LEGISLATIVE COUNCIL

Tuesday 20 March 1984

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

ASSENT TO BILLS

His Excellency the Governor's Deputy, by message, intimated the Governor's assent to the following Bills:

Adelaide Festival Centre Trust Act Amendment,
Classification of Publications Act Amendment,
Education Act Amendment,
Film Classification Act Amendment,
Further Education Act Amendment,
Industrial Conciliation and Arbitration Act Amendment (No. 3),
Klemzig Pioneer Cemetery (Vesting),
Legal Services Commission Act Amendment,
Local Government Act Amendment (No. 2),
Local Government Act Amendment (No. 3),
Local Government Finance Authority,
Magistrates,
Marketing of Eggs Act Amendment,
Motor Vehicles Act Amendment (No. 3),
Motor Vehicles Act Amendment (No. 4),
Natural Death,
Pipelines Authority Act Amendment,
Prisons Act Amendment (No. 2),
Real Property Act Amendment (No. 2),
Savings Bank of South Australia Act Amendment,
Shop Trading Hours Act Amendment (No. 2),
South Australian Ethnic Affairs Act Amendment,
South Australian Waste Management Commission Act Amendment,
State Bank of South Australia,
State Lotteries Act Amendment,
Statutes Amendment (Criminal Law Consolidation and Police Offences),
Statutes Amendment (Flood Management),
Statutes Amendment (Magistrates),
Stock Diseases Act Amendment,
Stock Mortgages and Wool Liens Act Amendment,
Trustee Act Amendment,
Wrongs Act Amendment.

PETITION: ABORTION

A petition signed by 207 residents of South Australia praying that the Legislative Council pass legislation giving protection from the moment of conception to all unborn South Australians was presented by the Hon. H.P.K. Dunn.

Petition received and read.

PAPERS TABLED

The following papers were laid on the table:

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

Pursuant to Statute—

Administration and Probate Rules of Court—Supreme Court Act, 1919—Probate Clerk.
Bills of Sale Act, 1886—Regulations—Fees.
Classification of Publications Act, 1973—Regulations—Copies of Publications, Videotapes.
Industrial Safety, Health and Welfare Act, 1972—Regulations—Construction Safety.
Land Tax Act, 1936—Regulations—Fees.
Listening Devices Act, 1972—Report on the Use of Listening Devices, 1983.
Local and District Criminal Courts Act, 1926—Regulations—Fees.
State Theatre Company of South Australia—Report, 1982-83.
Superannuation Act, 1974—Regulations—Ballot Papers.
Rules of Court—Supreme Court—Supreme Court Act, 1935-1983—
Legal Practitioners Costs, Probate Fees.
Friendly Societies Act, 1919—Amendments to General Laws—
Manchester Unit Independent Order of Oddfellows Friendly Society in S.A.;
Independent Order of Rechabites, Albert District No. 83;
Independent Order of Rechabites Friendly Society, S.A., District No. 81;
Hibernian Friendly Society.

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

Pursuant to Statute—

Commercial Tribunal Act, 1982—Regulations—Registrar.
Consumer Credit Act, 1972—Regulations—Tribunal and Forms.
Consumer Transactions Act, 1972—Regulations—Tribunal.
Credit Unions Act, 1976—Regulations—Appeals.
Fair Credit Reports Act, 1975—Regulations—Appeals, Tribunal.
Hairdressers Registration Act, 1939—Regulations—Registration Fees.
Trade Standards Act, 1979—Regulations—Dust Masks.

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

Pursuant to Statute—

Companies (Application of Laws) Act, 1982—Regulations—Co-operative Scheme for Companies and Securities.
Companies (Acquisition of Shares) (Application of Laws) Act, 1983—Regulations—Co-operative Scheme for Companies and Securities.
Securities Industry (Application of Laws) Act, 1981—Regulations—Co-operative Scheme for Companies and Securities.

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

Pursuant to Statute—

Aboriginal Lands Trust—Report, 1982-83.
Botanic Gardens—Report, 1982-83.
Building Act, 1970—Regulations—Fire and Earthquake Standards Local Government Building Fees.
Coast Protection Board—Report, 1981-82.
Crown Lands Act, 1929—Section 5 *(f)*—Statement of Land Resumed.
Dentists Act, 1931—Regulations—Registration Fee.
Food and Drugs Act, 1908—Regulations—
Anti-oxidants, Colourings and Additives.
Meat Products.
Cocoa and Chocolate.
Skimmed Milk Powder, Marzipan and Sauces.
Hospitals Act, 1934—Regulations—Fees.
Institute of Medical and Veterinary Science Act, 1982—Institute of Medical and Veterinary Science—General By-laws.
Local Government Act, 1934—Regulations—
Local Government Officers' Qualifications.
Registration Fees.
Parking.
Medical Practitioners Act, 1983—Regulations—Royal Flying Doctor Service.
Narcotic and Psychotropic Drugs Act, 1934—Regulations—Amphetamines.
Pharmacy Act, 1935—Regulations—Fees.
Planning Act, 1982—
Crown Development Report by South Australian Planning Commission on—
Proposed construction of classrooms at Seaton High School.
Proposed land division, Kidman Park.
Proposed re-construction of the Port Adelaide Bus Depot.
Division of land at Walkerville.
Proposed transportable toilet block, Lock Area School, Lock.
Proposed erection of a transportable classroom, Munno Para Primary School.

Proposed division of land at Renmark.
Proposed upgrading of a warehouse, Mount Gambier.
Proposed extension to the St Agnes Bus Depot.
Proposed establishment of a temporary construction depot, 1157 Grand Junction Road, Holden Hill.
Proposed relocation of a classroom within the campus of Elizabeth Community College.
Proposed land division at Wingfield.
Proposed construction of an amenities building at Port Adelaide Sewage Treatment Works.
Proposed land division at Port Adelaide.
Proposed land division at Torrensville.
Proposed land acquisition at Torrensville.
Division of land.
Proposal to erect a canteen verandah at Marden High School.
Proposed erection of a classroom at Torrensville Primary School.
Proposed erection of classrooms at West Lakes Shore Primary School.
Proposed temporary works depot, North East Road, Tea Tree Gully.
Proposed quarrying operations for Stuart Highway.
Proposed borrow pit.
Proposed land transfer at Gillman.
Proposed land acquisition at Mile End.
Proposed land acquisition at Klemzig.
Proposed division of land for future road purposes, Grange Road, Grange.
Proposed erection of a single timber classroom at Moonta Area School.
Proposed development at Davenport Aboriginal Reserve.
Proposed construction of Sewage Pumping Station at Port Adelaide.
Erection of a shelter shed at Blackwood Primary School Oval.
Proposed erection of a Dual Unit Timber Classroom at Kadina Primary School by Education Department.
Erection of a garage at Athelstone Primary School.
Proposed office accommodation at Kadina Courthouse.
Proposed construction of an Activity Hall at Taperoo High School.
Proposed erection of classrooms at the Port Adelaide College TAFE, Ethelton.
Proposed erection of a classroom at West Lakes High School.
Land division plan at Gloucester Avenue, Belair.
Proposed additions at the Mount Compass Area School.
Proposed additions to the Strathalbyn High School.
Proposed single unit transportable classroom at Mylor Primary School.
Proposed borrow pits for Leigh Creek-Lyndhurst Road.
Proposed dual unit transportable classroom at Mount Barker College TAFE.
Proposed additions at the Victor Harbor High School.

Planning Appeal Tribunal Rules—
Courts.
Leave to Appeal.
Regulations—Mount Lofty Ranges Watershed.
Racing Act, 1976—Rules
Greyhound Racing—Use of Sires.
Trotting.
Dogs.
Race Drug Testing.
Fund Deduction.
Radiation Protection and Control Act, 1982—Regulations—Transport of Radioactive Substances.
Real Property Act, 1886—Regulations—
Assurance Fund.
Certification of Instruments.
Fee for Requisitions.
South Australian Health Commission Act, 1975—Regulations—Incorporated Hospital Charges.
South Australian Waste Management Commission Act, 1979—Regulations—Licensing and Fees.
City of Adelaide—By-laws—
No. 16—The Central Market.
No. 20—River Torrens.
City of Glenelg—By-law No. 66—Regulating and Controlling the Use of the Jetty.
City of Noarlunga—By-laws—
No. 19—Street Traders and Street Hawkers.
No. 21—Signs.
District Council of Murat Bay—By-laws—
No. 4—Control of Motor Vehicles.
No. 13—Keeping of Dogs.
District Council of Port Elliot and Goolwa—By-law No. 39—Lodging Houses.
District Council of Snowtown—By-law No. 24—Cemeteries.

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

Pursuant to Statute—

Boating Act, 1974—Regulations—
Milang Zoning.
Port Stanvac Zoning.
Brands Act, 1933—Regulations—Fees.
Cattle Compensation Act, 1939—Regulations—Compensation Rate.
Dried Fruits Board of South Australia—Report, year ended 28 February 1983.
Electrical Articles and Materials Act, 1940—Regulations—Portable Electric Vacuum Cleaners.
Harbors Act, 1936 and Marine Act, 1936—Regulations—Survey Fees.
Meat Hygiene Act, 1980—Regulations—Carcase Description.
Metropolitan Taxi-Cab Act, 1956—Regulations—Common Licence.
Motor Vehicles Act, 1959—Regulations—
Accident Towing Roster Scheme.
Civil Defence.
Registration Fees.
Police Offences Act, 1953—Regulations—Traffic Infringement Notice.
Road Traffic Act, 1961—Regulations—
Traffic Infringement Notices.
Tyres and Seat Belts.
Wearing of Seat Belts.
State Transport Authority—Report, 1983.
State Transport Authority Act, 1974—Regulations—General.
Technical and Further Education Act, 1975—Regulations—Exemption from Fees.
Tertiary Education Authority of South Australia—Report, 1982.
Weeds Act, 1956—Regulations—Noxious Weeds.

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

By Command—

Australian Fisheries Council—Resolutions of 13th Meeting, Sydney, 23 September 1983.

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

By Command—

The Australian Forestry Council—Summary of Resolutions and Recommendations of the 20th Meeting, Melbourne, 6 June 1983.

Pursuant to Statute—

Woods and Forests Department—Report, 1982-83.

By the Minister of Correctional Services (Hon. Frank Blevins):

Pursuant to Statute—

Prisons Act, 1936—Regulations—
Parole of Prisoners.
Remissions of Sentence.

PUBLIC WORKS COMMITTEE REPORTS

The PRESIDENT laid on the table the following interim report by the Parliamentary Standing Committee on Public Works:

Northfield High School—Library Resource Centre Re-establishment.

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

Adelaide Remand Centre (Currie Street),

Marla Bore Police Complex—Stages 1 and 2,

Northfield High School—Library Resource Centre Re-establishment.

Port Adelaide, Outer Harbor No. 6 Berth (Second Container Crane),

State Aquatic Centre,

Yatala Labour Prison—Security Perimeter Fence and Microwave Detection System,

Yatala Labour Prison (Visiting Centre and Adjacent Staff Development Centre).

QUESTIONS

BOTANIC HOTEL

The Hon. M.B. CAMERON: I seek leave to make a short statement before asking the Attorney-General a question about workers liens at the Botanic Hotel.

Leave granted.

The Hon. M.B. CAMERON: I understand that an investment company, Birchep and Company, a Western Australian based company with no assets in South Australia other than the Botanic Hotel, was put into receivership on 22 December 1983. At that time the Botanic Hotel was subject to extensive renovation and redevelopment, and the builders and tradesmen associated with the redevelopment work were told to cease operations. The premises were locked. Birchep and Company owed the builders and tradesmen (it is alleged) outstanding payments on contracts of about $150 000.

Subsequently, the hotel was sold at auction by the receivers, and the price received was insufficient to cover the secured bank creditors. As a result, no money was available for the work completed by the builders and tradesmen subcontracted by the builder working on the building.

The 26 subcontractors and the builders have taken out a workers lien over their work, but it appears that this holds no weight in the law, according to my information, compared with the rights of the secured creditors. Although the work done by the builders and tradesmen added to the value of the property and was sold at the auction, as a part of the property, they will receive absolutely no return. Amongst the items sold at the auction was a large amount of material supplied to the site by the building tradesmen but which had not been paid for by Birchep & Co. In a number of cases the tradesmen themselves had not paid for the goods and services invested in the building and they (the builders and tradesmen) now are being put through bankruptcy proceedings by their suppliers.

This appears to be very unacceptable, unjust and unfair, but unfortunately it appears to be within the present law. One can only conclude that the law in this instance is morally wrong. There can be no justification for the work of these tradesmen and their supplies to be sold at auction when they had not been paid for their services and supplies. Clearly, the tradesmen are receiving the worst end of the deal and believe that they are being taken for a ride.

I must stress that the builders and tradesmen have taken every possible step to regain what they believe to be rightfully theirs, even going so far as to interrupt the auction to indicate to those persons present at the auction that the renovations and the goods used for the renovations had not been paid for and the building should not have been sold before payment took place. Of course, that does not mean that what occurred at the auction was not proper. Certainly, the receivers had every right to sell the goods. I also stress that I am not indicating any illegal or illicit action on the part of the receivers, but I am concerned as a matter of principle about the rights of the builders and tradesmen who in good faith provided goods and services to the company in the circumstances that I have outlined.

Will the Attorney-General take the necessary steps to make changes to the Workmen's Liens Act to ensure that such a situation is corrected and, if necessary, will he consult with the Federal Government to bring about any necessary changes to the bankruptcy law to ensure that, where goods and services have been used on a site and not paid for, they cannot be sold without any return to the providers of such goods and services?

The Hon. C.J. SUMNER: I will look into the matter raised by the honourable member. In fact, there is and has been for some time a review proceeding in the Attorney-General's office into the Workmen's Liens Act.

The Hon. K.T. Griffin: It's a morass.

The Hon. C.J. SUMNER: As the Hon. Mr Griffin said, it is a morass. Some submissions have been received which argue for the abolition of the Workmen's Liens Act, and some sections of the building industry also argue for its abolition. I think that those submissions were initially requested by the Hon. Mr Griffin when he was Attorney-General. Many submissions have been received, and they are currently being assessed in accordance with the resources available within the Department. I can only indicate to the Council that the matter is not simple. It appears on this occasion that certain builders lost out because their workmen's lien did not take precedence over secured creditors. I can only say that that has always been the situation.

Although workmen's lien provides some additional security if placed on a title, it does not take precedence over creditors who have secured their lien by way of loan. Although in this case it appears that some builders have suffered substantial losses as a result of what has occurred, it is by no means the unanimous opinion in the building industry that the Workmen's Liens Act should even exist. A number of submissions have been made to the effect that it should be done away with.

The Hon. M.B. Cameron: Obviously, those people have not been in the position of the builders and tradesmen involved in this case.

The Hon. C.J. SUMNER: That is right. I have said that to indicate to the Council that it is not an easy issue. There exists a great diversity of views. Those views are being assessed and submissions are being received. I will certainly take up the questions that the honourable member has asked and ascertain whether any action can be taken with the Commonwealth Government or in amendments to the Workmen's Liens Act and whether the problems the honourable member has raised can be accommodated.

PORNOGRAPHY IN PRISONS

The Hon. K.T. GRIFFIN: I seek leave to make a brief explanation before asking the Minister of Correctional Services a question on prison pornography.

Leave granted.

The Hon. K.T. GRIFFIN: In yesterday's *Advertiser* the existence of a draft internal instruction from the Department of Correctional Services relating to the availability of pornographic material in prisons was disclosed to the public. The report suggests that this instruction is to be considered by institutional chiefs at a meeting in Mount Gambier later this month. The Minister for Correctional Services is reported in the *Advertiser* as saying that the instruction 'simply sought to formalise existing practices'. He appears in that report to be defending the instruction.

In the *News* yesterday he is reported as saying that he had not seen the circular but would be looking at it. It is also reported that prisoners can already obtain or order

pornographic material through the post. I have also been informed that regular opportunities are available to prisoners to view pornographic videos or films. My questions are as follows:

1. Who prepared the draft circular and where did it originate?

2. Has the Minister now seen the draft circular?

3. Does he support the proposals that it is reported to contain?

4. Was the Minister or his predecessor (Mr Keneally) consulted about the preparation of the draft circular?

5. Did the Minister or his predecessor approve in principle the proposals in the draft circular?

6. Are there occasions when prisoners are permitted to view pornographic videos or films and, if so, what are those occasions?

7. If pornographic material is discovered by prison officers in the mail, or otherwise, is it confiscated or dealt with in some other way?

The Hon. FRANK BLEVINS: The Hon. Mr Griffin asked a number of questions. The best way to answer them will be to base my answers on the first question and give an extensive background to the Council, as I know members opposite have a great interest concerning the question of pornography. If, at the end of this operation, the Hon. Mr Griffin feels the need to ask further questions or wants to know more about pornography, then I will do my best to help him. The first question that he asked was, 'Who prepared the "draft" circular and where did it originate?' It originated with a prison officer who wrote to the Ombudsman. It was a lengthy letter and I know that members of the Council will want me to read it to them. I will read an extract from that letter sent to the Director of Correctional Services by the Ombudsman by way of explanation.

The Hon. R.J. Ritson: Did you take out the dirty bits?

The Hon. FRANK BLEVINS: No. The Hon. Dr Ritson will be pleased to learn that there are sufficient dirty bits in here to give him the gratification he craves. As I said, this letter was sent from the Ombudsman to the Director of Correctional Services. It states:

Dear Mr Dawes,

I have received a complaint from a prison officer at the Adelaide Gaol concerning the use of pornographic material by inmates. The relevant part of the letter states as follows:

During my three years of service as a 'Correctional Officer' at Adelaide Gaol, I have found that a large number of offenders are convicted for 'sex related' offences. It is in this area that the system amazes me. The Department is now allowing all types of 'pornographic' material to be brought into the gaol by visitors, for the inmates. It is then freely circulated around the gaol, and, as normal, on to the inmate's cell wall.

I fully understand that the inmate could purchase this type of material at a number of outlets if he was on the outside. However, it is my belief that by feeding them this type of material it is only adding fuel to the fire in most cases. Movies are another area where the inmate gets to see films containing undue violence against 'Authority' and society in general.

No doubt, many have learnt how to deal out more vicious acts against their victims of the future. One of the aims of the 'Correctional Services' is to help in the 'rehabilitation' of inmates. Overall, this is not being achieved due to the 'archaic' state of the prisons in general.

I will come back to that in a moment. The letter continues:

However, surely the abovementioned area of 'pornographic material' being allowed in is not helping with 'rehabilitation' of their minds. Although no doubt, some 'psychologists' see 'pornography' as a source of 'rehabilitation' by releasing their sexual desires. Society is up in arms about 'child pornography', and new laws have been legislated, as you are well aware. Maybe the curtailment of 'pornographic material' being brought into the 'prison system' could help towards a small part in the 'rehabilitation' of inmates in general.

I would find it hard to believe that by having part of one's cell covered with 'pornographic photos' could 'rehabilitate' anyone. My letter is written purely to help the inmate in one area towards their 'rehabilitation'.

We then get back to the Ombudsman, who states:

I have advised the officer that I would be prepared to refer the matter to you to determine whether or not any departmental policy exists concerning the use of such material. In addition, I query whether the regulations under the Prisons Act deal with the use of such material in any of its provisions?

I have advised the prison officer that it is not up to me to provide a policy in advance concerning the use of such material, nor to necessarily insist that the Department adopt a policy in this matter (if one does not exist). I understand that there are two schools of thought in relation to the use of such material. One school of thought believes that the use of such material may have a positive effect in relieving frustrations, while another school of thought believes that the use of such material may be detrimental to the well-being of persons who have a propensity towards sexual offences.

The purpose of this letter is to inquire whether a policy does exist in relation to the use of such material by inmates and your views generally on the matter.

The Hon. K.T. Griffin: What is the date of that letter?

The Hon. FRANK BLEVINS: It is 8 November 1983. Obviously, this gave the Department some concern that there was, according to this prison officer, a deal of pornography circulating freely throughout the prison and being placed on inmates' cell walls. In response to that the Department's psychologist was asked to consider the matter. Following that consideration, a draft departmental instruction was drawn up to cover this particular area. While we are still on the question of the Ombudsman, I will also read a letter from the Ombudsman sent on 20 March 1984, in relation to this matter. Anyone who has any dealings with the prisons would be aware that the Ombudsman's office is very much involved in issues within the prisons.

The Hon. Diana Laidlaw: Sent to whom?

The Hon. FRANK BLEVINS: I will tell you that in a moment. The letter states:

Mr M. J. Dawes, Executive Director, Department of Correctional Services. Dear Mr Dawes—

The name of an officer is mentioned and I will obviously not read it, but if the Hon. Mr Griffin feels that I am hiding anything, then I will show it to him. The letter states:

Thank you for your letter of 8 March 1984 together with the report prepared by Mr Peter Priest.

Mr Peter Priest is the Department's psychologist. The letter continues:

I was most pleased to read Mr Priest's excellent report. This area is a very sensitive one and, since receiving your report, I am aware of the publicity which this whole issue has engendered in the media. I am also aware of the attitude of prison officers to this issue, and as you will recall the matter was raised initially with me by an officer at the Adelaide Gaol.

It is difficult for me to comment on the report because the issue is such a subjective one. However, my personal belief coincides with the statement in the report that 'there is no adequate evidence to either condemn or exonerate the role of pornography in terms of influence upon human behaviour'.

The other important point is, I believe, that pornographic material has been available in institutions for some time and I particularly remember seeing various magazines in the canteen at Yatala Labour Prison. Therefore, the doors are not being opened to an unknown quantity. In addition, I welcome the attempt by the Department to create consistency between the institutions and to give effect to the spirit of the Classification of Publications Act.

The only concern I have is in relation to ensuring that the rights of other inmates and prison officers are not offended by the availability of such material and I note from the draft departmental instruction that the privacy aspect has been considered and dealt with.

Therefore, in summary, I consider that the draft instruction is a clear attempt to set consistent policy in relation to the availability of pornographic material in institutions and I personally do not see that the acknowledgement of the existence of such material in our institutions is likely to have a major detrimental impact on inmates or officers. To my mind, the public reaction is a proverbial 'storm in a tea cup'. I would be interested to be informed of further developments in this matter.

I think that that gives the Hon. Mr Griffin the answer in relation to the background of this particular matter. It arose quite simply from a complaint by a prisons officer to the

Ombudsman. The Ombudsman, quite properly, took up the issue with the Executive Director of the Department of Correctional Services and what we have had has flowed from that.

When I first became Minister I went to look at some of our prisons and it was pointed out to me that material on display in the cells was giving some concern to some officers. I myself was not particularly offended by it. I did not see it as any big deal. I thought it showed that the inmate of a particular cell was perhaps a little obsessive in his affection for various parts of the female body. However, that is (as we would all know) not restricted to prisoners. I make no judgment on it, but merely comment that that appeared to be the case. However, I was advised that some Correctional Services staff were offended by it. I said, 'I do not want any of my officers offended by material that could in any way be classed as pornographic.' If pornography is circulating in the prison—and some people call these pictures on the wall pornographic—let us do something about it.

The present position is, as honourable members would hear from the correspondence that I read out from the Ombudsman, not very clear at all. I can remember a few years ago in the term of the previous Government the furore about pornography going into Yatala. I am not sure that the then Opposition made the fuss that has been made around this issue at this time. However, for a number of years, material, which some people consider pornographic, without any doubt has been in the prisons. It is there. What some people consider pornography is openly displayed. I believe that that is wrong.

I have no objection to people being able to see and read anything that the law of the land says that they can see and read if they wish. That is their right and privilege and, in lots of cases, their problem, but that has really nothing to do with me. However, my employees in the institution should not be confronted with material of that nature.

An honourable member interjecting:

The Hon. FRANK BLEVINS: Do not interrupt or you might really set me going.

The Hon. M.B. Cameron: It should have been a Ministerial statement.

The PRESIDENT: Order!

The Hon. FRANK BLEVINS: But the honourable member has been waiting for this since the weekend. I would not disappoint him. So, the whole thrust of the draft departmental instruction was to attempt to get some order into this very unclear and, for some people, disturbing area. In response to a prison officer's request and a request for information from the Ombudsman, a draft instruction was drawn up which took the only possible line. It said, 'What is the optimum position so that we do not have prison officers acting as censors and deciding what material they like and do not like?' It has to be clearer than that because that is the position at the moment and it is, quite frankly, a mess. So, the optimum position or the base where one starts is: what is legal outside should be legal inside and one works from there.

The draft circular was sent to the unions and to the managers of the institutions to ask them what they thought of that draft instruction. It was not the Department of Correctional Services or the Minister laying down the law and saying, 'That is how things will be.' It was an attempt, for which the union has personally thanked me, to get some order into this very difficult area. We asked the unions to let us know within a month what they thought of this draft instruction. They were in my office on Friday and said that they were very pleased with the way in which we had approached them on this and given them time to consider the instruction before introducing it in an attempt to get some clarity in the area.

One member of the union—and my understanding is that the union is quite cross about it, as are other members of the institution—went to Channel 7 and attempted to portray this as the Minister opening the floodgates—as if they were not already open—even further to this material. That is certainly not the case. We were endeavouring to get something written down in the institution in this area and in a whole range of other areas.

One of the main problems that I have seen already in this Ministry of Correctional Services in the prisons area is the lack of clarity in some of the harder areas as to what prisoners and prison officers can do.

The Hon. C.M. Hill: How long will you go on?

The Hon. FRANK BLEVINS: You asked the question.

The Hon. M.B. CAMERON: I rise on a point of order. It is very difficult in Question Time if extremely long answers are given. I understand that it is a complex area. Surely in matters like this, if there are to be long answers, they should be the subject of a Ministerial statement and not be a quarter of an hour answer to a question in a one-hour Question Time.

The PRESIDENT: There is no point of order. I have no jurisdiction over the Minister's answers, although I have some over questions.

The Hon. FRANK BLEVINS: One of the major problems that I have found is this lack of very firm guidelines for both prisoners and prison officers in the prisons. The first thing that prison officers asked me to do was to attempt to fix it up in consultation with them. This is what we are attempting to do in a whole range of areas where there is now some dissension within the prison as to where the line can be drawn. That process has been going on for some time. I have asked the Department to accelerate that process and to take the unions into their confidence within the prisons—not to put out departmental instructions and say, 'That is the way it will be', but to discuss it with the employees of the Department to see whether we can get some order into our prisons and, goodness knows, it is something that has been sadly lacking for the past few years.

Mr President, may I seek your guidance? The Hon. Mr Griffin asked me seven questions. I have given a preliminary answer on the first one. I am not sure whether the Council feels that the other six questions have been answered within the discussion and the background around the first.

The Hon. K.T. Griffin: Can't you answer 'Yes' or 'No'?

The Hon. FRANK BLEVINS: If the Hon. Mr Griffin wishes me to continue with the other answers, I will be pleased to do so.

The PRESIDENT: The Minister has asked me for my guidance. I suggest that he give the Hon. Mr Griffin the answers to the other six questions on some other occasion so that other members can ask questions today.

The Hon. FRANK BLEVINS: I am in your hands.

PERSONAL EXPLANATION: PARLIAMENTARY SALARIES

The Hon. K.L. MILNE: I seek leave to make a personal explanation.

Leave granted.

The Hon. K.L. MILNE: I have stated publicly that I intended to give notice today that I would introduce a Bill to amend the Parliamentary Salaries and Allowances Act, 1965, to reduce the recent increase in Parliamentary salaries awarded by the Salaries Tribunal, and other matters. But, I have now received advice that this Bill would be a money Bill and that I am not in a position to introduce it in the Legislative Council. Accordingly, I will now seek to accomplish the same result by suggesting amendments to the

Government Bill on the subject of Parliamentary salaries if and when it comes before this Council.

SCHOOL RESOURCES

The Hon. ANNE LEVY: Has the Minister of Agriculture, representing the Minister of Education, a reply to a question I asked on 13 September 1983 about Government and non-Government school resources?

The Hon. FRANK BLEVINS: The following information is provided as a further reply to your question in relation to Government and non-Government school resources. A table has been prepared which compares recurrent income and recurrent expenditure per student in a range of non-Government and Government schools. Each non-Government school has been matched as closely as possible to a Government school of similar size and, where relevant, primary/secondary mix, in order to provide the most accurate comparative data of income and expenditure between schools in the two sectors.

The selection of non-Government schools reflects a range of resource levels, school sizes and locations within the categories of need as defined by the advisory committee. Categories E-A are classifications used when ranking schools on a needs basis. Category E schools are considered the most needy schools and category A are the least needy schools. The annual report of the Advisory Committee on Non-Government Schools in South Australia gives further details.

The table provides comparisons of Government income per student (from State and Commonwealth sources), total recurrent income per student from all sources (that is, Government and private income) and total recurrent expenditure per student for each non-Government and Government school. The following factors were taken into account when computing the statistics, so that at all times like data was compared with like data.

Income—Excludes all income expressly declared 'capital'. Includes notional value of contributed services of religions.

Expenditure—Excludes superannuation and workers compensation payments, which are not described separately in Catholic or Government schools data. Includes notional value of contributed services of religous. Debt servicing costs of non-Government schools are excluded. Costs of equipment, library books and some miscellaneous non-building costs, described as capital in non-Government schools, are included.

Members interjecting:

The PRESIDENT: Order!

The Hon. FRANK BLEVINS: In Government schools such costs are included in annual recurrent expenditure. They have been taken into account as annual costs in all schools. Costs of furniture and major building projects have been excluded as they are capital in nature. Annual building maintenance is included as annual costs in all schools.

Variation in Government schools—It should be noted that in Government primary schools expenditure may vary up to plus or minus $50 per student in Government secondary schools and plus or minus $100 per student, depending upon the particular Government school selected in the sample.

Variation between income and expenditure in non-Government schools—Any surplus is assumed to be required for debt servicing, capital expenditure, superannuation etc. Deficits reflect expenditure from reserves (this also applies to Government schools).

I seek leave to have a statistical table, which was referred to in the reply, inserted in *Hansard* without my reading it.

Leave granted.

COMPARISON OF LIKE NON-GOVERNMENT AND GOVERNMENT SCHOOLS (USING ACTUAL ENROLMENTS AND 1982 DATA)

			Recurrent Income per Student				Recurrent Expenditure per Student	
Non-Govt Funding Category	School Type	Enrolment	Govt Sources	Non-G. as % of Govt	All Sources	Non-G. as % of Govt	(Excludes Debt Servicing) Total	Non-G. as % of Govt
			$	%	$	%	$	%
A	Combined Primary/ Secondary Non-G.	1 044 31% Primary	830	44	3 257	164	2 680	136
	Combined Primary/ Secondary Govt	1 026 31% Primary	1 890		1 986		1 969	
A	Primary Non-G.	292	628	48	2 037	151	1 833	135
	Primary Govt	329	1 303		1 351		1 358	
B	Combined Primary/ Secondary Non-G.	1 169 28% Primary	858	48	3 129	154	2 702	147
	Combined Primary/ Secondary Govt	1 652 31% Primary	1776		2 035		1 836	
B	Combined Primary/ Secondary Non-G.	864 32% Primary	897	46	2 725	132	2 318	112
	Combined Primary/ Secondary Govt	701 37% Primary	1 952		2 065		2 062	
B	Combined Primary/ Secondary Non-G.	181 65% Primary	1 142	49	2 012	83	1 798	75
	Combined Primary/ Secondary Govt	190 68%	2 352		2 415		2 390	
B	Primary Non-G.	126	747	59	1 865	137	1 890	141
	Primary Govt	123	1 273		1 357		1 339	
B	Primary Non-G.	35	1 528	80	1 702	86	1 691	83
	Primary Govt	35	1 906		1 990		2 044	
C	Secondary Non-G.	639	1 016	43	2 808	115	2 272	93
	Secondary Govt	647	2 377		2 447		2 441	
C	Combined Primary/ Secondary Non-G.	559 47% Primary	1 190	63	1 906	97	1 824	93
	Combined Primary/ Secondary Govt	490 50% Primary	1 888		1 963		1 955	
C	Primary Non-G.	507	934	78	1 168	93	1 125	89
	Primary Govt	530	1 205		1 260		1 258	

Non-Govt Funding Category	School Type	Enrolment	Recurrent Income per Student: Govt Sources	Non-G. as % of Govt	All Sources	Non-G. as % of Govt	Recurrent Expenditure per Student (Excludes Debt Servicing): Total	Non-G. as % of Govt
			$	%	$	%	$	%
C	Primary Non-G.	68	1 153	77	1 520	99	1 450	96
	Primary Govt	68	1 498		1 529		1 515	
D	Secondary Non-G.	410	1 505	61	1 797	68	1 570	60
	Secondary Govt	401	2 449		2 633		2 626	
D	Combined Primary/ Secondary Non-G.	935 50% Primary	1 210	59	1 913	89	1 634	76
	Combined Primary/ Secondary Govt	427 51% Primary	2 065		2 160		2 144	
D	Primary Non-G.	240	821	60	1 128	80	1 019	72
	Primary Govt	231	1 371		1 417		1 424	
E	Secondary Non-G.	131	1 680	57	2 303	75	2 158	71
	Secondary Govt	143	2 980		3 079		3 048	
E	Combined Primary/ Secondary Non-G.	489 61% Primary	967	53	1 343	68	1 272	65
	Combined Primary/ Secondary Govt	550 59% Primary	1 830		1 966		1 955	
E	Combined Primary/ Secondary Non-G.	343 51% Primary	1 206	58	1 633	76	1 557	73
	Combined Primary/ Secondary Govt	427 51% Primary	2 065		2 160		2 144	
E	Primary Non-G.	219	925	60	1 174	73	1 048	67
	Primary Govt	201	1 529		1 611		1 569	

TEMPORARY POSITIONS

The Hon. I. GILFILLAN: I seek leave to make a brief explanation before asking the Minister of Agriculture a question about temporary positions and red tape.

Leave granted.

The Hon. I. GILFILLAN: With some alarm I read the 'Red tape reason for resignation' headline in relation to the resignation of Mr Jim Richardson, who is a very highly regarded and late acquisition to the Department of Agriculture. It is of great concern to those who are close to the rural population of South Australia that such a valuable acquisition should resign for a reason that is insignificant in regard to actual substance. It is frustrating to think that we are losing people, who can serve the State, because in the Department (in Mr Richardson's words) it takes such a long time before there is any change and everything has to be processed through committee after committee and meeting after meeting.

On 19 October 1983 I asked the Minister what I thought was a simple enough question: I requested the number of temporary positions. In answer at that time the Minister indicated that the reply might take some time, and it certainly has. I ask again whether the Minister has been able to obtain from his Department a list of the number of temporary positions, as requested on 19 October 1983. Does the delay that I have experienced involve the type of red tape which forced the resignation of the Chief Extension Officer, Mr Jim Richardson?

The Hon. FRANK BLEVINS: The opinions that were expressed in that article and attributed to Mr Richardson are his opinions, and he is entitled to them. They are certainly not my opinions, and I believe that anyone here who has had anything to do with the Department of Agriculture would agree with me that there is an absolute minimum of red tape. The Department is an operational department in every sense of the word, responding rapidly and effectively to the requirements of our rural community.

Since I have been Minister, I have not (until I read this article) heard any criticism at all of the Department from the farming community—none at all. As I constantly travel around the State, I say to farmers, 'We have been here for an hour and you have not mentioned the Department. What is it like?' They reply, 'First-class'. They have nothing to criticise. In fact, the farmers all want much more of it.

So, I certainly deny totally the remarks and the charges that were attributed to Mr Richardson. The fact is that public servants move through departments frequently, and that will explain some of the difficulty in replying to the honourable member's question regarding the number of acting positions: because of the very nature of the Public Service, the number fluctuates almost daily in every Government department. I hope (but I do not want to talk about this in detail) that the Guerin Report, which has received extensive publicity since Sunday, addresses that problem. However, I can only state that I have no doubt at all, on the best authority possible (and that is our customers—the farmers of this State), that the Department of Agriculture is a first-class department doing a first-class job. It is Mr Richardson's right to resign, and in addition to Mr Richardson lots of other officers leave the Department. We also gain officers all the time—and first-class officers at that.

If the Hon. Mr Gilfillan understood a little more the nature of the Public Service he would know that there is not necessarily a loss when someone goes to another department: there is a constant to-ing and fro-ing amongst departments as people climb up the ladder of the Public Service. I believe that there is not enough movement between departments and what I object to is the way in which people lock themselves into departments and jobs and never move. It is those people who come into and leave the Department of Agriculture and my office for whom I have the highest regard.

SELECT COMMITTEE ON LOCAL GOVERNMENT BOUNDARIES OF TOWN OF GAWLER

The Hon. ANNE LEVY: I move:

That the time for bringing up the Select Committee's report be extended until Tuesday 8 May 1984.

Motion carried.

SELECT COMMITTEE ON ST JOHN AMBULANCE SERVICE IN SOUTH AUSTRALIA

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

That the time for bringing up the Select Committee's report be extended until Tuesday 8 May 1984.

Motion carried.

SELECT COMMITTEE ON REVIEW OF THE OPERATION OF RANDOM BREATH TESTING IN SOUTH AUSTRALIA

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

That the time for bringing up the Select Committee's report be extended until Tuesday 8 May 1984.

Motion carried.

DAVID JONES EMPLOYEES' WELFARE TRUST (S.A. STORES) BILL

The Hon. BARBARA WIESE brought up the report of the Select Committee, together with minutes of proceedings and evidence. Ordered that report be printed.

Bill recommitted.

Clause 1 passed.

Clause 2—'Commencement.'

The Hon. K.T. GRIFFIN: This clause has retrospective application. It can be seen in clause 1 that the Act is deemed to come into operation on 2 August 1976, and by subclause (2) there is an indenture dated 25 February 1982 which is deemed to have had effect from 2 August 1976. So, there are really two aspects of retrospective application covered by this clause.

In ordinary circumstances I would have been extremely cautious about supporting retrospective validation of the acts of trustees that had occurred in respect of the welfare trust, but in this case I am satisfied that the acts of the trustees in respect of the trust were inadvertently in breach of the principal trust deed as amended up to August 1976, and the inadvertent breaches, whilst of a technical nature, were nevertheless consistent with the general thrust of the trust, which was established about 50 or more years ago for the benefit of the employees and past employees of the old Charles Birks and now the David Jones Adelaide store.

In the operation and application of trust funds since August 1976, benefits have been provided to employees who have served a qualifying period in the David Jones Adelaide store. To that extent I am willing to support this clause and, in fact, the whole Bill because it seeks to recognise that in the commercial arena the old Charles Birks and Co. was taken over by David Jones and that, for the purposes of its present corporate structure, it is a wholly owned subsidiary of David Jones (Australia), which in itself is a subsidiary of David Jones (Adelaide) or vice versa.

The Select Committee was satisfied that there had been a reasonable application of the trust fund to the employees of the company carrying on in succession the business which was established originally and known as Charles Birks and Co. and that, since August 1976, it was appropriate to validate those technical breaches of the trust fund which had occurred.

The Hon. R.I. LUCAS: I, too, had some initial concern with this clause, particularly, the retrospective nature of it. As with the Hon. Mr Griffin, in the end I, too, was convinced that the provision was deserving of support. Therefore, I support the clause and the Bill. I take this opportunity to thank the staff of the Select Committee, the other Committee members, and to refer to the good Chairmanship of the Committee.

Clause passed.

Remaining clauses (3 and 4), preamble and title passed.

Bill read a third time and passed.

MARALINGA TJARUTJA LAND RIGHTS BILL

Adjourned debate on second reading.

(Continued from 8 December. Page 2537.)

The Hon. ANNE LEVY: I was about to speak to the Bill when the business of the Council was taken out of the Government's hands late last year. Since then there have been further developments regarding the Maralinga land rights legislation. Some of the things that I had planned to say last year are no longer relevant, in view of public statements that have been made by various members of this Council. I think it is well to remind people that this Bill, even as it appears before us, already contains very many concessions that have been made by the Aboriginal people.

There have been consultations with both Liberal and Labor Governments over the past three years, so both Parties have been involved in the consultations. Many submissions were also made to the Select Committee which incorporated further concessions from the Aboriginal community into the Bill. When we talk of further concessions being made at this late stage, I think that we should remember that the Aboriginal community has already made very many concessions to arrive at the Bill whose second reading we are now debating.

First, I refer to the question of access to the Maralinga lands. The Aboriginal community has already agreed that access will be available to any resident of the township of Cook. Any person who is a resident of Cook will have an annual permit to travel for a radius of 32 kilometres from Cook without having to either obtain permission or give notification. That provision is incorporated in the Bill.

Secondly, the Aborigines have conceded that anyone who wished to travel to the Unnamed Conservation Park would be able to cross the Aboriginal lands; they would not refuse permission to anyone who wished to travel across their lands to the Unnamed Conservation Park. While that is not mentioned in the Bill, this undertaking was given to the Select Committee. I am sure that everyone is aware of the undertaking and does not doubt the word that was given.

Thirdly, the Aboriginal people have conceded that any person of Aboriginal descent will be deemed to have a permit if he or she is invited on to the lands by any individual of the Maralinga people. That provision is contained in the legislation. That is another concession already made by the Maralinga people. They have also made another concession mentioned in the legislation: access is guaranteed to the existing rabbiters who earn their living by rabbiting on the Maralinga lands. I believe that some 10 to 15 individuals and their families regularly go into the Maralinga lands to collect rabbits. The legislation contains a provision which allows existing rabbiters to continue to enjoy access to these lands.

As I have said, these concessions have already been made by the Aboriginal people and have been incorporated in legislation. Apparently, we now have a situation where the Aboriginal community has made further concessions in relation to access. Although this is not contained in the legislation, it has been trumpeted in the media that the Maralinga people are now prepared to allow people to merely notify them if they wish to travel on the roads through their lands, as long as they do not deviate by more than 100 metres

either side of the road. Permits will only be required for travel beyond 100 metres from the road or for longer periods of time.

To some extent I believe that all questions in relation to access on the roads miss the point. The roads through the Maralinga lands are not roads as we know them: they are tracks, many of which were made 30 years ago for the Maralinga bomb tests. They have not been maintained since that time. They consist largely of sandy tracks and are quite impassable by normal vehicles. In fact, they can only be traversed by four-wheel drive vehicles and, furthermore, by those who carry extra supplies of fuel, because there are no refuelling places on the lands. In case honourable members have forgotten, I should also point out that the permit system as set out in the Pitjantjatjara land rights legislation has worked extremely well. Out of over 1 400 applications since that Bill became law, only 23 have been refused, which means that 97 per cent of all applications have been granted. Therefore, no-one can suggest that the Pitjantjatjara people have been unreasonable or irresponsible in the way that they have granted permits for access. I cannot understand why anyone should think that the Maralinga people would be any less responsible in relation to requests for access.

The Hon. M.B. Cameron: What were the grounds for the refusals?

The Hon. ANNE LEVY: The Hon. Mr Cameron knows quite well the grounds for refusal.

The Hon. M.B. Cameron: What were they?

The Hon. ANNE LEVY: In a number of cases it was because people persisted in bringing in alcohol, flogging it at exorbitant prices, and the community did not want grog pushers coming on to their lands. I imagine that many people would have great sympathy with that.

The Hon. M.B. Cameron: Including the minister from Coober Pedy who was refused—

The PRESIDENT: Order!

The Hon. M.B. Cameron: That is absolute nonsense.

The PRESIDENT: Order!

The Hon. L.H. Davis: Was the minister carrying alcohol?

The PRESIDENT: Order!

The Hon. ANNE LEVY: In relation to the question of mining rights, I refer to the whole system of using an arbitrator; that is in the Bill before us as a concession that was made by the traditional owners to the previous Liberal Government. It is no secret that they want an absolute veto over exploration and mining on their lands. They agreed with the previous Minister of Mines (Hon. E.R. Goldsworthy) that they would make the concession of not having a veto and that the conditions and compensation were to be determined by consultation or by an arbitrator if no agreement could be reached. Again, we cannot say, in relation to the Pitjantjatjara land rights legislation, that this provision has not worked.

I am sure that I do not need to remind honourable members that it was Hematite—not the Pitjantjatjara people—that refused to go to an arbitrator. The Pitjantjatjara Lands Rights Bill set down procedures for going to an arbitrator, and Hematite refused to go to such an arbitrator. It is certainly strange how often various people say that one should abide by the decision of the umpire yet, in this case, people will not even go to the umpire to find out what his decision would be.

The Hon. R.J. Ritson: That is the most intellectually dishonest bit of reasoning I have heard in this Council.

The Hon. ANNE LEVY: It is the Liberal Party opposite that is defending this situation of refusing to go to an umpire when arbitration provisions have been laid down. I hope it will adopt the same attitude if ever there are situations in the future where people do not wish to go to an umpire, as often suggested in industrial disputes. I trust that members opposite will never again criticise anyone who refuses to even go to an umpire, let alone abide by the decision of the umpire—

The Hon. R.J. Ritson: Come on, Anne—you have been to university. You can reason better than that.

The PRESIDENT: Order! There have been far too many interjections. I call on members to observe some sense of decorum, and allow the Hon. Ms Levy to speak.

The Hon. ANNE LEVY: I certainly believe it is most unjust of Liberal members to now want further concessions on mining when the concession incorporated in the Bill was negotiated with the Aboriginal people by the Liberal Government. Members opposite have gone back on what their own Government had agreed to with the Aboriginal people.

I wish to make one point regarding certain arguments which have been made relating to the area of land involved in the Maralinga Tjarutja Land Rights Bill. The most absurd arguments have been raised about that area compared with the total area of the United Kingdom, West Germany or some other place; that comparison takes no account whatsoever of productivity from an economic or other viewpoint. However, I point out that, in this State currently, there are 358 pastoral leases which, between them, cover 46 per cent of the area of this State. So, to all intents and purposes, we have 358 families controlling 46 per cent of the State. The land we are talking about here is unused Crown land. It is not suitable even for pastoral purposes. It comprises only 6 per cent of the State and it is for about 500 Aboriginal people.

The Hon. H.P.K. Dunn: Where did you get that figure?

The Hon. ANNE LEVY: It is sad to see that this matter is not being treated in the bipartisan way in which previous Aboriginal land rights matters have been treated in this Parliament. When the then Premier, Don Dunstan, first canvassed the Pitjantjatjara land rights legislation, there was support for it from the Liberal Party. When the Government changed and the Tonkin Government introduced the Pitjantjatjara Land Rights Bill, there was support for it from the Labor Party. We now have a situation where we have land rights legislation for the Maralinga people and we no longer have a bipartisan approach. We have opposition to it from the Liberal Party. I would remind honourable members that the question of this legislation comes about because these people were dispossessed of their land over 30 years ago by the then Premier, Tom Playford, who promised these people that they would get back their land. It is about time the Parliament of this State honoured that promise.

Let us not forget that the Maralinga people share the distinction, along with the Japanese people of Hiroshima and Nagasaki and the Pacific people of the Bikini Islands, of being the only people in the world who have had atomic weapons affect their home. A further concession which the Aboriginal people had already made before this Bill came before us was the Parliamentary Review Committee. That was included at the request of Liberal members of Parliament. The Yalata people have accepted that and fear nothing from it. I hope it will enable them to educate certain members of Parliament. It is, however, insulting to insist upon it. No other statutory body has a special committee to review how it carries out its powers and functions. I wonder whether the insistence of the Liberals on this concession arose because it concerns an Aboriginal body. I strongly suspect that that is the case, and I believe it is an attitude reminiscent of the old days of the statutory Protector of Aborigines. I pay tribute to the Aboriginal community for having accepted such an insulting amendment in the interests of obtaining title to their land which they so urgently want.

Finally, another concession already made by the community relates to pastoral and environmental questions. Pastoral activities will be regulated on the Maralinga lands

in exactly the same way as all other pastoral activities in the State. We would agree that it is in the interests of everyone, but it is a concession by the Yalata community. Environmental controls, too, can be implemented by the Minister responsible without getting approval first of the Maralinga Tjarutja people. Again, we would agree that it is in the interests of all South Australians that the land should be preserved, but it was a concession by the Yalata community.

In summary, the Yalata people have made many concessions to enable them to get title to their land from which they were forcibly removed 30 years ago in the interests of atomic bombs. They have made concessions from the word 'go'—concessions to the previous Government, concessions to the Select Committee—concessions all along the line, up to and including only two days ago. Concessions are still being asked of them. I believe that it is time that this Parliament ceased monkeying around with this matter, ceased trying to wring the last drop of blood from the Aboriginal community, recognised their rights to this land, recognised that they have waited far too long to receive title to their land, and passed this legislation in the shortest possible time. I support the second reading.

The Hon. I. GILFILLAN: My colleague, the Hon. Mr Milne, will be speaking substantially to the Bill later in the debate.

The PRESIDENT: Order! I have just been reminded that the Hon. Mr Gilfillan has already spoken in this debate.

The Hon. BARBARA WIESE secured the adjournment of the debate.

POWERS OF ATTORNEY AND AGENCY BILL

Adjourned debate on second reading.
(Continued from 29 November. Page 1986.)

The Hon. K.T. GRIFFIN: The Opposition supports the Bill. It arises from the 47th Report of the Law Reform Committee of South Australia which was presented to me as Attorney-General in 1981. It was a comprehensive report which I and the previous Liberal Government supported and, in fact, we had taken steps to have a Bill drafted to implement the recommendations of the report. I am pleased that the present Government and present Attorney-General have decided that this is one of those reports of the Law Reform Committee which can be approached on a bipartisan basis. One of the major deficiencies in the common law relating to powers of attorney at the present time is that, when a power of attorney is granted at a time when the person granting the power has sufficient legal capacity to make the grant, subsequently that person may cease to have the necessary legal capacity, for example, through illness, senility, or for some other reason.

Technically, at common law, when the person who grants the power of attorney subsequently ceases to have the necessary capacity at law, the power of attorney ceases to have any effect. The difficulty in practical terms is that often persons who act as attorneys under such a power continue to act, notwithstanding that the person who has granted the power has subsequently ceased to have the necessary legal capacity. Technically, in that context, everything which the attorney does in the name of the grantor of the power is not legally binding, for example, where an adult son or daughter acts as the attorney for an aged parent. This is normally done to facilitate the conduct of the affairs of the aged parent. When the aged parent no longer knows what he or she is doing, the son or daughter, as the attorney, continues to carry on the business affairs of the aged parent.

In those circumstances one can understand the desire of the son or daughter to look after the affairs of the aged parent. But, in fact, what most people do not seem to realise is that, when the aged parent ceases to be of sound mind, the son or daughter can no longer legally undertake the responsibilities of managing the affairs of the aged parent. This is a matter that lawyers in private practice meet quite frequently. In many instances, legal advice is sought when the parent is quite obviously declining mentally and physically and it is the borderline whether or not a valid power of attorney can be granted. In those sorts of instances generally resort is had to the Aged and Infirm Persons Property Act, which provides the mechanism for application to the Supreme Court for the appointment of a manager of the estate of the aged or infirm person. There were also provisions under the Mental Health Act for the appointment of a guardian, and at common law there is still the old provision for those who are legally insane, where a committee can be appointed by the Supreme Court. That is very much out of use in these days.

So, the principal amendment which is before us will overcome the difficulties to which I have referred, where the grantor of the power ceases to have appropriate legal capacity, and it will enable a person granting the power of attorney to add a clause or a declaration at the foot of the power of attorney that the power is to endure, notwithstanding subsequent lack of capacity. Provided that is witnessed by a qualified witness (the qualification being spelt out in the Bill) the power does so endure and is not affected by subsequent incapacity. That enduring power is subject to several qualifications. One is that it will not, in fact, override the provisions of the Aged and Infirm Persons Property Act or the Mental Health Act, although the two Acts can run concurrently. In the event of a manager being appointed under the Aged and Infirm Persons Property Act, the attorney is thereafter responsible to the manager for the appropriate conduct of the affairs of the grantor of the power.

There is also a provision that, in the event of incapacity, and quite rightly so, the attorney must act in the best interests of the grantor and is not able to retire as attorney unless it is with the approval of the Supreme Court. That is one provision which caused me a little concern. I wondered why, in the circumstances of incapacity, it was necessary to obtain the approval of the Supreme Court for retirement as attorney. The second reading explanation suggests that that is a necessary corollary to the earlier provision in the Bill that the attorney is to act diligently and in the interests of the grantor of the power. However, I am not convinced that that is a necessary corollary.

Of course, I can see some problems if an attorney is to renounce the power during the incapacity of the grantor, but I am not convinced that there are significant problems arising if, for good reason, the attorney wishes to retire. However, I do not propose to move any amendment. I suggest that it is a provision of the Bill we can watch in practice and, if it creates problems, we can make appropriate amendments at that time rather than amending it at this stage.

There are several matters to which I want to refer specifically. In clause 5 the general power does not operate to confer authority to perform functions that the donor has as a trustee or personal representative. I wonder whether the Attorney-General could give some consideration to the reasons why that provision is included in clause 5. Many general powers of attorney presently contain a provision that the attorney will perform all the functions of the grantor as personal representative or as trustee. Notwithstanding the amendment to the Trustee Act that is to be considered later in today's proceedings of the Council, there could be some value in allowing the attorney also to be able to

delegate functions as trustee or personal representative. So, if the Attorney-General could give attention to clause 5 I would appreciate it.

In clause 6 is a provision that the witness to the clause that makes a power of attorney an enduring power is to be a person authorised by law to take affidavits. The second reading explanation refers to a member of the judiciary or a legal practitioner or a person specially appointed by the Governor. There are two questions here: the first is what category of person is likely to be specially appointed by the Governor. The second question relates to persons like proclaimed bank managers and justices of the peace. On reflection, I do not think that proclaimed bank managers have authority to take affidavits, but my recollection is that justices of the peace do have authority to witness powers of attorney already and to take affidavits. So, is it intended in clause 7 that the witness may also be a justice of the peace?

In respect of clause 9, I have already referred to the provision that an attorney, where there is an enduring power of attorney, may not renounce the power during any period of legal incapacity without the leave of the Supreme Court. Perhaps the Attorney-General might give further consideration to why it is necessary to have the approval of the Supreme Court to that provision. In respect of clause 4, I presume that the Act will apply to all current powers of attorney and not only to those made after the Bill comes into operation. Can the Attorney-General clarify that that is his understanding of that clause?

Those matters to which I have referred are relatively minor. They do not affect the support by me and the Opposition to the substance of the Bill, which we support as a worthwhile law reform initiative.

The Hon. C.J. SUMNER (Attorney-General): I thank the honourable member for his support of the Bill. I suggest that the matter go into Committee and I will study his comments and respond to them as they are given consideration.

Bill read a second time.

In Committee.

Clause 1 passed.

Progress reported; Committee to sit again.

LAW OF PROPERTY ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 29 November. Page 1987.)

The Hon. K.T. GRIFFIN: The Opposition supports this Bill, which merely provides for a deed to be executed by a person on behalf of another. It is an amendment to the law which is referred to in the Law Reform Committee's report on powers of attorney. It is a useful addition to the law in respect of who may sign deeds and in what context. This Bill has special application to those who through some disability are unable to execute deeds personally and it merely provides that they can execute deeds by another person provided that that other person signs the deed in the presence of the party to the deed for whom he or she is executing it and in the presence of an attesting witness or witnesses where at least one of them is authorised by law to take affidavits. Again, my recollection is that that is not only commissioners for taking affidavits but also justices of the peace. I will appreciate it if the Attorney-General could confirm that in Committee. We support the Bill.

Bill read a second time.

In Committee.

Clause 1 passed.

Progress reported; Committee to sit again.

TRUSTEE ACT AMENDMENT BILL (No. 2)

Adjourned debate on second reading.

(Continued from 29 November. Page 1987.)

The Hon. K.T. GRIFFIN: The Opposition supports this Bill. It is, to a certain extent, consequential upon the Powers of Attorney and Agency Bill, and the amendment arises from the recommendations of the Law Reform Committee. Presently, under section 17 of the Trustee Act there is power for a trustee to delegate his or her powers but only in limited circumstances, specifically where the trustee is or is about to be absent from the State. That creates some difficulties in this day and age of much greater mobility, and accordingly the amendment, which widens the authority of the trustee to delegate, is welcomed.

Proposed new section 17 will allow all powers, authorities and discretions of the trustee to be delegated to any person residing in South Australia unless the deed constituting the trust prevents that delegation *in toto* or in respect of certain powers, authorities and discretions. The section provides some limitation on the power to delegate which is to be carried out by deed, namely, that it must come into operation within six months of the granting of the power of attorney by the trustee, and it remains in operation for only 12 months after that power came into operation. There is a provision for notice to be given by the donor to each person who has power to appoint a new trustee or to other trustees, and there are certain limits on the power to delegate to co-trustees where the co-trustee is a natural person rather than a corporate trustee.

The other limitation, as I gather, in the provisions of proposed new section 17 is that the power of the Supreme Court in respect to the appointment of new trustees is not in any way limited or affected. As I said, this is a useful amendment to the Act, and I support it.

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

EVIDENCE ACT AMENDMENT BILL (No. 3)

Adjourned debate on second reading.

(Continued from 29 November. Page 1988.)

The Hon. K.T. GRIFFIN: The Opposition supports the Bill. Again, it arises from the report of the Law Reform Committee on powers of attorney, perhaps indirectly, because the Law Reform Committee, whilst drawing attention to a particular provision of the English Powers of Attorney Act, went on to say that it would not consider the matter further because it was outside the terms of the Committee's remit. However, attention was drawn to a section of the English Powers of Attorney Act which, in the view of the Law Reform Committee, it would be useful to include in the Evidence Act in South Australia.

Basically, the Bill seeks to provide that a certified facsimile copy of an original document is admissible as evidence of the contents of the original document. A certain procedure is laid down to ensure that all precautions are taken to make sure that the copy produced is, in fact, a facsimile copy of the document of which it purports to be a copy. There must be a certificate signed by a person authorised by law to take affidavits. Again, that suggests to me not only commissioners for taking affidavits, that is, legal practitioners and judges

of the Supreme Court, and other persons appointed by the Governor, but also justices of the peace. I would like the Attorney to confirm that in the Committee stage.

There are penal provisions, particularly in subsection (6) of proposed new section 45c, which provide that a person who signs the certificate under this section knowing it to be false shall be guilty of an indictable offence and liable to be imprisoned for a term not exceeding two years. I support that provision. However, it does not deal with the person who gives the certificate purporting to be a witness authorised by proposed new section 45c but who is not such a witness. For example, if someone purported to be a commissioner for taking affidavits and if that person was not in fact a commissioner for that purpose, I am not sure what penal provisions could be applied to that person. I wonder whether there is something in the Oaths Act or some other provision of the law that the Attorney-General might be able to have researched and to provide an answer at an appropriate stage of the proceedings. There is only one other matter to which I want to draw attention, and that relates to proposed subsection (3) of new section 45c. It states:

> A document shall be admissible in evidence under this section without proof of the identity of a person by whom a certificate appearing on the document was made, or of whether he was authorised by law to take affidavits, unless the court is of the opinion that there is, in the circumstances of the case, special reason why such proof should be required.

I am not sure what is intended by the use of the words 'special reason'. It suggests something more than just any reasonable reason. Of course, it may be that in a will case or in some other case involving a particular facsimile document, the identity and status of the certifying witness is particularly important, but the question of whether or not the person had the appropriate authority may not appear on the face of the document. Perhaps it is not a significant point, but will the Attorney consider why the reference is to 'special reason' and not perhaps for any reason that the court deems appropriate? With those comments, which do not affect the substance of the Bill, the Opposition indicates its support.

Bill read a second time.

In Committee.

Clause 1 passed.

Progress reported; Committee to sit again.

LAW OF PROPERTY ACT AMENDMENT BILL (No. 2)

Adjourned debate on second reading.

(Continued from 30 November. Page 2108.)

The Hon. K.T. GRIFFIN: In principle the Opposition supports the Bill, which seeks to abrogate the common law rule that bodies corporate are unable to hold property as joint tenants. Most people will realise that there are two methods of joint holding of property. One is tenancy in common and the other is joint tenancy. With tenancy in common, the shares which the joint proprietors hold can be equal or unequal but, in whatever proportion the joint proprietors hold property as tenants in common, they each have an undivided moiety or moieties in the property. That means, for example, that an individual with one undivided moiety in property as a tenant in common is able to deal with that moiety either by will, by sale, by mortgage or whatever. Where property is held by two or more proprietors as joint tenants, there is a much more limited scope for dealing with the joint asset.

For example, where two individuals hold property as joint tenants, there is no capacity for either joint tenant or both to provide in their wills that their share in property will pass by the will. Rather, on the death of one, it passes by survivorship automatically to the other joint tenant or joint tenants. At common law, bodies corporate have not been able to hold property as joint tenants in this State, although that rule was abrogated in the United Kingdom in 1899 and, as I understand it, it has also been abrogated subsequent to 1899 in New South Wales, Victoria, Queensland, and Tasmania.

The recommendation embodied in the Bill, as I understand it, originated with the Law Society, which requested the change in the law to allow bodies corporate to hold property as joint tenants. That means not only companies but associations, credit unions, co-operatives, building societies, friendly societies and so on are involved. If there is some legal advantage in such joint tenancies in which at least one of the joint tenants is a body corporate, the Opposition has no difficulty with it. I wonder whether the Attorney has considered whether or not the proposal in the Bill could be used by bodies corporate to avoid liabilities, either tax liabilities in the evasion or avoidance of taxation—either Commonwealth or State—or whether it can be used to avoid legal liabilities for debts.

I have considered this question myself and believe that it is theoretically possible for bodies corporate holding property as joint tenants to avoid obligations for stamp duty where one body corporate dissolves under the Bill and the property passes automatically to the body corporate which remains or, if the other joint tenant is an individual, then to that individual.

I am not saying that that is necessarily a bad thing because, even between two individuals, where one dies at present the property passes to the survivor automatically and no stamp duty is payable. Of course, there you have an act of nature rather than a positive act of individuals to dissolve a company, unless of course you have a situation of murder or manslaughter, in the case of an individual. That is rather remote. Has the Attorney considered this problem in regard to stamp duty?

In regard to corporate law, there may be mechanisms by which companies in debt or with other liabilities could seek to avoid those liabilities by dissolving; it may not be a practical consequence because of the need to appoint a liquidator, a receiver or manager but, in this context, a liquidator to undertake liquidation. One can only appoint a liquidator either by order of the court, where it is creditors' liquidation, or by members of a company where it is a members' voluntary winding up. I do not have the resources to research all these fine questions. I am not suggesting that the passing of this Bill will create problems, but I wonder whether the Attorney will at least consider (if he has not already done so) the position with a view to clarifying this matter before the Bill passes. If the Attorney indicates that he does not see any practical difficulties in the context to which I have made reference to theoretical difficulties, I am happy to accept that. With those comments, and to enable the matter to be further considered, the Opposition is willing to support the second reading.

Bill read a second time.

In Committee.

Clause 1 passed.

Progress reported; Committee to sit again.

ADJOURNMENT

At 4.27 p.m. the Council adjourned until Wednesday 21 March at 2.15 p.m.