to other State Acts which have been made necessary by the exclusion of the old Companies Act and the enactment of the legislation under the Co-operative Companies and Securities Scheme.

The proposed amendments to the National Companies and Securities Commission (State Provisions) Act, 1981, are purely technical. They affect the delegation of functions by the National Companies and Securities Commission. The drafting changes would ensure the possible delegation of all the Commission's functions to persons holding office under State or Commonwealth law, who could be identified by the position they hold rather than by name.

Most of the amendments to the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981, are also technical in nature. One amendment will preserve the substance of provisions presently found in section 382 of the Companies Act. This states that certain allegations in complaints laid under the companies and securities legislation (e.g. an allegation that a meeting has not been held within a certain time) shall in the absence of proof to the contrary, be deemed sufficiently proved.

The proposed amendments to the Companies (Acquisition of Shares) (Application of Laws) Act, 1981, involve only minor drafting changes; most alter references in the existing legislation to the Companies Act, 1962-1981, to the Companies (South Australia) Code. These amendments would only come into force on the day on which the Companies (Application of Laws) Act, 1981, came into operation, implementing the Companies (South Australia) Code.

The proposed amendments to the Securities Industry (Application of Laws) Act, 1981, also involve little substantial alteration to the existing legislation. Most of the amendments involve replacing the existing references to the Companies Act, 1962-1981, with references to the Companies (South Australia) Code or are of a similar drafting complexity. One significant amendment confers a regulation making power on the Governor of South Australia. The power permits the exemption of certain classes of rights from the ambit of the Securities Industry (South Australia) Code. This power may be exercised when the approval of the Ministerial Council is obtained.

The second area dealt with by this Bill is contained in Part VI, and concerns other State legislation which must be amended as a consequence of the changes to be brought about by the introduction of the Companies (South Australia) Code.

The most important provision here is purely technical in nature. It 'translates' references in other State Acts to a provision of the Companies Act, 1962-1981, to references to the corresponding provision of the Companies (South Australia) Code.

More specific translation provisions have been included to adequately cover relationships between the Companies Act and other pieces of State legislation—notably the Associations Incorporation Act, 1956-1965, the Building Societies Act, 1975-1981, the Credit Unions Act, 1976-1980, the Friendly Societies Act, 1919-1975, the Industrial and Provident Societies Act, 1923-1974, and the Prices Act, 1948-1980.

The private Acts relating to South Australia's four private trustee companies have been amended. Under the present law, these companies have a blanket exemption from the public fund-raising provisions of the companies legislation. It is considered that a more appropriate and flexible approach would be exemption by regulation. This would enable the companies to continue their present business activities, whilst providing a safeguard against any future problems. Therefore, these statutory exemptions are to be repealed on the clear understanding that an exempting regulation will replace them on 1 July 1982.

Provisions have been included to make it clear that the Companies (Acquisition of Shares) Code does not apply to building socieities, credit unions or industrial and provident societies. Although the Code was never intended to apply to these bodies, it appears that in some circumstances it may. The amendments clarify the matter and ensure that the Acts regulating these bodies also regulate changes in control.

The provisions of the Bill are as follows:

Clause 1 is formal.

Clause 2 provides for the commencement of the Bill.

With the exceptions referred to in subclauses (2) and (3) the Bill will come into operation on the commencement of the Companies (Application of Laws) Bill, 1981. Clauses 9, 14 and 18 amend schedule 1 of the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981, the Companies (Acquisition of Shares) (Application of Laws) Act, 1981, and the Securities Industry (Application of Laws) Act, 1981, respectively. It is desirable that these amendments operate retrospectively from the commencement of the principal Acts concerned and accordingly subclause (2) provides that they will be deemed to have come into operation on the day on which the National Companies and Securities Commission (State Provisions) Act, 1981, came into operation. Clause 19 makes an amendment to schedule 1 of the Securities Industry (Application of Laws) Act, 1981, for the purpose of 'translating' new section 81 of the Commonwealth Securities Industry Act, 1980, inserted by the Securities Industry Amendment Act (No. 2), 1981. The latter Act came into operation on 1 October 1981 and it is therefore appropriate that subclause (3) provide that the translating provision came into operation on the same day.

Clause 3 sets out the arrangement of the Bill.

Clause 4 is formal.

Clause 5 by paragraph *(a)* makes a small drafting change to section 12 (1) and by paragraph *(b)* increases the scope given in section 12 (3) *(b)* of the principal Act to the Commission to delegate its functions and powers to persons holding or occupying positions in State Public Services. Paragraph *(c)* makes a similar amendment in relation to the authorisation by a delegate of the Commission to a person to perform the functions or exercise the powers delegated to him by the Commission.

Clause 6 is formal.

Clause 7 rectifies a previous omission.

Clause 8, by paragraph *(a)*, substitutes a new paragraph 3 *(g)* in schedule 1 of the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981, to take account of the amendment of the Commonwealth Act whereby the reference to 'Companies Ordinance 1962' is changed to 'Companies Act, 1981'. The new provision also refers to a 'law in force in another State, etc.' instead of a 'law of another State, etc'. It may be argued that a Commonwealth law that is applied in a State is not strictly a law of the State but more correctly a law 'in force' in the State. Paragraph *(c)* inserts new clause 11a into the first schedule of the principal Act. The new clause inserts new subsections (3) and (4) into section 36 of the

Companies and Securities (Interpretation and Miscellaneous Provisions) (South Australia) Code. The new subsection (3) is an evidentiary provision designed to facilitate the prosecution of offences under all the Codes, but in particular under the Companies (South Australia Code). The provisions are similar to those in section 382 (4) of the existing Companies Act, 1962-1981. Paragraph *(d)* inserts a reference to new section 270a of the Criminal Law Consolidation Act, 1935-1981, and a reference to the Justices Act, 1921-1981, into section 38 (3) of the Code. Paragraph *(e)* inserts clauses 17 and 18 into the first schedule of the principal Act. Clause 17 ensures that reference is made in section 40 of the Code to regulations 'applying' under a relevant Code. Regulations will be Commonwealth regulations made under the Commonwealth Act and will apply under a Code but will not be made under that Code. Clause 18 replaces section 41 of the Code with a more accurately drafted provision.

Clause 9 repeals paragraph *(z)* of clause 3 of schedule 1 of the Companies and Securites (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981, thereby inserting into the Code the definition of 'State Act' in the Commonwealth provisions.

Clause 10 is formal.

Clause 11 makes changes to section 5 (1) of the Companies (Acquisition of Shares) (Application of Laws) Act, 1981, consequential on the commencement of the Companies (South Australia) Code.

Clause 12 replaces sections 7 and 8 of the principal Act with provisions that will accommodate the new Companies (South Australia) Code.

Clause 13 by paragraph *(a)*, makes an amendment consequential on the commencement of the Companies (South Australia) Code. Paragraph *(b)* inserts a provision to translate the new subsection 38 (4) inserted in the Commonwealth Act by the Companies (Acquisition of Shares) Amendment Act (No. 2), 1981.

Clause 14 amends schudule 1 of the principal Act. Paragraph *(a)* improves the wording in relation to laws in force in other jurisdictions. Paragraph *(b)* inserts a provision in the Code which interprets references in the Code to previous laws to include a reference to Part VIB of the Companies Act, 1962-1981, and to the Companies Take-overs Act, 1980.

Clause 15 is formal.

Clause 16 inserts new section 15a into the Securities Industry (Application of Laws) Act, 1981. This section gives the Governor power, with the approval of the Ministerial Council, to declare, by regulation, that interests are exempt for the purposes of the definition of 'prescribed interest'. The provision is similar to section 16 (3) of the Companies (Application of Laws) Bill, 1981.

Clause 17 amends schedule 1 of the principal Act. Paragraph *(a)* makes an amendment consequential on the commencement of the Companies (South Australia) Code. Paragraph *(c)* inserts new paragraph *(c)* into section 30 (4) of the Code and in an amendment to section 30 (5) includes references to the Commonwealth Minister. Paragraph *(d)* inserts a new translation in section 48 *(b)* which more accurately expresses the position in the State. Paragraph *(e)* replaces clause 17 with a new clause that translates the new section 75 inserted in the Commonwealth Act by the Securities Industry Amendment Act (No. 2), 1981, of the Commonwealth. The paragraph also inserts new clause 17a which translates new subsection (9) of section 76 of the Commonwealth Act.

Clause 18 amends schedule 1 of the principal Act. Paragraph *(a)* more accurately refers to a law as being 'in force' in a State or Territory. Paragraph *(b)* introduces a new provision into section 4 of the Securities Industry (South Australia) Code that interprets references to previous laws of the State to include a reference to the Securities Industry Act, 1979-1980. Paragraph *(c)* makes an amendment similar to that made by paragraph *(a)*. Paragraph *(d)* substitutes a new section 60 (5) in the Code with paragraphs *(a)* and *(b)* in reverse order. Paragraph *(b)* is extended to include an order of a court under the law of other States.

Clause 19 translates new section 81 (2) *(a)* inserted in the Commonwealth Act by the Securities Industry Amendment Act (No. 2), 1981.

Clause 20 is a transitional provision.

Clause 21 adds a new clause to schedule 2 of the Securities Industry (Application of Laws) Act, 1981.

Clause 22 removes from the Companies Act, 1962-1981, provisions which are obsolete but which would remain in force if not repealed. Clause 18 of the Companies (Application of Laws) Bill, 1981, provides that the Companies (South Australia) Code applies to the exclusion of the Companies Act, 1962-1981, in relation to the matters covered by the Code. The sections repealed by this clause are not covered by the Code and would otherwise remain in force.

Clause 23 provides that references in other Acts and in subordinate legislation and other documents to the Companies Act, 1962-1981, or previous corresponding legislation will be construed as a reference to the new Code.

Clause 24 is a similar provision relating to references to the Registrar of Companies and the Corporate Affairs Commission.

Clause 25 provides for the amendment of the Acts referred to in the first schedule.

Clause 26 is a transitional provision. At the moment some of the Acts referred to in the second schedule incorporate certain provisions of the Companies Act, 1962-1981. Amendments made by schedule 1 replace these with the corresponding provision of the Code. This clause makes transitional provisions to accommodate the change by reference to the transitional provisions in Part III of the Companies (Application of Laws) Act, 1981.

Schedule 1: The amendments to the Associations Incorporation Act, 1956-1965, are consequential on the commencement of the Companies (South Australia) Code. Section 22b of Bagot's Executor Company Act, 1910-1978, which is repealed by this schedule, provided that Division V of Part IV of the Companies Act, 1962-1981, which deals with interests other than shares, debentures, etc., does not apply to a common fund kept by that company. It is proposed that on the commencement of the Companies (South Australia) Code the Governor will, by regulation under section 16 (1) of the Companies (Application of Laws) Act, 1981, exempt the company from the operation of the prescribed interest provisions under the Code thus, in effect, preserving the existing situation by a different method. New subsection (2) of section 5 of the Building Societies Act, 1975-1981, is inserted to make it clear that the Companies (Acquisition of Shares) (South Australia) Code does not apply to building societies which are adequately protected by virtue of the strictures imposed by the Building Societies Act, 1975-1981, itself. The other amendments to that Act are consequential on the commencement of the Companies (South Australia) Code. Comments relating to the amendment of the Building Societies Act, 1975-1981, apply to the amendments to the Credit Union Act, 1976-1980. The amendments to Elder's Executor Companys Act, 1910-1978, Executors Company Act, 1885-1978, and Farmers' Co-operative Executors Act, 1919-1978, are made for the same reason as the amendment to Bagots Executor Company Act. The amendments to the Friendly Societies Act, 1919-1975, are made in consequence of the Companies (South Australia) Code. New subsection (2) of section 3 of the Industrial and Provident Societies Act, 1923-1974, is

inserted to ensure that the Companies (Acquisition of Shares) (South Australia) Code does not apply to societies under that Act. Once again the reason is that the Act itself incorporates sufficient safeguards. The other amendments to the Act are consequential on the commencement of the Companies (South Australia) Code. Schedules 2 and 3 are self-explanatory.

The Hon. D. J. HOPGOOD secured the adjournment of the debate.

STAMP DUTIES ACT AMENDMENT BILL (1982)

Adjourned debate on second reading (resumed on motion).
(Continued from page 3024.)

Mr BANNON (Leader of the Opposition): This Bill comes very hastily before the House at the end of the week of the extraordinary bankcard bungle—although in calling it that I think we should remember that it does not just involve stamp duties charges being passed on to consumer who hold a bankcard, but it also affects credit receivers, credit consumers, if you like, from a whole range of financial institutions in this State—all of those, in fact, where the rate of interest is above the level at which stamp duties becomes payable.

This whole business should have been totally unnecessary and but for the extraordinary miscalculation, or lack of briefing, or lack of competence on the part of the Government, we would not have had to go through this process and we certainly would not have had the problems of the last few days. The confusion that has been wrought in this matter is confusion that really reflects total confusion within the Government and its decision-making process. The Bill brought before this House last October was not fully researched; the consequences of the amendment we are now concerned with had not been fully investigated by the Government, and the so-called assurances that were at the base of the Government's introduction of the measure, apparently, when put to the test, have proved either to have been non existent or worthless. It is still questionable which of those it is, because the Government has not produced the evidence that is required.

That is why I found it quite extraordinary to read the *Advertiser* editorial this morning on this matter. This is an extraordinary interpretation of events and perhaps a good starting point for comment on this Bill. In part, the editorial said:

> The Premier is of course fortunate in that he is in a position to have the last say, as he intends to, through the legislative process.

I make that clear that the last say is being said not by the Premier through the legislative process, but by this Parliament. It was in this Parliament that we objected to the change that was being made, that we questioned its concequences, and ultimately that we opposed it, but the Government pushed on. It is only in this Parliament that the matter can be corrected, and I believe that the last say is not being made by the Government—and thank goodness it is not, because the matter might never have been resolved except for the fact that it could be made a Parliamentary issue. It will be made by this Parliament's reinstating in terms of this Bill those provisions that the Government took out of the Act last year. The editorial goes on with at least two more extraordinary statements, one of which is this:

> In practice the charges as a portion of the operating overheads of credit businesses would have been passed on as part of the interest rate anyway.

That is just not true. There were cases, obviously, where that would happen, but those cases were by no means all. In fact, as the letter, presumably one of the assurances that the Premier claimed he had, from the Australian Finance Conference makes clear, a substantial minority of transactions (a minority nonetheless, of the order of 40 per cent or so) was operating at the level of national interest rates.

Let me make a further point: increasingly that will be so as credit provision is centralised, as national credit cards and national credit arrangements come in, as centralised computers operate those charges, so we will find that those charges will be levelled at a national rate of interest, and it will not be possible to make individual variations. That is why the financial institutions are so keen to be able to pass on the duty, because where in the past they may have been able to apply some differential rates, recently they have not been able to do so to the same extent. It is not true to say that in practice the charges have been passed on in all cases; in some, but increasingly that is not true, and it provided a special advantage to people in South Australia, an advantage that the Premier apparently wanted to throw away.

Another comment in the editorial states:

> It seems that written assurances on this were obtained from others in the credit business in South Australia.

We have yet to sight those written assurances. There is total confusion about that point. The Premier has at no time been consistent as to the nature of the assurances, as to whether they were in writing or whether they were verbal, and who they actually came from. Whenever the matter has been put to the specific test, that is, in relation to the banks and bankcard, we find no such assurances were given; when it came to the specific test, such as the letter from the Finance Conference, again, no such assurance was given, and there has been no other evidence.

Let us take the case of credit providers such as the larger retail stores which conduct credit accounts for their customers. My information is that the retail traders certainly gave no assurances, in fact, inquiries to the Myer organisation, which has its computer accounts done in another State, indicate that it was not going to pass on the charge. The reason was not because it gave an assurance that it would not, but simply because it involved administrative problems and difficulties with the computerised accounting system, so it did not think it was worth the effort when the legislation was introduced.

As I understand it, taking the case of the retail stores, their position would have been that individually they would have had to approach the Credit Tribunal. No assurances could be given by them because of the interposition of the Credit Tribunal in this State; I refer to those who were supplying credit here. They, of course, particularly in the case of Myer and David Jones, point out the remark I started with, that increasingly centralised accounting procedures and store charges mean that a standard rate affects the whole of Australia, and there was an increasing and distinct benefit to South Australian consumers by the provision of the Stamp Duties Act that did not allow the charges to be passed on. They had to be absorbed within operating costs, within the profits of the organisation concerned, and that was a benefit to the public.

The Premier on Monday was quoted as saying that he had gained assurances from the Australian Bankers Association (that is not true); from the Finance Conference of Australia (that is not true); the Retail Traders Association (that could not be true); credit unions, unnamed (but as I understand it credit unions are not affected by the legislation because of the level of their interest rates), and several merchant banks, unnamed and unspecified, that the charges would not lead to increased charges. None of the evidence that we require confirms assurances having been given and

this makes the Government's action in this area even more inexplicable and irresponsible.

So much for the editorial which, in the face of all that evidence, much of which was reported in the newspaper itself, still comes to the conclusion that there was 'a misunderstanding and the victory clearly is Mr Tonkin's'. I hope that makes the Premier feel warm at heart, thinking that perhaps he has got away with it. He may have done in the eyes of that journal, but I would suggest that it is propping up the unproppable, and the facts of the matter have been more than adequately conveyed in the other media in this State.

The confusion will be resolved in part by this Bill, and to the extent that it is restoring those clauses it has our full and complete support, just as the retention of those clauses had our support last time the measure was before the House. I am not sure what the Premier meant in his second reading explanation when he hinted that further changes were envisaged which may provide for the exemption of certain transactions which, as he puts it, 'comply with the spirit of the Government's intention'. That is not contained in the Bill and whilst it is not in the Bill it is not a subject matter before the House.

This Bill restores absolutely the provisions that were formerly there and we are supporting it. However, where does that leave the people who have in fact been levied with those charges and have already paid them? That situation has not yet been revealed, and I think it is in that context that it is vital that the Premier table all correspondence and documents relating to the question of assurances by credit providers. If those assurances were given, and nonetheless the charges were passed on, then I believe everyone of those institutions has a moral obligation to return the amount of charge they have levied. If they did not give the assurance (and the bankcard organisation for one says it did not), it is a little harder to enforce that obligation. It is harder because they were unaware that they were not mean to pass them on, they were unaware that the Premier, in their name, had guaranteed that they would not be. I have requested the Parliamentary Counsel to draw up amendments which we may introduce in the Committee stage, depending on the Premier's response to this, but I say again that the question of assurances is absolutely vital, because it touches very much upon those people who already have been forced to pay charges when, according to the Premier, assurances were given that they did not have to pay at all.

Last October the issues were clearly put before the House and the questions were put to the Premier fairly and squarely. He chose not to answer them fairly and squarely, and he certainly misled the House. You, Sir, will recall that I asked on that occasion for the evidence of those assurances. I said:

> I would like to ask whether the Premier can demonstrate that consumers will not be disadvantaged by the repeal of this provision. For whose convenience are we doing it?

That question, those assurances, despite all the debate last week, have still not been answered or given.

At the time the Premier was rather confused. He said in October that the assurances were simply verbal; bear that in mind: they were simply verbal. So, I ask whether the Premier will provide us with the evidence that this has no impact and no effect as far as consumers are concerned.

The Hon. D. O. Tonkin: Where is 'simply'?

Mr BANNON: The Premier asks where is the word 'simply', I am using; the word 'simply' may not be there. He said they were verbal assurances, but he did not suggest they were assurances of any other nature. If he wants to take refuge behind that, that is quite extraordinary. If they were in writing that should have been stated, and they should have been put before us. He said they were verbal and we can only assume that is the basis on which they were given. Will the Premier provide us with the evidence that this has no impact and no effect as far as consumers are concerned? What precise evidence has he got in this regard? His answer is, 'It is a hypothetical question, and I can see little point in taking it further.' It certainly became something more than a hypothetical question when thousands of South Australians were told by their banks that they were being hit with yet another charge, a charge that they had been protected from until this Government changed the legislation.

It was an advantage that they had, as South Australians, over the rest of the nation. One of the most extraordinary reasons given for the withdrawal of that protection was that it applied only in South Australia. Are we really in the business of giving away advantages like this? What was the *quid pro quo* for the giving away of this advantage? No evidence, no statement has been made to that effect. It is an extraordinary thing to do, something in fact which Sir Thomas Playford, who had been petitioned on this matter in the past when there had been disputes over it, and successive Premiers (including Liberal Premier Steele Hall) had resisted, despite frequent approaches from the financial institutions. Fair enough, too.

The Premier's confusion, I think, is very well shown up in the *Hansard* debate; when he came to deal with whether or not the charges were passed on, having talked about the assurances and, having put it in that context, we had him saying then 'It may be that the cost will in a small way be transmitted to the consumer if these provisions are repealed; I can see no reason why that should not occur and I cannot in any way accept the Leader's opposition on this matter.' They were passed on. They were passed on in a far more comprehensive way than the Premier gave any hint or indication of.

On Wednesday 17 February, the Opposition raised publicly the question of the charges being passed on. The Premier, in response to that, in response to the queries of the media, based on the remarks I had made, hastily prepared a statement which he presented to this Parliament. He said, incidentally, in that context, that he really discovered it only when he had opened his bankcard notice and read it himself the day before. It was drawn to his attention because we raised it, and not because he had read a bankcard notice. He said that the Government viewed the action by the banks with grave concern, and he reiterated that he had been given assurances that the charge had not been passed on.

Then began a week of twisting and turning, deceit and distortion by the Premier and his Ministers. His unequivocal statements that he had assurances were met by equally unequivocal statements from the bank and bankcard organisations that he did not. The *Advertiser* the next morning reports the Premier as saying that the lending institutions gave assurances at the time that the removal of the restriction would have very little impact on consumers. At the same time, the Bankcard chief executive, Mr Pitman, was saying that Mr Tonkin's comments were the first he had heard of any assurances not to impose the credit charge.

In the urgency debate last week, the Minister of Industrial Affairs made the rather juvenile point that the bankcard organisation in Sydney was not connected with the banks or the assurances given. Of course, subsequently we discovered that the banks themselves in South Australia, from the Bank of New South Wales Manager, who was interviewed last night, to the Chairman of the Bankers Association, were themselves unaware of any assurances that had been given. It was the first they had heard of it, and yet the Premier was telling us in Parliament last October airily

that this was hypothetical, that these assurances had been given.

What was the nature of these assurances? From the Premier's statement we can gain no idea whatsoever. He is quoted as having said last Wednesday on one channel that he thought it was just a misunderstanding that could be resolved with a meeting with the bankcard people. Incidentally, obviously he had not consulted with his Minister who, in this House, made great play of the fact that the bankcard people were irrelevant to this process. The Premier apparently thought then that they were very relevant because that is who he was going to meet urgently.

On another channel he suggested that there were detailed discussions and consultations to be had with the A.B.A. (they were now in the act) and the bankcard people.

On the question of South Australians now paying the charge, he said that it was the law and they would be liable for it. That was a correct statement. He went on to say:

> In the light of the guarantees and undertakings which were given by the financial institutions I can say that one way or another, whether it is because they act responsibly and remove those charges—

'act responsibly', he is telling these institutuions—

> or we have to bring in the legislation again people will not be saddled with these extra burdens.

For a few months they have been, and this legislation does not lift that burden or repay to them any payments they made. That was on channel 2.

He had another story for channel 9. This was that the assurances were quite tangible, they were on paper. The interviewer was a bit surprised by that. This was the first we had heard of written assurances. The Premier responded, 'I do not think there is any question of having tangible assurances. They are both verbal and written.' Those written assurances have never been put before us. Perhaps the Premier has them ready to table in the course of this debate. They have not seen the light of day. The only thing that has is the Finance Conference document that says, 'We cannot assure you that charges will not be passed on; in certain cases they will be passed on.'

On channel 10, the fourth channel, there was yet another story about those who had received their bills. He mentioned the urgent discussions with members of the bankcard organisation, the A.B.A., on the misunderstanding, and he said 'I sincerely hope we reach a resolution one way or the other. Yes, you could say South Australians can expect not to be paying for this.' The interviewer said, 'What about those who have already received their bill and have paid it?' The Premier said, 'Well, again that is something', and he trailed off there, as his mind tried to focus on that difficult question and the fuzzy outlines of the situation he had got himself into, and he went on to suggest that in these discussions it will all be cleared up.

That has not been the case. The banks have consistently stood on the basis that they did not give assurances that indeed it sounds as though they were never asked to give assurances, that it was never drawn to their attention that assurances were necessary. All they saw was the Act in South Australia being changed. They now have the legal power to pass the charges on and, in accordance with that legal power, they did so. Out of the blue, they get hit with the Premier telling them they are in grave breach, they have behaved irresponsibly, whether by misunderstanding or not, and they have to stop passing the charges on or cop this legislation again.

This sorry saga has continued since then. We have the Deputy Premier and the Minister of Industrial Affairs trying to defend the Government in the urgency debate, getting quite confused themselves about whether assurances were written or verbal. We have the Premier himself returning and saying that the bankcard customer assurances had not been in writing, but he would remind representatives of banks and the company co-ordinating the services of verbal commitments in a meeting that afternoon. He reminded them, but apparently their memory is very defective, because his reminder just simply did not ring a bell with them.

When Mr Griffiths, from the Bank of New South Wales, was interviewed, one could see the clear difficulties he was under. He did not want to be totally rude to the Premier or enter the political arena, but he knew that the reminders that the Premier had given him were meaningless, because the matter had never been raised with him before. The Premier also repeated the nonsense that the charges were already being passed on to consumers in the provision of credit by the banks simply adjusting the interest rate to reflect them. That is nonsense; the banks are charging national rates. The bankcard organisation has a rate that is fixed and applies in every State throughout Australia at the same level. Where was this adjustment of interest rates that he was talking about? It does not exist. It is another nonsensical statement, indicating incompetence, confusion, or a deliberate intention to mislead people about the frightful mess he got them into.

So, the saga goes on, until this morning. I have already quoted the developments that we have had over the past day or so. The fact is that the Premier at least has honoured his promise. He said that, if the credit institutions would not come to the party with this non-existent assurance, action would be taken. It did not surprise me that they bailed up. If I was a banker with this put on me, I would behave in exactly the same manner as the banks have behaved and say, 'You have changed the law. We are acting on it, and we will not do anything on it unless you change the law back.' So, the Premier must implement the second string of his proposal, namely, the reintroduction of this Act.

This situation should never have arisen. As I said at the beginning, it indicates a total lack of preparation and a lack of examination of the consequences of what the Government was doing, as well as a failure properly to prepare the legislation and to explain it to this Parliament. We were misled, at that stage, I would suggest, out of sheer ignorance on the Premier's part. He was prepared to give airy assurances, hoping that no-one would follow them up or catch up with them. Then, when the Premier was caught up (and this is the worst aspect of it), instead of saying right from the beginning, 'I was wrong. The evidence does not exist. I understand now that a mistake has been made,' and getting on with the job of correcting it, he has hedged, twisted, turned and prevaricated in a dismal attempt to suggest that in some way it was someone else's fault. We in South Australia are tired of hearing that. We hear it about the economic depression in this State: it is the fault of other people, other Governments and other institutions. Here is yet another example. When the Premier is caught out, what does he do? He blames someone else.

The institutions were not prepared to cop this, and they have unloaded the Premier. It has been revealed totally to the public. This Bill is really a confession of failure and of the hopeless indecision and inability of this Government to foresee the consequences of this action. The Opposition supports the measure, which should never have had to come before us.

The Hon. D. O. TONKIN (Premier and Treasurer): I suspect from the speech that the Leader has made that it was written before he was aware of what was contained in the second reading explanation that I read to the House a little while ago, because many of the matters with which

the Leader dealt were contained in my second reading explanation, and it would have been wise for him to have read it.

I totally agree that it is regrettable that this action is necessary. However, I must say that the Bill and the reasons leading up to it were fully researched over a period of 12 months. Assurances were given by way of letter, and even the follow-up proceedings that led to discussions and the verbal reassurances being given by various people took a considerable time. Even a letter that the Leader of the Opposition has quoted from the Finance Conference of Australia states quite clearly (and I again refer the Leader to my second reading explanation) that it could give assurances in relation to the majority of transactions where interest rates had been adjusted to compensate for stamp duty. So, there is the word 'assurance' in that piece of evidence that the Leader has been waving around. It also went on to refer to a significant minority.

Mr Bannon: But it had changed.

The Hon. D. O. TONKIN: No. It had changed, if the Leader would read the first sentence of the letter, from the absolute guarantee that had been given previously at the conference.

Mr Bannon: That's right.

The Hon. D. O. TONKIN: But it still gave an assurance in relation to the majority of transactions where interest rates had been adjusted to compensate for stamp duty, and there is no way in which the Leader can twist that. It also referred to a significant minority (that was the term used) of transactions of which companies had absorbed stamp duties and where no change downwards was expected.

The whole point is that, where the Leader says that 40 per cent is involved, it is our advice that only 2 per cent of total finance company lending in South Australia comes into that category. In other words, 2 per cent may well be a significant minority, but it is certainly a minority.

Mr Bannon: It's more than that. We are talking about the whole range of credit finance transactions.

The Hon. D. O. TONKIN: That is the figure that has been given. Even if that is reduced to the question of personal consumer-based finance, it is less than 10 per cent.

Mr Bannon: Well, you're raising it.

The Hon. D. O. TONKIN: It is still a minority. I think that the Leader has put his case, and it is only fair that he should now listen to the corrections that are being made. Certainly, assurances are both written and verbal, and they do exist; there is no question of that.

Mr Bannon: Where are they?

The DEPUTY SPEAKER: Order!

The Hon. D. O. TONKIN: The Leader referred to the retail traders. Certainly, the rates are set by the Credit Tribunal. If the Leader were to look at the credit union situation, he would find that the rates that are charged come underneath the stamp duties threshold that has, unfortunately, been raised only too frequently recently. The Leader has himself fallen into the trap that was, I suspect, the cause of the misunderstanding between the Governmnent and the Associated Banks in South Australia, which was the cause of the misunderstanding with the Government, namely, that he speaks of banks and bankcard in the same breath. However, they are separate organisations, and, as I have outlined, the misunderstanding that arose was purely and simply because it was assumed that the banks (and I am talking not about the merchant banks, which also responded, or the other providers of credit, such as the pastoral houses, which responded, but about the associated banks in Australia) clearly stated in their response that their members' interest rates did not carry a component to cope with the stamp duties costs, and therefore the question of adjusting charges downwards was not appropriate.

Mr Bannon: Are you quoting from the letter?

The Hon. D. O. TONKIN: I am quoting very much from the wording of the letter. That was quite clear. As I said before, the Government was convinced that the responses were very much in keeping with the spirit of the legislation and, from that point of view, decided that it would go on. The misunderstanding occurred because of the same error that the Leader fell into just a little while ago. Bankcard does charge a flat 18 per cent, which is set on a national basis. In other States, stamp duties charges are levied and passed on. However, they are not passed on here, or they were not passed on here until this legislation was introduced.

Mr Millhouse: What will prevent the 18 per cent going up to 19.8 per cent?

The Hon. D. O. TONKIN: If that happens, it will happen with interest rate increases in all other States.

Mr Millhouse: Must it be uniform?

The Hon. D. O. TONKIN: No.

Mr Millhouse: That's the danger we run, isn't it?

The DEPUTY SPEAKER: Order!

The Hon. D. O. TONKIN: The rate varies from State to State, as the member for Mitcham knows. The only major thing is that the rate in South Australia of stamp duty passed on, before the Bill was introduced, was zero. The 0.15 per cent was the duty payable until now by the bankcard organisation. That is where the misunderstanding occurred. The Government, I repeat, misunderstood the situation and assumed (wrongly, as it turned out) that, in the response that the associated banks made, with no mention being made of any proposed increase in bankcard charges, there would be no increase. That was the only problem that we had. It was however, a major problem: that misunderstanding occurred.

Mr Millhouse: If you had it in writing—

The DEPUTY SPEAKER: Order!

The Hon. D. O. TONKIN: I freely admit that there was a misunderstanding in this matter. There was no question of the bankcard interest being passed on.

Mr Trainer: Sam Goldwyn once said, 'Verbal agreements aren't worth the paper they're written on.'

The DEPUTY SPEAKER: Order! The member for Ascot Park would assist the deliberations of the House if he ceased interjecting.

The Hon. D. O. TONKIN: As to all of the other matters referred to by the Leader, I point out that he has tended to exaggerate quite considerably, particularly when I understand he accused me of running away from the situation because I went to preliminary talks for the Premier's Conference, which he knew full well had been arranged some weeks beforehand.

Mr Millhouse: That was an absurd suggestion.

The Hon. D. O. TONKIN: It was an absurd suggestion and probably not worth commenting on. I repeat that the situation is being sorted out. It is a great shame, because, as I mentioned in the second reading explanation, there are significant advantages in the repeal of this legislation and in leaving it as it is now. Those significant advantages have been set out.

The Leader asked why should South Australia be singled out to disadvantage. I point out that charges are passed on in other ways here and that the cost of money, because legally it cannot be put on, has some adverse influence on the raising of capital funds for lending here. I also point out that some of the major finance companies have reduced their interest rates as a result of this legislation, particularly in the case of home mortgages. I find that situation deplorable—that if by reintroducing this we have to take steps that will increase those rates again.

As I said before, I believe there may be a solution. It is a solution that the Government will examine with great

urgency, and it involves introducing these amendments to reinstate the two clauses and considering whether or not various types of transaction can be prescribed either in or out of those provisions. That may be one way of preserving the best possible aspects of the original intention, at the same time protecting people from unnecessary and what we believe to be unreasonable charges and changes after what happened with the repeal of the first legislation. That suggestion will be examined as a matter of urgency, and it may well be that action can be taken along those lines in the relatively near future.

Bill read a second time.

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

Mr BANNON (Leader of the Opposition): I move:

Page 1—Leave out this clause and insert clause as follows:

2. This Act shall be deemed to have come into operation on the day on which the Stamp Duties Act Amendment Act, 1981, came into operation.

There are consequential amendments relating to clauses 3 and 4, but I believe that we can deal with this principle under this clause and make a determination. If the Government will not accept the amendment, we can vote on a test basis. The amendment endeavours to return to persons who have already been levied the extra charge as a consequence of the repeal of the Act the right to have the money credited to them by the various institutions. Retrospectivity in legislation is something that we must always consider very closely, but in this case I believe that there are good reasons why it should be allowed. First, if, as Premier says, these assurances have been given by the various institutions, they can have no complaint whatsoever. After all, they have assured the Premier prior to the removing of the clauses that the charges will not be passed on.

Now it appears that the institutions have passed on the charges. In that case, they were in clear breach of the undertaking that the Premier claims they gave, and I do not believe that they should be allowed to profit by that action; the charges wrongly levied by institutions in the face of such undertakings should be returned to the public on whom they are claiming. The only moral argument in that respect can apply if the institutions really had not given such assurances. The Premier cannot have it both ways. Either the institutions have given the assurances (the Premier believes that they have, and he should support this retrospectivity) or, if they have not, the argument becomes much more debatable.

In the interest of the consumers in this State, I still say that it should be given because although the credit institutions were not at fault, in the instance that they had not given assurances, the Government was at fault. The Government had botched it and given up an advantage to consumers which was unexpected, and people in this State were paying more when they should not have been and when they had been assured by the Government that they should not have been paying more. In that instance, I suggest that the Government probably has some obligation to reimburse those people, where the credit institution has not given assurances. There is no way in the terms of this Act that I can see that we could impose that obligation on the Government, but it is a moral responsibility. It is not good enough for the Premier to say, as he said in Question Time today, that it is up to the credit companies whether or not they allow people to have back the charges that have already been levied. I do not believe that it is up to the institutions. This course should be provided by legislation and there should be a requirement that members of the public (the consumers) should not suffer by this action.

Those who gave the assurances have a moral obligation; let us enforce it by legislation. As to those who did not, the Government is at fault; let us enforce that by legislation, but I suggest that a corollary of that is that the Government reimburse, by way of a stamp duty remission, those people who in good faith passed on the charge without having given the assurances. Honour will be satisfied on all sides by that course. I suggest that the most important thing will have been achieved, that is, the members of the public on whom this charge was imposed—and who, in the face of very clear assurances by the Government, did not know it was to be imposed—will not suffer. Those people will get back their money, either from the companies or by way of a stamp duty remission, *ex gratia*, or whatever, through the Government. I strongly urge the Committee to support the amendment and at least try to rescue some sort of honour from the assurances that the Premier gave the people of South Australia.

The Hon. D. O. TONKIN: As the Leader knows, this legislation is necessary today entirely because of the actions of the bankcard organisation. I have already made clear that there was a misunderstanding in respect of that organisation. I find that it is rather difficult to have discussions (as the Leader would possibly know), because of the Trade Practices Act, but there is no way that this Government will agree to any retrospectivity in legislation.

Certainly, we are aware of the charges that have been levied in the most recent accounts. The Government will have discussions again (and this is where the misunderstandings tend to crop up from time to time) with the trading banks—with their operators, the bankcard organisation—to see what their attitude will be towards these charges. The whole matter will be investigated as a matter of relative urgency, but, there is certainly not a place for this legislative change.

Mr MILLHOUSE: I would like to be able to support this amendment, because in my view the Government deserves the stick over what has happened. There was no misunderstanding—that is a complete euphimism. The fact is that the Government has, I believe, been careless with the truth as to what happened in its discussions with the organisations concerned when the Bill was being prepared, or at some time during 1981. I do not believe for one moment that any undertaking was ever given or hinted at by the organisations such as the undertaking that the Government now claims that it believed had been given. The fact of having that belief, even in the Leader's own mind, weakens very much the case for retrospectivity. I am not prepared to support any retrospective legislation, certainly not in a matter such as this. With regard to the question of a misunderstanding, the Government was a damned fool not to get any undertaking in writing from all the parties that could have been affected. Of course, if there had been any undertaking it would have been in writing, and the Government would have been very careful to see that it was in writing. Therefore, I just cannot accept what the Government has said on that point.

I now turn to the question of retrospectivity. If there were no misunderstandings at all and if no undertakings were given, then, of course, the banks or bankcard organisations, the associated banks or whoever it might be, have done absolutely nothing that they were not entitled to do, both legally and morally. That is the position that we must remember—they have done nothing at all. Why should they be penalised by having what they regarded as their rights, and therefore the exercise of their rights, taken away from them by legislation which is to date back to October 1981? I do not believe that they should; what a fiddly business it would be. May I tell the Committee of my own experience: I think it was last week that I received my bankcard

statement. I nearly dropped through the floor: it was $494, I think, which is about as much as it has ever been, but I had been away on holiday and we had had a few good dinners and so on.

Mr Lynn Arnold interjecting:

Mr MILLHOUSE: It is highly relevant, if only the member for Salisbury would contain himself. The statement was for $494, and for the first time there was some little bit written at the bottom of the statement indicating that there was to be a 0.15 per cent charge of some description. I did not take much notice of it because in my case that charge on a total of $494 was only 50 cents, and I went and paid it. I always pay it on the first day hoping that that will cut the thing down a bit more, at least stopping the interest on the cash advances going up. When I went to the bank, for the first time I had two pages of statement, and the teller threw away the page with the little note on it, so I do not even have that now to say what it was. The next day this storm in a teacup broke. However, in my case the charge was only 50 cents; if the banks, the bankcard organisation, or whoever does the paperwork have to refund small amounts like that—

Mr Bannon: It's in the computer.

Mr MILLHOUSE: I do not give a damn whether it is or not. It may give the computer a headache, for all I know. However, the amounts are so small that they are not worth worrying about. So far, this has happened for only one month, so from a practical point of view I would have thought that even with computers (although I do not understand them) it would cause a lot of inconvenience. For the amount involved for only one month (I take my case as being probably typical, that is, a charge of 50 cents on nearly $500) it just would not be worth it, and that is apart from the principle.

I have discussed this matter with my colleague in another place who is of the same mind as I am. He gave me a beaut speech to make in the second reading debate, and if the Leader had not been so short with his speech I would have got here in time to deliver it. However, the Hon. Mr Milne himself will be able to deliver it in the other place, and probably to greater effect than I could have here. However, in this matter we are of the same mind: neither of us likes the suggestion of retrospectivity. I would like to support the amendment, because I believe that the Government has come out of this whole thing very badly indeed, and if it were not such a storm in a teacup it would have badly dented the Premier's credibility, but it really is such a small matter.

Mr Trainer: You wouldn't find a smooth spot to put a dent in.

Mr MILLHOUSE: Is that right? The member for Ascot Park can speak for himself. It is such a small matter that I think people will forget it. However, if the Premier messes up a thing like this, one wonders whether he is capable of handling bigger things, but perhaps that is irrelevant. While I would like to support the amendment, I feel that I am not in a position to do so, and my colleague in another place feels the same way about it.

Mr BANNON: I certainly accept the point made by the member for Mitcham that the question of retrospectivity is a bit tough on those institutions that did not give or were not party to any assurance. In the continued absence of documentary evidence, or any sort of evidence from the Premier, except his assertions, one suspects that most of the institutions gave no assurances at all. Therefore, I concede that point. On the other hand, as I have stressed, it is also a bit rough on the consumer. It is all very well for the member for Mitcham, a Parliamentarian with a legal practice, and so on, to talk about insignificant amounts. As he stated himself, he pays off his bankcard bill every month. However, there are many people in the community who cannot afford to do that, people who use their bankcards, department store credit cards, their hire-purchase agreements, and any other sources of credit as a matter of simply existing; they are never in a position where they can pay these off, and they can only pay them at the instalment rate, which means that they have a very large amount of outstanding credit at any one time, and it is that which is taxed.

Whether the amount is a matter of cents or a matter of dollars, for people in this position the amount counts. A number of instances have been put to me over the last few days concerning people who are saying that these amounts of money matter to them, because they are up to their ears in credit and any extra charges will impose very difficult burdens on them. Therefore, I am not terribly impressed by the member for Mitcham's comments on his means and his financial position and his telling us about how it is really a trifling matter. It is very important for people in the community; I believe that they ought to be reimbursed, because they should never have been charged.

It is not some monumental administrative problem. Most of these accounts are computerised; most are continuing accounts where credits can easily be worked in. In the meantime, I suggest that the Government has a strong moral obligation to reimburse people by means of remission of the duty for those charges, because, after all, it is the Government that got people into this predicament. The Premier simply shrugs that off, but I suggest that it is not the small matter that the member for Mitcham suggests it is, and because it is not a small matter it ought to be corrected. I would agree with the member for Mitcham that there are larger matters, and heaven help this State when the Premier deals with them. This situation is unfortunately all too typical of his style and his method of dealing particularly with finance.

The Committee divided on the amendment:

Ayes (19)—Messrs Abbott, L. M. F. Arnold, Bannon, (teller), M. J. Brown, Corcoran, Crafter, Duncan, Hamilton, Hemmings, Hopgood, Keneally, Langley, McRae, Payne, Peterson, Plunkett, Slater, Trainer, and Wright.

Noes (23)—Mrs Adamson, Messrs Allison, P. B. Arnold, Ashenden, Becker, Billard, Blacker, D. C. Brown, Chapman, Eastick, Glazbrook, Goldsworthy, Lewis, Mathwin, Millhouse, Olsen, Oswald, Rodda, Russack, Schmidt, Tonkin (teller), Wilson, and Wotton.

Pairs—Ayes—Messrs Evans and Randall. Noes—Messrs O'Neill and Whitten.

Majority of 4 for the Noes.

Amendment thus negatived; clause passed.

Clause 3—'Insertion of new s. 311.'

The CHAIRMAN: I take it that the Leader of the Opposition will not be continuing with his amendments?

Mr BANNON: No, Mr Chairman, as I indicated, I treated that as the test. I would like to put directly to the Premier a question that relates to precisely what the Premier was being asked by the media last week. What does he intend to do about those people who have already paid this amount? He has rejected the amendment and he will not make that apply. Does he see them as having any valid claim anywhere, in particular to the Government, for some reimbursement, if they choose to exercise such a right, or should they write and ask him? Will the Premier admit that it is his mistake in this area and that he has some moral obligation to reimburse those people who have been charged unreasonably?

The Hon. D. O. TONKIN: I think I have answered that question in another form. The answer is the same. Discussions will continue with the operators of bankcard. As far as the legal situation is concerned, people who have been charged that charge, as the member for Mitcham has pointed out,

are liable for it at this stage. Whether or not arrangements can be made to credit them with that amount on their accounts (I think that was something that was not mentioned by the Leader). I do not know. Discussions will continue.

Mr BANNON: When can we expect some response or statement from the Premier on this matter?

Clause passed.

Clause 4 and title passed.

Bill read a third time and passed.

LEGAL PRACTITIONERS ACT AMENDMENT BILL

Received from the Legislative Council and read a first time.

The Hon. H. ALLISON (Minister of Education): I move:

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

This short Bill is designed to overcome a minor problem that has arisen in the course of making arrangements for the new Legal Practitioners Act to be brought into operation on 1 March. Division 2 of Part III gives the Supreme Court certain powers and discretions with regard to the issue of practising certificates. The question has been raised as to how the court is to exercise these powers and discretions. No doubt Rules of Court could be made on the subject. However, in order to expedite matters the Government has thought it advisable to introduce an amendment providing that, subject to any rule, order or direction of the court to the contrary, the powers are to be exercisable by the Registrar.

Clause 1 is formal. Clause 2 inserts a new section 20a, which provides for the powers, discretions, functions and duties of the court in relation to the issue of practising certificates to be exercised (subject to any rule, order or direction of the court to the contrary) by the Registrar.

The Hon. R. G. PAYNE secured the adjournment of the debate.

LAND SETTLEMENT ACT REPEAL BILL

Returned from the Legislative Council without amendment.

LONG SERVICE LEAVE (BUILDING INDUSTRY) ACT AMENDMENT BILL

Consideration in Committee of the Legislative Council's amendments:

No. 1 Page 2, line 15 (clause 3)—Leave out subparagraph (v) and insert— '(v) chimney stacks, cooling towers or silos, or the construction, improvement or alteration of docks, jetties, piers or wharves;'.

No. 2. Page 3, line 11 (clause 3) - After 'kind' insert ', including any rate or payment of a class declared by regulation to form part of ordinary pay in relation to work of that kind.'

No. 3. Page 3, lines 30 and 31 (clause 3)—Leave out all words in these lines.

No. 4. Page 7, line 23 (clause 13)—Leave out 'within the period of twelve months'.

The Hon. D. C. BROWN: I move:

That the Legislative Council's amendments be agreed to.

In doing so, I refer to what I said during the Committee stage of this Bill when I indicated that a number of points had been brought to my attention by the United Trades and Labor Council. I said that I believed that in certain cases the United Trades and Labor Council had misunderstood the interpretation of the Bill and in other cases I think what it was concerned about was already the practice.

I can indicate that one of the amendments deals with rates of pay. It refers to ordinary pay, and we now have defined what is included but also what is excluded, and extra payments to be included in the base rate of pay, and special allowances, tool allowances, and additional payments. Such matters as overtime, penalty rates and special payments such as dirt money are not to be included; that is, ordinary pay equals the weekly base rate, as prescribed in the appropriate award, plus any additional payment prescribed by the award, plus any special allowance and any tool allowances prescribed by the award.

The next amendment deals with the definition of 'employer' and whether or not 'employer' would cover an employer involved in the construction of docks, jetties, piers or wharves and works for the improvement or alteration of any harbor. The Government has agreed to the amendment. I stress that the reason for this is that those appropriate amendments we believe cover the sort of work that it was always intended to cover under the Act. There was no intention to exclude, for instance, work being carried out on the new wharf at Stony Point. That is the issue of concern. I stress how difficult it was to carefully define this area, and I highlighted in Committee that it was necessary to make sure we did not start to cover departments or other groups involved under different areas, say with Myers.

The third amendment deals with the definition of 'worker,' and is really consequential upon the definition of 'employer'. We have agreed to that. The other area about which the Government did not move in another place, because it was moved by the Opposition in that place, referred to the period of within 12 months after the commencement of the Long Service Leave (Building Industry) Act Amendment Bill. There was a time limit on that. Frankly, it is not especially important to the Government; if people think they need a period longer than 12 months we will give it, so we will remove any specific time limit at all. Of course, the person would need to make that claim before he is due or eligible, for long service leave.

I agree with all the amendments and, as I have indicated, the Government will look at them seriously; in fact, three of the four amendments were moved by the Government in the Upper House.

The Hon. J. D. WRIGHT: I want to apologise to the Committee for not being here when the Minister commenced to speak about this amendment. I wish the Government would make up its mind about how it is controlling the business of the House today. I understood that two other Bills were to have been debated before this matter. In fact, the whole Notice Paper has collapsed.

The DEPUTY SPEAKER: Order!

The Hon. J. D. WRIGHT: I know I cannot talk about that, Sir, but I thought I would express my view. I am delighted that the Minister has accepted the amendments. While they are not specifically the same as those moved by me in this Chamber they are very similar indeed. The first concerns the insertion of the chimney stacks, cooling towers or silos, or the construction, improvement or alteration of docks, jetties, piers or wharves and seems to extend the necessary classifications which in most events (I am not going to say 'in any event') would take into consideration those classifications that the building industry employee organisations were concerned about in the first instance.

Obviously, the Opposition supports the amendment from the Legislative Council.

I think this is one of the rare occasions when I have been able to get up in this Chamber and support amendments inserted in industrial legislation, particularly by the other place. Over most of the years of my experience as Minister I had to oppose them, because they were mostly Draconian measures. At least on this occasion the other place has looked at the amendments suggested. I think the consultation on that took place outside of the Chamber I think has been well worthwhile, and we have reached a stage where the Bill will be much better for the amendments; it is certainly a much better Bill than when it left this place.

The second amendment relates to rate of pay, which was a concern amongst employers in the building industry. While it may not be completely in line with what is required, I believe the amendment goes a long way to ensuring that the ordinary rate of pay will unquestionably be paid. I believe that people who are to receive long service leave in future will be able to receive the ordinary rate of pay applying at the time the leave was taken. There has been a problem with this matter in the past. I make no criticism of the previous board; I could see its problem, and I wrote to it on several occasions. I make no direct criticism of it. The legislation did not allow payment of the rate of pay applying when the leave was taken, and that was bad. I believe that situation is now corrected.

The third amendment deals with the striking out of the definition of 'worker' in the passage 'bridge and wharf carpenter', and I am pleased that the Legislative Council has seen the wisdom of that. Again, that was a request from the building industry unions, which I believe should know and should be concerned about the classifications that could from time to time need to be classified so that a person could receive his credits for long service leave.

The last amendment was a request from the Building Workers' Union and the Trades and Labor Council to leave out the maximum period of 12 months. I believe that is a sensible course. It now guarantees any affected person, irrespective of the time period, his justifiable rights under the provisions of this legislation. I believe that the Legislative Council and the Government have, in their wisdom, seen the light, not to fullest extent, but I believe the legislation has now to be passed is a much better piece of legislation that when it left this Chamber.

Motion carried.

CONSTITUTION ACT AMENDMENT BILL (1982)

Adjourned debate on second reading (resumed on motion).

(Continued from page 3025.)

The Hon. D. J. HOPGOOD (Baudin): The Opposition supports this Bill, but, before going on to say one or two things about it, may I place on record the fact that, despite the misunderstanding that occurred in relation to the last item of business, there has been a degree of co-operation between the Government and the Opposition this afternoon in relation to the Notice Paper. Can I also say that it has been highly necessary that there should be that co-operation, because otherwise this place would have become unworkable. It is unusual to have so many Bills introduced in an afternoon and for it to be a requirement of the Notice Paper that we proceed almost immediately to debate them. It is true that they have all come down from the Upper House, and therefore have been considered in that place beforehand.

I exempt the stamp duties legislation, which is in a different category. However, one wonders about this Government's legislative programme when it is necessary, in order to get a Notice Paper at all for this day of sitting, that we must do this. However, we in the Opposition are co-operative people, so we have co-operated, despite the fact that it places us in a rather unusual position, breaking a long-standing convention that there be a 24-hour adjournment on a Bill of any reasonable substance.

The Opposition supports this Bill, which addresses a problem which has existed for some time and in which I have taken some considerable interest. As Minister of Education, I found from time to time that there were inquiries from teachers who were seeking election to Parliament regarding what they had to do in relation to resigning. Of course, it depends on the nature of the task that is ahead of one.

If, for example, one is in a seat that one knows one cannot possibly win, and one is running for one's Party in order to give the faithful in that electorate someone for whom to vote, there is no necessity at all to resign, because one knows in advance that one will not be placed in the ambivalent position of being elected whilst still holding an office of profit under the Crown and therefore immediately having the seat vacated from under one.

However, I make the point that on a couple of occasions it came to my notice that schoolteachers were bullied into putting in their resignations, although they were standing for a seat that they simply could not win. That did not arise from any fascist tendency on the part of their local principal or anything like that. It arose out of the misunderstanding of the way in which the Electoral Act and Public Service conditions operated. That local principal really believed that one had to resign from the Public Service just to be a candidate for an election.

My advice to these people who were a little unsure about their position was simply to give their principal a written resignation on the Friday afternoon, knowing that it would be too late for it to be posted, and then on the Monday morning get it back from the principal before the resignation was posted off if, as was predictable, one did not win the seat at the election. I understand that the procedure safeguarded one's position perfectly.

It is ridiculous that people should have to do that sort of thing, and therefore it is good that we have this tidying up process in front of us. The situation is quite different regarding a person who is running in a marginal seat and a person who has preselection for a seat that his own Party has won and held for many years—the so-called safe seat. These people usually take the precaution of resigning from the day of the issuing of writs, even though that action is not strictly necessary.

Some problems, which were addressed in the Legislative Council, will still hang around the place. The Attorney-General gave certain undertakings about consulting with the Commonwealth authorities regarding those matters. I understand that the Bill cannot affect the Commonwealth Electoral Act in any way and, therefore, that some problems remain.

I suppose that there are four sorts of permutation that one could consider. There is, for example, the State public servant who is running for a State seat, the State public servant who is running for a Commonwealth seat, the Commonwealth public servant who is standing for a State seat, and the Commonwealth public servant who is standing for a Commonwealth seat. It is obvious that, because of the limitations of the Federal system, this Bill cannot address all those problems, yet it is important that they be addressed.

I have spoken, for example, to a man who would be well known to members of this place, namely, Mr Graham Maguire, who in 1980 had to resign from the State Public Service in order to protect himself from challenge in the event that he won a Senate seat, which was quite likely. In

fact, Mr Maguire did not win that seat, and he believes that it probably cost him about $2 000 in lost income because of the way in which he found it necessary to resign in order absolutely to safegard himself from the possibility of challenge. That seems to me to be a quite ludicrous situation. That was the third occasion on which Mr Maguire had contested a Federal election as a State employee.

What about, for example, Senator Bolkus, who was unemployed for so long because Senate candidates do not take their Senate seat immediately on being elected? Obviously, from the point of their election, such persons must resign from any office of profit under the Crown. That is something else that badly needs to be tidied up. I understand that some of those things cannot be addressed in legislation that is merely being passed in a State House.

We have had certain assurances from the Attorney-General regarding these matters. The Attorney-General said that he would take up the matter with the Commonwealth authorities to see whether it was possible get complementary legislation passed by the Commonwealth and, I guess, by all other States, in order to overcome some of the problems that arise.

It is extraordinary that there should have been so much misunderstanding on the part of people in the Public Service regarding these matters. It was genuinely believed that one could not run as a candidate while occupying an office of profit under the Crown. Of course, it is clear that that was never the case, but it certainly was the case that, once elected, one then opened up for oneself the possibility of the seat being declared vacant because one was in this ambivalent position. The Bill seeks to redress that situation to the extent that it is possible under State legislation, and we support it.

The Hon. H. ALLISON (Minister of Education): I will be brief. I share the honourable member's pleasure that a number of problems have been redressed by this legislation, and I assure the House that I was one who well expected a less pragmatic point of view from a former Minister of Education than that expressed a few minutes ago by another former Minister of Education. In fact, I did resign five or six weeks ahead of the declaration of the poll, having expressed a strong opinion that I would win an unwinnable seat. Had I had the former Minister of Education opposite me as my Minister, I am sure that I would have been spared that for at least five or six weeks. However, that is water under the bridge.

I am convinced that quite a lot of teachers and other public servants who are currently in the lists for candidacy at the next election will benefit from this legislation, and certainly this Bill should be read before candidates consult either the South Australian Education Department regulations or the Public Service regulations. This Bill will supersede other legislation currently on the Statute Book, and I commend it to the House.

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

ELECTORAL ACT AMENDMENT BILL (1982)

Adjourned debate on second reading (resumed on motion).

(Continued from page 3025.)

The Hon. D. J. HOPGOOD (Baudin): The Opposition supports this Bill. Initially, we had one or two fears about it, but I believe that those fears have largely been allayed in another place. I will simply pick out three matters that the Bill raised, although there are one or two other minor matters to which I need not refer and which deal largely with the bringing of our State Legislation into line with Commonwealth legislation, which I support wherever it does not offend against my general principles in relation to the democratic control of elections. Provided that is satisfied, I believe there should be the highest degree of uniformity that is possible between the procedures for Commonwealth and State policies.

I will refer to three matters. The first is the striking out from the Act of the requirement that copies of electoral rolls be produced for sale. Under the Bill, the Minister will determine whether the copies are to be made available for sale and, if so, at what price. The Attorney-General in another place has given assurances that the availability of rolls for people in public places, such as post offices, libraries and so on, and the availability of rolls for candidates and political Parties will continue as has occurred in the past. However, the unnecessary printing of rolls for sales that do not eventuate will not continue. Given the assurances that we have received, there can be little quarrel with that.

I simply say in passing that the electoral roll is an important document for many purposes, indeed for historical purposes. Those of us who have done a degree of historical research regret the fact that more electoral rolls were not retained from the last century. I believe that a fire at the old Electoral Office in 1890, or about the turn of the century, destroyed a lot of records and material in relation to the results of elections. There has been painstaking recreation of that material mainly from newspapers, with which Dr Jaensch has been associated. A lot of the old electoral rolls have been lost. As far as I can ascertain, the earliest electoral rolls are in the Parliamentary Library—those from 1884, 1887, 1891, and then they drop out of sight until the incomplete set of 1912.

The people involved with the South Australian collection at the State Library have told me that, when people go there to inquire, they are usually sent to the Commonwealth Electoral Office, but even at that office the earliest records are from 1906. It is a great pity that those records have been lost. It is important that there be a full record of contemporary electoral rolls, if only in the interests of Ph.D. and other students in the year, say, 2042.

The Minister, in the second reading explanation, stated that a new provision is proposed under which the death of two or more candidates for election to the Legislative Council on or before polling day would render the election invalid. This matter has arisen from time to time, and, indeed, it was quite a hot political topic at the 1914 Federal election, because, as some members would be aware, in those days the Senate was elected on a 'winner take all' system. Whether there were three, five, or more candidates up for election at that time, the one side got the lot under the cross system of voting, as opposed to the proportional representational system of voting. In addition, Prime Minister Cook had called a double dissolution and so all of the Senators came out.

There was a possibility that the Party that won the election might have control of the Senate to the extent that it held every seat in the Senate. It was the possiblity of that happening that led Arthur Caldwell in the late 1940s to introduce the present system of proportional representation. When Senator Gregor McGregor, the blind Senator for the Labor Party in South Australia, died after the applications for candidacy had been closed, the Labor Party endeavoured to do whatever it could to have him replaced on the ballot-paper. It was indicated at the time that that was not possible. Therefore, the Labor Party went into that double dissolution election knowing that, no matter how well it did, at least one Senate position was not available to it because it did not have a candidate, because the Party's candidate had died. The Party decided to pick up one of the Liberal candidates, the least objectionable ideologically,

and put his name on the how to vote card. That gentleman attracted an enormous number of votes and all of the other candidates who were elected were Labor candidates, indicating, of course, that, if the Party could have had the dead Senator replaced on the ballot-paper, it would have won all of the seats and not just one less than the total number then available to it.

Something like that situation is picked up by a clause in the Bill, although in respect of Legislative Council elections. It is clear that that should occur. The accident of a death should not be allowed to vitiate the wishes of the electors as expressed in the polling booth, or the way which they would seek to express themselves. We support that principle.

Finally, I refer to the provision for expiation of the offence of failing to vote. As has been explained, there is provision for expiation in the practice of the Electoral Commissioner at present. If a person fails to vote, he receives a 'please explain' notice. If the explanation is not satisfactory, he is then invited to expiate the offence. However, the way in which the Act is currently worded provides that one could expiate the offence and still be subject to a summons. Therefore, by giving statutory effect to the expiation process, the Parliament is allowing for the expiation process to end the procedure there and then.

Objections were raised in another place in regard to this provision on the grounds that more fines would probably be imposed than occurs at present. I am prepared to accept the assurances given at that time that that will not be the case. We are merely (as it were) regularising a process that occurs at present. For the most part, the explanations given by people for failure to vote are accepted by the Commissioner, and only a small proportion of people are subject to an expiation procedure or a summons. In the light of that, we support this provision.

I cannot let this opportunity pass without repeating the usual sermon that I give on these occasions when the matter of compulsory voting comes up, and that is that in this State and in the whole of Australia we really have compulsory turnout, rather than compulsory voting. There is no way in which one can require people to cast a formal vote. Indeed, the general trend of formal voting suggests that a small minority of people exercise the option of not voting because that is what they want to do. However, in compliance with the law, they turn out.

The justification for this, of course, is well known. The whole getting out process, the whole business of whipping the electors to the polling booth, is something that was left to the organisation of individual political Parties and candidates, and was subject to hints of corruption, and subject to the accusation that the side that had the most money rather than the better policies was most likely to win. Government came along at the Federal level in the mid 1920s, and at the State level in this State in the early 1940s, and said to the political Parties, 'We will nationalise this process for you; the State will provide that people turn out. How they will vote or whether they vote, having turned out, having got their names crossed off the roll, is their business', as indeed it should be in any proper democratic process. With those comments, I indicate that the Opposition supports the Bill.

Mr BLACKER (Flinders): I want to make a couple of comments about this Bill. I have been trying to pick up the threads of what has been happening. The Parliamentary debates from the Legislative Council are not yet on file, but I have a proof copy that I have been perusing. There are some aspects of these amendments about which I am not particularly happy. I refer to clause 3 of the amending Bill which removes the requirement that the last print-out of the electoral roll shall be available for sale. The Government would be aware, particularly through the Attorney-General, that I raised this matter during the Budget debate; the electoral rolls for my own electorate have been virtually unavailable for the last three years, with the exception of the print-out at election time, and that print-out of the electoral roll had almost run out at the time of the election. It was only a matter of a few months after the 1979 general election that the electoral rolls for the Flinders District were no longer available.

I have raised complaints with the Attorney-General about this and I raised the matter during the Budget debate, when I was given an undertaking that a print was in process and that I would be able to obtain a copy 'in the very near future', which I think was the term used. These copies are not yet available, and advice was received at my electorate office from the Electoral Department that they will not be available until the next general election, which is blatantly in contradiction of what the Attorney-General said. I must say that the Electoral Commissioner was in attendance during those Budget debates. I have some apprehension about the amendment, because it allows the Electoral Department to get off the hook, and not necessarily make available to anyone in the general community copies of the electoral roll.

I believe that, as a local member I have a right to an electoral roll, and more particularly I think that business people in my area have a right to obtain a roll, as have other members of the general public. I have a long list of names of people who want a copy of the electoral roll. Even yesterday, I had another phone call from a person wanting to come to my office and look at the latest electoral roll and obtain a copy for himself. However, we could not give him one and instead gave him a roll of the 1977 election, but obviously something so old is of little use to a business person or anyone else trying to locate a constituent of the area.

Therefore, I have some grave reservations about this measure. I believe it is covering up and withholding from the general public information which should normally be available. I have no alternative but to oppose clause 3, because of the Government's track record on this matter. I think it would be fair to say that the matter goes back to the previous Government as well, because the difficulties that I am now experiencing occurred before the last general election.

The provisions of clause 4 reduce from three months to one month the period of non-residence on which an objection to enrolment may be based. I am not quite sure that I have actually grasped the import of this provision, but as it is a normal requirement that every person is entitled to at least one month's annual leave, it could well be that many people could be out of an area at that time and there could be a floating population. If one wanted to be facetious, one could suggest that in a close electorate it may be possible for numbers of people to change enrolment for the specific purpose of electoral votes. Whilst I think that is purely hypothetical, it cannot be discounted as a possibility.

Clause 5 provides that any election for the Legislative Council will be rendered invalid where two or more candidates die on or before polling day. That is something about which we would all agree, because only a most unfortunate set of circumstances would bring that about, but nevertheless, under the list system of voting, there would be a tremendous impact on the overall election should that occur. That is a valid point.

The provisions in clause 7 worry me, because it provides for a vertical grouping of candidates for the Legislative Council where each candidate constitutes a group. It appears that the two major Parties have got together on this one so as to minimise the effect of a person running as an inde-

pendent. I believe that a person who runs as an independent and who wants to campaign in that way should be entitled to do so and should be entitled to be shown on the ballot-paper as doing just that. I think that, if such a person is lumped together (words that I use advisedly) with a number of other persons whose political philosophies might be vastly different, that could have some rub-off effects on him or her.

That situation would be unfair, and certainly it would not be presenting to the general public a candidate standing on a platform of his or her own choice. For example, someone from the extreme right wing of politics might be running as an individual candidate and there might be someone on the extreme left wing of politics running as an independent candidate. They would be lumped together as a group on the voting schedule, and whilst the requirement to place numbers next to the names would still apply, nevertheless such grouping would have the effect of a person appearing to be associated with a candidate who may have a divergent opinion. I do not believe that that is a correct thing to do. It is the right of every constituent throughout the entire State to contest as a candidate if he or she sees fit, and not be branded or associated with a person of a different political persuasion or a different political colour.

Clauses 9 and 10 provide for a fair requirement, namely, that there be inclusion of the name and address of a printer on material published. That requirement is quite in order. I have had occasions when I had to question the authenticity of certain publications that have appeared, some of which have endeavoured to use not only my own name but, by reflection, my attitutes, and I have had to threaten legal action in a couple of instances when that occurred. If the address of the printer is clearly displayed then at least there is some recourse available to an aggrieved person to trace the origin of the wrongful advertisements or other matter.

At this stage I do not wish to say anything more, but I indicate that I would have to oppose at least two of the clauses. I oppose the electoral roll issue on the grounds that past practices have not been satisfactory and contrary to undertakings given during the Budget debate, principally in the Legislative Council Chamber. The undertakings have not been honoured, and this amendment waters down even further the obligation of the Attorney-General and the Electoral Commissioner to make electoral rolls available for general circulation.

The Hon. H. ALLISON (Minister of Education): The Government would have to agree that access to electoral rolls is essential if electors are to satisfy themselves that the enrolment details are accurate. The member for Flinders drew attention to the fact that up-to-date and accurate copies of the rolls are supposed to be made available for general public use.

The public has the right to object to the enrolment of others if they believe that they do not possess, or have lost, the necessary qualifications to be enrolled. I assure the honourable member that, in order to enable electoral rolls to be perused, full sets are supplied free of charge to libraries and post offices. In addition, members of the public can peruse the rolls at any one of the 13 electoral offices (the State Electoral Department, the offices of the Registrars, and the Australian Electoral Office Headquarters). In fact, the rolls are available for public perusal.

Inevitably, when documents become public, they are used for reasons other than those for which they were made public. For example, insurance companies, trustee organisations, debt collectors, missing persons bureaux, mail order houses, and so on, find the electoral rolls indispensable. Very often they prefer to purchase the rolls rather than simply peruse them on an *ad hoc* basis in public. Consequently, within three months of the last election, which was held in October 1980, supplies were exhausted and reprints are therefore mandatory at the present time.

Reprints are exactly that—they are reprints of the electoral roll as at the last Commonwealth or State election, whichever was the most recent. Today, enrolment details of more than 100 000 electors differ from those at the last Federal election. Unfortunately, immediately following the last reprint, the price of the Commonwealth rolls increased from $13.20 to $91.30 per set. The State rolls cost about $132 per set. Few people are interested in purchasing them at this price. That price does not even cover the cost of production. As a result, the Australian Electoral Office has sold only three of its 200 sets, while the State Electoral Department has sold none. No further sales are expected. Currently, $20 000 worth of out of date rolls are occupying about 300 cubic feet of warehouse space and will return to revenue a total of about $17 when they are sent away for pulping.

If the mandatory requirement to have rolls available for sale is removed, this situation will not occur again. The advantages in amending the Act are purely economic and the disadvantages are few, if there are any at all. The current price of the rolls is likely to remain beyond the means of the private citizen, so availability is not a significant issue. Whilst some business houses may be unable to purchase rolls if they are not quick enough off the mark to obtain the early copies that are printed at election time, nevertheless they could obtain rolls (not reprints) in micro-fiche form. The micro-fiche are available at a very much reduced price to the Government, but would probably retail at the same price to the purchaser. They can be produced in large or small numbers as required. Irrespective of this amendment, the Commonwealth will still be obliged to provide rolls for sale in accordance with Commonwealth legislation. As has been mentioned, they are a little cheaper than State Electoral Department copies.

In relation to the expiation fee, all States in the Commonwealth have an expiation fee for people who have not voted. South Australia has an expiation fee in practice, but the Act does not preclude further penalty if the Electoral Commissioner feels that it is necessary to proceed further. That is, a non-voter may choose to have the matter dealt with by the Commissioner and pay his $3 fine, but that may not be the end of the matter as far as the Commissioner is concerned, even though the voter may feel that he has expiated the fine. If he wishes, the Commissioner can accept the $3 as part payment of the penalty.

We feel that is a very good reason for providing an expiation fee that precludes any further action. Since compulsory voting became law, no person has been penalised twice, and I do not believe that that is likely. This amendment merely formalises the current practice. We have also received confirmation that the expiation fee is in the order of $5 for New South Wales, in accordance with the Electoral Act, and the fee in Victoria varies from $4 to $10, at the discretion of the Chief Electoral Officer. I commend the Bill to the House.

Bill read a second time.

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Public inspection of rolls.'

Mr BLACKER: I thank the Minister for his explanation in relation to the print-out of electoral rolls. However, I do not think that he has satisfactorily answered the undertaking given by the Attorney-General during the Budget debate, particularly as the problem I have experienced has occurred for many years. I find it rather strange that the Minister should say that there are many cubic metres of paper being

wasted, because that indicates a very sad lack of planning when the rolls are prepared. Obviously, some rolls will not be required and not used and have been around for a considerable period of time. However, there are other areas where rolls are required and have been in desperately short supply.

I accept on one hand the explanation given by the Minister, but I believe there must be further answers for this particular problem, other than denying people in my area (and no doubt in other areas) ready access to these rolls. The other point made was that they are available from the electoral office. The electoral office for my particular area is in Port Pirie and it is difficult to have ready access to an electoral roll from there. I question how many post offices have a print-out available. Perhaps print-outs are available at the major post offices, but the people who have come to me looking for the roll have had trouble getting access to it. I oppose the clause.

Clause passed.

Clauses 4 to 6 passed.

Clause 7—'Printing of ballot-papers.'

Mr BLACKER: In his summing up, the Minister did not respond to some comments I had made about the grouping of individual candidates. It is a very serious problem and one of principle that individual candidates are entitled to contest in their own right and not necessarily be lumped together with individuals whose political persuasion or thinking would be vastly different and, in many cases, completely opposite to that of another individual. I cannot accept that just because it will shorten the length of the voting paper is sufficient reason in itself to deny these people the right to be presented to the public for voting.

The Hon. H. ALLISON: I believe that one voting paper (and it may have been in New South Wales during the last State or Federal election) was several feet long, and people were likening it to something coming off an accounting machine and marking off the numbers on an almost *ad hoc* basis. It was extremely difficult for people with short sight, short tempers, or whatever else, so in the extreme it can be a difficult proposition for an elector to move into the polling booth and to be confronted by an unwieldy and lengthy voting paper. It has been a consensus of opinion that for the comfort of electors this is the better alternative. I appreciate the honourable member's point of view, but the Government has taken this step as the better of two alternatives.

Mr BLACKER: I maintain that the Minister's explanation is not adequate. For the same reason, why do we not lump the Liberal Party and Labor Party together in the same column, because exactly the same reason would apply? Just to use that as an excuse to put all Independent candidates in one group is not good enough. What we have here is a situation of convenience, not only for the length of the ballot-paper but also for the major Parties. They have quite distinctly sorted out that those who want to run as a group are entitled to their own box on the ballot-paper but those who run as Independents are not. Let us face it, this State has had Independent members in 43 out of the 44 Parliaments so it is not new. It is a well established fact that Independent members will always be around.

It is grossly unfair to these people for them to be lumped together because exactly the same argument could be applied to putting the two major political Parties together in the same way and then letting the voters sort things out. I ask the Minister to reconsider this clause, because the implications in it are great. Who has the right to say that this should happen. I do not agree that the Government (or the Opposition, which appears to be agreeing with this clause) has the right to do this.

The Hon. H. ALLISON: I do not believe that there is anything further I can add to my argument. This decision has been made for the reason stated. The honourable member has a point of view to which he is entitled, but this is a decision by the majority and that is the way democracy has worked over the centuries. This is a majority decision, in this case, we claim, for the benefit of the voting public.

The Committee divided on the clause:

Ayes (40)—Mr Abbott, Mrs Adamson, Messrs Allison (teller), L. M. F. Arnold, P. B. Arnold, Ashenden, Bannon, Becker, Billard, D. C. Brown, M. J. Brown, Chapman, Corcoran, Crafter, Eastick, Evans, Glazbrook, Goldsworthy, Hamilton, Hemmings, Hopgood, Keneally, Lewis, Mathwin, McRae, Olsen, Oswald, Payne Plunkett, Randall, Rodda, Russack, Schmidt, Slater, Tonkin, Trainer, Whitten, Wilson, Wotton, and Wright.

Noes (2)—Messrs Blacker and Peterson.

Majority of 38 for the Ayes.

Clause thus passed.

Remaining clauses (8 to 11) and title passed.

Bill read a third time and passed.

The Hon. D. O. TONKIN (Premier and Treasurer): I move:

That the sittings of the House be extended beyond 6 p.m.

Motion carried.

JUSTICES ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 16 February. Page 2859.)

Mr McRAE (Playford): This Bill is a commonsense one. It provides six changes to the principal Act. Each of the changes is sensible, reasonable, and in accordance with justice, and the Opposition supports the Bill.

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

COMPANIES (ADMINISTRATION) BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 3026.)

Mr McRAE (Playford): The Bill is supported by the Opposition. Really, it is cognate to the Companies (Application of Laws) Bill and the Companies (Consequential Amendments) Bill. This area of law is incredibly complex and difficult. It is the sort of area where one either speaks for three minutes or three hours. I take it the House would prefer me to speak for three minutes, and I take that view myself. I shall explain why.

Since 1960 there has been continuing on-going discussion between the State and Federal Attorneys in an endeavour to get a uniform companies system in Australia. There are merits and demerits in what is being produced. So far as the Australian Labor Party is concerned, its position has always been clear; that is, it would propose a transfer of powers to the Commonwealth so as to produce a coherent system of laws that would not be subject to constitutional challenge. I merely suggest that, because of the way some of these Bills is structured, they could be the subject of challenge. However, the reality of the matter is that the Liberal Party, the Labor Party and the National Party throughout Australia have agreed to this system over the years.

In so doing, they have taken from this Parliament its proper power to exercise control. Of course, I fully realise that we could, if we so chose, defeat any of these amendments coming up if we gained the numbers in the Upper House,

but in so doing I would suggest that we might defeat the whole scheme and that is contrary to our intentions. With those few remarks, I support the Bill. What I am saying is that there is lurking inside this whole system a very nasty savour that a council of Ministers can abrogate the rights of individual Parliaments. However, having said that, there is nothing so alarming about any of the proposals in any of the three Bills that should even call for a division and, in those circumstances, the Opposition supports all three.

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

COMPANIES (APPLICATION OF LAWS) BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 3033.)

Mr McRAE (Playford): The Opposition supports this Bill.

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

COMPANIES (CONSEQUENTIAL AMENDMENTS) BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 3036.)

Mr McRAE (Playford): The Opposition supports this Bill.

Bill read a second time and taken through Committee without amendment.

The Hon. H. ALLISON (Minister of Education): I move:

That this Bill be now read a third time.

I place on record my appreciation of the co-operation given by members of the Opposition in ensuring that the Bills before the House on this very complex companies legislation have had a speedy passage.

Bill read athird time and passed.

LEGAL PRACTITIONERS ACT AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 3042.)

Mr McRAE (Playford): The Opposition supports this eminently sensible Bill, which forms part of a scheme in which the Law Society, the Bar Association and the Government have considered very desirable provisions for insurance on the part of legal practitioners and, at the same time, has made provision for certain changes in relation to practising certificates.

The whole matter is very technical, and I do not think I need to go into it, save to foreshadow a question on which I will ask the Minister to obtain an undertaking from his colleague. The Bill means that the fee for a practising certificate will move from $15 to $100. However, at this stage I do not think I need to take the matter further than that. As I said, the Opposition supports the Bill.

Bill read a second time.

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

Mr McRAE: This is the appropriate occasion for me to explain the relevant facts to the Committee and to ask the Minister to obtain some further information from his colleague in another place. As I said, the fee for a practising certificate is being increased from $15 to $100. In the case of those persons who are fully occupied in the practice of law in the private sector, that might be frowned on. Nonetheless, I do not think it is all that unreasonable in this day and age. However, a problem arises because persons are employed as legal practitioners not only in the private sector but also in the public sector.

It is well known (and I do not bother to raise the topic in relation to the Crown Law Office, including Crown prosecution, the Crown Counsel Office, and so on) that, whatever the appropriate fee might be, that fee would be met by the Government. Representations have been made to me by a number of legal practitioners concerning the position of those who are employed in a diverse range of Government offices, ranging from consumer affairs, the Department for Community Welfare, and just about every department that one could think of. Because they are legal practitioners, hitherto they had taken the sensible step of maintaining their practising certificate, even though strictly they may not need it. When a practising certificate was $15, that was one thing, but now it has become $100 it is another matter. I ask the Minister to obtain information that I know he can obtain only from his colleague in another place. The Opposition is aware of the importance of this measure, and whether or not the undertaking can be obtained by tomorrow afternoon will not alter our position. The Opposition wants to facilitate the passage of this Bill, but we do not want to leave these people out in the cold.

The situation is this: either the Government gives an undertaking that it will meet the costs of practising certificates, namely, $100 for those legal practitioners employed in the sort of Government positions to which I have referred, outside the normal range of what one would call the court lawyers or, alternatively, our proposition would be that the Government make representations to the court or do whatever else has to be done to exempt such persons from the extremely high levy, that is, leave them on the $15 levy.

The Opposition takes the view that, if they are using the practising certificate in the private sector, they should meet the increased fee but, if they are working for the Government in a legal or *quasi* legal manner, it seems to be rather harsh that they must meet the full fee. Two factors are operating simultaneously. First, such people would be foolish not to pay for the practising certificate, because anything can happen in terms of employment in this day and age and, secondly, at the same time they are in the employ of the State and are benefiting it. I do not believe any harm could be done as a result of either course of action that I propose. Perhaps the Minister will report progress and, if he can, give a reply to the Opposition some time tomorrow afternoon.

The Hon. H. ALLISON: I have listened with great interest to the question raised by the member for Playford. I simply ask him to note that a number of other organisations—the Australian Library Association is one example—outside the law (but working well within it, I assure him) have a practice of charging some of their practitioners a sliding scale of fees so that those on a high salary pay $130 to $140 a year and those on the lowest scale pay about $30 to $35. For another group who are not actually practising within the profession but who are still members an even lower fee applies. I am sure that the Attorney-General will consider the matter, and I will bring back a considered reply tomorrow for the honourable member.

Progress reported; Committee to sit again.

ADJOURNMENT

The Hon. H. ALLISON (Minister of Education): I move:

That the House do now adjourn.

Mr WHITTEN (Price): I would like to express my regret that the South Australian Jockey Club is proposing to sell Cheltenham Racecourse. I am completely opposed to the sale of Cheltenham Racecourse, and I believe that that area should remain for all time as open space. I would like to relate some of the history of the Cheltenham Racecourse from the time it became a racecourse under the auspices of the Port Adelaide Racing Club in 1890.

In 1890 the Port Adelaide Racing Club raced on a block of land on Junction Road at Rosewater, which is part of my district, a part that I hold very dear. In 1895, the club was granted a lease by David Bower, who, incidentally, was a member of this Chamber at one time and who owned a lot of land in the Woodville area. He leased the Cheltenham Racecourse and its surrounds to the Port Adelaide Racing Club for £151 per year. The club enjoyed that privilege until 1921. At that time, a private Act of Parliament was passed, which enabled the Bower estate to be sold, and 125 acres was then bought by the Port Adelaide Racing Club for what is now called Cheltenham Racecourse. The racecourse and all of the land was bought for the princely sum of £125 per acre, in all about £15 000.

In 1975, the Hancock Racing Inquiry adopted certain recommendations. It is useful to record that the Hancock Report recommended the amalgamation of the Adelaide Racing Club at Victoria Park, the S.A.J.C. at Morphettville, and the Port Adelaide Racing Club at Cheltenham. The three clubs involved were to form a new association called the South Australian Jockey Club Incorporated. The amalgamation was in line with the recommendations of the Hancock inquiry, and took place in 1977. The property at Cheltenham then went into the hands of the S.A.J.C.

It is interesting to note that the present State Government instituted an inquiry in 1979 or 1980 under the chairmanship of the former Auditor-General, Mr Byrne. A press statement appeared in the *Advertiser* of 23 February 1980, as follows:

> The South Australian Jockey Club is considering selling the Cheltenham Racecourse. The need for a new grandstand at Morphettville Racecourse has led to a study of the Cheltenham property. The S.A.J.C. Chairman, Mr R. W. Clampett, told the racing inquiry that the State Government had asked the club to thoroughly investigate the possible sale of Cheltenham. He said the demand for training facilities meant that Cheltenham was still needed.

I think it is worth emphasising that point, namely, that the present State Government, in 1980, was advocating to the S.A.J.C. that Cheltenham should be sold. Many other things should be brought out in relation to this matter. The press report also stated:

> If it [Cheltenham] were not available, an expensive all-weather course for training would have to be built. The S.A.J.C. Secretary told the inquiry that a bank overdraft of $4 500 000 has been arranged, guaranteed by the Government.

Earlier, another reference to this matter was made in an article in the *News* of 1979. I presented a petition in this House on 11 June 1980 which carried 3 344 signatures and which prayed that the Cheltenham racecourse would not be sold and would always be used as a racecourse. I believe that there is no way that we can tell the South Australian Jockey Club that it must race at Cheltenham, but I believe that the State Government should be advocating that the open area of the Cheltenham Racecourse should never be sold or used for anything other than equestrian events or the training of horses, because there is no way possible that the number of horses now trained at Cheltenham could be trained at the S.A.J.C. premises at Morphettville.

Further, we all know that there is no possibility now of training horses at Victoria Park. Also, the fact that Victoria Park Racecourse is owned by the people should be borne in mind. It is dedicated parklands. One of these days a council could possibly say that the land must be returned to the people, and then there would be no more racing at Victoria Park. Therefore, it is absolutely necessary that Cheltenham be retained.

I believe that there are ways and means by which the S.A.J.C. could be made viable. I believe that there has perhaps been some mismanagement at times, and that too much money has been spent on entertainment. I saw a report the other day that stated that $70 000 a year is spent by the S.A.J.C. on entertainment alone, much more than is necessary. Perhaps some of that money should be going into paying the club's debts. Also, there are six acres of car park area adjacent to Torrens Road from which the S.A.J.C. could immediately raise some money.

Mr Becker: That's Anzac Highway, that is.

Mr WHITTEN: I am not talking about Anzac Highway but about the car park areas on Torrens Road, where there are six acres of land that could be split up into 24 or 25 prime building sites. There is plenty of car parking space on the flat of the Cheltenham racecourse. If the land adjacent to Torrens Road was sold for building sites, I would not object, but I do strongly object to the land of the racecourse and the flat being used for anything other than open area. I believe that the Housing Trust would be at fault if it took that over and build houses there.

Whilst the Premier is in the House, I would like to read the resolution carried unanimously at a meeting (at which I spoke), at Woodville. The resolution states:

> That this meeting inform the Premier of South Australia, the Minister of Recreation and Sport, and the Chairman of the South Australian Jockey Club, Inc., Mr R. W. Clampett:
>
> 1. That it objects strongly to the sale of the racecourse by the South Australian Jockey Club for purposes other than for racing and anything connected with racing in South Australia.
> 2. That the Cheltenham racecourse be maintained for horse-racing, training of horses and recreational activities.
> 3. That it objects strongly to any change in the preservation of the area as an open space as proclaimed pursuant to section 61 of the Planning and Development Act.
> 4. That a deputation of four seek audience with the Minister of Recreation and Sport, the Hon. Michael Wilson, M.P., to express the concern of this meeting and to convey the resolutions of this meeting.

I am very disappointed that I do not have time to elaborate on this matter. One hundred horses are trained at Cheltenham. There is no way that they could be trained at any other course. It has been suggested that the trainers move to Murray Bridge or Gawler, but that would not be viable. In fact, that it is impossible. The racing industry is a big industry which employs a lot of people.

The SPEAKER: Order! The honourable member's time has expired.

Mr SCHMIDT (Mawson): I refer to matters pertaining to education and two articles in Saturday's *Advertiser*. One article is entitled 'Rush for elite schools', and the other 'Parents join rush to enrol children at Norwood High'. It is interesting to note that one of the principal reasons for people joining this so-called rush, if one wishes to call it that, is that they are looking for schools which provide a certain academic performance. More importantly, as was mentioned in both articles, they were looking for schools that have a very high degree of discipline: even to the point where parents are adamant about the fact that their school impose a strict rule regarding school uniforms. Obviously, the parents who send their children to these schools see this as part of the disciplinary process.

It is interesting to note that this matter will always create a problem. In one of the articles by Alex Kennedy she referred to two opposites that occur. She said:

> In aiming to send their children to a 'good' State school it is recognised that parents are looking for discipline and academic standards.

On the other hand, parents regard a bad school as a place which has poor matriculation results and no back up from the staff when they wish to enforce uniforms from home. In the same article, she contrasted Norwood High and Christies Beach High. I refer to the comments made by the Headmaster of Christies Beach High who, in the years that he has been at that school, has done a tremendous job in upgrading the standard and name of that school in the district. He states that he has one factor going against him. Namely, the fact that the school is located in a low socio-economic area.

If anything happens in that area, no matter what district that person comes from, if they mention the fact that they come from Christies Beach that unfortunately immediately implicates the school as a whole. When I first entered Parliament, I was asked to speak at one of the local primary schools before a grade 7 class. The first question asked by these children was whether Christies Beach High School was really as bad as people said. For the purposes of this exercise, I will say that the boy who asked the question was named Jack Brown. I said, 'Jack, before I came to this school today someone told me that you were the meanest, ugliest little kid in the class and that you were a real monster. Is that true?' Of course, Jack was most indignant and he said 'No, that is not true. I am not like that at all.' I said, 'I made that comment because I was listening to a rumour. The comments you have made about the Christies Beach High School are surely based on rumours. I suggest that no student make any decision about which school you wish to go to based purely on a rumour. I suggest that you and your parents go to that particular school, speak to the principal and staff and look at the programme provided by that school. You will find that the facts are quite often different from the rumours that you may make decisions upon.' I brought this matter up because it is interesting to note this trend in schools, particularly amongst the parents to seek out schools that have a good reputation, especially for discipline.

I think we can name a large number of Government schools that are reputed to have good discipline and hence there is a rush for those schools. The reason I mention this is that earlier in the year I had the good fortune to visit America where I visited authorities in Washington State and spoke to them about the education system there. The Washington State Government last year introduced a directum to each school district that it should now set up a code of discipline for its own district. Obviously, the State Government saw the need for schools to address themselves to the discipline problem. I add that we should not look upon the schools as a scapegoat because the whole thing must be directed back to the parents. If parents require a school to maintain discipline then they must look at discipline within their own homes. If they cannot maintain discipline in the home, then they cannot expect the school to do it for them. The school is there as a back-up support for what must be done in the home.

The Washington State Government initiated this thrust for the schools to set up a code of discipline. In 1978 that Government took over the financing of Government schools which were previously financed by the school districts raising their own levy. The Government said that from then on, if it was going to fund Government schools, it was going to set down stringent guidelines as to how those schools would operate. The Government recognised the need to do that because of the inequity that was creeping into the system because of the difference between the wealthy districts and the poor districts.

It set down in the guidelines for funding that schools must allocate 85 per cent of their time to academic subjects, 10 per cent to industrial type subjects, and the schools were left to do what they would with the remaining time. I turn to the booklet produced by the South Central School District and called 'A Curriculum Scope and Sequence Guide' which sets out from kindergarten on the guidelines for State funded schools. For instance, the guidelines state that there shall be 20 kindergarten children to one classified teacher and that that is the guideline under which the Government provides funding. This works from kindergarten right through to high school. The booklet points out how many minutes will be allocated to each subject. As an example, for grade 2, language arts, which includes reading, hand writing, spelling and grammar, a total time of 825 minutes a week must be allocated to those tasks. Arithmetic must have 200 minutes a week allocated to it. There must be 75 minutes a week allocated to social sciences and 75 minutes a week to science and health, and so it goes through the subjects to make up a total time of 1 500 minutes for a grade 2 class student.

The booklet goes on to point out the objectives of each course. The objectives behind the book are to give a directive to teachers as to what they should be teaching. More importantly, it states in its introductory comments:

> Parents and students can use this booklet to gain a better understanding of learning opportunities that will be offered students at each grade level.
>
> The 'Scope and Sequence Guide' will serve as an easy reference to show what is taught in our schools and when it is taught.

The idea of that is that parents can use the book as a check to make sure that children are given the education in a particular school that they think a child should be given. The Washington State Government then went so far as to say that at a given time in the morning all classes should cease work and salute the American flag, so they have gone back to doing the type of thing we eliminated many years ago. That was in Washington State.

In the brief time I have left I want to make reference quickly to another education problem that was occurring in Colorado, where the authorities were negotiating with teachers over their salary claims. After many, many days of negotiation the teachers were asking a 9.8 per cent pay increase, but the authorities eventually only gave them 8.5 per cent, which was going to give the authorities a saving. In granting the teachers a wage increase they then turned around and cut $1 000 000 off the education budget and in so doing they eliminated 78 classified employees out of the classified teachers. They eliminated bus drivers, teacher aids, security and maintenance personnel. With other substantial cuts and estimated savings for the school district for the first four months of 1982, they eliminated 30 elementary school music teachers, counsellors and teachers of slow-learning pupils; they eliminated more than 20 administrators—

The SPEAKER: Order! The honourable member's time has expired. The honourable member for Gilles.

Mr SLATER (Gilles): This afternoon I brought to the attention of the House by way of a question the lottery conducted by the South Australian Jockey Club, or in the name of the South Australian Jockey Club, and it was in association with the recent Australasian Oaks carnival. It is no secret that the South Australian Jockey Club did not have the resources to pay the stake money of $280 000 for the four feature races associated with the carnival. To provide some means of revenue to attain that stake money a group of people, mostly associated with the breeding industry, guaranteed to underwrite the Oaks carnival venture to the tune of $115 000. The group hoped to defray this cost by obtaining sponsors, but I understand that persistent efforts in this regard unfortunately failed, so a last measure to raise funds was to initiate this lottery.

I point out that it was not the idea of the South Australian Jockey Club—it was the idea of the people associated with the underwriters—but the South Australian Jockey Club actually used its name and it backed the lottery. As I pointed out this afternoon, the odds were not particularly attractive, because there was to be 50 000 tickets sold at $2 each, which if all sold would return $100 000, and the prize money was only $20 000—one-fifth of the total that could have been obtained from this lottery.

Mr Trainer: Not much better than Aussie Pools.

Mr SLATER: I believe that it might be a little better than Aussie Pools, and the investigation by the Minister of Recreation and Sport, as indicated to the House this afternoon, would indicate to us whether the particular lottery is any better than Aussie Pools. I will be particularly interested and the public of South Australia will be interested in the results of those investigations because, as I pointed out this afternoon, of the 50 000 tickets, only 20 000 were sold to the public in general despite the T.A.B.'s involvement as selling agents. I believe that this is unprecedented as far as the activities of the T.A.B. are concerned. I would also like to know from the Minister how the T.A.B. came to be involved. Was its involvement sanctioned and for what purpose? I believe that, if it is entitled to be involved on behalf of the South Australian Jockey Club in this way, why should that same involvement be extended if the other codes decide to participate in a similar lottery?

Can the Minister of Recreation and Sport say why and how the T.A.B. was involved in this particular lottery? As I pointed out, there were 50 000 tickets to be sold at $2 each and only 20 000 tickets were sold to the general public. On the eve of the draw of the raffle the promoters or underwriters took a decision to purchase the rest of the tickets. They then purchased 30 000 tickets and one of those tickets was fortunate enough to win the first prize of $20 000.

Mr Becker: What were the other prizes?

Mr SLATER: I do not believe that there were any other prizes. I am not sure of that, but I understand that that was the major prize and there has been no advertisement regarding any other minor prizes. I did mention in the House this afternoon that an advertisement appeared in the press indicating the winning ticket of the $20 000 prize. The winner was a syndicate called 'I'm in it to win it'. I also indicated that the address of this syndicate was given as 37a South Terrace, Adelaide, South Australia.

Since I have raised the question in the House this afternoon, I have personally taken the opportunity to have a look at the address at 37a South Terrace and have confirmed that there is no-one in residence. The block has a number of town houses not yet completed with nobody in residence, and the notice on the property says that the town houses are for sale. The owners of the block indicated on that sign are E. R. & B. G. Investments. I hope that the Minister takes all these points into consideration regarding the investigation. It is a serious matter because we now find that the lottery section of the Department of Recreation and Sport gave approval for the conduct of the lottery.

What efforts were made by the Department of Recreation and Sport in connection with this matter? Was an officer of the department advised of the problems associated with the filling of the lottery? Was an officer of the department present at the draw? How can an advertisement appear in the press indicating that a person won the lottery yet no-one lives at the address given. There are many questions to be answered; in the public interest the Minister should answer them. We have had a spate of failures regarding these lotteries in the past few months. The Austcare lottery also ran into problems because of the lack of public support and is being investigated by the Department of Recreation and Sport. An article in the press of 16 January 1982 headed 'Department checking Austcare lottery' states:

S.A.'s Division of Recreation and Sport is investigating the conduct of a lottery run in the name of the national refugee relief organisation Austcare.

It was reported in the *Advertiser* yesterday that Austcare had spent at least $32 000 of its own money to meet the debts of the lottery, the Austcare Mr 1982 lottery.

The Minister of Recreation and Sport Mr Wilson, who is responsible for lotteries other than those run by the Lotteries Commission, said last night that 'some weeks ago' two complaints had been received about the conduct of the lottery.

These matters had been under investigation since.

The director-at-large of Austcare, Mr K. J. Moore was reported in the *Advertiser* yesterday as saying there had been a shortfall in lottery funds of $15 000 to pay suppliers of prizes, printing, advertising and creditors.

He said Austcare had given a $17 100 secured loan to one of the lottery promoters, and this money would be recovered.

So, I point out that this is not the first occasion in the past few months when a lottery of this nature has run into problems. The Minister said this afternoon that he believed that at this stage there was no contravention of the Lottery and Gaming Act. He appeared to condone the fact that promoters and sponsors of lotteries can still buy the majority of tickets and have a chance to win a prize.

I believe that, even though that might not be contrary to the Lottery and Gaming Act, it is unethical in relation to the other participants in the lottery. As I said before, the public should be able to know specifically what occurred in relation to this lottery and in regard to Austcare. They are the two examples that have been obvious to us, and both are under investigation.

The SPEAKER: Order! The honourable member's time has expired.

Motion carried.

At 6.36 p.m. the House adjourned until Wednesday 24 February at 2 p.m.