LEGISLATIVE COUNCIL

Tuesday 30 October 1984

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

PETITION: SIMS BEQUEST FARM

A petition signed by 73 residents of South Australia praying that the Council will support the retention of the Sims Bequest Farm intact to fulfil the wishes of the late Mr Gordon Sims, to improve the existing Cleve Certificate in Agriculture course and to establish residential facilities that will cater for the present and future requirements of country students was presented by the Hon. Peter Dunn.

Petition received.

PETITION: VIDEO TAPES

A petition signed by 149 residents of South Australia praying that the Council will ban the sale or hire of X rated video tapes in South Australia was presented by the Hon. K. T. Griffin.

Petition received.

PAPERS TABLED

The following papers were laid on the table:

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

Pursuant to Statute—

Financial Institutions Duty Act, 1983—Regulations—Exemptions.

Art Gallery Board—Report, 1983-84.

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

Pursuant to Statute—

Builders Licensing Board—Report, 1983-84.

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

Pursuant to Statute—

Lottery and Gaming Act, 1936—Regulations.

Medical Board of South Australia—Report, 1983-84.

Pitjantjatjara Land Rights Act, 1981—Regulations—Control of Alcohol.

West Beach Trust—Report of Auditor-General, 1983-84.

City of Whyalla—By-law No. 24—Street Hawkers and Traders.

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

Pursuant to Statute—

Road Traffic Act, 1961—Regulations—Traffic Prohibition (Woodville)—

Albert Park.

Aberfeldy Avenue, Woodville.

Rawley Terrace, Woodville.

South-Eastern Drainage Board—Report, 1983-84.

Electricity Trust of South Australia—Report, 1983-84.

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

Pursuant to Statute—

Fisheries Act, 1982—Regulations—

Central Zone Abalone Fishery Fees.

Western Zone Abalone Fishery Fees.

Southern Zone Abalone Fishery Fees.

Spencer Gulf Prawn Fishery Fees.

Tuna Fishery Management.

Investigator Strait Experimental Prawn Fishery.

Gulf St Vincent Prawn Fishery Fees.

Southern Zone Rock Lobster Fishery Fees.

Size Limit on Tuna.

Fish Processors Requirements for Tuna.

MINISTERIAL STATEMENT: VINDANA PTY LTD

The Hon. C.J. SUMNER (Attorney-General): I seek leave to make a statement.

Leave granted.

The Hon. C.J. SUMNER: On 25 October 1984 I answered a question asked by the Hon. Mr Griffin in this Council about the situation regarding Vindana Pty Ltd. In my reply I advised the honourable member that the Corporate Affairs Commission was preparing a comprehensive report on the current situation and that I would soon make it available to the Parliament. I also said:

> The difficulty is that the companies with which Mr Morgan was associated are in liquidation. Mr Morgan is bankrupt, and there are problems . . . in obtaining redress for growers as unsecured creditors. There will be a report outlining the situation relating to Mr Morgan's bankruptcy and the liquidation of the companies with which he was concerned, but from the information I have to date there do not appear to be sufficient assets in either the companies or in Mr Morgan's estate to satisfy the demands of unsecured creditors.

I was provided with information from the Corporate Affairs Commission indicating that Mr Morgan was bankrupt. That information is not correct—he has not been declared bankrupt, although proceedings were taken at one stage to have him declared bankrupt. Nevertheless, the fact that he has not been formally declared bankrupt does not really alter the substance of the answers I gave in reply to the honourable member's question last week. He is in very serious financial difficulty, but, technically, not bankrupt. I wish to clarify that situation, in light of the answer given last week. The report that I referred to in that answer should be available for perusal by honourable members in the near future.

QUESTIONS

EAST END MARKET

The Hon. M.B. CAMERON: I seek leave to make a brief explanation before asking the Minister of Agriculture a question about the relocation of the East End Market.

Leave granted.

The Hon. M.B. CAMERON: There is growing confusion in the Government's ranks about the relocation of the East End Market. Last week the Minister of Agriculture released a report of a review of alternative sites for a $25 million relocation of the market. That report recommended former Samcor paddocks at Gepps Cross as the preferred site. The Minister of Agriculture has, I understand, endorsed this option. The choice of the Samcor paddocks is strongly opposed by the Speaker (Mr McRae) and the Minister for Environment and Planning.

The *News* yesterday carried the following article which highlights the split between the Minister of Agriculture and his colleagues. Under the heading 'Public look at market site "waste" ', it states:

> A leading Labor MP reacted angrily today to a call by the Agriculture Minister, Mr Blevins, for public comment on a proposed new site for the East End Market. The Speaker in the House of Assembly, Mr McRae, claimed people would be wasting their time and money preparing submissions. Labor policy clearly prevented the markets being relocated to the site—the S.A. Meat Corporation's former eastern paddocks. Mr McRae said the proposal, recommended in the major report to the Government, was 'just not on'. 'The ALP had given a pre-election commitment—

and I am pleased that he is in favour of keeping a few of those promises—

> to retain the land, now owned by the Lands Department, as open space. I say the ALP had no right at all to call public comment,' he said.
>
> Mr Blevins has said he favours the site but has called for public comment before 21 December before making a recommendation to Cabinet.

According to Mr McRae, the site, which falls in his Playford electorate, is ruled out by Party policy. He has the support of the Environment Minister, Dr Hopgood, who declared today he would vote against the recommendation. The eastern paddocks have been named as the preferred of 11 sites in a report by the New South Wales Farm Produce Market Authority Chairman, Mr E.T. Kime.

Mr McRae said that in December 1981 the then Opposition Leader, Mr Bannon, had said Labor policy 'is one of support for the principle of the land becoming part of a green belt for the northern suburbs'. He had similar undertakings from Dr Hopgood and this amounted to 'pretty solid evidence'. Dr Hopgood today agreed the market proposal did not fit into the open space concept agreed to by the Party, and he would oppose the move.

Mr McRae said establishment of a new market in an area known as Samcor's northern paddocks would be unacceptable. This site, owned by Samcor and valued at $3 million is given as the second preferred location in Mr Kime's report.

Clearly the Minister of Agriculture is facing strong opposition from members of his Party to his plans. He is reported as saying that the undertakings to which Mr McRae had referred had been made in the context of the entertainment and convention centre. I ask the following questions:

1. Does the Minister of Agriculture agree with the views of the Minister for Environment and Planning and Mr McRae that ALP policy rules out the use of the Samcor paddocks as a site for the 'new' East End Market?

2. Does the Minister also agree with Mr McRae that people would be 'wasting their time and money' preparing submissions on the proposal and that the Minister had no right to call for public comment?

The Hon. FRANK BLEVINS: The answer to the first question is, 'Maybe Mr McRae is correct'—that ALP policy rules out using the Samcor paddock designated as the first option in the Kime Report as the position for a new market, if one is constructed.

The Hon. C.M. Hill: What do you mean by 'maybe'? Don't you know your Party policy?

The Hon. FRANK BLEVINS: We have had a very productive and peaceful last few weeks. I welcome the Hon. Mr Hill back. I see that it will get lively again. As I stated to the media, Eric Kime prepared this report and, quite properly, did not take into account any political considerations concerning the relocation. He stated 11 options, I think, and gave his preferred option. When Cabinet released the report for public comment we welcomed the public comment we received, whether from the local member or anyone else. That is the object of the exercise: to obtain comments from interested parties.

I cannot see anything at all to make a fuss about in that. If Mr McRae feels that it is not suitable, that is fine. He has made his views known and his views will be taken into account. The same with the Hon. Dr Hopgood; he has many channels for making this views known and has certainly done so. Again, that is fine by me. I cannot see any purpose whatsoever in commissioning a report using taxpayers' money and then saying that that report, or at least one of the options, cannot be discussed. Of course, it can be discussed. People in the Playford electorate have actually said to me that it is a good idea and that it should be located there. Again, that will be part of the discussion.

The Hon. R.I. Lucas: Doesn't Mr McRae know his electorate?

The Hon. FRANK BLEVINS: I doubt whether he personally knows the first names and views of the 30 000 people (or however many there are) who live there. He is not the Hon. Mr Lucas: nobody is as clever as the Hon. Mr Lucas, obviously. So, I suspect that Mr McRae does not know the individual views of every person who lives in the Playford electorate. I have opened the discussion, as I stated when I was interviewed by the media. Certainly, the case put up by Eric Kime hangs together very well and, as far as I am concerned, it is the preferred option. However, I went on to say—there it was on prime time television—that it may not be the opinion of the people in the area.

For some people, obviously it is not. That will be taken into consideration. I point out that there are 11 options—this is the preferred option. If anyone would like a copy of the report I shall be delighted to let them have one. It is a good report indeed. People can assess the other various options against Mr Kime's preferred option. The answer to the second question is 'No' (I forget now what the question is)—

The Hon. M.B. Cameron: Wasting their time and money preparing submissions.

The Hon. FRANK BLEVINS: Certainly not. It is the reported opinion of Mr McRae that they are wasting their time and money. He is entitled to that opinion and I welcome his view but, in the case of anyone else who wishes to write a letter, it costs only 30 cents for a stamp and they can express a view on the various options, including the Samcor option, and I do not believe that they are wasting that 30 cents at all. Their views will be considered.

The Hon. M.B. Cameron: We'll wait and see who wins.

The Hon. FRANK BLEVINS: It is not a battle. There is no burning desire on my part to locate the market at Samcor paddocks. The report I released had that as a preferred option. If members took the time to read the report they would see that the case hangs together well.

The Hon. M.B. Cameron: Will we get an answer before the Elizabeth by-election?

The Hon. FRANK BLEVINS: I would not think so.

Members interjecting:

The PRESIDENT: Order!

The Hon. FRANK BLEVINS: However, the report did go on to say that no account would be taken of political considerations. That is perfectly proper. Mr Kime is Chairman of the Sydney Market Authority and he knows nothing (nor would he want to, I suspect) of the political opinions, considerations, etc., in South Australia in regard to the market. I am quite willing to have Mr McRae's views and those of members opposite or anyone else interested in the market. I think it is an excellent process of releasing the report for public discussion and having those views conveyed back to me. It is a proper procedure, and I am most happy about the way it is going. To suggest that there is any kind of battle shows that the Opposition has been reading too many newspapers.

The Hon. C.M. Hill: What is the ALP policy?

The Hon. FRANK BLEVINS: The Hon. Mr Hill, whose seat is barely warm, asks me a further question. I shall be happy to respond.

The PRESIDENT: If you are answering an interjection, well enough, but if it is another question, I suggest that the Hon. Mr Hill asks a supplementary question.

The Hon. FRANK BLEVINS: I am in your hands, Mr President.

FOLEY REPORT

The Hon. J.C. BURDETT: I seek leave to make a brief explanation before asking the Minister of Health a question about the Foley Report.

Leave granted.

The Hon. J.C. BURDETT: My question relates to that part of the Foley Report that refers to the town of Oodnadatta. There are a number of statements that are at odds with the facts as otherwise reported. On page 79, it is stated:

Oodnadatta, situated in the Far North of South Australia, is a unique town in that its Aboriginal population comprises 85 per cent of the total population: 80 Aboriginal and 30 non-Aboriginal.

The Oodnadatta Progress Association has informed me that those figures are not accurate, that there are 59 white adults and 16 white children, a total of 75 non-Aboriginal people, not counting the nearby stations.

The next statement refers to the development of the new township of Marla being some 250 km to the east. I know that, in fact, it is 250 km to the west. Page 80 of the report states:

The hospital employs two community health nurses.

I am informed by the Oodnadatta Progress Association that the two persons employed at the hospital are double or triple certificate sisters. The report also states:

The local Aboriginal people are reluctant to avail themselves of the existing hospital services due to a lack of commitment by the nurses employed by Frontier Services.

I am informed by the Oodnadatta Progress Association that this is inaccurate, that the Aboriginal people do use the hospital and that a check of hospital records confirms this.

The hospital is operated by the Uniting Church and was originally established by the Reverend J. Flynn. Recommendation number 11 of the report states, at page 82:

The South Australian Minister of Health should commence negotiations with the representatives of the Uniting Church in respect to the transfer of the Oodnadatta Hospital, equipment and funds (presently being provided by the South Australian Health Commission) to the Aboriginal community at Oodnadatta.

Has the Minister considered this recommendation and made up his mind about it?

The Hon. J.R. CORNWALL: Yes, I have considered the recommendation and, yes, I think it is probably fair to say that I have an opinion concerning it. I have also had a preliminary discussion with the appropriate representative from the Uniting Church. The Australian Inland Mission established the hospital, which is very small by any standard. There is no medical practitioner in Oodnadatta. In fact, the hospital is staffed by two nurses who are cast primarily in a community health type role, regardless of whether they have two certificates or whatever number.

It is also a fact that the South Australian Aboriginal Health Organisation employs a community health nurse in Oodnadatta, and a remarkable woman she is indeed. She recently organised the Tjitji Walkabout, where the children of Oodnadatta—predominantly Aboriginal children, I think with two exceptions—walked from Coober Pedy to Oodnadatta (a distance of some 200 km) to raise funds for the Royal Flying Doctor Service. The initial response of the Uniting Church representative—specifically the Australian Inland Mission representative in Sydney—has generally been favourable to the specific recommendation of the Foley Committee; that is, that the administration and conduct of the small community hospital should be transferred to the local Aboriginal community.

Since the closure of the old Ghan railway line the population of the township of Oodnadatta is predominantly Aboriginal. There is a very large and a very general measure of community control. A few weeks ago in the Saturday edition of the *Advertiser* a feature article was written by, from memory, Christobel Botten. That article outlined some of the very encouraging results of the programme for Aboriginal community control. It seems to me, and to most of the people involved in Aboriginal health in the area, that the idea of transferring that small hospital to the control of the local Aboriginal community would be very good.

That does not mean that it would not be available to treat any other people in the region or community. One of the outstanding features of Aboriginal community-controlled health services is that they always make their services available to anybody and everybody who wishes to use them. I recommend to the Hon. Mr Burdett, in the discharge of his duties as shadow Minister of Health, that he should take a trip to Alice Springs some time, as I did in 1982, and see how well the Aboriginal community-controlled health service in Alice Springs works. It has first-class doctors, headed by Dr Trevor Cutter, who is a physician of outstanding repute. Many non-Aboriginal people of Alice Springs avail themselves of the services that are available through the Aboriginal community-controlled service in Alice Springs. That would continue to be the situation at Oodnadatta: the general members of the population, regardless of their ethnic origins or backgrounds, would continue under the proposal to have free and open access to the Oodnadatta Hospital.

GRAND PRIX

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

Leave granted.

The Hon. K.T. GRIFFIN: The Premier raced to the United Kingdom a week ago yesterday to undertake some negotiations, as it was reported, to secure the Grand Prix for Adelaide. According to reports, the matter was discussed in Cabinet on that Monday, before the decision was taken to let him fly to London for that purpose. I presume that, in the context of that trip, the Premier took some staff. Presumably, Cabinet received a report yesterday, and I presume again that the Attorney-General was present in Cabinet and heard a report on the negotiations that had taken place last week and on the matters that may be outstanding. The *Advertiser* of Monday, 29 October, contains a report which, among other things, states:

Agreement had been reached on the contract and 'hands shaken', but the technicalities still were being written up and the contract would be signed soon, perhaps in Adelaide. The negotiating in London was over the sharing of sponsorship and gate takings for the race.

I presume, also, that the negotiations and the agreement would relate to such matters as the use of the roads that will comprise the route, the use of Victoria Park Racecourse, the amounts to be paid by spectators, and a variety of other matters. I expect that that agreement, because of the liability of or obligations on the State Government and the effect on the community, will be made available publicly. The Road Traffic Act, for example, may prejudice the conduct of the Grand Prix in the sense that it sets out provisions for the use of public roads—

An honourable member: Speed limits, too.

The Hon. K.T. GRIFFIN: —the speed limit, keeping to the left hand side of the road, and a variety of other matters. Presumably, also, the Roads (Opening and Closing) Act, or even the Local Government Act, will not adequately cover the obligations to close off certain roads for certain periods of each day. Presumably, also, the Victoria Park Racecourse, which is largely parkland, will in some way or another have to be closed off for the purposes of the Grand Prix. There has been a suggestion, too, that spectators, wherever they may be viewing the race, will be charged a fee, even if standing on the side of the road. I would suggest that there may well have to be special legislation to deal with all those aspects and perhaps with other aspects. My questions to the Attorney-General in the context of that explanation are as follows:

1. What technicalities are still being written up, and when is the agreement expected to be signed?

2. Will it be made available publicly?

3. Who did the Premier take with him to assist in the negotiations?

4. Will the Government introduce special legislation regarding closing off roads, putting up barriers, using Victoria

Park Racecourse and other matters related to the Grand Prix, and when will it be introduced?

5. Is it proposed to charge a fee to spectators along the roadside and, if so, will that be the subject of special legislation?

The Hon. C.J. SUMNER: I understand that the contracts are now being drawn up. The Premier has advised that the negotiations were successful, but obviously the formal signing—dotting the i's and crossing the t's—is still to come, and I understand that that will occur in the very near future. I assume that if not the contracts then the general terms of the agreement will be made available publicly, although I cannot provide definite information on that. Unless there are certain commercial reasons why the information should not be made public, I would assume that the terms of the arrangement between the State Government and the Formula One Contractors Association and information on other aspects of the staging of the Grand Prix would be made available. I am not sure who went with the Premier beyond Mr Lyndon Owen, a solicitor in the Crown Solicitor's Office. One other officer might have gone, but certainly Mr Lyndon Owen went with the Premier.

The Hon. K.T. Griffin: Will you obtain that information?

The Hon. C.J. SUMNER: If it is of such world shattering importance, I will obtain that information. It will keep the honourable member happy. Certainly, one officer from the Crown Solicitor's Office went with the Premier, and one other officer might have gone, but I can obtain that information for the honourable member. I believe that special legislation will be necessary to cover some of the matters to which the honourable member has referred. Speed limits obviously is one question that will have to be addressed, and that legislation will be introduced as soon as possible.

Obviously, a fee will be charged to spectators but whether that fee will be charged in respect of all sections of the route I am not in a position to say. I suppose it would be difficult to charge spectators who might have already secured a place on certain hotel balconies, but undoubtedly there will be a fee for entrance to the Grand Prix. I am not in a position to say whether there will be a fee in regard to the whole of the course. I believe that once the agreement is signed the Premier will be in a position to outline all the details that the honourable member has requested. I also believe that legislation will be necessary, and the honourable member can consider that in due course.

The Hon. M.B. CAMERON: I wish to ask a supplementary question. Is the route outlined in the *Advertiser* the correct route for the Grand Prix; if it is, will the decision to use this route require the removal of trees in the region of Victoria Park, the East Parklands or East Terrace; if so, how many and where?

The Hon. C.J. SUMNER: I understand that the route as outlined in the newspaper is substantially the agreed route, although there may have to be minor adjustments. I am not aware how many trees will be affected, but I will convey that request to the Premier and ask him to include a reply in the comprehensive information that I am sure he will provide to the Parliament on this project.

SCHOOL FIRES

The Hon. I. GILFILLAN: I seek leave to make a brief explanation before asking the Minister of Agriculture, representing the Minister of Education, a question about fires in schools.

Leave granted.

The Hon. I. GILFILLAN: Only a few weeks ago we had news of the devastating fire in the primary school at Renmark, involving an enormous cost to the Department and thus to the people of South Australia. It seems that education property is frequently subjected to repeated vandalism and arson. As the cost is enormous and must significantly deplete the resources that are available for education, and bearing in mind how essential and important education is to the well-being of the State, with the aim of reducing the incidence of vandalism and fire in our schools and education facilities, I ask the following questions:

1. Will the Minister of Education give an estimate of the fire damage done to South Australian schools in each of the past 10 years?
2. What fire precautions are taken in schools, for example, fire alarm systems or sprinkler systems?
3. Will the Minister consider returning to the system whereby live-in caretakers are employed at schools so that amongst other advantages they would be a distinct positive deterrent to theft, arson and vandalism?

The Hon. FRANK BLEVINS: I will refer the honourable member's questions to my colleague in another place and bring back a reply.

TRADE COURSES

The Hon. ANNE LEVY: I seek leave to make a brief explanation before asking the Minister of Agriculture, representing the Minister of Education, a question about trade based courses in TAFE.

Leave granted.

The Hon. ANNE LEVY: Some time ago I put on notice a question regarding non-traditional trade based courses in TAFE, and the Minister kindly provided a reply on 16 October. However, it is apparent that the Department somewhat misunderstood the question: the episode demonstrates just how careful one has to be with language. The original question referred to non-traditional trade based courses in TAFE and, by that, I meant those trade based courses that are very rarely undertaken by women. However, TAFE took that to mean (according to its definition) 'courses that cover vocations which are declared and have an indenture term but are not in the building, metal, electrical or automotive fields'.

Consequently, in the reply I got I received interesting information on the numbers of men and women in courses in leather and allied trades, commercial cookery, meat industry, hairdressing and gardener/greenkeeper for pre-vocational students only and excluding all apprentices. However, interesting though that all was, it was not really the information that I was after. Therefore, will the Minister find out for me how many young men and how many young women are enrolled in 1984 in trade based courses in TAFE that are non-traditional for women?

The Hon. FRANK BLEVINS: I will refer the honourable member's question again to my colleague in another place and endeavour to bring back the reply that she is seeking.

AMDEL

The Hon. R.C. DeGARIS: I seek leave to make a brief explanation prior to asking the Minister of Agriculture, representing the Minister of Mines and Energy, a question about AMDEL.

Leave granted.

The Hon. R.C. DeGARIS: Last week in the House of Assembly the Minister of Mines and Energy reported that AMDEL will probably be restructured into an independent company. In debates in this Council in the past I have advocated that many operations conducted by the Government or statutory authorities should be restructured and

placed in the private sector. Therefore, I am delighted with the announcement made by the Minister in taking this course. When making his announcement in the House of Assembly the Minister said:

The restructuring contemplated would provide consideration in the form of a suitable shareholding arrangement which would recognise the contributions of AMDEL's present contributors or sponsors, but at the same time provide an injection of new capital and the opportunity for involvement of other major client groups.

The Minister added that he will advise the House of Assembly when more detailed proposals are available. In the movement toward privatisation, which is a worldwide one in Western democratic countries and one which we should be following in South Australia, there are a number of problems unique to the Australian constitutional position that need to be taken into consideration.

This problem is one that requires another speech rather than the explanation of a question in this Council. My questions are:

1. Has the Government undertaken discussions with the Federal Government on the proposal to restructure AMDEL, in which the Federal Government has an interest, of course?

2. If such discussions have been undertaken, will the Minister inform this Council of the Federal Government's views on the restructuring of AMDEL as a private organisation?

3. Will the Minister keep this Council, as well as the House of Assembly, informed of the details of the proposals?

4. Is legislation necessary to implement this programme of privatisation of AMDEL?

5. If not, will the Government ensure that details of the privatisation of AMDEL are made available to this Council before their implementation so that members can express their views on this programme?

6. As the Government has decided to support the privatisation of the operations of AMDEL does the Government intend introducing other proposals for privatisation of other Government or statutory authority operations?

The Hon. FRANK BLEVINS: I will refer the honourable member's questions to my colleague in another place and bring back replies.

Q THEATRE

The Hon. C.M. HILL: Does the Attorney-General have a reply from the Minister for the Arts to the question I asked about the Q Theatre on 12 September?

The Hon. C.J. SUMNER: Discussions have been held between the owners and officers of the Department for the Arts. The Government has made no decision as yet.

RACIAL DISCRIMINATION

The Hon. C.M. HILL: Has the Attorney-General a reply to the question I asked on 20 September about racial discrimination?

The Hon. C.J. SUMNER: The Chairman of the South Australian Ethnic Affairs Commission has discussed the commercial with the Manager of radio station 5AA, Mr Edwards. The Manager informed the Chairman that in the interests of their client he will instruct that the commercial be withdrawn from the client's schedule. It was also agreed that the Manager would issue an invitation to the South Australian Ethnic Affairs Commission to have discussions with his station to formulate an approach to their industry regarding any points that may be mutually beneficial.

NURSES WORKING WEEK

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Minister of Health a question about the shorter working week for nurses.

Leave granted.

The Hon. L.H. DAVIS: The *Advertiser* this morning carries a report that South Australian nurses, after negotiations with the State Government, have accepted a 19-day working month effective from 3 December 1984. The Minister recently admitted that no specific provision had been made for additional costs associated with the implementation of a 19-day working month for nurses. Can the Minister say what is the estimated cost of introducing a 19-day working month for nurses in public hospitals for the year 1984-85 and the full financial year 1985-86?

The Hon. J.R. CORNWALL: First, it is not true to say that I recently indicated that I did not know what the cost is. I have had done a number of costings which took into account a variety of scenarios. Nor is it true to say that as Minister of Health or as a Government we have not made provision for it.

The Hon. L.H. Davis: You admitted that at the Budget Estimates Committee hearing.

The Hon. J.R. CORNWALL: No, I did not. The honourable member should read the *Hansard* record. I made it very clear that the Government makes provision for matters relating to wage and salary variations every year, and successive Governments have done that since time immemorial. For somebody who purports to have a knowledge of public finance—although a much keener interest in private financial matters—the Hon. Mr Davis should know just how fundamental this is at the State Budget level to the good conduct of the affairs of South Australia.

Every year Governments in this State, whether Labor or Liberal, make provision for these sorts of movements in the round sum allowances. I made clear again the other night that it has never been the practice in this State to telegraph what that amount might be because there has been the policy always that it tended to be a self-fulfilling prophecy. Whether or not that is true, and whether the fact that the Federal Government does its budgeting somewhat differently without, it seems, these sorts of terrible things happening, I do not believe that I am in a position to say. However, we are now in a much clearer position than we were when those questions were asked the other night, because we have conceded—conceded, I might say, after 18 months of long and tough negotiations—a 19-day working month to nurses in public hospitals in this State. I am now able to tell the Council that, as part of the deal accepted by a mass meeting last night, the RANF and the PSA, which represent nurses in this State, have agreed that during the first six months from the date of operation all accruals will be at standard rates of pay and will attract no penalty rates. They have also agreed that there will be no accruals to student nurses during those periods when they are in what is known as block training as part of their normal training programmes.

There have also been a number of agreements with regard to additional payments for meals and some other perquisites, if you like, that traditionally have attracted low payments, sometimes significantly lower than cost. All of those offsets have been negotiated. The Oversight Committee, which was established by the Minister of Labour in August 1983, will continue. We will be making a special effort to attract as many registered nurses as possible, who are currently not working, back into the system. Eventually, when the full staffing for the 19-day month is in place, we will have provided additional employment for between 430 and 450 nurses.

I am sure that honourable members will recall with great detail that the best full year cost estimates I could give last Wednesday evening were between $4 million and $6 million. I am pleased to tell the Council that as a result of one particular offset, the matter of accruals for the first six months being agreed to as not attracting penalty rates, the Government will save $700 000. As far as we can estimate at this time, rather than approaching the $6 million mark (the upper limit of the figures provided to me as the full year cost of the introduction of the 19-day month in the public nursing sector) the figure will be more in the order of $4.5 million.

GRAND PRIX

The Hon. R.I. LUCAS: I seek leave to make a brief explanation before asking the Minister of Health a question about the Grand Prix and tobacco company sponsorship.

Leave granted.

The Hon. R.I. LUCAS: Members will recall that last year the Hon. Mr Milne introduced a Tobacco Advertising (Prohibition) Bill, which was supported in its passage, in this Council at least, by the Minister of Health and the Government. The effect of such legislation would have stopped tobacco company sponsorship of sport in South Australia. Members will also be aware that tobacco companies are prominent in international motor sports. For example, in the current Grand Prix circuit there are at least four tobacco companies that presently sponsor teams: the Marlboro team; the John Player team; the Gitanes team; and the Barclay team. In addition, the local Australian champion, Alfredo Constanzo, is sponsored by the Peter Jackson company. Marlboro, for example, pays about 40 per cent to 50 per cent of the world's top formula one drivers a retainer to exhibit the Marlboro logo on their uniforms, helmets, etc.

So, it is clear that the enactment of such legislation would decimate the prospects of a top quality Grand Prix event in South Australia. It would also appear obvious that the Formula One Constructors Association, which is the controlling body for all Grand Prix events, would be genuinely concerned about the prospects of such legislation in South Australia. My questions are:

1. Will the Minister give a commitment that he and the Government will not support the passage of such legislation, if introduced, during the coming three years, which is the minimum period of our involvement in the circuit?
2. Will the Minister ask the Premier, and bring back a reply, whether this matter was the subject of negotiations with the Formula One Constructors Association?
3. Has the Premier given any commitment to the Formula One Constructors Association?

The Hon. J.R. CORNWALL: I have made it very clear to this Council on innumerable occasions and I will do so again today: the question of tobacco company sponsorship, which may be transmitted to the general public via television, is a matter that is clearly and absolutely outside the discretion of the State Government. It is a matter for the Commonwealth Government. There is no question that we have any powers whatsoever under the Broadcasting and Television Act (which is Federal legislation). So, the matters raised by the Hon. Mr Lucas are spurious in the event.

NURSES WORKING WEEK

The Hon. DIANA LAIDLAW: My questions to the Minister of Health also concern the nursing agreement. First, does the Minister believe that the required number of nurses will be recruited by 3 December to enable the agreement between the Government and the Nursing Federation to proceed? Secondly, in all instances will the nurses recruited be fully trained to maintain standards in the hospitals at the current staffing levels and quality of service? Thirdly, will the extra cost of the new arrangements to public hospitals be fully met by the Health Commission? Fourthly, will the extra cost to the State prejudice the commencement of the Nurse Education Programme through the CAEs in the forthcoming year?

The Hon. J.R. CORNWALL: There are four questions. I think that I can remember them, although my shorthand is not too good. The first question, I believe, was whether we could recruit the required additional 430 to 450 qualified nurses, whether they be registered or enrolled nurses, by 3 December. The short answer to that is, of course, 'No'. There will be an active campaign to try to get those nurses currently registered but not working in their profession back into the industry.

There are about 9 500 nurses on the register in South Australia who are currently not working in their profession. I am sure that the Hon. Miss Laidlaw will recall that there was a phone-in conducted a few weeks ago to try to discover where some of those nurses are. I suppose that they are everywhere, but it is clear that a significant number of them are young mothers. If we are to be fully successful—and I am determined that we will be fully successful—in recruiting the additional 430 to 450 nurses, then it will be necessary, among other things, to provide significantly expanded child care facilities and—

The Hon. Diana Laidlaw: And refresher courses?

The Hon. J.R. CORNWALL: —plans are well advanced to do that. I will come to refresher courses in a moment. I must point out—and this point has not been made anywhere to date—that these agreements, while they are clearly within the accord, have to be ratified by the Industrial Commission. The fact that the Government has conceded (as I said, albeit reluctantly), and that the RANF, the PSA and its membership have accepted (whether that was gleefully or reluctantly depends on whose story one listens to) after long and difficult negotiations, does not necessarily mean that that agreement will be ratified in the Industrial Commission.

Let me make it clear that all of this is subject to ratification by the South Australian Industrial Commission in the first instance. As to whether I can give a guarantee that the nurses who are employed will be fully trained or retrained to the extent necessary, yes, I most certainly can. In no circumstances would I, the Government, the Health Commission, or the individual hospitals permit a situation to arise where nurses would be in the wards who were not fully qualified and registrable by the Nurses Board of South Australia, or were not *bona fide* student nurses. I assure everyone in South Australia that the quality of service will in no way be diminished. What will happen in the first instance is that the rosters will be organised within the existing work force.

That will mean, based on the experience in Victoria in particular, that there will be an accrual of days. In other words, where we have not sufficient nursing staff to replace nurses on that 20th day of the month—

The Hon. Diana Laidlaw: Rather than being paid overtime?

The Hon. J.R. CORNWALL: Hang on, and I will explain it—they will then be asked to work an extra day on the roster. That will accrue in the first six months at ordinary time—not at penalty rates. That is part of the agreement reached. If a nurse during that time leaves the employment of a particular hospital, the nurse or nurses will be paid at ordinary rates for accrued days. So, there will be no penalty in the sense of time and a half or double time. The question of refresher courses is very much under active consideration at present—

The PRESIDENT: Order! The time for questions has expired. Call on the Orders of the Day.

QUESTIONS ON NOTICE

ASER PROJECT

The Hon. K.T. GRIFFIN (on notice) asked the Attorney-General in respect of the ASER Development—

1. Have directors, in addition to Mr Weiss and Mr Takanaka, been appointed to ASER Nominees Pty Ltd, and, if so, who are they?

2. Has the ASER Property Trust deed been finalised and, if it has, will it now be made public?

3. *(a)* Has the title for the land yet been issued and, if it has, what is the title reference?

(b) If it has not, when is it expected to be issued?

4. Has the ASER Investment Trust deed been finalised and, if it has, will it now be made public?

5. *(a)* Has the final agreement between all parties been finalised?

(b) If it has, will it be tabled publicly?

(c) If is has not, when will that agreement be finalised?

The Hon. C.J. SUMNER: The replies are as follows:

1. Yes. Mr M. Otsuka, Chairman, Kumagai N.S.W. Pty Ltd, Mr J. Beare, Acting Manager Investments, SASFIT.

2. Yes. No specific changes to the APT deed are presently foreseen. However, the joint venture partners recognise that changes may be necessary to reflect the final documentation of the development.

Under the terms of the Tokyo agreement the arrangements between the joint venturers must be to the satisfaction of the Government and all documentation will, in due course, be submitted to the Crown Solicitor. The joint venture partners do not propose to make the deed public since it is a private commercial arrangement.

3. This matter is in the hands of the Crown Solicitor. I understand that the title will be issued shortly.

4. The ASER Investment Trust is a body which will be activated if, and only if, it is appointed as the operator of the casino. All documentation relating to AIT has been, or will be, submitted to the Crown Solicitor and the Lotteries Commission. In the event that AIT is selected as the operator, the present standard form of the AIT deed may be modified to reflect the requirements of the Commission. The partners to the deed do not propose to make it public since it is a private commercial arrangement.

5. *(a)* No. Final resolution of arrangements between APT and the Government depends on agreement regarding the design of the project, in particular, the office block.

(b) Not applicable.

(c) APT expects to resubmit the office block design formally within one month, following informal discussions with Government representatives. The Minister for Environment and Planning must then allow a minimum of 30 days consideration by City of Adelaide Planning Commission and council before an amendment can be promulgated. A longer period may be considered appropriate because of the holiday season.

ANTI DISCRIMINATION BILL

Adjourned debate on second reading.

(Continued from 25 October. Page 1508.)

The Hon. I. GILFILLAN: I welcome this Bill. The area with which it deals, both in consolidation and in breaking relatively new ground, is important in South Australian society in 1984. Many of the consequences will be appreciated by people in our society who have suffered intimidation, deprivation, personal humiliation, economic loss and various other experiences that are quite often not clearly apparent. However, in the responsibility that the Government has shown, it is an area where Parliament cannot avoid being involved. The areas that are likely to cause the most public comment and contention are reasonably easily defined. The bulk of the Bill dealing with wide ranging discrimination on the basis of race and physical impairment has been welcomed. In fact, many people have written expressing appreciation of the whole gamut of the Bill but with minor areas of criticism that I believe should be looked at responsibly. However, it should be encouraging to the Government to realise that there is substantial public support for the initiative taken in the Bill and the challenge then will be to make sure that in its final draft it is in a form that most effectively implements the goals and intentions of the Bill.

I would like to spend a little time reading some of the background material that I believe supports the justification for the Bill, but before I do that I feel obliged personally to make a comment that could perhaps apply to many other people in South Australia: that when some of us feel that certain protests at discrimination are trivial or unnecessary, it often reflects the fact that those who are saying that or who are making that criticism have themselves not been subject to the discrimination or harassment. I have found that it is a learning process to realise what the suffering of discrimination brings on people. That learning process takes a considerable amount of time and quite a lot of imagination.

I believe that a better choice of word for discrimination is 'prejudice'. It is prejudice by society or by groups in society against individuals or other groups of individuals in society that is the real base of the evil which destroys and wounds so many people in society. When members in our society are prejudged, they have no personal choice and consequently suffer a penalty that they do not deserve. I emphasise that I consider that to be prejudice. I think the word 'prejudice' is appropriate in dealing with this Bill. We want to remove prejudice so that society views people as they are: as individuals with the qualities that are relevant to the situation for which they are being considered. If it is for employment, they should be considered on only those qualities applicable to employment, and the same principle applies in relation to the other areas covered by this Bill.

However, human nature is difficult to change overnight. I realise that by simply introducing legislation one does not change the heart of man or woman, and that prejudice will not be removed by a simple Act of Parliament. However, at least it acts as a spur, a goad or an incentive for people to rethink personal positions and to pause long enough to say, 'Am I right in assuming that all homosexuals behave in a certain way and therefore they must be categorised? Am I right in assuming that all married women are to be treated only in a certain way? Am I right that Aborigines as a race are to be identified in certain categories because they happen to be Aborigines?' I think all of us, even the most ardent supporters of the Bill, are guilty of prejudice more or less in some degree. I regard this Bill as a worthwhile and germaine incentive for us all to pause and question our own individual area of discrimination or prejudice.

Those of us who attended the Christian Parliamentary Fellowship breakfast this morning heard the Reverend John Smith make a very fervent and impassioned plea for the support and strength of the family unit in Australian society. I believe that Reverend Smith very clearly recognised that the most productive and fertile climate in which young

Australians can grow will be provided by secure, long-lasting, loving, caring married relationships. I do not believe that this Bill or any other legislation that we have dealt with in this place has been antagonistic to the institution of marriage. I believe that however one disagrees with my point of view as to the value of marriage, *per se*, the actual structuring of human relations is not made by legislation. It can be encouraged by attitudes, opinions and incentives within society, but it cannot be made.

It is the relationship between two people which makes marriage so revered by those who identify marriage as being precious in our society, engaging in a mutual contract and undertaking a mutual responsibility of caring on a life-long basis. I can only speak for myself, but I believe that those of us who profess to be Christian believe in divine intervention in human relations, not only in the marriage state but in all human relations. The marriage institution is without doubt one of the most precious human relationships available to us as a society. By compulsory legislation one cannot force people to enter into those types of relations, nor by other legislation prevent them from entering into those relations or force them to go into less satisfying human relations.

I believe that the legislation that this Parliament or any other Parliament can pass can only provide the facilitating circumstances or environment, but it cannot legislate either for or against so-called moral situations, moral attitudes or moral relationships. I think we are obliged to take the step adopted by the Government. I refer to article 7 of the United Nations 'Basic Documents on Human Rights' (and Australia has supported the Universal Declaration of Human Rights) as follows:

> All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this declaration and against any incitement to such discrimination.

I think that this is relevant to the Bill we are dealing with. Australia has ratified a United Nations Convention on the elimination of all forms of discrimination against women.

I believe this framework is the background for justifying dealing with this Bill and why I in particular am supporting it. The latter part of the convention states:

> *Convinced* that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields.
>
> *Bearing in mind* the great contribution of women to the welfare of the family and to the development of society, so far not fully recognised, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of chldren requires a sharing of responsibility between men and women and society as a whole.
>
> *Aware* that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women.
>
> *Determined* to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations.

I believe that is a firm basis for the inclusion of 'sex' and 'sexuality' in the Bill before us.

I turn briefly to statements and material that has emanated from the Australian Democrat background, from our policy dealing with law reform, civil liberties and human rights. We support a Bill of Rights. Among other things, the objectives of the Bill will be to guarantee, 'Freedom from discrimination on the basis of sex, race, colour, creed, marital or other status, language, sexual preference, religious, political, ethical or other beliefs, national or social origin, property, birth or other status, mental or physical handicap or association with minorities.' One can see that all of the material that is addressed in the Bill is quite specifically included in the Australian Democrats policy statement of removing discrimination from those areas.

The Hon. C.J. Sumner: Has Lance read it?

The Hon. I. GILFILLAN: Yes. A lot of people have read it. Some people agree with it and some do not. Following discussions during a recent women's policy conference, summaries were made that are going forward for debate within the Party. I refer to the summary statements as statements of opinion from the conference and not as ratified statements of opinion by the Australian Democrats. The statements do not basically contradict what I have just read. The summary states:

> 1. Discrimination on the grounds of sex, pregnancy or marital status in employment and occupation, promotion, education and training, and provision of goods and services, will be prohibited. Legislation at State and Federal levels must be broadened, so that all such discrimination, including sexual harassment, is eliminated.
>
> 2. In order to overcome the effects of past discrimination there must be established programmes of affirmative action in education and public and private employment.

Number 6 states:

> We will enact appropriate legislation to widen the operation of sex discrimination legislation by means of inquiries (initiated by the sex discrimination boards and Human Rights Commission) and class actions.

I will also read into *Hansard* some comments on anti discrimination legislation. The author of this material is Senator Janine Haines, but it expresses opinions about which I have no question and with which I wholeheartedly agree. She says:

> WHAT THE SEX DISCRIMINATION BILL IS NOT ABOUT:
>
> It is not about wrenching babies from their mothers' breasts, and putting them into 'impersonal' creches while the mother is forced to work.
>
> It is not about giving a woman a job regardless of talent because of her sex and depriving a better qualified man of a job.
>
> It is not about forcing employers to make women 50 per cent of the workforce.
>
> It is not aimed at breaking up family life as we know it—or as some 25 per cent of the population knows it—nor is it designed to denigrate marriage.
>
> It will not (as I heard one Festival of Light supporter say once) remove the privileges and protection given to wives by their husbands.
>
> This Bill does not aim to produce a unisex population (whatever that is). It does not aim to turn women into men or to emasculate the male. It will not do the former because no woman in her right mind wants to be a man and, if it does the latter, the man has the problem, not the legislation.
>
> WHAT THE SEX DISCRIMINATION BILL IS ABOUT:
>
> It is about acknowledging both the rights and the needs of many women to work in the paid workforce and the necessity to provide appropriate, high standard child care facilities.
>
> It is about ending a practice in which a man could be given a job in preference to a woman regardless of how much better qualified she is, simply on the grounds of his sex.
>
> It is about ending discriminatory practices which preclude them from having even equal access to jobs in the paid workforce.
>
> It is designed to give those women who want it the right and opportunity to achieve personal and financial independence.
>
> It will not do this because there is no legal requirement in this country for one spouse to support another and because, as anyone who has ever visited a women's refuge knows, not only are many women not protected by their spouses, all too many need to be protected from their husbands.
>
> It does attempt to encourage both sexes to use their talents equally to benefit society and themselves. In the long run we hope it will eliminate exaggerated and irrelevant sex role stereotypes. With a bit of luck it will mean that women will no longer be demeaned, denigrated and deceived unless they subscribe to the role some men allocate to them, that is, being dim, docile and dependent.
>
> It might also mean that [women] will no longer be seen as child-bearing drudges and that both parents will take equal responsibility for rearing children. Above all, it may make the troglodytes of the right realise that God gave women a brain as well as a womb and that [their] brain functions a damn sight longer than [their] womb!

I will also take the liberty of quoting Senator Janine Haines in one of the other areas that is contentious: sexual harass-

ment. It is not hard to isolate what are the specific areas where most contention arises. We are experiencing a response to attempts to perhaps combat what has been seen as the feminist thrust in our society. Parts of our society and individuals are nervous of that pressure and are moving to defend, as they see it, the sanctity of marriage and the right for women to be women. So I can see that that is an area in which there will be more than usual interest and contention.

The second area of contention is the area where the sexuality clauses embrace the requirement that no-one will be discriminated against on the basis of their sexuality. Homosexuality will, obviously, be the focus of a lot of attention there because we still have some hang-ups and remnants of quite unfair and unreasonable discrimination and vilification of homosexuals in a prejudiced form. I confess to it, myself: it is very difficult for people who have been conditioned to regard homosexuality as abhorrent to accept that homosexuals are people with absolutely equivalent rights to heterosexuals and that they are entitled to be treated on exactly the same basis as heterosexuals.

The third area of special contention that appears to me to be coming forward distinctly is sexual harassment, where the understanding and recognition of sexual harassment has been limited in its distribution to members and to the general public. It is subject to ridicule; it could be subject to exploitation, but our responsibility is first to say, not whether it has been exaggerated and not whether it is open to misinterpretation or abuse, but whether it exists and, if it exists, whether it is undesirable in our society. I believe that it is, and that it is both ways: once we come to live with this legislation it will appear that there is also sexual harassment of men by women. I hope that, from a greater awareness of the relationship between human beings, a freer society will develop. In particular, the workplace or educational institutions can be very unfair environments in which there can be intimidation and abuse of a relationship for sexual purpose, albeit by innuendo, remark or the other areas that will be embraced by the sexual harassment provision. This kind of harassment does not give Australians a fair go. It is not giving the people the environment to work in to which all Australians should be entitled.

It is a mistake to treat this area of concern with lighthearted ribaldry, indicating that it is really all a big joke. Fair enough, there will be jokes; I do not see that in the long run that will be a desperately unfortunate situation, but the important thing is that we do not give that the first priority. The first priority is to see where people are suffering, identify that suffering and, where possible, remove it. In a speech in the Senate on 28 October 1981, Senator Haines said this of sexual harassment:

> . . . (Sexual harassment) can again come in many forms, varying from the telling of off-colour jokes to in fact actually making sexual intercourse with the boss a condition of promotion or of keeping the job itself. It is one of the hardest forms of discrimination for anyone to combat since it usually comes down to one person's word against another or to the fact that the woman concerned is made to feel dirty, guilty, somehow to blame for what has happened to her and certainly too embarrassed to tell anyone. It is exacerbated by the fact that some forms of harassment are still considered socially acceptable and passed off either as jokes or as compliments which a woman is too churlish to accept or to see. The women who complain are ridiculed and dismissed as having no sense of humour or as being radicals or lesbians or, for that matter, all three.

She includes in this speech a letter which is rather poignant and tragic in its consequences and which deals with a sexual harassment case in which a woman complained. A long, detailed story is spelt out here in this same *Hansard*. Eventually, the perpetrator of the harassment got the job that the victim had had before the situation became intolerable for her and she left the employment. Let us hope and pray that that does not happen often—and I do not believe that it does—but the fact that it can and does happen certainly motivates me to look to this type of legislation at least to start to reduce the incidence and, hopefully, in the long run to virtually eliminate sexual harassment.

Rather than go through the Bill in detail, I will indicate some areas where the Bill could be amended. I have had consultations with the Australian Small Business Association, which found no specific fault with the legislation. I have read the submissions from the South Australian Employers Federation and the Chamber of Commerce and Industry, both of which are constructive, useful and sensitive to the major issues confronted. I will refer to those submissions in regard to potential amendments. Many people see problems in the context of sexuality, and I believe that the following quote expresses succinctly what the Bill should provide:

> What an individual does in private, unless it directly affects their work, is no concern of the employer.

If that concept can be encapsulated in this Bill, it will expand and put into practice one of the welcome reforms that have occurred in South Australian society over the past 15 or 20 years in that there has been a gradual breakdown of unthinking prejudice and discrimination. There is good argument for altering the title of the Bill. A constructive and positive title and headnote would be an advantage, and I acknowledge that the Chamber of Commerce and Industry has suggested what I believe to be an improved title and headnote. The Chamber stated:

> Given that the proposed legislation is modelled on the Handicapped Persons Equal Opportunity Act, the alteration to the headnote and the title was noted with concern by our organisations.
>
> It is the belief of industry that this legislation should serve a dual function—this title does not properly reflect this dual role. Equal opportunity legislation should have the role of both educating and promoting equal opportunity along with providing an avenue for redress for cases of discrimination. The change to the title and the headnote of the proposed legislation do not, in industry's opinion, encapsulate the intent of the legislation in its entirety. Rather, it stresses one aspect of the legislation, that of redress and not the true intent of the legislation, which is to foster amongst the community a positive attitude to equal opportunity.

I could not endorse that last sentence more strongly. Further it is stated:

> Industry therefore recommends that the Bill and consequently the Act be titled 'The Equal Opportunity Act of 1984' in place of the present title 'The Anti-Discrimination Act of 1984', and the headnote should read as follows:
>
> > An Act to prevent certain kinds of discrimination and other related behaviour; to provide effective remedies against such discrimination; to promote goodwill, understanding and equality of opportunity in the community and to deal with other related matters . . .
>
> Industry believes that, if the Bill was amended along these lines, then the legislation would provide an appropriate foundation for effectively generating amongst the community a willingness to promote equality of opportunity by the process of conciliation and education rather than by prosecution and penalty, whilst still providing these secondary mechanisms where conciliation fails.

One of the areas of concern in the Bill is clause 5 (2), dealing with the grounds of action. It provides:

> For the purposes of this Act, a person acts on a particular ground referred to in this Act if he in fact acts on a number of grounds, one of which is the ground so referred to.

I am concerned that this would open up quite trivial areas of activity which, frankly, serve no purpose. The identification of a ground amongst a number of grounds to be justified for action under this Bill would have to be a significant ground, and we should make some effort to draft the clause so that it embraces that concept; otherwise, the risk of a resulting unnecessary and petty witch hunt would cause more hostility and would in fact result in a quite idiotic situation.

Regarding the operation of the Tribunal and the setting of damages, it is reasonable to set a limit, and we as a

Parliament should consider a limit of $40 000 or $60 000, subject to discussion. I do not believe that that would in any way restrict the proper working of the Tribunal, but it would place some degree of restriction on what could be seen by those who are nervous as an open ended opportunity to set damages. Clauses 16 and 17 refer to the appointment of members of the Commission and the Tribunal, and I believe that there should be a set three-year term with the right of extension.

The Hon. R.C. DeGaris: Do you mean that the first appointment should be for three years?

The Hon. I. GILFILLAN: No, the first appointment need not be for three years, but thereafter it should be for three years. Paragraphs *(c)* and *(d)* of clause 17 (2) should be deleted. Sensitivity, enthusiasm and personal commitment are subjective criteria and it is very difficult to interpret them properly. Their inclusion will unnecessarily expose the Bill to the charge that it could encourage the appointment of biased people to the panel. I have been encouraged by a sensible amendment proposed by the Chamber of Commerce and Industry in regard to clause 27 (5) *(d)*, referring to pregnancy. It is stated:

> This provision does not apply to discrimination on the basis of pregnancy in relation to employment if the expectant mother would not be able—
> (i) to perform adequately, and without endangering herself, the unborn child or other persons, the work genuinely and reasonably required for the employment or position in question;
> or
> (ii) to respond adequately to situations of emergency that should reasonably be anticipated in connection with the employment or position in question.

That is a valuable contribution, worthy of further consideration in Committee. Subclauses (6), (7) and (8) of clause 82 deal with the responsibility of an employer. I know that clause 85 deals with the vicarious liability of an employer. I will not deal with this matter exhaustively now. I have had extensive discussions with Jo Tiddy, the Commissioner for Equal Opportunity, who expressed her reaction to some of these matters. I will not quote her as having condoned them, but I would like those members who are listening to realise that I discussed all these points with her.

These subclauses expose the employer to a liability before that employer may have any knowledge that discrimination or harassment has taken place. There is already scope in the Bill to urge employers to take reasonable steps, and with proper relations with the business community as much as is reasonable to expect of an employer could be done by way of awareness, information, and the publicity associated with this Bill. However, I believe that it is unfair and unreasonable to make it unlawful for an employer not to take certain steps before that employer has any knowledge that there might have been some form of harassment or discrimination.

The Hon. Anne Levy interjecting:

The Hon. I. GILFILLAN: Perhaps we can discuss that later. So far as I am concerned, there does not seem to be anything achieved in that; it is making a victim of a quite innocent party and attributing to that party some intention. What we want to do is get rid of the abuse. I do not see that holding employers legally responsible so that they can be charged—

The Hon. K.L. Milne: It is not part of their duty.

The Hon. I. GILFILLAN: I think that it is part of their moral obligation, but I do not see it as a legal obligation for which they can be punished if they do not comply with some formula. What will the formula be? They may emanate the most warm hearted acceptance and tolerance of all the people we are concerned about, but there may be an area where there has been discrimination or harassment exercised. Once they know about it and have not taken action, sure, but prior to that I think that it is unfair for them to be charged with committing an unlawful act. Clause 82 (9) gives a definition of 'harassment' which is quite specifically different from section 28 of the Federal Act, which states that harassment will 'disadvantage the other person in any way in connection with the other person's employment or work or possible employment or possible work'.

I have no objection to the wording of this Bill. It is interesting to note that others apparently do not have any objection to the wording of the Federal Act—and I have asked others who are concerned about this, including Senator Janine Haines's office. I suspect that there is an advantage here in accepting the wording that causes the least indignation or fear from those who are nervous about the wording in the Bill. During the Committee stages I think it will be reasonable to look closely at the real differences and the likely differences in the effect of the Bill if we were to accept the same wording to describe 'sexual harassment' as is in the Federal legislation.

An area in this Bill that causes me some concern—and I still cannot see the answer to it—is that there must be a deterrent for malicious and/or false complaints of discrimination or harassment. In clause 24 the Bill gives the Tribunal the power to award costs in the case of vexatious or frivolous action—I forget the exact wording. Costs may, in certain circumstances, be negligible and of no consequence at all. I think, with some justification, that some people are nervous about the opportunity this Bill offers people who wish to hurt the reputation and family life of others or to pay them back for something they may have done, or for something that a person imagines they have done.

When I first thought about this matter I thought that it was appropriate for this Bill to contain a specific penalty clause for action that could be described as 'malicious and false' and that that would in some way act as a positive deterrent to people who had spurious and unacceptable motives for coming forward with complaints. Mrs Tiddy said to me that she felt that the proper area for that would be a defamation action in the Supreme Court. I have not had the chance to discuss this matter in detail with anyone who has adequate legal knowledge of it, so I cannot say whether that is, in fact, an adequate safeguard—it may well be.

I think that it is our responsibility to be sure that not only are we protecting those who are the victims of harassment and discrimination but also that we make the effort to protect people who could be subjected to devastating consequences because other people act under this Bill from malicious motives.

In clause 89 there is a subclause dealing with the power of the Commissioner to take the books of a business. This is viewed with some misgiving by people in industry who have discussed this matter with me. The South Australian Employers Federation has addressed this problem and made a very constructive suggestion about it. I was not sure whether or not even the powers they have granted are not more than is reasonable to give to the Commission. However, I put that forward as something worthy of consideration. There is a note on the Commissioner's power to remove records, which states:

> Whilst it is a reasonable requirement to permit the Commissioner to retain books, etc., we would submit that the following qualification be added to subsection 89 (5):
> Provided, however, that the Commissioner may not take away from the person's premises any document which is required for the day to day operations of the person's business.

I think that that is a sensible and modest request.

The Hon. C.J. Sumner: Do you have any amendments on it yet?

The Hon. I. GILFILLAN: I am not at that stage yet. I am on my second reading speech. I have had misgivings about the power for class action. This is because there is a fear abroad that if class action is introduced it will be uncontrollable and will provide welter type actions. Therefore, my original reaction was to be cautious about class action. However, Senator Haines gave an example of a possible class action: if there were grounds to challenge discrimination against married women in a particular industry where there may be 50 or 60 married women employed, a class action would be the most economic and sensible way to deal with that situation. I therefore remain undecided as to whether its inclusion in the Bill at this stage is justified. I think that it is important for us to avoid loading into this Bill unnecessary paraphernalia that will have the consequences of stirring up more distrust and concern in the business and industrial world than is absolutely necessary.

I know that union representation has been objected to by some people, but I have no difficulty with that. If a union is representing an individual and supports that individual in taking action, that is proper and appropriate action for it to take. I have tossed about in my mind the difficulty of fixing a time limit for a complaint at six months or 12 months. If one were looking with hostility at the Bill one could assume that six months would be a reasonable time because it would protect the 'guilty party' from action after six months and therefore diminish the scope for undesirable and bothersome action. However, if I look at it as I believe I am obliged to, I realise that the Bill is addressing a serious form of discrimination and persecution in our society, and it does not appear fair that it should be restricted to a six month limitation from the time of complaint.

I can accept that there may be—in fact, I am sure that there are—people who have suffered and will suffer the sort of persecution and discrimination described in this Bill and who will be reluctant to come forward and lay a complaint. I do not see that the difficulty in assessing the accuracy or validity of a complaint becomes markedly less in the second six months of a twelve month period. So I believe, subject to hearing further discussions on this matter, that it is probably a good thing for the working of the Bill that it should retain the 12 month time limit for a complaint.

Those are my comments on the details of the Bill. I believe this is a valuable piece of legislation which, I hope, will have far-reaching consequences in the society of South Australia. It is an obligation on all members. We cannot depend on legislation to create the reform in our society; it depends on a personal reaction. I regard it as a first step, and on that basis I welcome and support the second reading.

The Hon. M.S. FELEPPA secured the adjournment of the debate.

The Hon. K.T. GRIFFIN: Mr President, I draw your attention to the state of the Council.

A quorum having been formed:

RACING ACT AMENDMENT BILL (No. 2)

Adjourned debate on second reading.

(Continued from 25 October. Page 1497.)

The Hon. L.H. DAVIS: The Opposition supports this Bill to amend the Racing Act, 1976. The second reading explanation explained the purpose of the amendments, two of which regularise existing practices. One amendment gives the Minister power to authorise horse racing, trotting or greyhound clubs to conduct on-course totalisator betting on other races where scheduled races may have been cancelled owing to inclement weather or unforeseen circumstances. There have been instances, as members will be aware, where this has occurred. Indeed, during the very heavy winter just past there were two or three such occurrences. It is also possible that events other than weather will cause the cancellation of a race meeting; there was the recent breakdown of a barrier that caused the premature cancellation of a meeting. The purpose of this amendment will enable on-course totalisator betting to continue on other races notwithstanding the fact that the meeting has been cancelled.

In addition, the Bill provides that there can be cross-code betting. In fact, that already exists; that is, tote betting on races held by clubs from different codes. As one could perhaps observe, it means that when you are betting on the horses you can go to the dogs! This causes a difficulty in the sense that clubs at present are directing the money gained from cross-code betting to the Racecourse Development Fund of the code to which the club belongs, rather than the code on which the bets were made. So, there is an amendment that seeks to correct that anomaly.

A further amendment gives the Minister the power to use other than the *Government Gazette* to provide for a variation in a racing programme which may result at short notice. At present the Minister is required to give notice in the *Government Gazette* of variation to the programme. As the second reading explanation observed, this may be simply not practical on occasions because of the lack of time. The final point covered by this legislation is that, as we all know, bookmakers to field at a race meeting must be licensed by the Betting Control Board and have a permit from the Board to appear on a particular day at a particular racecourse. In other words, the Betting Control Board exercises some control over the number of bookmakers fielding on a certain day.

That is a sensible measure and ensures that the number of bookmakers will match the needs of the club on a particular day. This amendment enables the Betting Control Board to have power to revoke a permit of a bookmaker to field at a particular meeting rather than go as far as suspending a licence. It appears that the clubs themselves are not unhappy with these arrangements.

I am aware that there has been some controversy about the so-called 'phantom' race meetings; that is, the ability to conduct totalisator betting at the venue notwithstanding the fact that the races at that venue had been cancelled. I accept the second reading argument that this can occasion a loss of revenue to the State and, ultimately, to the industry. The importance of the industry to South Australia has been mentioned on many occasions on both sides of the Chamber. I am pleased to note that through the actions of both political Parties in recent years the horse, greyhound and trotting racing industries appear to be somewhat stronger than a few years ago. I support the second reading.

The Hon. R.C. DeGARIS secured the adjournment of the debate.

CANNED FRUITS MARKETING ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 24 October. Page 1411.)

The Hon. M.B. CAMERON (Leader of the Opposition): The purpose of the Bill is to extend the operation of the Canned Fruits Marketing Act, 1980, which is due to expire on 30 December 1984, for a further period of three years ending 31 December 1987, and to complement measures considered by the Commonwealth Government to be appropriate for flexibility of operation by the Australian Canned

Fruits Corporation. The principles behind this complementary Commonwealth—States scheme are of particular relevance to the social and economic structure of the Riverland of South Australia, the Goulburn Valley in Victoria and the Murrumbidgee irrigation area of New South Wales.

Unfortunately, its value to South Australia has diminished in recent years because of the very depressed state of the canned fruits industry in the Riverland. There are many reasons behind that, not the least of which is the way in which the cannery has operated since the intervention of the Development Corporation during the period of the previous Labor Government. However, that is one issue that I do not particularly want to address at length in regard to this Bill, because it is the matter that should be considered—if it is considered—in its own right.

This Bill provides for the expansion of powers and functions of the Australian Canned Fruits Corporation. The principle role of the corporation is to aid industry in adjusting to changing market circumstances, developing a corporate plan setting out its objectives including marketing strategy. The Commonwealth legislation provides for expanded powers to the corporation, enabling it to raise finance by more contemporary methods, all of which will be subject to approval by the Commonwealth Minister. The State Bill provides for substantially increased penalties for contravention of the Act, that is, $200 to $800, $1 000 to $2 000, $2 000 to $10 000 for various transgressions of the Act. The legislation has no financial implication for the States. The corporation's marketing and related costs are met from the proceeds of sale of canned fruit, while its administration and promotional costs are met by a levy on canned fruit production. The Opposition supports the Bill which is complementary legislation and which I trust will assist our very depressed canning industry, although I do not hold much faith at the moment in the future of that industry because of the problems associated with the cost structures, much of that situation being associated with the problems of the cannery in the Riverland. I support the Bill.

The Hon. J.R. CORNWALL (Minister of Health): I thank the Leader of the Opposition for his well prepared and well thought out contribution. In many ways it bore a remarkable similarity to the Minister's second reading explanation. It is clear that in this matter we have a bi-partisan approach. I can see by the nods and approbation that I am getting from the Hon. Mr Milne that the three of us, as it were, are as one. Regrettably, perhaps I do not think that there is much I can add at this stage. I urge all members for the benefit of the industry, which of course for a number of reasons is in considerable difficulty, to give the Bill a speedy passage.

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

RACING ACT AMENDMENT BILL (No. 2)

Second reading debate adjourned on motion.

(Continued from page 1549.)

The Hon. R.C. DeGARIS: I am sorry that I held up the rapid progress of this Bill that was going through almost immediately earlier this afternoon, but I thought that the Bill would be adjourned so that the Council could hear what someone else would contribute to it. I have some grave doubts about the Bill and I would like to point out those reservations to the Council. Clause 6 inserts new section 64, which provides:

> Where, due to inclement weather or any other unforeseen circumstances, a registered racing club is unable to hold races on a day and at a racecourse specified in respect of the club in a programme published under section 63, the club may, if authorised to do so by the Minister (whether by writing or orally), conduct on-course totalisator betting on that day at that racecourse on other races held within or outside Australia.

Let us consider a race meeting which is abandoned after the third race, perhaps following a sudden downpour of rain. The position is that the racing club, by cancelling or abandoning the race meeting, has a very profitable gain on its hands. It saves all the stake money allotted to the remaining races, and perhaps the horses in those races have been brought from Eyre Peninsula or the South-East. However, the whole betting process continues in relation to race meetings being held elsewhere. People attending that race meeting have already paid to get in. Is their entrance money to be refunded? They have already purchased their race books. All the money goes in to the racing club coffers, even though the club has cancelled the race meeting. The club can continue the meeting, without providing a refund to those attending, by providing a TAB service in relation to race meetings being held elsewhere.

The Hon. J.R. Cornwall interjecting:

The Hon. R.C. DeGARIS: There are two circumstances under this clause. I have been explaining the first: when one or two races have been held and the meeting is suddenly abandoned or cancelled. Under this clause betting could continue on course after such abandonment. That results in a great bonanza to the racing club because it is saving a tremendous amount of money. It has received entrance money from people who have attended the meeting, the club has sold all of its race books, and it is saving stake money allotted to the five or six races that have been abandoned or cancelled. For the club it is an effective way of saving money once it has people on the course. Leaving racing clubs to decide on abandonment is rather difficult to start with.

The next question concerns a race meeting which does not start at all and is cancelled at, say, 11.30 a.m. People have arrived at the course and have paid an entrance fee, bought their race books and suddenly the whole meeting is cancelled. Do those people receive any refund of their entrance fees? They will only be betting on the TAB or with bookmakers in relation to races being held elsewhere. Is there any refund of the nominations and the cost of transport in relation to horses attending the meeting from all around South Australia? The only people making a gain out of this situation will be the racing clubs. Will meetings be cancelled only as a result of rain? In New Zealand race meetings have been held even at a stage when rivers have been almost flowing down the racecourse.

It is not necessarily rain that can cause the cancellation of a race meeting. Will race meetings be cancelled because someone complains about the heat and its effect on the horses? Will we have races cancelled by racing clubs just so that they can continue to provide a betting service on races being held elsewhere in Australia? Those people who attend a race meeting that is cancelled will not receive a refund, and people who bring their horses to a cancelled race meeting do not have their costs refunded. The Council should examine these matters before passing this Bill in its present form.

I would like to have done a bit more work to examine this issue, but looking at the Bill quickly today I believe that the Council should have an opportunity to examine the questions I have raised. Will we see an entrance fee being charged to the TAB on a day that a race meeting is cancelled? We might as well put a turnstile on the TAB so that people have to pay when going in to bet. That is exactly what is happening in this Bill. I think the Council should examine the questions I have raised. The Minister may be able to answer them. At this stage, I oppose the Bill.

The Hon. J.R. CORNWALL (Minister of Health): I think the Hon. Mr DeGaris in this instance rather uncharacteristically does not really understand how the Bill will operate in a practical sense. This is not trail blazing legislation in any way. Phantom race meetings are conducted interstate and have been for a number of years. The circumstances under which they are conducted and the circumstances and regulations within which they are conducted are well spelt out, well understood and will apply in exactly the same way in this State.

Within the points raised by the Hon. Mr DeGaris, I think it is important to make a clear distinction between a meeting which is abandoned and a meeting which is cancelled. Currently, if a meeting is cancelled—that is, because of rain or whatever other circumstance—punters know well in advance, because a decision is usually taken by 7.30 a.m. when the stewards inspect the race track. Very often the stewards are forced to make a decision at that time; it is a fairly onerous task if the sun happens to shine within 15 minutes of a decision having been made to cancel a race meeting. Nevertheless, that is the how the system operates. It is very difficult to think of any way in which that can be improved.

If a race meeting is cancelled, punters know that it has been cancelled, they know there is little point in buying race books or in doing anything except strolling down to their local TAB. On the other hand (even though it is uncommon, it does happen), a race meeting could start and, because of heavy rain falling after the running of the first race or for some other reason, the race track deteriorates. The jockeys, as they sometimes do, could lead a deputation to the Chief Stipendiary Steward and put the point strongly that, in their opinion, the track or certain parts of it are unsafe for racing. Again, the stewards may well take the decision that the meeting should be abandoned.

Currently, if a race meeting is abandoned, the punters do not receive their admission fees back, nor do they receive a refund on their race books. It may well be that, if the racing club's insurance has covered it for certain events (including so many millimetres of rain falling between certain hours), it will indeed receive a windfall, because it will not have to pay stake moneys on those races that have been abandoned. The racing club has received admission money at the gate, it has sold all its race books and it has collected rain insurance to boot. That is a windfall gain. All that is envisaged in the Bill is that, at the discretion of the Minister of the day, whether in writing or orally—and of course acting on the best advice available to him from his or her senior advisers—permission may be given to conduct on-course totalisator betting on that day at that race course on other races held within or outside South Australia. In other words, it is literally a phantom race meeting.

There does not seem to me, to the Government or, most important of all, to the clubs anything exceptional about that. Frankly, I commend that to the Council. One of the main reasons for introducing this legislation is to allow phantom race meetings, as they are called, to occur. There are a number of other things which this Bill does, notably to allow cross-code betting. I have a particular interest in cross-code betting as one who was the unofficial advocate at least for some of the country clubs in the South-East for a number of years. I may have inherited that mantle from the Hon. Mr DeGaris; perhaps we did it in tandem for a period. There was a very strong—

The Hon. R.C. DeGaris interjecting:

The Hon. J.R. CORNWALL: Health and racing traditionally went together. Perhaps I was in a transitional phase; my financial health improved when I retired hurt. In particular, representations were made to me by a number of greyhound racing organisations in country areas of South Australia, particularly in Mount Gambier, wanting cross-code betting on Saturdays. It seemed to me that on balance that would be good for the code and the industry in the South-East. Because of the arrangement that the greyhound club had with the racing club, it was also good, at least in a small way, for the health of the Mount Gambier Racing Club.

For those reasons, I supported cross-code betting very strongly for a number of years and, indeed, the regulations ultimately were varied so that Mount Gambier, among a small number of other places around the State, was able to run meetings at which cross-code betting occurred. In other words, at the greyhounds on Saturday afternoon, people were able to bet on the gallops in Adelaide and Melbourne.

That does not seem to have had anything but a beneficial effect on the industry generally. There were some objections from the principal racing club in this State—the SAJC—initially, but, again, I would be surprised, if there is anything but a most residual opposition. Generally, I would have to say that there has been a good deal of consultation about the measures in this Bill. The clubs, generally, of the various codes support it. The bookmakers, I am told, on balance support it, and that follows a good deal of consultation. Frankly, I really cannot see any objection to what is a modest series of proposals and set of reforms that are principally based on experience in the Eastern States over a number of years. I commend the Bill to the Council.

Bill read a second time.

In Committee.

Clauses 1 to 5 passed.

Clause 6—'Repeal of ss. 63, 64 and 65 and substitution of new sections.'

The Hon. R.C. DeGARIS: I still do not agree with the Minister on this issue, and I would like the Committee to consider certain positions that I have tried to put to it in regard to this Bill. Proposed new section 64 provides:

> Where, due to inclement weather or any other unforeseen circumstances, a registered racing club is unable to hold races on a day and at a racecourse specified in respect of the club in a programme published under section 63 . . .

That means that races can begin or that the races have not begun. I understand that to mean that any meeting can be cancelled, whether abandoned or not. It is not a question of abandoning a meeting; it is a question that any race can be cancelled or that the races need not start.

Then one has the difficulty at present that, if a meeting is abandoned, the club has very little income for that day, but if one allows that club to go on betting on that day at a phantom meeting it gets a very large income. People have to pay to go in to see the races and all they have is the betting programme. The least thing that we should do is have the entrance money refunded to those people who have gone to that race meeting. I cannot see any case whereby a person can be charged to go on to bet on the TAB. That is what this Bill does, as I see it.

Will the Minister report progress at this stage to allow me to look at drafting an amendment on this Bill to cover some of those aspects? I would like to hear his argument again on whether the Bill before us should refund to people who have gone along and paid entrance money to see races and suddenly there are no races. Why should they not be refunded their entrance money on that day? I can see no reason. If it happened to anybody else that a phantom programme was put on in place of what they paid to see and there was no refund, there would be one heavy scream in regard to a refund of that entrance fee.

Secondly, in relation to a meeting that is abandoned, say, after three races have been run, the club itself loses a fair bit from betting income, but we let that club go on and get that income from gambling. Once again, they will charge the people who pay the full tote odds to go in there. Also,

people have brought horses from all parts of the State, and the club is saving stake money, not refunding even nomination fees for those horses that have come down for that race. We should examine those questions and frame some amendments to cover those areas.

The Hon. J.R. CORNWALL: I really cannot pick up the Hon. Mr DeGaris's point at all. The current situation is that once a race meeting has started betting can proceed. Even if only one race is held and the meeting has to be abandoned (not cancelled), there is no right to a refund—that is to some extent the luck of the draw—but bookmakers and the TAB can continue to operate on race meetings that are being held elsewhere.

This Bill proposes that in the event of a meeting being cancelled, for whatever reason—it would be because of rain in the overwhelming majority of cases, although it is possible to hypothesise about other situations that might arise, particularly in the country areas—the stewards make a decision at whatever time (whether 7.30 a.m. or 10.30 a.m.; in practice those decisions normally have to be taken before 8 a.m.). If they decide that the meeting should not proceed (in other words, that it should be postponed or cancelled), it is possible under this proposed amendment to the Racing Act for the Minister's discretion to be exercised and for a phantom race meeting to occur.

In those circumstances, the punters know well in advance that, if they attend the racecourse, for their admission fee they will have the use of all facilities: say, the grandstand enclosure and the significant comforts that go with those amenities in this day and age. They could attend friendly Morphettville, for example, and would have access to the very comfortable facilities—

The Hon. R.C. DeGaris: And the free beer.

The Hon. J.R. CORNWALL: And the catering facilities.

The Hon. R.C. DeGaris: Which they pay for.

The Hon. J.R. CORNWALL: Yes, but it is a pretty pleasant sort of environment. They make that decision, they make a decision to stay at home and toddle down to the TAB or they make a decision, sensibly, not to have a bet at all. They have all those options. People are not being inveigled into something by deception; it is not theft by deception and it is not a case of misleading advertising. They are told on all the radio programmes from fairly early in the morning that there will be no racing at, say, Mount Gambier, Kimba, Morphettville or Victoria Park but that a phantom race meeting will proceed.

If they wish, in their wisdom, to go along and bet on, say, the Caulfield Cup, the AJC Metropolitan or whatever feature race meeting may be taking place interstate on that day or, indeed, in the case of a country meeting in South Australia, if they wish to tramp through the mud and have a bet on a graduation race, that is their decision. Whether it is a wise or foolish decision is not a matter that should be within the purview of the Administration of the day: it is a decision that is taken freely—to go or not to go, to bet or not to bet, whether to bet on the local friendly TAB or to go to the racecourse in order, perhaps, to enjoy the friendships that one tends to strike up if one is a regular racegoer. It is as simple as that. In my view there is nothing more complex or more difficult in the proposition. Quite frankly, in the circumstances, I am very loath to report progress unless the Hon. Mr DeGaris can produce a rather better argument than he has produced to this moment.

Clause passed.

Remaining clauses (7 and 8) and title passed.

Bill read a third time and passed.

FAMILY RELATIONSHIPS ACT AMENDMENT BILL

In Committee.

(Continued from 25 October. Page 1505.)

Clause 6—'Insertion of new Part IIA.'

The Hon. PETER DUNN: I wish to defend the argument put by the Hon. Diana Laidlaw and in the light of what the Attorney-General has said I am sure that he believes that this amendment puts aside the whole Bill. Let me assure him that the amendment deals only with the retrospective passage in the Bill. We will agree to the Government's definition until March 1986, and after that we say that the matter should be considered by the Select Committee. In defence of that position, I refer to the New South Wales Law Reform Commission Report which, in relation to the definition of *de facto* relationships (section 6), states:

> As will become clear, we have not applied this definition without modifications in all areas we have examined. For example, for the purposes of our recommendations on financial adjustment, succession on intestacy and adoption, we have included an additional requirement that the parties have lived together for a minimum period.

That recommendation was picked up in Schedule I, clause 19, of the Adoption of Children Act Amendment Bill, 1984, that went before the New South Wales Parliament.

The Hon. C.J. Sumner: The New South Wales Parliament passed a Bill on this topic that has a similar clause.

The Hon. PETER DUNN: Yes, but it also used three years as the minimum period in relation to a *de facto* relationship.

The Hon. C.J. Sumner: That was for adoption.

The Hon. PETER DUNN: The provision need not be applied until after the period mentioned. The amendment adequately picks up what the Government intends but includes a sunset provision so that it is stopped at a certain point, after which time the Select Committee may make a recommendation. The Government could pick up the recommendation and adjust it. We have given considerable ground in allowing the domestic relationship to be applied until that date, because we realise that children are affected in regard to whom they can claim from or obtain maintenance from. It is quite clear that the provision stops at that time, and thereafter it can be further considered.

The Hon. K.T. GRIFFIN: This debate has been a long one over the days and weeks that the Bill has been before us, and I do not want to prolong it unnecessarily. However, I indicate that I prefer to see the children of those couples who are not married dealt with by the Select Committee and to try to find a more specific and certain definition that will enable the status of those children to be determined without what I regard as a fairly vague reference to a genuine domestic basis.

I will be supporting the amendment on the basis that it improves the Bill, but I inform the Council that, notwithstanding that, I will, when clause 5 is before us, be using that as a basis for testing my point of view that the whole area of status of children of unmarried couples is a matter that should be dealt with by the Select Committee. I am supporting this amendment because it is an improvement, but will be using another clause to vote against the whole concept of 'genuine domestic basis' being the basis for the determination of the status of children.

The Hon. I. GILFILLAN: I move to amend the Hon. Diana Laidlaw's amendment to read:

Page 2, after line 33—Insert new subsection as follows:

(1a) This part does not apply—

(a) in respect of a fertilisation procedure carried out on or after the first day of June 1986, either within or outside the State; or

(b) in respect of a child born on or after the first day of June 1986, either within or outside the State.

I have heard comments made that the Hon. Diana Laidlaw's amendment seriously impairs the Bill. The Hon. Trevor Griffin says that it improves the Bill. I do not believe that it does either. What it does is reflect the fact that members of this Council and members of the community have concern about the Bill. Added to that there is the fact that a Select Committee with significant terms of reference relative to the understanding and implementation of the procedures discussed in this Bill will, I hope, report before that time, so June 1986 will be clear of any complication of legislation that may emerge as a consequence of its findings. I have said before that I have no objection to the Bill as it stands. I will assist in its acceptance by the Council but indicate that the Council should recognise that it is a subject that is not closed by the passing of this Bill and will be subject to reconsideration. It may not be altered at all, but I feel that we owe it to the people to say that we will have another look at this matter before June 1986.

The Hon. R.I. LUCAS: I support the amendment moved by the Hon. Diana Laidlaw. I am inclined to support the further amendment just moved by the Hon. Mr Gilfillan. I do so only on the basis that it limits the scope of the Government's Bill. When we reach the appropriate clause I will oppose the whole concept of 'genuine domestic basis'. I will not go through my position again, except to say that I did propose an amendment to extend the Bill to include 'putative spouse' and that amendment was defeated. I will vote against the definition of 'genuine domestic basis'. However, I support the amendment moved by the Hon. Diana Laidlaw because it possibly limits the Government's Bill because it cuts it off at some time in the future.

The Hon. C.J. SUMNER: I support the Hon. Mr Gilfillan's amendment, but will not support the amendment moved by the Hon. Diana Laidlaw. As I have said before, there is no logic in the position taken by members opposite. There are some Bills that are suitable for the inclusion of sunset legislation, but this is not one of them. After the Select Committee has reported, and if we wish to change the law, we can introduce a Bill to amend the law. This has no different effect from having a sunset clause in the Bill. What members opposite are saying, in effect, is that the status of a child in these circumstances can be determined now, but on 1 January 1986 that status will no longer exist.

The Hon. R.C. DeGaris: It may be different.

The Hon. C.J. SUMNER: Yes, it may be different. It will only exist for those children who were born up until the present time, or until 1 January 1986.

The Hon. R.C. DeGaris: Should there be a further amendment to say that one cannot alter what has happened to those children who are taking this position now?

The Hon. C.J. SUMNER: The Hon. Mr DeGaris is an astute Parliamentarian and logician and he understands what I am saying. The whole thing is illogical and, I believe, inappropriate for this sort of legislation. We are, as I have said, only talking about the status of children; we are not talking about the broader moral issues. If, after the Select Committee reports, it is felt that there needs to be a change in the law, it can recommend that there be such a change. It can do that without the existence of a sunset clause in this legislation. I do not see the rationale of a cut off date for this kind of legislation.

The Hon. R.I. Lucas: Then why are you supporting it? Didn't you say you would support Mr Gilfillan's amendment?

The Hon. C.J. SUMNER: I said I would support the Hon. Mr Gilfillan's amendment because it slightly improves the Hon. Diana Laidlaw's amendment. However, I find the whole amendment totally unacceptable because it is not a logical exercise of the legislative process to have a sunset clause in legislation of this kind. As I said when the matter was last debated in relation to random breath testing legislation, where one is setting up an administrative procedure to deal with a particular problem, that is an appropriate case for sunset legislation. However, where one is introducing legislation to determine the status of children who are already born and one says that they will have a certain status until 1 January 1986 and that thereafter we do not know what status they will have, the whole thing is really ludicrous. The more I think about it the more ludicrous it becomes. One can also get to the point of illogicality. If one looks at the amendment as drafted, which talks about any fertilisation procedure carried out on or after 1 January 1986, or any child born on or after 1 January 1986, one sees that such children will not have any status—that is what members opposite are saying. Therefore, there could be the situation of a child who has been artificially conceived in March, who is perhaps overdue and who is born after 1 January 1986. That child has no status. However, there may be a child artificially conceived in March who is born prematurely in November or December 1985 who will have status.

The Hon. R.C. DeGaris: Not after 1 January.

The Hon. C.J. SUMNER: The Part remains in the Bill, so the children born prior to 1 January 1986 will have their status in accordance with this Bill, but any child born after that date will not have that status.

The Hon. R.C. DeGaris: But that child will lose its status.

The Hon. C.J. SUMNER: No, it will not. They are saying that the Part does not apply in respect of any procedures after 1 January 1986. The fact that it does not destroy the status of children born before 1 January 1986 does not defeat what I am saying. What the honourable member is putting in legislation is that certain children born after 1 January 1986 will have no status. What happens if another Bill is not brought back in? Some sunset legislation falls if a Bill is not brought back in, presumably because Parliament does not want it to continue any longer. To put sunset legislation in in this situation is an absurdity because you are saying that children born of these procedures up to 1 January 1986 will have status in accordance with the legislation, but at 1 January 1986 the whole thing is finished and children born after that will not have status. Then, if one introduces another Bill they may have a different status to children born before 1 January 1986.

The Hon. K.T. Griffin: That is why I have been arguing that that aspect should go to a Select Committee.

The Hon. C.J. SUMNER: The honourable member's proposition of it going to a Select Committee is somewhat more logical than the proposition we have before us. I do not accept that, because I do not think that there is any need for this aspect of the Bill to go to a Select Committee. I say again: the Bill has been before the Standing Committee of Attorneys-General for some five years and the drafting has been looked at by the committee of the Solicitors-General. They have come up with that wording in relation to the so-called *de facto* situation which has now been picked up in New South Wales and Victoria in this sort of legislation.

If an honourable member on the Select Committee wants to address the question of whether these procedures should be available to *de facto* couples, that is fine. The Select Committee can look at that and we can bring in another Bill and say that this procedure should not be available to *de facto* couples. I come back to what I said before: this Bill talks about the status of children; it does not say anything

about the moral or ethical issues that may need to be addressed by the Select Committee. In any event, this amendment is inappropriate in this sort of legislation.

Some things get into fashion, and at the moment sunset clauses in legislation are a fashion. If one does not know what to do with a problem one has a sunset clause in it. That seems to me to be what has happened there. Applying what is a perfectly legitimate and reasonable procedure in some Bills to a Bill of this kind is an absurdity. You really ought to leave it there and if you want to amend the law, you amend it by introducing another Bill in 1986.

The Hon. I. GILFILLAN: I seek leave to amend my amendment by striking out 'January' and inserting 'July'. This is unlikely to alter the significance of the amendment.

The Hon. C.J. Sumner: Why don't you say '30 September', that takes us into the next session.

The Hon. K.T. Griffin: Make it 1 July, that is 18 months. The Hon. Mr Sumner will not be in Government then, so we will have to worry about it.

The Hon. C.J. Sumner: That may well be. I am not arguing about that.

Leave granted; amendment amended.

The Hon. I. GILFILLAN: I am not sure whether the Attorney-General is muttering that he wants to go over the ground again. I do not have any dispute with the logic of what he says. It will not be the first time in the short time I have been in Parliament that we have acted illogically. The illogicality in this case is reflecting a very real concern. I am certain that little difficulty will arise from accepting this amendment. It will allay some fears, which may be quite illogical. People in the community at large do not always react with the pure logic that the Attorney-General so frequently displays, and they will judge this Bill as being a *prima facie* acceptance of these procedures being available to *de facto* couples indefinitely. That is quite illogical; I accept that; but, it is real. That is why I personally support the amendment.

The Hon. C.J. SUMNER: I put to the honourable member another question. If we are going to extend the date, and I think there was some concession from the Hon. Miss Laidlaw about it, it would be wiser to make it more realistic. There is no question that this Select Committee will be a fairly lengthy committee. The reality is that next year there will be a session of Parliament presumably in February-March and another in August-September. There may be another session the following March depending on when the election is held, that having to be held by March 1986. This means that the Government would have to bring in a Bill, probably even with 31 July the cut-off point, by this time next year. I doubt whether the Select Committee will have finished its deliberations by then, and whether we will be in a position to have a Bill ready to run the whole gamut of the Parliamentary process.

The Hon. I. Gilfillan: By next year? You mean 1985?

The Hon. C.J. SUMNER: Yes. I doubt whether the Select Committee will have reported by then.

The Hon. I. Gilfillan: Surely you are referring to 1986 because the sunset clause does not come into affect until—

The Hon. C.J. SUMNER: What I am getting at is that by the time one has the election, Parliamentary procedure—

The Hon. R.I. Lucas: A new Government; a new Attorney-General.

The Hon. C.J. SUMNER: All those things may happen. I suppose the only thing I can be assured about is that I do not have to stand for election on this occasion. I do not believe, whatever Government has to deal with the matter, that it could get to it much before the Parliamentary session in the second half of 1986. I am still not going to support the amendment. Given the complexity of the problem, that the Select Committee has very broad terms of reference (there are difficult issues to grapple with), and the sort of Parliamentary programme, I doubt that we will be able to debate anything until the latter half of 1986. Will the honourable member consider perhaps something later than 30 September 1986? Even assuming legislation was introduced in August 1986, it will still probably take two or three months to get through.

The Hon. K.T. Griffin: Notwithstanding the arguments you put, if we look to be running out of time we can easily introduce a Bill towards the end of next year.

The Hon. C.J. SUMNER: I appreciate that, but there seems to be no point in occupying Parliamentary time this time next year, because that is what we have to do.

The Hon. K.T. Griffin: That is what Parliament is all about: keeping a close watch on what is happening.

The Hon. C.J. SUMNER: I appreciate that. If there is a Select Committee sitting there seems to be little point in making it 1 July 1986 when, given that programme, it means that we will have to have amending legislation back in the Council this time next year or in March 1986. I do not believe that the Select Committee will have reported and all the process gone through by then. I am only suggesting 30 September or 31 October will be more sensible. That is the question I put to the Hon. Mr Gilfillan.

The Hon. I. GILFILLAN: I would like to have an opinion from someone in the Opposition, which has taken the matter seriously. I think that the Attorney-General has raised a valid point. The purpose of my amendment to the amendment is not to hang on the date as being the significant factor.

The Hon. K.T. GRIFFIN: One can raise all sorts of arguments for and against particular dates. I have indicated that I am willing to go along with this only to the extent that it is an improvement on the absolute position in the Bill. I approach it from a different point of view from that of the Attorney, but I suppose that we will still reach the same conclusion because in some way or another it is better than what we think we might get if we stand alone.

The Hon. C.J. Sumner: Put it off—you won't have it by 30 June, no matter what Government is in office.

The Hon. K.T. GRIFFIN: The Attorney is talking about 30 September. If a session commenced as late as this session commenced it is possible that a Bill would not even be introduced then.

The Hon. C.J. Sumner: This session commenced at the normal time.

The Hon. K.T. GRIFFIN: In August—usually it is mid July.

The Hon. C.J. Sumner: That's not true.

The Hon. K.T. GRIFFIN: Usually it is mid to late July. If it commences some time in August, then I suggest that, if the Attorney's scenario is correct (and I do not necessarily subscribe to it), there is still no guarantee that we will get amending legislation through by 30 September 1986.

The Hon. C.J. Sumner: We would be much better off making it 30 December 1986.

The Hon. K.T. GRIFFIN: We are extending it all the time. My point is that it is better to have the date as 1 July. It looks as if it is being spun out from 1 January 1986 to 1 July 1986. It is better to have that and to have some reasonable deadlines to meet rather than to keep putting it off. The Select Committee, I would have thought, has a reasonable prospect of reporting next year. If there is a deadline of 1 July 1986, the Select Committee can easily present an interim report that might address this issue. There is much flexibility within the more than 18 months given by the date of 1 July 1986. Whichever date one picks there can always be an argument that can be put for or against it. I prefer it earlier than later because I believe it

is important to have this matter established once and for all.

The Hon. I. Gilfillan's amendment to the Hon. Diana Laidlaw's amendment carried.

The Committee divided on the Hon. Diana Laidlaw's amendment as amended:

Ayes (9)—The Hons J.C. Burdett, M.B. Cameron, L.H. Davis, Peter Dunn, I. Gilfillan, K.T. Griffin (teller), C.M. Hill, R.I. Lucas, and K.L. Milne.

Noes (7)—The Hons Frank Blevins, B.A. Chatterton, J.R. Cornwall, C.W. Creedon, M.S. Feleppa, Anne Levy, and C.J. Sumner (teller).

Pairs—Ayes—The Hons Diana Laidlaw and R.J. Ritson. Noes—The Hons G.L. Bruce and Barbara Wiese.

Majority of 2 for the Ayes.

Amendment thus carried.

The CHAIRMAN: The Hon. Mr Lucas has an amendment on file to lines five to seven.

The Hon. R.I. LUCAS: This amendment follows from my putative spouse amendment, and I indicated earlier that I would not proceed with my amendment, because I lost the initial vote.

The Hon. K.T. GRIFFIN: I see a difficulty in continuing with my amendments on file. The principle that I was seeking to establish has now been overridden. The Hon. Mr Lucas moved amendments about the putative spouse. They were given priority over my amendments and were defeated. It seems that, having considered the amendments of the Hon. Diana Laidlaw, procedurally I am not in a position to move my amendments without recommitting the clause.

I propose that I do not move my amendments for the time being but that when we consider clause 5 we use that as a test case for removing 'genuine domestic basis'. If that amendment is unsuccessful, I will take the matter no further. However, if it is successful I will need to recommit clause 6 for the purpose of pursuing the principle that will be supported by the carrying of the amendment to clause 5. That is complicated but, following consultation with the Clerks, I understand that that is the proper course to follow.

Clause passed.

Clause 7—'Putative spouses'—reconsidered.

The Hon. K.T. GRIFFIN: Again, I do not propose to deal with this clause at the present time. It is really consequential upon the other matter of principle to which I have already referred in respect of clause 5.

Clause passed.

Clause 5—'Presumption as to parenthood'—reconsidered.

The Hon. K.T. GRIFFIN: As I have already indicated, it seems that this is the most appropriate clause with which to test the feeling of the Committee in relation to the removal of 'genuine domestic basis' from the Bill absolutely. That is an issue that can be picked up by the Select Committee. I was not able to debate and have that issue voted upon at an earlier stage. This clause is really consequential upon other clauses. If the Committee is happy to use this as a test clause on the proposition that I put, it will save recommitting clause 6 and going through other amendments, which probably deal more substantively with the proposal. I indicate that on that basis I oppose the clause.

I do not believe that the concept of 'genuine domestic basis' should be in the Bill. I believe that the Bill should deal with identifying the legal father, particularly of children born to a married couple as a result of IVF and AID procedures, and that children born to unmarried couples in so far as the relationship to a legal father is concerned should be considered by the Select Committee. On that matter of principle, I oppose the clause. The Hon. Mr Milne has indicated that he supports my position and will vote against the clause, if he is here, but seeks a pair if he is not, on the basis of some pre-existing commitment. The Hon. Mr Milne supports my position and to that extent I hope he will be the subject of a pair from the other side of the Chamber.

The Hon. R.I. LUCAS: I do not intend to take too much time. In essence I support what the Hon. Mr Griffin has just said; that is, I take this, too, as a test case for the question of whether the 'genuine domestic basis' concept should be included in the Bill. I strongly oppose the retention of 'genuine domestic basis' within the terms of the Bill. As I have already indicated, I took the view that I was prepared to accept (and I moved an amendment to include it in the Bill) the concept of 'putative spouse', because there is a concept of definitiveness within the definition of 'putative spouse'. In my view there is no way of knowing what on earth is meant by 'genuine domestic basis', and I will not support that concept. I oppose the clause, as the Hon. Mr Griffin has indicated, as in effect a test case on that particular concept in the Bill.

The Committee divided on the clause:

Ayes (10)—The Hons Frank Blevins, G.L. Bruce, B.A. Chatterton, J.R. Cornwall, C.W. Creedon, Peter Dunn, M.S. Feleppa, I. Gilfillan, Anne Levy, and C.J. Sumner (teller).

Noes (6)—The Hons J.C. Burdett, M.B. Cameron, L.H. Davis, K.T. Griffin (teller), C.M. Hill, and R.I. Lucas.

Pairs—Ayes—The Hons Diana Laidlaw and Barbara Wiese. Noes—The Hons K.L. Milne and R.J. Ritson.

Majority of 4 for the Ayes.

Clause thus passed.

Title.

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

After 'the guardianship of Infants Act, 1940' insert 'and the Sex Discrimination Act, 1975'.

This is really consequential on the amendments that have already been carried. Therefore, I hope that it will not be the subject of a division.

Amendment carried; title as amended passed.

Bill recommitted.

Schedule—reconsidered.

The Hon. R.C. DeGARIS: When the amendment to the schedule, relating to surrogacy arrangements, was passed I spoke and voted against it. I seek its reconsideration because I believe that the Council did not give enough consideration to the amendments relating to surrogacy. I referred, when speaking to this matter, to the case in Victoria to which considerable publicity has been given throughout Australia. I will use that case again in my opposition to this amendment. A woman and her husband were involved in an IVF programme in Melbourne. They had several embryos in refrigeration when the woman was unable to continue in the programme because of an illness. Her sister offered to accept the implantation of one of the frozen embryos and, if successful, to give the child to the genetic parents. I can see no objection to this surrogacy. However, this amendment would make this unlawful, and provides a penalty of $10 000 or two years imprisonment for any person who assists in such an impregnation.

I will illustrate the effect of this amendment. If the sister of the wife now offers, having been refused the implantation of the embryo, to have intercourse with the husband, the wife agrees, pregnancy results and the child is given to the husband and the wife following the birth, no law has been broken. If the sister accepts donor semen from the husband, inseminates herself with it, becomes pregnant and delivers the child, when born, to the husband and the wife, no law is broken. However, if the sister seeks medical help in her artificial insemination, the doctor who assists in that insemination is breaking the law and open to a penalty of $10 000 or a two year gaol term.

There are four options open, including impregnation using the embryo that is in the refrigerator; intercourse with the sister, a child being born and delivered; and artificial insemination by the sister herself. What preference will we, as members of this Council, give each of these options on the moral scale? The present position produces a rather foolish situation in which the two options that are the least moral are lawful and the two options that are more moral than the others are unlawful.

When the amendment was passed, the Hon. Dr Ritson expressed his opposition and explained that a problem existed in relation to surrogacy because of what may happen if a child is mentally deficient or deformed and no-one wants to take it—neither the surrogate mother nor the married couple. However, that applies to the lawfully accepted surrogacies that I just illustrated. That position still exists. I agree with the Hon. Dr Ritson that this problem needs to be addressed, but it is no argument to vote for an amendment that makes surrogacy unlawful only in relation to professionally assisted pregnancies by IVF or AID procedures.

The Bill as it stands, with the clause that states that the woman who gives birth to a child, even though the ovum of the pregnancy was not of her genetic origin, is legally the mother of the child, provides a difficulty in overcoming the problem that has been stated by the Hon. Dr Ritson. So far, speeches have been made on surrogacy only in relation to motherhood. What is the position regarding surrogate fatherhood? That question has not been raised. In voting for the amendment, the Hon. Ian Gilfillan took the view that we should pass the amendment because the issue can be examined in a Select Committee and, if necessary, changes made to the legislation. The Hon. Anne Levy put the view that the question should not be put to the Council because the issue will be examined by the Select Committee.

I reject both these arguments. The view put by the Hon. Anne Levy really says that no changes should be made to the Bill because we have established a Select Committee. That does not hold up: this Bill is before the Council and if it decides on certain issues of importance I would not argue that the Council should not take that action simply because a Select Committee has been appointed. The view put by the Hon. Ian Gilfillan I also reject because we are, by this amendment, creating a serious anomaly that should not be accepted, even knowing that the recommendations of a Select Committee may change it. Of the two views put by the Hon. Anne Levy and the Hon. Ian Gilfillan, I strongly support the end result that the Hon. Anne Levy advocated (that is, the defeat of the amendment), but not for the reasons she gives.

This amendment creates an anomaly that should not be created, and for that reason I ask the Committee to reconsider its decision. It is also important to realise that this Bill is an important measure. As the Attorney-General has said, the important issue at this stage is the status of children. We should be careful that we do not create difficulties or pass amendments that will put the Government in the position of not wanting to accept them and therefore being forced to drop the Bill. That would be a serious situation because important questions must be addressed and solved in regard to the status of children. I move:

That new section 47a inserted in Part I of the Schedule under the Adoption of Children Act be struck out.

The Hon. K.T. GRIFFIN: I know that the Hon. Ren DeGaris supports surrogacy.

The Hon. R.C. DeGaris: With certain conditions.

The Hon. K. T. GRIFFIN: Yes, but nevertheless he supports the general concept of surrogacy. I indicated previously that surrogacy ought not to be supported but that I was prepared to consider the matter further as the Select Committee takes evidence on this and other issues. The point I made when we first debated the clause was that surrogacy in the United Kingdom arranged by intermediaries and in the context of the so-called rent-a-womb arrangements was quite objectionable in both contexts. A surrogacy arrangement in New South Wales involved the sum of $10 000, but the surrogate mother is reported to have reviewed her decision to hand over the child at birth to the prospective parents or purchasers, and that in itself caused difficulties. I referred also to reports about four couples in Melbourne who undertook surrogacy arrangements. The Attorney-General in that State said that he believed that the contracts were not enforceable because they were contrary to public policy, but there was no specific Statute law on that subject.

I referred also to the statement made by the Minister of Health on behalf of the Government accepting the recommendations of the Connon/Kelly report that surrogacy should not be permitted and that that point ought to be put beyond doubt by an amendment to the law. The amendment that I moved, which was passed and which the Hon. Ren DeGaris seeks to remove, established as a matter of principle that any surrogacy agreement is void and has no effect, whether or not it is commercially arranged, because surrogacy takes no cognisance or account of the interests of the child (and that was the point that the Hon. Dr Ritson made when he spoke in this debate)—it takes account only of the interests of the childless couple.

It does not affect the status of the child in regard to who are the legal mother and father and that, of course, is something that, no matter what sort of arrangement is entered into, cannot be altered unless adoption procedures are instituted. What I was anxious to do was to establish a principle and, in the context of the IVF and AID programmes, to identify that a person who assisted in a fertilisation procedure in that context committed an offence, because we were focusing on those procedures in respect of the status of children under the Family Relationships Act Amendment Bill. It may be that there are other areas of surrogacy that have not been addressed in this amendment, but I do not regard that as a deficiency in the amendment.

I conceded that there were other areas that had to be addressed by the Select Committee and honourable members will remember that I moved my amendment in a different form from that which I originally had before the Committee where a penalty was imposed on the surrogate mother, and I moved it in an amended form to remove that penalty on the surrogate mother because of the potential controversy. It is an issue that has some fairly serious ramifications for the child as much as for the mother, and it can be adequately considered by the Select Committee.

Whether or not the Government decides to proceed with the Bill with this amendment in it is really a matter for the Government to consider after it has been to the House of Assembly and has come back to the Council. I do not want to presume what the Government may or may not do if the clause is left in the Bill. I believe that it is an important amendment, that it reflects a widely held view against surrogacy, notwithstanding the exceptions to which the Hon. Ren DeGaris referred, and that as a matter of principle it is important for it to be in the Bill and therefore I oppose the stand taken by the Hon. Mr DeGaris.

The Hon. C.J. SUMNER: I support the stand taken by the Hon. Mr DeGaris. I adopted my position on a previous occasion not because I considered the matter to have been resolved but basically because we felt that the law should be left as it is until the Select Committee has reported. However, I did not want to traverse the arguments again nor to bring back the matter again for another vote. However, the Hon. Mr DeGaris on the other side of the Council has decided to do that and, having placed the matter back in the arena, obviously I will support his proposition to delete

the clause that the Hon. Mr Griffin placed in the Bill to prohibit surrogacy.

However, as I said on previous occasions, that does not mean that the Government has not taken a view on it. In fact, we have taken a view on surrogacy procedures in relation to IVF procedures, although, of course, this amendment potentially goes further than that. It does not refer to surrogacy agreements just in relation to IVF procedures. It prohibits all surrogacy agreements and I think that that is where the problem arises; so, I support the Hon. Mr DeGaris.

The Hon. R.C. DeGARIS: Very briefly, I appreciate what the Hon. Trevor Griffin has said, but the main point he made that I believe should be restated is that the amendment does not in any way address the whole question of surrogacy. Surrogacies that are operating now outside the IVF programme will continue. There is nothing in the law to stop them. It does not put the issue beyond doubt and I believe that it only creates a rather foolish position that I have explained to the Committee where actions can be taken on which moralists may look and say are completely immoral and lawful, and allow things that are much more moral to become illegal, with a $10 000 fine and a two-year gaol sentence.

That is the point that I cannot support in this amendment. The best thing to do is to leave the Bill alone, let the Select Committee make its determinations, and see what happens then. I am certain that, as far as the IVF programme is concerned, we will not see any surrogacies occur. I believe that the present legislation makes us, as lawmakers, look very foolish, and those who argue strongly on certain issues are making it completely illegal, with a very heavy fine, and other things one can look on as being quite immoral are allowed and can lawfully continue. Let the Select Committee examine the whole question and bring down recommendations for approaches on this very delicate matter.

The Committee divided on the amendment:

Ayes (8)—The Hons J.C. Burdett, M.B. Cameron, L.H. Davis, Peter Dunn, I. Gilfillan, K.T. Griffin (teller), R.I. Lucas, and R.J. Ritson.

Noes (9)—The Hons G.L. Bruce, B.A. Chatterton, J.R. Cornwall, C.W. Creedon, R.C. DeGaris, M.S. Feleppa, C.M. Hill, Anne Levy, and C.J. Sumner (teller).

Pairs—Ayes—The Hons Diana Laidlaw and K.L. Milne. Noes—The Hons Frank Blevins and Barbara Wiese.

Majority of 1 for the Noes.

Amendment thus negatived; schedule as amended passed.

Bill read a third time and passed.

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

EVIDENCE ACT AMENDMENT BILL (No. 3)

In Committee.

(Continued from 23 October. Page 1347.)

Clause 2 passed.

Clause 3—'Evidence in sexual cases.'

The Hon. K.T. GRIFFIN: I raised some questions on this clause during the course of the second reading debate. The Attorney-General gave a fairly lengthy reply which incorporated some extracts from letters from the judges indicating mixed reactions to the provision of the Bill which abolishes the common law rule that judges were required to give a direction in respect of corroboration in cases relating to sexual offences. I have already indicated that the Opposition supports that provision in the Bill. We see that there will be some circumstances in which judges may decide that, in the circumstances of a particular case, the warning is necessary and that, in those circumstances, they will be able to do so.

I raised a question about the provision in new subsection (5) as to whether, for example, a court of appeal could set down some guidelines to be followed by judges or whether proposed subsection (5), when applied to the Supreme Court, for example, meant that for all time the courts could not lay down any guidelines as to circumstances in which the warning may or may not be appropriate. The Attorney-General has given a response but, with respect, it does not adequately answer the question I raised. Will he further address the question as to whether any such guideline might be encompassed within the description of rule of law or practice? If that is the case, is it intended that for all time courts of appeal should not be able to lay down guidelines for the assistance of trial judges?

The Hon. C.J. SUMNER: I would not have thought so. The situation under new subsection (5) will be the same as in any other case. If an appeal court believed that a warning should have been given, presumably the appeal court would order a new trial. I do not see any problem with an appeal court correcting the exercise of the discretion of a trial judge in laying down the sorts of principles that should apply in giving directions to juries in this or any other case. All the amending Bill does is say that it is not something that must occur as a matter of existing law or practice to warn the jury with regard to the uncorroborated evidence of the alleged victim of an offence. By removing that, it leaves the appeal court in the same position as appeal courts are now in in regard to laying down the principles on which trial judges should exercise their discretion.

The Hon. K.T. GRIFFIN: I do not intend to move an amendment to clarify that. We need to watch it in practice. If it does purport to have the effect that I have outlined, the courts of appeal will find a way around it and limit its operations, as the Attorney suggests. The other two matters raised relate to new subsection (2) with regard to when leave should be granted by the trial judge to allow questions to be asked or evidence admitted as to the alleged victim's sexual activities before or after the events of and surrounding the alleged offence. I have already indicated that I support the incorporation in subsection (2) of the principle that was missing from the earlier section 34i, that an alleged victim of sexual offences should not be subjected to unnecessary distress, humiliation or embarrassment through the asking of questions or admission of evidence of the kind referred to in that subsection; that is, subsection (1) *(b)*. However, I raise some questions about the two criteria that determine when the leave may be granted, that is, in the circumstances that the trial judge is satisfied that the evidence in respect of which leave is sought is of substantial probative value or would in the circumstances be likely materially to impair confidence in the reliability of the evidence of the alleged victim.

Of course, the overriding consideration is that the admission of the evidence is required in the interests of justice. The Attorney has said that the concept of 'substantial probative value' is akin to the Victorian and Queensland provisions. With regard to the Victorian Evidence Act of 1958, section 37a refers to 'substantial relevance to the facts in issue'. I am not sure that 'substantial relevance' is the same as 'substantial probative value', and I would like the Attorney to elaborate on whether in his view 'substantial probative value' is the same as 'substantial relevance'.

The Hon. C.J. SUMNER: I took the view that it was effectively the same. The Victorian legislation talks of 'substantial relevance', as the honourable member said. Our legislation talks of 'substantial probative value'. The introduction of evidence has to be on the basis of its relevance—if it is relevant, it has probative value.

So, I would have thought that the two concepts are similar, if not exactly the same—similar concepts expressed in different ways. I do not think that I can take the matter much further beyond saying that, in order for a matter to be put before the court, it must be relevant. If it is relevant, presumably it has some probative value. What we are saying is that before evidence of this kind is admitted a judge must be convinced that that evidence is of substantial probative value or of substantial relevance.

The Hon. K.T. GRIFFIN: I profess not to be so clear on that point, but I do not intend to move any amendment. I indicated during the second reading debate that it may be that I would move an amendment if the Attorney-General's responses were not satisfactory, in my view. I am still a little concerned about it, but perhaps the better course is to allow the provisions to go through and to watch them in practice.

Not long after the 1976 amendment to section 34i, it came under review by the Court of Criminal Appeal in a couple of cases in which the then Court of Criminal Appeal was very critical of the use of the phrase 'directly relevant', and it was as a result of those decisions that some rules were established by the Court of Criminal Appeal which would in fact interpret what Parliament had on that occasion enacted.

My major concern is to ensure that the 'principle' expressed in new subsection (2) is not so weighted in favour of the alleged victim that it tips the scales very much against the accused in the way in which the accused's innocence or guilt is considered by the court and a jury. As I indicated earlier, we really have to ensure that the basic principle of our criminal law is maintained, that is that the accused is innocent until proved guilty by the prosecution beyond reasonable doubt.

I have a fear that the way in which this new section is drafted may well prejudice that principle when there is material relevant to the facts in issue that may be excluded by the use of words such as 'substantial' and 'materially' in paragraph *(b)* of new subsection 2.

So, on that basis I am prepared not to move any amendments but merely to put my concerns on the record and watch to see if it makes any difference to the way in which justice is administered, and whether or not it adds prejudice to the position of the accused disproportionately to the benefits which flow to an alleged victim.

Clause passed.

Title passed.

Bill read a third time and passed.

NATIONAL CRIME AUTHORITY (STATE PROVISIONS) BILL

In Committee.

(Continued from 24 October. Page 1420.)

Clause 35—'Cessation of operation of Act.'

The Hon. K.T. GRIFFIN: I have two amendments which arose as a result of discussions on earlier clauses. It was arranged that the Attorney would report progress after the Committee had dealt with clause 34 so that further consideration could be given to the points that I had been making. Therefore, I will seek to have clauses 12 and 30 reconsidered.

The Hon. C.J. SUMNER: During the Committee stage the honourable member raised some questions, on which I undertook to obtain further information. One question related to clause 12, where there is reference to 'a court of the State'. The honourable member's query was whether or not that included the Industrial Court. When the honourable member raised that question, I indicated that I thought that it probably did, although I had some doubt about that because of the titles of 'President' and 'Deputy President' of the Industrial Court.

The CHAIRMAN: I draw to the Attorney's attention that he is speaking to clause 12. The Attorney is not referring to clause 35.

The Hon. C.J. SUMNER: I am responding to questions that were asked.

The CHAIRMAN: That being so we have the position of reconsidering clauses 12 and 30.

The Hon. C.J. SUMNER: Later—after I have explained the position.

The CHAIRMAN: What are you explaining, if it does not relate to clause 35?

The Hon. C.J. SUMNER: On the last occasion, when this matter was under consideration during the Committee stage of the Bill, the honourable member opposite raised a number of questions, some of which I answered, and in relation to other matters I indicated that I would seek clarification in order to bring back a reply. The honourable member indicated that, depending on my reply, he might want to move an amendment. The honourable member does wish to move an amendment, because I have told him privately what the position is. I felt that I should put on record the answers to the two concerns that were raised, not just in relation to clause 12 and the definition of 'a court of the State' but to another matter relating to the role of the Federal Court. Previously we adjourned when considering clause 35 to enable me to obtain answers to the questions that had been asked. It may well be that what I am saying is not directly relevant to clause 35. If that means that we must recommit all the clauses of the Bill, that can be done and we can go right back through it again, but that would be a waste of the time of the Committee. If the present procedure is considered to be acceptable—which I assumed it was due to what we said on the previous occasion—I suggest that we proceed: then the honourable member or I can move to recommit those clauses that are still giving him concern. I should have thought that the course that I was adopting was the most expeditious. If I must seek leave to adopt this course of action, then I will do so.

The CHAIRMAN: No, I do not think so. You are going along all right.

The Hon. C.J. SUMNER: Thank you, Mr Chairman. I have ascertained, and I think the preferred view is, that 'a court of the State' does include the Industrial Court. I understand that the honourable member will now place an amendment on file. The other query which the honourable member had, and with which I did deal, was in respect of clause 21, dealing with the power of the Federal Court in relation to certain proceedings. The situation with respect to clause 21 and the applications which have to be made thereunder, concerning failure to produce documents, being entitled to refuse to answer questions, and the like, is that the clause refers to situations where there are references from the inter-governmental committee to the National Crime Authority in relation to potential offences in more than one State. That being the case, I believe that under clause 21 it is appropriate that the Federal Court be the adjudicating authority in respect of the issues that I have raised.

If the Supreme Courts of the States were introduced in this clause I think that there would be the potential for people not to know to which court they should be applying if the reference is in more than one State, and there could be some forum shopping. That is the answer in relation to clause 21. However, the question raised by the honourable member had some broader implications, and I told him at the time that a concern similar to his had been raised by Mr N.J. Harper, the Minister for Justice and Attorney-

General in Queensland, in correspondence to the Special Minister of State, Mr Young.

Mr Harper, referring to clauses 15 and 20 of the draft Bill, noted that the powers to order the delivery of passports or issue of warrants of arrest of witnesses are limited to the Federal Court alone. He put the view forward that, if the principle of the judges of the State courts or of the Federal Court having the power to issue search warrants has been accepted both under the Commonwealth and the draft State Bills, the powers under clauses 15 and 20 should also be extended to judges of the State and Federal Courts. In other words the State courts are given some jurisdiction with respect to the issue of search warrants, and Mr Harper was saying that if they have that power surely they ought to have the power to order delivery of passports or issue of warrants for arrest of witnesses. On that point the Special Minister of State responded as follows:

> As to your suggestion that jurisdiction be given to State judges as well as Federal Court judges to deal with applications under clause 15 or 20 for orders to deliver up passports or for warrants for arrest of witnesses likely to leave Australia, it would be most unfortunate to make a change of this nature at a point when the Commonwealth has legislated and several States are about to legislate. At the meeting of Commonwealth/State officials on 7 July 1984, several suggestions were made on behalf of the States for changes in the legislation which have since been substantially implemented by the Commonwealth. However, no suggestion for a change as now proposed was then made.
>
> Time would not permit the Commonwealth to legislate this year to give effect to the proposed change, and it would be most undesirable that the State legislation on this aspect differ from that of the Commonwealth. I would therefore strongly urge that Queensland proceed with the existing provisions of the model Bill and enact this legislation as soon as possible. However, this would be on the understanding that possible extensions of jurisdiction of State courts would be considered at subsequent meetings of the committee.

That is the substance of the response that I gave in Committee previously with respect to clause 21, although it was more appropriate to clauses 15 and 20. The Commonwealth will consider the powers of State courts later. I believe, from the discussions that we had at the recent meeting of the inter-governmental committee, that that is the position that was acceptable to Queensland, or at least to the Queensland Attorney (I do not suppose that I can speak for him officially, but I think that that was the position that was accepted). In any event, it was the Commonwealth's position, and on that ground I ask the honourable member and the Council to note that response from the Special Minister of State (Hon. M.J. Young). I am happy to look at that question again later in the inter-governmental committee. Those were the only outstanding questions; however, if the honourable member has and any others, he could draw my attention to them.

The Hon. K.T. GRIFFIN: I thank the Minister for his response. Those were the outstanding issues that I raised at the time. I appreciate that in respect of my question on clause 21, which the Attorney suggested would be more appropriate on clauses 15 and 20, there may be some short-term difficulty if the South Australian Bill is different from that of the Commonwealth. On the basis of the undertaking that has been given that he will pursue this question at the inter-governmental committee level and that the Commonwealth will give further consideration to the jurisdiction of State courts under those two clauses, I am happy to leave that one as it is.

The State courts ought to be involved if the National Crime Authority is to be a truly co-operative venture. I recognise the difficulty of forum shopping, but I would have thought that there may be ways in which that can be limited. I recognise that in the context of the time that was available to the Commonwealth, in the light of an early election, it might not have been possible to fully explore all those issues and the consequences of vesting the State courts with this jurisdiction in addition to the Federal Court having that jurisdiction.

I will not address any remarks on clauses 12 and 30 at this stage; I will leave that until those clauses are reconsidered. However, I did want to indicate that I have a strong view that the State courts ought to be involved, at least on a par with the Federal Court, in the exercise of jurisdiction as conferred by the Commonwealth Bill and the State Bill.

The Hon. C.J. SUMNER: I am happy also to include consideration of clause 21 along with clauses 15 and 20 when looking at the responsibilities of State courts and without in any way being committed to a position. So, I will take what the honourable member has said into consideration when the question of the powers of State courts is raised in the inter-governmental committee.

Clause passed.

Clause 12—'Search warrants'—reconsidered.

The Hon. K.T. GRIFFIN: This picks up the question which the Attorney-General has answered and relates to the issue of search warrants. Subclause (1) provides that a member of the National Crime Authority is entitled to apply to a judge of a prescribed court for the issue of a search warrant. Subclause (11) provides that the judge of a prescribed court is to be construed as a reference to a judge of the Federal Court or a judge of a court of the State.

My question originally was whether the Industrial Court was included in that definition and, as the Attorney-General has indicated, that is the preferred view—not necessarily preferred because of the desirability of having the Industrial Court judges encompassed by the reference, but on the interpretation of their status. The issue of search warrants ought not to be within the ambit of the authority of the Industrial Court; the Industrial Court deals with workers compensation matters and other matters of an industrial nature, and no matters of a criminal nature.

It is for that reason that I do not believe it proper for the sort of authority which is to be given to the courts in respect of search warrants to be vested in the Industrial Court. The Supreme Court and the District Court are courts which traditionally and regularly exercise criminal jurisdiction. They are familiar with the question of search warrants and other rights; they are more aware of the consequences of the issue of these warrants; and I think it is more appropriate that they alone should exercise the jurisdiction conferred by clause 12.

So, although that may well make it different from the Commonwealth legislation, I do not think that that will create any problems at all. It certainly will not prejudice the action of the National Crime Authority which can apply to the Federal Court, a Supreme Court or a District Court for the issue of a search warrant. Enough judges are available for that purpose without including the Industrial Court judges, who do not normally exercise criminal jurisdiction. That is really the essence of the reason why I moved this amendment.

The Hon. C.J. SUMNER: I oppose this amendment, and I will do so through all stages. It might seem to be a small matter, but this is a uniform Bill and a model Bill; it has been prepared to give effect to the decision to establish a National Crime Authority. The State Bill has been drafted on a basis that is uniform throughout Australia whereby reference to a judge of a prescribed court is a reference to a judge of the Federal court or a judge of a court of the State: we believe that that also includes an Industrial Court judge. The fact that this is a uniform exercise and model legislation means that we should reject the amendment. It is interesting to look at the Commonwealth National Crime Authority Act, where a judge is defined as:

(a) a judge of a court created by the Parliament or of a court of a State or Territory or

(b) a person who has the same designation and status as a judge of a court created by the Parliament.

So in Commonwealth legislation the definition of 'judge' includes a judge of a court of a State or Territory, so the Commonwealth Act already includes Industrial Court judges. If the amendment is accepted, an Industrial Court judge in South Australia could exercise powers under the Commonwealth Act but not under the State Act. With respect, that is an absurd situation. I also refer honourable members to clause 14 of the State Bill, which provides:

A judge of a court of the State may perform functions conferred on the judge by section 22 or 23 of the Commonwealth Act.

Section 22 of the Commonwealth Act refers to the issue of search warrants, and section 23 refers to application by telephone for search warrants. If this amendment is passed, a State Industrial Court judge will have the authority to issue search warrants under the Commonwealth legislation but will have no such authority under the State legislation. That is clearly an absurd situation and cannot be tolerated.

I suspect that Industrial Court judges will not be called upon in this capacity, in any event, as a matter of practice. I also point out that, with respect to the issue of warrants for all sorts of things, such as warrants of commitment concerning the liberty of the subject and the like, at present they are issued by justices of the peace, not by judges at all. I do not see that an Industrial Court judge would be incapable of coming to grips with the issues involved. The plain fact is that it is in Commonwealth legislation and if we pass this amendment a judge of the State Industrial Court could exercise powers under the Commonwealth Act because he is included in the definition of a State court judge under that Act but he could not use his powers under the State legislation. A State Industrial Court judge would be able to exercise powers under the Federal legislation but not under State legislation. That is a result that is verging on the absurd, with respect to the honourable member.

This is model legislation and the amendment is utterly unacceptable. I ask the Council not to dilly dally for too long, because I assure honourable members that the Government will not accept the amendment in the House of Assembly. The Bill will come back here and, if the amendment is insisted upon, the Government will insist on its position. We will then come to an impasse in regard to a Bill of significant importance on a matter which to my mind is irrelevant.

The Hon. K.L. MILNE: My question to the Attorney-General relates to a point of clarification. Is there some difference in the status between the judges of our State courts and judges of the Industrial Court—the conciliation and arbitration court—and how significant is that difference?

The Hon. C.J. SUMNER: The status of an Industrial Court judge is similar to that of the President of the Industrial Court, or a Supreme Court judge, as he has the title of 'Mr Justice'. In fact, I think that the South Australian Industrial Conciliation and Arbitration Act, if my memory serves me correctly, lays down that the President of the Industrial Court will have the status and title of a Supreme Court judge. The Deputy Presidents of the State Industrial Court are also judges and, although they are not, as I understand it, equated in any legislation with other judges of the system, as a matter of convention, practice and emoluments, they are equated with judges of the District Court. Of course, judges of the Industrial Court also sit as presidential members of the Industrial Conciliation and Arbitration Commission. However, in so far as they are exercising their jurisdiction as part of the Industrial Court they are judges, and the President has the status and title of a judge of the Supreme Court.

The Hon. K.T. GRIFFIN: I do not like the threat that we will reach an impasse on this matter and that, therefore, we ought to bow to the dictates of Canberra. What the Attorney-General is saying is that, in fact, we have to accept this Bill he has presented, we are not allowed to amend it, if we do amend it it will create some problems, that Canberra has set it all down, anyway, and that we will reach an impasse if we do not agree. I do not believe that that approach is appropriate. I think that we are entitled, as a State Parliament, to make such changes as may be reasonable and necessary to legislation that will confer jurisdiction for State matters on a Commonwealth agency such as the National Crime Authority, and that if we, as a Parliament, decide that we will give it something different from what the Commonwealth wants it to be given then we are entitled to make that decision.

Parliament has not been consulted in any way as to what will be in the Federal Act establishing the National Crime Authority and I do not believe that we ought to be accepting it as a *fait accompli* in respect of the South Australian legislation. I agree that it is important to pass this Bill and to confer State jurisdiction, but I think that as a sovereign Parliament we have a right to make comment on it and to make changes if we believe that they are appropriate. I do not believe that it is appropriate to give judges of an industrial jurisdiction power to act as though they were judges exercising a criminal type jurisdiction. I would suspect that, when the Commonwealth drafted this Bill and when the interim intergovernmental committee or other Ministers considered it, they never contemplated that industrial courts would be issuing warrants and exercising jurisdiction under this Bill.

In fact, that was clear when I raised the question when the matter was last before the Committee. It seems to me that in not every jurisdiction will offices of industrial jurisdictions be exercising the power that this Bill gives to judges of the Industrial Court. Therefore, I persist with the amendment on the basis that it will not prejudice the operation of the National Crime Authority and that it is an appropriate amendment, notwithstanding the protests of the Attorney-General.

The Hon. K.L. MILNE: On another point of clarification, the Attorney-General said that Industrial Court judges would be on a level with District Court judges. Are District Court judges to be given powers to do these things that are necessary, the same as Supreme Court judges?

The Hon. C.J. SUMNER: Yes, they are. In reply to the Hon. Mr Griffin, I am not trying to suggest that Parliament cannot be master of its own destiny in this matter. I was keen to point out to honourable members, as a matter of practicalities, that the amendment is not acceptable to the Government. The Bill is in its final form now, and I would not have thought that an amendment over this sort of matter should get us into a deadlock situation. But, if that is the Committee's view, that is a matter for it. The substantive part of my argument is that it simply will create an absurd situation because we will have State Industrial Court judges being able to exercise jurisdiction under the Commonwealth Act, but not under the State Act. For the sake of uniformity and of not creating confusion, it would seem that, whether one is acting under the Commonwealth or the State Act, the people concerned should know where they can go and should not have to think, 'When I am looking for a warrant under a State reference I can go to the Supreme Court but not the Industrial Court,' or, 'When I am under a Commonwealth reference I can go to the Industrial Court.'

The Hon. K.T. Griffin: You can't tell me that they are as unprepared as that. If they are, they are not particularly competent lawyers.

The Hon. C.J. SUMNER: Then why have that difference? Why create this anomaly, which it clearly is? It will be an anomaly, where our State courts could exercise jurisdiction under the Commonwealth Act but not under our State Act. If the honourable member wants me to pursue the matter with the inter-governmental committee and ask the Commonwealth whether it had in mind the Federal Court judges exercising industrial jurisdiction, I am happy to do so, but I really would ask the Committee not to agree to the amendment.

The Committee divided on the amendment:

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

Noes (10)—The Hons G.L. Bruce, B.A. Chatterton, J.R. Cornwall, C.W. Creedon, M.S. Feleppa, I. Gilfillan, Anne Levy, K.L. Milne, C.J. Sumner (teller), and Barbara Wiese.

Pair—Aye—The Hon. Diana Laidlaw. No—The Hon. Frank Blevins.

Majority of 1 for the Noes.

Amendment thus negatived; clause passed.

Clause 30—'Appointment of Judge as member not to affect tenure, etc.'—reconsidered.

The Hon. K.T. GRIFFIN: I do not intend to move my amendment, as the Committee's wishes have been clearly expressed on clause 12. I would, however, ask that the Attorney-General at least obtain some clarification, as he indicated he was prepared to do on clause 12, on what jurisdictions were intended in the course of operation of this Bill.

The Hon. C.J. SUMNER: I am happy to do that. I suspect that there will be a need for some amendments to this legislation as time passes, as it is completely new legislation in the Commonwealth and in the States. As has already been foreshadowed in respect to the powers of State court judges, the Federal Special Minister of State has agreed to consider that question. There will probably be others, and I am happy to pursue the question raised by the honourable member.

Clause passed.

Title passed.

Bill read a third time and passed.

PRICES ACT AMENDMENT BILL (No. 2)

In Committee.

(Continued from 23 October. Page 1349.)

Clause 2 passed.

Clause 3—'Functions and powers of the Commissioner.'

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

Page 1, lines 19 to 26—Leave out all words in these lines and insert:

(a) by striking out from subsection (2) the passage 'the sum of five thousand dollars' and substituting the passage 'the prescribed amount';

and

(b) by inserting after subsection (2) the following subsection:

(2a) In subsection (2)—

'the prescribed amount' means—

(a) in relation to the period until the end of 1985—the amount of ten thousand dollars;

and

(b) in relation to each succeeding calendar year—the amount determined by dividing the amount of ten thousand dollars by the quarterly consumer price index number for Adelaide prepared and published by the Australian Statistician ('the consumer price index') for the quarter ending on the thirtieth day of September 1984, and multiplying the quotient so obtained by the consumer price index for the quarter ending on the thirtieth day of September in the calendar year immediately preceding the calendar year for which the amount is to be determined, and by adjusting the product to the nearest multiple of one hundred dollars.

The first thing that this clause does is in regard to the power of the Commissioner of Consumer Affairs to conduct investigations. I raised this matter in my second reading speech, but I will refer to it again briefly. At present, the Commissioner can investigate where there are (just to take the main matters, leaving aside others) consumer complaints or where he has reasonable grounds to suspect that a breach of consumer laws has occurred. I suggested that this is adequate because, in most cases where there is anything wrong, there will be a consumer complaint.

The Bill seeks to remove those limitations so that the Commissioner can investigate in any case of his own motion with or without any reason, for any reason, for no reason at all, willy-nilly, as he sees fit. The reasons that were advanced in the Minister's second reading explanation were that it may be difficult to obtain reasonable grounds until an investigation had been started and that it was necessary to monitor the situation. I do not believe these reasons are adequate. I believe it is proper that a fairly heavy handed procedure and investigation of this kind should be limited in this way. I said in my second reading speech that I have confidence in the administration of the present Minister and the present Commissioner. I can think of some previous Ministers whom I would not have liked to have had that power. I can think of some cases in the future—

The Hon. C.J. Sumner: You're not referring to yourself?

The Hon. J.C. BURDETT: No—because I had no problems. That brings me to another issue. During the three years that I was Minister, officers did not complain to me that there was any problem in this area. They did not tell me that the powers ought to be expanded and, if they were experiencing difficulty, it was their duty to say so.

However, I have every confidence in those officers and I do not believe that they fell down in their duty. I believe that the reasons just were not there. The powers are fairly Draconian: businesses which are investigated find it a very heavy burden, particularly small businesses, which find it a very oppressive burden indeed in terms of money and inconvenience.

Perhaps we should also consider the proposal to widen the powers of investigation against the background of section 49a of the Prices Act, which makes the Commissioner not liable for acts done by him in good faith, so that if he decides to investigate particular companies and this involves expense and inconvenience, as I have suggested, and it is eventually found that no case exists against a company, there is no provision for compensation, nor do I suggest there should be at the present time.

However, when we are considering the extension of the power, we must bear in mind that the Commissioner is protected, that he is not liable for acts done in good faith and that a very far reaching power indeed can be exercised. It would be possible (as I have suggested I would not expect this Administration to do it) to substantially increase the investigative staff, to send them out on investigations, hither, thither and yon, and this could be most oppressive and I believe not necessarily in the interests of consumers, but could have a great adverse effect on businesses.

The second part of the amendment relates to the present power of the Commissioner to conduct legal actions on behalf of consumers at public expense, either to institute them or to defend them. At the present time and, as contemplated by the Bill, in both cases the Commissioner must

be satisfied that it is in the public interest or otherwise proper so to do (I have never been quite sure what the 'otherwise proper' means, but that is not an issue at the present time), the consumer must consent, and the Minister must consent.

So, there were these safeguards and they remain, and I want to make that clear. However, the further limitations were that there was a monetary limit of $5 000, and land was excluded. The proposal in the Bill is to remove the monetary limit altogether and to include land. As I said in my second reading speech, this is quite contrary to our general legal system and tends to erode it. It would mean that an action for half a million dollars or as many millions of dollars as one likes could, subject to the limitations which I have mentioned (being in the public interest or otherwise proper, the consumer consenting and the Minister consenting), could be undertaken by the Commissioner on behalf of a consumer at public expense, or he could defend such an action.

In my view, there is no doubt that in larger commercial cases this is quite wrong. The ordinary procedure which has been accepted for some time is that, if one subject thinks he has a cause of action against another, he can take action in the courts with or without legal assistance. If there is something wrong in the system then that should be addressed; if there is inadequate legal aid, then that should be addressed. However, to enable a public officer (the Commissioner of Consumer Affairs) to institute such actions, even with these limitations, on behalf of consumers at the public expense seems to me to erode the ordinary system.

I have referred to the present exclusion of land provision. It is intended in the Bill to remove that exclusion so that actions in relation to the purchase of land or the proposed purchase of land will be included within this power. I ask honourable members to imagine a case where the Commissioner takes an action against a vendor on behalf of a purchaser of land. The vendor is confronted with a serious disadvantage: he has opposed to him an action undertaken by the Commissioner at the public expense, and the vendor must look to his own means to defend it. At present there are substantial remedies available to a consumer or other person in relation to the purchase of land. The consumer has considerable protections.

Of course, as I have hinted, a consumer can apply for legal aid; he can pursue a matter through the ordinary court processes; and he can obtain advice from the Real Estate Institute Public Advisory Service, which also conducts a disputes procedure through a disputes and complaints committee. The Land and Business Agents Act provides quite substantial protection for consumers when they are dealing with land; in particular, there is the cooling-off period and also section 90 statements which are required under that Act and which set out matters which a consumer needs to know.

To sum up, the amendment seeks to do two things: to retain the power of investigation as it presently exists, with a few additions where there is a consumer complaint or where there are reasonable grounds of suspicion; and, because inflation has obviously eaten into the monetary limit of $5 000, my amendment proposes to increase that to $10 000. I might add that I was told by the Bureau of Census and Statistics that, based on the amount of $5 000 set in 1977 (when the amount was last fixed), the appropriate amount now is $9 000. I have rounded that out to $10 000, and I have sought to index that against the consumer price index.

In the Minister's second reading speech—and I also adverted to this in my speech—the question was raised of a recent matter involving a financier. Sixty persons appeared to have a legitimate cause of action and needed to take action in the Supreme Court for an injunction and for declaration—some more and some less than $5 000, some who would qualify for legal aid and some who would not. The Attorney pointed out that it would be much more convenient (and no doubt it would) if the Commissioner could take one action on behalf of all those consumers. That is a particular case which may not happen again, or it might happen tomorrow. We should not fall into the trap of hard cases making bad law. I do not think this is a reason to depart from the present position. I believe the only justification for this power of the Commissioner to undertake actions at the public expense on behalf of consumers is in small cases. In cases where the amount of money is not large and where it may be unattractive for a consumer to proceed—

The Hon. C.J. Sumner: The consumer might stand to lose a lot more in a larger transaction.

The Hon. J.C. BURDETT: If I can continue with what I am saying: the only justification that I can see for the Commissioner being able to conduct actions at the public expense is in small cases where it may be very unattractive for the consumer to take legal action because of the cost situation and because of his knowing that even if he wins the amount received will be whittled away by the difference between the party and party costs and the solicitor and client costs. In such cases, where it is in the nature of a test case, or where there is some legal point of consumer law that needs to be clarified, there can be justification. But if one steps into the ordinary commercial field of large actions, it seems to me that any consumer ought to be able to make use of the ordinary procedures of the courts by taking action and by obtaining legal aid if he is not able to pay the costs involved. It is for those reasons that I have moved the amendments to clause 3.

The Hon. C.J. SUMNER: The amendments are unacceptable. Not surprisingly I do not believe that the honourable member's arguments have any validity. In any event, I think he is talking about another era. Paragraphs *(a)* and *(b)* of clause 3 seek to remove from the Act the provisions that restrict the ability of the Commissioner to undertake investigations of his own motion. In 1977 an attempt was made to make similar amendments, but that was rejected. However, since 1977 the consumer affairs function has become better understood and better respected by businesses and by the community in general. Allegations that the Commissioner would abuse his powers of investigation by harassing businesses and by becoming a super snoop have proved to be unfounded. Indeed, I might refer in aid here to an appropriate quotation from remarks made by Mr John Howard, the current Deputy Leader of the Opposition in the Federal Parliament, although I understand that he has some pretensions to higher office. I am sure that even the Hons Mr Burdett and Mr Milne would be impressed by Mr Howard's eloquence on these matters. Some years ago at a Monash economics lecture, he said:

> The demands of consumers for protection against unfair practices and bad bargains are not a passing fad. The concept that a proper level of protection should be both achieved and maintained as an essential element of market justice is now a permanent feature of the Australian business scene. It is increasingly accepted as such by responsible business organisations and is an integral part of the present Government's approach to surveillance of market place behaviour.

The Hon. J.C. Burdett: I don't see the relevance.

The Hon. C.J. SUMNER: It indicates that that aspect of consumer protection was part of the surveillance of market place behaviour referred to. As the honourable member knows, the jurisdiction of the Ombudsman has been extended to the Department of Public and Consumer Affairs, and I understand that that was suggested by the present Commissioner for Consumer Affairs. I would not have expected the Commissioner to agree to an extension of the Ombudsman's

jurisdiction over the Department of Public and Consumer Affairs had he been about to launch off on some kind of crusade against the State's businesses.

But there is that safeguard that the Ombudsman now has jurisdiction over the Department of Public and Consumer Affairs and can investigate any administrative acts that are unreasonable, unjust, oppressive or improperly discriminatory and any acts done in the exercise of a power or discretion where they are done 'for an improper purpose or on irrelevant grounds or on the taking into account of irrelevant considerations'.

So, there is authority in the Ombudsman to investigate administrative actions of the Commissioner for Consumer Affairs. More importantly—and this is fundamental to the amendments and really ought to be borne in mind by all honourable members if they are to give this amendment any serious consideration—a number of Acts in South Australia specifically provide for the Commissioner for Consumer Affairs to have their administration, including the Consumer Credit Act, Consumer Transactions Act, Fair Credit Reports Act, Residential Tenancies Act and Second-hand Motor Vehicles Act.

The Government is also proceeding with proposals, which were suggested initially under the Corcoran Government and then taken up by the Tonkin Government, to transfer the jurisdiction of various boards to the new Commercial Tribunal, so that the Tribunal exercises the judicial and quasi-judicial functions under the relevant legislation and the Commissioner exercises the administrative functions. Under these proposals the Commissioner will be responsible for the administration of, for example, the Builders Licensing Act, the Commercial and Private Agents Act and the Land and Business Agents Act. So the Commissioner is or will be responsible for a large number of Acts.

If the Commissioner is to properly administer these pieces of legislation he must undertake some monitoring role to ensure that the requirements of the legislation are being complied with. For example, he must have power to make spot checks of used car yards to ensure that dealers' books are being kept in proper form and that the correct notices are being displayed on used cars that are offered for sale. I should have thought that the Hon. Mr Burdett and the Hon. Mr Milne would consider that reasonable. Indeed, I would have expected the Hon. Mr Milne to consider it reasonable somewhat more than the Hon. Mr Burdett because the Hon. Mr Milne is an eminently reasonable man.

It would make nonsense of the Commissioner's responsibility for administration of legislation if he were not given the power to perform a monitoring role but were restricted, as the honourable member wishes to restrict him, to conducting an investigation after a complaint had been received or after he became aware that an unfair trade practice was being carried on. The Commissioner already has wide monitoring power under the Consumer Credit Act. Section 12 (1) of that Act states:

> For the purposes of ascertaining whether the provisions of this Act or the Consumer Transactions Act, 1972, are being or have been duly complied with, the Commissioner, or a person authorised in writing by the Commissioner, may at any reasonable time enter premises on which business affected by this Act or that Act is carried on, and inspect, and take extracts from, any books or documents relating to that business.

So, there is already a monitoring role under the Consumer Credit Act. That has existed for 11 years and there has never been any suggestion of the Commissioner's abusing his powers in that regard.

An honourable member interjecting:

The Hon. C.J. SUMNER: Because the powers are needed, as I have explained, in relation to other legislation. All that I am saying is that where there has been a monitoring power in the Consumer Credit Act it has not been abused. In 11 years there has never been any suggestion of the Commissioner's abusing his powers in this regard, even under the Hon. Mr Burdett as Minister.

This amendment merely seeks to make the Commissioner's general powers of investigation consistent with those that he already has under the Consumer Credit Act. How can the Commissioner monitor properly, for instance, the Second-hand Motor Vehicles Act and its compliance if he has to do it purely on complaint? One area in which the Commissioner's powers of investigation are severely restricted by the present provisions of the Prices Act is that of advertising.

Under the present Act, where the Commissioner has drawn to his attention an advertisement that seems, on the face of it, to require some sort of investigation, he is prevented from conducting such an investigation until a complaint has been received unless he suspects on reasonable grounds that excessive charges for goods or services have been made or that an unlawful or unfair trade or commercial practice has been or is being carried on, or that an infringement of a consumer's rights arising out of any transaction entered into by a consumer has occurred.

A typical example of the sort of thing that ought to be investigated is an advertisement which appeared in the *Advertiser* of Saturday 20 October 1984, which was placed by a firm that calls itself 'UP International Advertising' of Palm Springs, California. The advertisement tells people that they can earn up to $750 a week at home simply by addressing envelopes for the firm. Quite obviously, an advertisement of this kind should be investigated immediately.

The Hon. K.T. Griffin: You're not going to California to do it.

The Hon. C.J. SUMNER: However, the Commissioner would not necessarily be able to say that he 'suspects on reasonable grounds that an unlawful or unfair trade or commercial practice has been carried on'.

The Hon. K.T. Griffin: The jurisdiction doesn't extend to California.

The Hon. C.J. SUMNER: That is the typical sort of comment that one would expect from the Hon. Mr Griffin. I am putting this forward as an example.

The Hon. K.T. Griffin: It's a pretty poor one!

The Hon. C.J. SUMNER: It is an exceptionally good example. If that advertisement appeared in the paper, it may be that the Commissioner can at least make inquiries about it. However, if the honourable member is arguing the technical point about jurisdiction, so be it. If this had been put in a newspaper by a company operating in South Australia, where the Commissioner clearly had jurisdiction, he would not have any power under the current legislation to investigate that. So, what is he to do—sit back and wait until thousands of people have sent in $20 each, which is apparently what is required by this advertisement? It states:

> Your registration fee refunded: we will refund your $20 registration fee when you send us your first 100 envelopes according to our instructions.

The people have to send in their $20 on the basis that they will make up to $750 a week. Are the Hons Mr Milne, Mr Griffin or Mr Burdett saying that the Commissioner for Consumer Affairs should not take some kind of action to investigate an advertisement of that kind?

The Hon. K.L. Milne: I haven't said anything yet.

The Hon. C.J. SUMNER: No, I understand that, but I have a feeling that the honourable member might have been nobbled.

The Hon. R.I. Lucas: That's a disgraceful allegation.

The Hon. C.J. SUMNER: The Hon. Mr Burdett has just come back from over there; he just walked across the Chamber.

Members interjecting:

The CHAIRMAN: Order!

The Hon. C.M. Hill interjecting:

The Hon. C.J. SUMNER: He is un-nobbleable then. The question is whether, in a case like that, the Commissioner should sit back and wait until thousands of people have sent $20 each to the organisation and received nothing in return before he makes some inquiry about the advertisement. This would clearly be a case of attempting to lock the stable door well after the horse had bolted. The Commissioner should have power to make immediate inquiries about such an advertisement, and he may need his powers of investigation under the Prices Act in order to do so. For example, he may have to find out from the newspaper who inserted the advertisement and, if it was inserted by a local agent, ask questions of the agent about the *bona fides* of the principal. So, there is a need for some monitoring role for the Commissioner, particularly because of the broader scope and the larger number of Acts that now come within his administration. He does have, and has had for some 11 years, that power without abuse, apparently, under the consumer credit legislation.

I merely give the example again of the advertisement that I cited. Surely the powers of the Commissioner should be clear to stop people from being unscrupulously duped. Paragraph *(c)* of clause 3 seeks to remove the monetary limit on the Commissioner's powers to represent consumers in legal proceedings. There are already provisions in section 18a (2) of the Prices Act that limit the ability of the Commissioner to represent consumers in legal proceedings. The Commissioner must be satisfied that there is a cause of action and that it is 'in the public interest or proper' for him to make use of the power. The consent of the Minister is required, and this consent may be given subject to conditions.

These restrictions might be supported on the ground that the provisions should not be used simply as a substitute for legal aid. That is agreed: there is no question about that. However, there is no logical justification for imposing a limit of $5 000 on the sum involved in such proceedings. Apart from anything else, it is sometimes difficult to quantify the sum involved in legal proceedings. For example, where an injunction is sought to restrain a party from taking particular action, no monetary claim is involved, and it is difficult to determine whether or not this restriction should apply. However, if the Commissioner is to have power to represent consumers in legal proceedings, surely it is even more important that he be able to do so in cases where a substantial amount is involved and where much more is at stake as far as the consumer is concerned. The mere fact that a large amount of money is involved does not mean that the consumer is in a better financial position in regard to his ability to afford normal legal representation. I would have thought that that was clear.

The case of Action Home Loans Pty Ltd is a case in point. Most of the transactions that the Commissioner is presently investigating involved amounts greater than $5 000. It may be necessary for South Australian consumers to seek a declaration from the Supreme Court as to their contractual rights under the Consumer Credit Act and an injunction restraining the company or its liquidators from enforcing the contract otherwise than in accordance with those rights. Many of the people involved cannot afford a solicitor, although some of them may not qualify for legal aid. It is just too glib to say that people can trot off to the Legal Services Commission and get legal aid, because they might not qualify, although they might not have large amounts of money. In such cases, the consumer's own home is at stake.

As far as legal proceedings are concerned, similar questions will fall for decision in each case, and it seems ridiculous that the Commissioner is not able to represent the consumers collectively in these proceedings. I can only emphasise that point to the Council. There should be no doubt about the effect of the rejection of this Bill.

The Hon. J.C. Burdett: Who said we will reject it? I supported it.

The Hon. C.J. SUMNER: It is a funny kind of support. The honourable member supports the Bill in order to emasculate it.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: There is not an unreasonable extension of the Commissioner's powers and, if the honourable member suggests the contrary, he does not understand what is in the Bill. I am quite happy to write to the 60 people who were caught by what the Commissioner for Consumer Affairs called the greatest loan shark operation in South Australia under Action Home Loans. The Commissioner, on behalf of those people, wants to go to the Supreme Court to get a declaration as to whether the Consumer Credit Act covers them and to ascertain their rights and obligations to repay interest and the like in regard to loans taken out. I would have thought that this sort of case is exactly where the public interest required that the Commissioner should act, irrespective of the individual amounts involved.

I am quite happy to write to the 60-odd people who apparently were caught up by this unscrupulous operator and say that the Commissioner will not be able to act for them because the Parliament did not approve amendments to the legislation giving him that power. It is outrageous that these people could be left lamenting. Many of them are not particularly well off, and the Hon. Mr Burdett is suggesting that, if cases come under a certain monetary limit in terms of the amount borrowed, the Commissioner for Consumer Affairs should not be able to act.

That is a patent absurdity. People not particularly well off, such as pensioners, may have borrowed money—they may well have borrowed the money to put an addition on their small house—but, because they borrowed more than the $5 000, or the adjusted figure, the Hon. Mr Burdett (in the case where the public interest demands it, such as the Action Home Loans case) is saying to those people, 'No, you have no right.'

The Hon. J.C. Burdett: I did not, actually; I said $10 000.

The Hon. C.J. SUMNER: Or the amount that is adjusted.

The Hon. J.C. Burdett: I did not say $5 000. You've got it wrong. You haven't read the amendment.

The Hon. C.J. SUMNER: The figure of $5 000 is the amount at the moment, or the amount that the Hon. Mr Burdett suggests.

The Hon. J.C. Burdett: Well, I wish you'd use that amount.

The Hon. C.J. SUMNER: All right, $10 000; it does not make any difference to my argument at all.

The Hon. Peter Dunn interjecting:

The Hon. C.J. SUMNER: I will put the argument to the Hon. Mr Dunn. He is a sensible person—all right? He would know in Kimba (and I am sure that you would, too, Mr Chairman) some people who are not particularly well off. They may be working people on average weekly earnings. They are not people who are well off. They may borrow the sum of—just to satisfy the Hon. Mr Burdett—$15 000. Say that that money is borrowed from a group such as Action Home Loans where the interest rates are high, where that group has not complied with the law of South Australia, and there is an entire category of people who are caught up in that: the Hon. Mr Burdett wants to say, 'No, you cannot be represented in any circumstances by the Commissioner for Consumer Affairs.'

The Hon. J.C. Burdett: But you can take your own action. You can get legal aid.

The Hon. C.J. SUMNER: You cannot get legal aid.

The Hon. J.C. Burdett: You can.

The Hon. C.J. SUMNER: If you are on average weekly earnings, Mr Burdett, you cannot get legal aid.

The Hon. J.C. Burdett: Otherwise you take your own action.

The Hon. C.J. SUMNER: Then you take your own action. What is the justice in that?

The Hon. J.C. Burdett: That's the ordinary case.

The Hon. C.J. SUMNER: That is the ordinary case. All I am saying to the Hon. Mr Burdett and other members is that the amount of money that is borrowed surely ought not to be the determining factor in deciding whether the Commissioner in the public interest can take a case on behalf of consumers. That is nonsense. As I said, there may be pensioners who borrow $10 001. There may be people on average weekly earnings or less who borrow $15 000 to add some additions to their house and who will perhaps pay it back over 20 or 30 years. They get caught in a situation where the company that has lent them the money has not obeyed the consumer credit legislation, and there may be a category of people in that situation as there is with Action Home Loans. The Hon. Mr Burdett is saying—and allow me to proceed with the absurdity of the situation—that there may be a millionaire who borrowed $9 500 from the same company and who is entitled to representation under the Hon. Mr Burdett's proposition. How absurd can one get? That is clear. It may well be a matter of public interest where it needs determining.

The Hon. R.I. Lucas: Come on—he can't afford his own lawyer but he's a millionaire.

The Hon. C.J. SUMNER: But that is the absurdity of the honourable member's proposition.

The Hon. J.C. Burdett: I think it's your absurdity.

The Hon. C.J. SUMNER: It is not. It is the absurdity of making a monetary limit, because theoretically someone with plenty of money who borrowed only $9 900 would be entitled to representation potentially. A poorer person—

The Hon. J.C. Burdett: So what?

The Hon. C.J. SUMNER: He says, 'So what?' A poorer person, someone on average weekly earnings or less or a pensioner who happened to borrow $10 100, would not be entitled to representation. Where is the justice in that? There is no justice or logic.

What I am saying is that setting that monetary limit is potentially unfair. Paragraph *(d)* of clause 3 of the amending Bill seeks to remove the restriction that the Commissioner shall not represent a consumer in legal proceedings to which the consumer is a party 'in his capacity as a purchaser or prospective purchaser of land'. The same arguments apply here as those that I have just outlined in relation to paragraph *(c)*. There is absolutely no logical justification for this section. The definition of 'consumer' under the Prices Act includes a purchaser or prospective purchaser of land. Where such a consumer becomes involved in legal proceedings, and where the other conditions of section 18a (2) are satisfied, there is no logical reason why the Commissioner should not represent the consumer in those proceedings.

In fact, it is arguable that there is even more reason for the Commissioner to represent the consumer in such proceedings than in proceedings involving a different type of transaction where far less is likely to be involved. That is another aspect of the argument that I have just put. To the ordinary person in the community, the purchase of land and the outlay of money for land is probably the largest commitment they will make. That being the case, why should the determining factor be a certain monetary limit or the fact that that money is being paid out for the purchase of land. Surely it is logical that the capacity to represent should be there if the public interest demands it. The other qualifications I have outlined already exist.

As I said before, a pensioner, or a person on average weekly earnings or less, might make a substantial commitment for a house, which for them is a major outlay of funds, yet the Hon. Mr Burdett is saying that those people should be denied legal representation just because land is involved or the amount of money involved in the loan transaction is over $10 000. That has no justice to it whatsoever, so I ask the Council to reject the amendments.

The Hon. J.C. BURDETT: I will be very brief, because I dealt previously with most of the Minister's objections to my amendment. In relation to my alleged nobbling of the Hon. Mr Milne, honourable members will see that he has on file an amendment to my amendment. When I spoke to him we simply arranged who would speak next following the Minister's interminable speech—that was all. In relation to the quotation from John Howard, one could use that either way. His quotation applies to the law as it is, as it will be after the Bill is passed, if it is passed, and to the law if the Bill is passed after amendment. The Ombudsman was mentioned in the Minister's second reading explanation. If the Ombudsman's powers of investigation are extended it is true that he will be able to investigate the administrative acts of the Department of Public and Consumer Affairs, as he can now and as he has been able to do for some time. But, he will have to investigate any question of the Commissioner using his investigative powers having regard to the law. If the law is changed to remove limitations, I do not think that that will be very much of a protection for businesses that are oppressively investigated.

I thought that the argument relating to second-hand cars was a very weak one. There has been no problem here: inspectors have inspected second-hand car yards and no problem has been raised. Section 16 of the Second-hand Motor Vehicles Act gives very wide powers to the Board, including the power to require the production of books and all sorts of things of that kind. During the period when the Liberal Party was in Government there were discussions over a long period of time about amending the Second-hand Motor Vehicles Act.

Any suggestion of there not being sufficient powers of investigation certainly was not raised at that time. After we lost Government I introduced the Bill that had been prepared as a private member's Bill. The Government introduced another Bill that took into account some matters that had apparently arisen in the meantime. The Government's Bill proceeded and passed with the Opposition's support. It was not suggested at that time that there was any problem with investigations in the area of secondhand motor vehicles.

As to advertisements, the example that the Attorney-General gave seemed to indicate that reasonable grounds for suspicion existed in any event. The Attorney has said that he is quite happy to write to the 60-odd people in regard to Action home loans to tell them that the Parliament has prevented the Commissioner of Consumer Affairs from taking action on their behalf. If he does do so, I hope he will have the courtesy to give me their names so that I can also write to them also.

The Hon. K.L. MILNE: I move:

Leave out paragraphs *(a)* and *(b)* of the Hon. J.C. Burdett's amendment to clause 3, page 1, and insert paragraphs as follows:

(a) by striking out from subsection (2) the passage ', where the amount claimed or involved in any case does not exceed the sum of five thousand dollars,'; and

(b) by striking out subsection (3a) and substituting the following subsections:

(3a) The Commissioner shall not institute or defend or assume the conduct of any proceedings on behalf of a consumer pursuant to subsection (2) where the proceedings involve a monetary claim that exceeds the prescribed amount.

(3b) In subsection (3a)—
'the prescribed amount' means—
(a) in relation to the period until the end of 1985—
(i) where the consumer is or is to be a party to proceedings in his capacity as a purchaser or prospective purchaser or a mortgagor of land upon which he resides or intends to reside—the amount of $75 000 or
(ii) in any other case—the amount of $20 000;
and
(b) in relation to each succeeding calendar year in a case referred to in subparagraph (i) or (ii) of paragraph (a)—the amount determined by dividing the amount referred to in that subparagraph by the quarterly consumer price index number for Adelaide prepared and published by the Australian Statistician ('the consumer price index') for the quarter ending on 30 September 1984, and multiplying the quotient so obtained by the consumer price index for the quarter ending on 30 September in the calendar year immediately preceding the calendar year for which the amount is to be determined, and by adjusting the product to the nearest multiple of one hundred.

I seek to amend the Hon. Mr Burdett's amendment. I believe he has the principle right but the figures wrong. I am in substantial agreement with what he said when explaining his amendment. He knows the area well, having been the Minister. He covered the situation as I would like to have done had I had his experience. I do not propose to repeat it. I also have a high regard for what the Attorney-General said as I know what he feels and means. We have a difference of opinion as to how far the Department of Consumer Affairs should take over the duties of the legal profession and the legal system as we know it. It is a dilemma and we will have differences of opinion on it.

I am attempting to arrive at figures so that a consumer taking up a case possibly with legal aid will find it worth their while to do so, despite whatever expenses they may have. The question of the car sale yards is a difficult case and not an argument related to the matter we are debating. The inspection of windscreens is a simple matter undertaken by mutual arrangement with the inspectors who drop in when they are passing. They have a look and go out again. The inspection of car sale yard books is relatively simple and is set out in a certain manner by law. It is not difficult to ascertain whether or not books are being kept in the required manner. If the car sales people know that is going to happen they can take evasive action.

The example of the advertisement stating that $750 per week can be earnt by addressing envelopes is a shocker. It is an exceptionally bad case but one cannot make good laws from exceptions. However, it indicates that there may be some need to introduce a new clause for a procedure to be used in special cases of this nature. I can see that occasionally a blatant, obvious dreadful case will become known either very quickly or later.

There should be some machinery perhaps where the Commissioner can say to the Minister, to the Executive or someone that action should be taken at once and a decision can be made. I do not object to that, but I do object to opening the flood gates and saying to every business that inspectors can walk in at any time they like. What sort of country would we live in? The odd bad case that we have does not justify constant monitoring. What does constant monitoring mean? It does not mean walking past some business—it means going in, and doing something and interfering.

The Hon. Peter Dunn: Peeping over your shoulder.

The Hon. K.L. MILNE: Of course. Monitoring also indicates a lack of confidence in the whole business community when, in fact, only a small minority cause trouble—the Commissioner told me that himself. Therefore, I do not think it fair to place the majority at risk of being unfairly investigated. Unless one has run a small business one does not know what it is to have someone investigating one's books. As chartered accountants in practice we had investigators at one time in the office looking not at our books but at those of someone they considered was being dishonest. The investigation went on for days and days. It did not affect the firm so much, but it did affect the space available, the telephone access and all sorts of other things.

The Hon. C.J. Sumner: What was the result?

The Hon. K.L. MILNE: Nothing, but a great deal of inconvenience. What they thought was happening was not happening. We have to go back a step or two and make up our minds as to what the Department of Public and Consumer Affairs is all about. If one likes to take a broad view of what the object of the Department is, one could conclude that the Department could take over the whole State. We are all consumers and producers of goods and services. All of us would be beholden to the Department of Public and Consumer Affairs. We would almost need permission to clean our teeth. It could go on forever. We have to stop somewhere. Wherever we stop, someone will be affected where it is not quite fair, but I do not believe for one moment that the Department of Public and Consumer Affairs was ever meant to monitor every business. I do not believe it was meant to be another branch of legal aid. It is bad to even suggest that that is what it would be. The Attorney knows what I mean.

As the Bill stands now and as people get to know that the Department will take up their case legally no matter what they do, it will become exactly a branch of the legal aid authority. I do not believe that people realise, unless they have been in business, what an investigation means. I have seen investigators in the premises of small businesses and the investigations are most oppressive. People are nervous and cannot go on with their normal work; people have to answer questions all the time and produce books; they have to produce more information and answer more questions; if they travel a lot they cannot do it or it is restrictive; and altogether it is a horrible business.

Everyone in this Council and all political Parties keep on saying that they have an allegiance to and an understanding of small business. Yet, we keep on passing legislation which is a confounded nuisance to small business and when it is unnecessary I think that is reprehensible.

I have the utmost confidence in the present Minister—I have said it on many occasions in relation to other matters—and I have the same confidence in the present Commissioner. However, we have to look further ahead than that: personnel change and we have to realise there could come a time, when in a certain atmosphere or with certain personalities, this matter would be abused, even if it were simply through lack of control of staff. If someone is given the right to walk into a business, they one only have to say, 'I do not like the look of that guy or that woman. I think they are doing something funny' and they can go in. That is a ridiculous situation in a democracy such as ours and an especially ridiculous situation in South Australia. Even if it is done in other States, it is one of the things that we ought to avoid doing here. If we are not careful, we will legislate to allow the Commissioner to enter premises on a rumour—perhaps a malicious rumour. I repeat that it is more and more difficult for small businesses to trade successfully and I do not see any sense, without very good reason, in putting more difficulties in their way.

My amendment deals with the matter of land purchases. In doing so, I am thinking of the engaged couple, (the young couple saving up to buy a home before they get married) or the young married couple who are dealing in land for the first time. Now, there are traps in that: we all know that. I am asking the Committee to agree to introducing this concept for the purchase of either land for a residence or a house for a residence (it may not be the first residence; it may be the second, but it is for a residence). I had in mind first of all up to $25 000 and then $ 50 000, and that really would not get much. However, $75 000 would be a fair figure according to my information from the press and from my real estate experience.

I am asking the Hon. Mr Burdett to increase the sum of $10 000 to $20 000 for other transactions, and that the sums of $20 000 and $75 000 be indexed in the same manner as he had suggested earlier; that would be helpful. So, perhaps I should leave it at that. The explanation of the first amendment was a good one. I hope that I have explained reasonably well why I would like to change the figures and introduce the question of a residence. I ask the Committee to support it.

The Hon. K.T. GRIFFIN: Of course, in relation to land (as the Hon. John Burdett has indicated) there are already quite substantial safeguards in the Land and Business Agents Act which are designed to deal with the very question that the Hon. Lance Milne has raised, but that is a comment really in passing.

What I want to focus attention on are the powers of the Commissioner for Consumer Affairs because what the Government is seeking to do is to extend quite significantly the powers of a Government official to enter premises, obtain information and, in some circumstances, to take over legal proceedings on behalf of a member of the community and to prosecute those proceedings.

They are very wide powers to give to such a Government official. I suppose to a very large extent that distinguishes the Labor Government from a Liberal Government in the sense that a Labor Government is very much more interventionist than a Liberal Government. In the context of the powers of the Commissioner for Consumer Affairs to take over legal proceedings, I think it is important to reflect for a few moments on the extent of the power under section 18a (2) of the Prices Act, as follows:

> The Commissioner may, upon being satisfied that there is a cause of action and that it is in the public interest or proper so to do, on behalf of any consumer, institute legal proceedings against any other person or defend any proceedings brought against the consumer—

and then there are some words inserted by Act No. 49 of 1977—

> where the amount claimed or involved in any case does not exceed [a specific sum], with a view to enforcing or protecting the rights of the consumer in relation to any infringement or suspected infringement by that other person of those rights or of any of the provisions of this Act or other law relating to the interests of consumers.

It is important to note in that subsection the Commissioner can intervene on the basis that it is in the public interest to do so, or for any other reason that he regards as proper. That is not defined, but in my view that is a very much broader ambit to the section than the ambit so far given to it by the Attorney-General. Subsection (3) provides:

> The Commissioner shall not institute or defend or assume conduct of any proceedings . . . without first—
>
> *(a)* obtaining the written consent of the consumer which once given shall be irrevocable except with the consent of the Commissioner;
>
> and
>
> *(b)* obtaining the written consent of the Minister which may be given subject to such conditions as the Minister thinks fit.

So, there is some Ministerial control. Once the consumer has said to the Commissioner, 'Well, all right, you have persuaded me that you ought to be able to take it over, I will do that', the consumer has no rights to recover the conduct of the proceedings, however they may be conducted by the Commissioner, and resume control of them. That is relevant in the context of subsection (4), which provides:

> In relation to any proceedings referred to in subsection (3) of this section, the following provisions shall apply—
>
> *(a)* the Commissioner shall, on behalf of the consumer, have in all respects the same rights in and control over the proceedings, including the right to settle any action or part of any action, as the consumer would have had in the conduct of those proceedings;
>
> *(b)* the Commissioner may, without consulting or seeking the consent of the consumer, conduct the proceedings in such manner as the Commissioner thinks appropriate and proper;
>
> (*b*1) in the case of proceedings already commenced by or against the consumer, the court hearing the proceedings shall, on the application of the Commissioner, order that the Commissioner be substituted for the consumer as a party to the proceedings and may make such other orders or give such other directions in that behalf as it thinks fit;
>
> *(c)* any moneys (excluding costs) recovered by the Commissioner shall belong and be paid to the consumer without deduction and any amount awarded against the consumer shall be paid by and recoverable from the consumer, but in all cases the costs of the proceedings shall be borne by or paid to and retained by the Commissioner as the case may require;
>
> and
>
> *(d)* if any party to the proceedings files a counter-claim, or if the consumer on whose behalf the proceedings are being defended is entitled to file a counter-claim, and that counter-claim is not related to the cause of action and in no way relates to the interests of the consumer as a consumer, the court hearing the proceedings shall, on the application of the Commissioner, order that the counter-claim be heard separately and that the consumer be a party to the counter-claim in his own right and may make such other orders or give such directions in that behalf as it thinks fit.

A number of aspects of that cause concern, because under paragraph *(c)* of subsection (4) if judgment is awarded against the consumer it is the consumer who carries the can. It does not matter how the Commissioner has conducted the proceedings—the consumer has no recourse against the Commissioner at all. Even if the Commissioner has quite irresponsibly continued those proceedings and has refused to settle them, perhaps regarding it as a test case, in those circumstances the consumer is left out on a limb and, far from representing the interests of the consumer, the Commissioner would have sold him down the drain. I think that that is a matter of concern.

Although I was not in Parliament at the time when that provision was enacted in 1977, I can remember quite clearly making representations to members of Parliament at the time drawing attention to the very wide powers of the Commissioner to run the proceedings as he saw fit without any reference to the consumer at all, regardless of how the proceedings may be progressing and what the likely outcome may be. Even if the consumer wanted to settle, the Commissioner was not obliged to settle, and was not liable for negligence or in any other way liable to the consumer for the way that a case turned out. I think that that is a very serious defect in subsection (4).

The other defect is in relation to counterclaims. The Attorney-General would know that in the context of litigation it is sometimes a good thing to have a counterclaim resolved at the same time as the claim is resolved, because often one can be set off against the other. But in the context of where the counterclaim is not related to the cause of action, and where it in no way relates to the interests of a consumer as a consumer then the court, on the application of the Com-

missioner, without any reference to the consumer, may order that the counterclaim be heard separately, and that means, of course, that the consumer is left out on a limb to take proceedings on that counterclaim separately from the proceedings being conducted by the Commissioner on the consumer's behalf.

There are problems with those two provisions in the Act. The proposed Bill will give even wider power to the Commissioner to take over proceedings in relation to any land transaction or any other consumer transaction, regardless of its limit, the means of the consumer or necessarily the merits of the case. The Attorney has said that it may be that it is a matter of public interest for the Commissioner to take over proceedings, and he may be able to persuade the consumer to do that in the first instance, but it is quite possible that the consumer will subsequently regret that course of action, and in those circumstances the consumer has no power at all. Thereafter it is a matter run by a Government official on the basis of sponsorship out of Government funds. I think that that is another problem: where, in the normal course of litigation, because of the commercial realities of the litigation and the weaknesses or strengths on both sides, it may be good sense and in the interests of the parties to settle the matter. Now, the Commissioner, with all the Government resources behind him or her, is certainly in a much stronger position *vis-a-vis* the other litigant and may well be tempted to use the resources of Government to continue to pursue the matter to a final decision, notwithstanding that the consumer may want to settle.

In those circumstances, again, it is wrong that the Commissioner should have that wide power. The Government's Bill will extend that power even further. That can result in just as much injustice to a litigant as it can justice, and it can mean that the consumer and the other party to the litigation are both oppressed rather than relieved from the concerns of the litigation.

I am disappointed that the Hon. Lance Milne seeks to include land in his amendment because I do not believe that it is appropriate for the Commissioner to have any jurisdiction in relation to litigation involving land claims. As I said, the Land and Business Agents Act already imports a number of provisions that are in favour of the purchaser rather than the vendor, proper disclosures have to be made, and liability attaches to agents if wrong information is given. To import the Commissioner for Consumer Affairs into this is wrong in principle. For those reasons, therefore, I express concern about both the Government Bill and the Hon. Lance Milne's amendment and will certainly most strongly support the amendment moved by the Hon. John Burdett.

The Hon. K.L. Milne's amendment to the Hon. J.C. Burdett's amendment carried.

The Committee divided on the Hon. J.C. Burdett's amendment as amended:

Ayes (11)—The Hons. J.C. Burdett (teller), M.B. Cameron, L.H. Davis, R.C. DeGaris, Peter Dunn, I. Gilfillan, K.T. Griffin, C.M. Hill, R.I. Lucas, K.L. Milne, and R.J. Ritson.

Noes (8)—The Hons Frank Blevins, G.L. Bruce, B.A. Chatterton, J.R. Cornwall, C.W. Creedon, M.S. Feleppa, Anne Levy, and C.J. Sumner (teller).

Pair—Aye—The Hon. Diana Laidlaw. No—The Hon. Barbara Wiese.

Majority of 3 for the Ayes.

Amendment thus carried; Clause as amended passed.

Title passed.

Bill read a third time and passed.

MAGISTRATES ACT AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 23 October. Page 1312.)

The Hon. K.T. GRIFFIN: The Opposition supports the Bill. It is a relatively minor piece of legislation, but it is designed to deal with a couple of difficulties to which the Attorney-General referred in his second reading explanation. The first is in respect of the removal from a position of supervising magistrate of a magistrate appointed to that position. Apparently under the Magistrates Act, which was passed late last year, there is no power to remove a magistrate appointed as a supervising magistrate. Certainly, that difficulty ought to be overcome.

The second amendment merely recognises that some magistrates perform special duties as directed by the Chief Justice with the concurrence of the Attorney-General, and for that extra work at least there ought to be the provision for extra remuneration as may be determined by the Governor, although I do not necessarily agree that there ought in fact to be paid an additional sum. However, I am happy to facilitate the Attorney-General's desire to have some provision included in the Bill that will enable that to be paid if that is deemed to be desirable. Under section 6 of the Act, the Chief Magistrate, the Deputy Chief Magistrate and the supervising magistrates shall be appointed by the Governor on the nomination of the Attorney-General.

The amendment provides that the appointment of the supervising magistrate who is no longer required to carry out the duties of that office may, with the approval of the Chief Justice, be revoked by the Attorney-General without affecting his office as stipendiary magistrate. Other provisions of the Bill deal with the removal from office of a stipendiary magistrate. In Committee I will move an amendment to clause 2, because it seems to me that, if the Governor makes the appointment, the Governor ought to revoke it.

I do not believe it is proper for an appointment that is made by the Governor to be revoked by the Attorney-General. However, in the context of the Magistrates Act (about which I raised questions in the debate on that Act) I can see the desirability of, and some good reason for, the Chief Justice having to approve the removal from office of a supervising magistrate. Otherwise, whether the Attorney-General or the Government removes the magistrate from office, it may be suggested that the Government or the Attorney-General of the day is using the removal from office of a supervising magistrate as a political tool or a tool with which to influence the magistracy. I can see that that is undesirable. I certainly support any removal of the appointment as supervising magistrate being with the approval of the Chief Justice as a check on the use of that power.

However, I strongly urge the Attorney-General to accept a principle that has generally been accepted in legislation, that is, where a person appoints another to an office, that person ought also to have the power of removal and ought to exercise that power of removal. That is probably expressed most clearly in respect of appointments to statutory boards. Such appointments are made by the Governor, perhaps on the recommendation of Ministers, and removal from office is by the Governor, if certain conditions precedent are met. The removal of a member of a board is done not by a Government or a Minister but by the Governor, who appointed him to that position. Apart from that amendment, I am prepared to support the Bill, because I can see that it is essentially a matter of tidying up several omissions from the principal Act. I support the second reading.

Bill read a second time.

In Committee.

Clause 1 passed.

Clause 2—'Appointment to administrative offices in the magistracy.'

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

Page 1, line 19—Leave out 'Attorney-General' and insert 'Governor'.

Where a supervising magistrate is no longer required to carry out the duties of that office, his appointment to that office may, with the approval of the Chief Justice, be revoked by the Governor, the office holder who in fact made the original appointment. I have already explained the amendment in detail.

I have indicated (and I repeat this for the benefit of members who perhaps were not here when we dealt with it earlier) that, generally speaking, if the Governor appoints, the Governor should revoke the appointment. I think that that is generally a principle that is accepted in most legislation. There may be some checks or balances included in the revocation: for example, in respect of revocation of appointments to boards, it is on the basis of dishonourable conduct, inability to carry out adequately the duties and functions required, death or whatever. They are usually grounds that are taken into consideration by the Government, for example, in removing a person from a statutory board; so, in that context and to maintain that consistency I would urge the Attorney-General to support this amendment.

The Hon. C.J. SUMNER: The amendment is really there for flexibility to enable people to be appointed supervising magistrates when they are in fact doing work that requires them to have that title and the extra emoluments, so I do not think it is completely akin to the situation of the Governor removing someone from statutory office.

The Hon. K.T. Griffin: Except that the Governor makes the appointment.

The Hon. C.J. SUMNER: I agree with that and I will come to that in a moment. It is not really analogous, in my view, with removing someone from a statutory office because one is not removing the magistrate, under this proposal at least, from a position of stipendiary magistrate completely, although there are provisions for doing that, of course, which involve the Governor in other parts of the Act. All that the honourable member is doing under this amendment is providing for the promotion or designation of someone as a supervising magistrate when they are carrying out the duties that require that designation and the additional salary, and it is not a matter of dismissing them completely from the magistracy: it is a matter of removing them from the position of supervising magistrate when their being appointed to that position is no longer justified and it is to be done with the approval of the Chief Justice. Therefore, it was considered (and I think that the Chief Justice was happy with this) that revocation by the Attorney-General would be sufficient, but it is true that the Governor appoints supervising magistrates under the legislation and I guess that for consistency there is no harm in the honourable member's amendment.

Amendment carried; clause as amended passed.

Clause 3 and title passed.

Bill read a third time and passed.

EVIDENCE ACT AMENDMENT BILL (No. 2)

Adjourned debate on second reading.

(Continued from 17 October. Page 1175.)

The Hon. K.T. GRIFFIN: The Opposition is prepared to support the Bill, although I will be moving some amendments during the Committee stage which largely result from discussions with representatives of the media who have expressed some concern about the way in which the Bill has been drafted, particularly in respect of clause 7. The Bill arises from a number of suppression orders that were made in November/December 1982, perhaps an unusual number in that short space of time immediately after the election. It was that spate of suppression orders, accompanied by some particular media comment about the number of them, that prompted the Attorney-General to commission a discussion paper by an officer in the Crown Solicitor's Office which was prepared as an issues paper and very capably done, if I may say so, and then made available for public comment.

Submissions were made, as I understand it, by some 21 different persons or bodies, particularly by news media organisations and, largely, the matters raised by those various organisations have been taken into account in the way in which the Bill is now presented to us. In fact, it more comprehensively sets out the basis on which suppression orders are to be made, it provides for a higher degree of accountability by the courts in the way in which they make suppression orders, and it requires the Attorney-General to make an annual report to ensure that there is at least public information available about the nature and extent of suppression orders made by the courts. Previously, of course, the court making the suppression order had to give only a notice to the Attorney-General, but it was not a particularly comprehensive notice that was required, and there was no requirement that it be publicly reported, although generally by the very nature of the case it was the subject of comment in the media.

Several concerns have been raised about the Bill which I would like to raise at this stage with a view to the Attorney-General giving some consideration to them. The first is in relation to clause 4 of the Bill dealing with the right of appearance before a court, in relation to either making a suppression order or the variation or revocation of a suppression order, and in the matter of an appeal. The report made available publicly by the Attorney-General made a particular point about this. In paragraph 4, on the right to be heard on an application for a suppresson order, it states:

> Each of the submissions made by Advertiser Newspapers Limited, News Limited and The Australian (one submission) and the Australian Journalists' Association expresses the view that representatives of newspapers, radio stations and television stations should have the right to be heard on all applications for suppression orders.
>
> One submission received contends that the media ought not to be heard on applications for suppression orders, and a number of submissions advocate that there should be no change to the present law. In my [the author's] view it is not clear whether the present law affords the media the right to be heard on applications for suppression orders.
>
> In my opinion it is desirable that the law in this regard should be clear. I am persuaded that suppression orders sufficiently interfere with the liberty of the media to report upon the administration of justice to give the media a valid claim to be heard upon applications for such orders.
>
> I recommend that the Evidence Act be amended to make it clear that any person who satisfies the court that he or she has a proper interest in publishing a report of the proceedings in which an application for a suppression order is made, may intervene in the proceedings for the purpose of making submissions to the court concerning the application.

Clause 4, in proposed new section 69a (3) *(b)*, referring to those who may make application, provides:

> *(b)* any of the following persons, namely—
> (i) the applicant for the suppression order;
> (ii) the parties to the proceedings in which the suppression order is sought;
> (iii) any person who satisfies the court that he has a proper interest in the question of whether a suppression order should be made,

is entitled to make submissions to the court, on the application and may, by leave of the court, call or give evidence in support of those submissions;

That does not seem to be as clear as the report recommends, because no reference is made to a person who has a proper interest in publishing the report: only a person who satisfies the court that he has a proper interest in the question of whether a suppression order should be made.

In the submissions which have been made to me in response to my circulation of the report, concern has been raised as to whether or not the media is specifically among those parties referred to in subparagraph (iii) when, in fact, the report clearly intends the media to be such persons. In due course I will be proposing to the Committee that we ought to specifically include the media—a representative of a newspaper, radio or television station—as persons or bodies who have a proper interest in a suppression order, which would then give them an opportunity to appeal if that is an appropriate course for them to take. The other area of concern is in relation to new section 71b, which provides:

Where—

(a) a report of proceedings taken against a person for an offence, is published by newspaper, radio or television;
(b) the report identifies the person against whom the proceedings have been taken or contains information tending to identify that person;
(c) the report is published before the result of the proceedings is known;
(d) those proceedings do not result in conviction of the person to whom the report relates of the offence with which he was charged,

the person by whom the publication was made shall, as soon as practicable after the determination of the proceedings, publish a report of the result of the proceedings with the same degree of prominence as that given to the earlier report.

I emphasise the words 'with the same degree of prominence as that given to the earlier report'. One relatively minor question that arises is that, if there has been a report relating to an offence with which that person was charged, say, murder, but the person was convicted of a lesser charge of, say, manslaughter, does that mean that the section applies? If it does, it would seem to be an unintended meaning of the proposed section, and I think would be unfair to those who publish such reports. The matter of greater significance is in respect to the same degree of prominence as that given in the earlier report.

Let me just give two illustrations to the Council. The first is in respect of a radio report of a trial running for a period of time. It may be that it is a matter of some prominence, and such matters occur relatively frequently. It may be that a radio station on its news bulletins runs a report of a trial on consecutive days, or even in consecutive reports on the same day. It might make it the lead item. When the accused is acquitted, what does the radio station have to do to give the result of the proceedings the same degree of prominence as that given to the earlier report? Does the radio station have to broadcast the report of the acquittal as the lead item on consecutive days or in consecutive bulletins on the same number of occasions as it has been broadcast during the trial? That is what it may mean, the reference to the same degree of prominence as that given to the earlier report. There is no difficulty with the spirit of the clause: the difficulty is in the interpretation, particularly when there is a penalty imposed.

The other instance is this: a newspaper may, for instance, run a page one story on a number of days on the conduct of certain proceedings. It may be that the accused is acquitted. Does the newspaper then have to run the acquittal as the page one story on the same number of days as the original reports were run, that is, with the same degree of prominence? That is a reasonable interpretation from the drafting of the clause. If that is the position, it does not take into consideration the practicalities of newspaper reporting in the context of what might be news items. It is unrealistic in the sense that it may require page one treatment, perhaps with banner headlines, on each of a number of days matching the number of days that the original trial was reported.

There is one other variation of that; that is, in regard to posters that are in the streets advertising a particular headline. If one walks down King William Street any day one will probably see half a dozen different posters with different headlines, some relating to the actual headlines of particular editions—they can vary from edition to edition—and some identifying a particular story that might get a reference at the bottom of page one but be a page three story. The question has been raised with me whether the newspaper then has to put up a banner headline or a banner in poster form saying that so and so was acquitted of murder or rape and have it available on the streets in the same quantity and locations and on the same number of days as the original posters appeared.

They are genuinely held perceived difficulties with the interpretation of that clause. The amendment that I am proposing (and the Attorney-General may have some variation on this), and the principle I am trying to incorporate in it, is the principle in the original report. This is the principle to which the media subscribed; that there should be a fair and accurate report of the acquittal and that instead of giving it the same degree of prominence as that given to the earlier report, there should be reasonable prominence given to that fair and accurate report, having regard to the prominence given to the earlier report, so that it is not mandatory.

The other provision that I would like to insert, which would facilitate the clarification of what is fair and accurate and what is reasonable in all the circumstances, is that a person who is required to publish such a report of an acquittal may apply to the Supreme Court for directions in relation to the manner in which that person should comply with subsection (1). That at least provides a facility (it may not be used, but at least it is there) in the context of trying to ensure as much clarity as possible and endeavouring to be as fair as possible to all parties or groups.

The report, after the submissions were received on this discussion paper, at paragraph 8.5 states:

I recommend that the Wrongs Act be amended—

in that case it was the Wrongs Act, but it has obviously been done in the Evidence Act to keep it all together—

to provide that a report of a trial in which the identity of the accused is either given, or from which it may reasonably be inferred, shall be deemed an unfair and inaccurate report for the purposes of the Wrongs Act if the accused is subsequently acquitted and the fact of the acquittal is not published with reasonable prominence having regard to the prominence given to the report of the trial.

The Hon. C.J. Sumner: Where is that?

The Hon. K.T. GRIFFIN: That is in the Wrongs Act, and I am referring to the discussion paper at paragraph 8.5. I think it refers more to defamation but it has equal significance in the context of suppression orders. In fact, it would seem that instead of it applying to defamation and the Wrongs Act it is now being applied that the suppression order area and to the Evidence Act, which seems in fact to give it a different significance from that which the report originally proposed. So, to the extent that the report deals with this matter, my amendments would be consistent with that report and, I submit to the Council, would be fair and reasonable and do justice appropriately to all of the parties likely to be involved. With those observations in mind and subject to the opportunity to move appropriate amendments, I support the second reading of this Bill.

The Hon. C.J. SUMNER (Attorney-General): I thank the honourable member for his support of the Bill and indicate

that I will probably be giving favourable consideration to his amendments in the Committee stage.

Bill read a second time.

In Committee.

Clauses 1 to 3 passed.

Clause 4—'Repeal of ss. 69, 70 and 71 and insertion of new heading and sections.'

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

Page 2, after line 42—Add new subparagraph as follows:
(iia) a representative of a newspaper or radio or television station;.

I have already explained my amendment. It makes clear that representatives of the media do have a positive interest in being heard in respect of supression orders.

The Hon. C.J. SUMNER: Subparagraph (iii) provides:

Any person who satisfies the court that he has a proper interest in the question of whether a suppression order should be made.

It was considered that that would clearly cover the press. For clarity, the honourable member's amendment specifically refers to newspapers, radio and television, and I am prepared to accept it.

Amendment carried.

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

Page 3, line 9—Leave out 'paragraph *(b)* (iii); and substitute 'paragraph *(b)* (iia) or (iii)'.

This amendment is consequential.

Amendment carried; clause as amended passed.

Clauses 5 and 6 passed.

Clause 7—'Insertion of new heading and section.'

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

Page 5—
Line 33—After 'a' insert 'fair and accurate'.
Lines 34 and 35—Leave out 'the same degree of prominence as that' and substitute 'reasonable prominence having regard to the prominence'.

There are two parts to my amendment. One changes the emphasis of the clause to ensure that it is a fair and accurate report of an acquittal which is required and, instead of the same degree of prominence as that given to the earlier report, it is reasonable prominence, having regard to the prominence of the earlier report. I have already spoken at length on that.

The Hon. C.J. SUMNER: I think there is merit in the general thrust of the honourable member's comments on this clause. I think the amendment overcomes the difficulties that the press and the media might have had in determining what sort of prominence should be given to an acquittal. I think the wording overcomes the problems outlined in the honourable member's second reading speech. Therefore, I am happy to support the amendment.

Amendments carried.

The Hon. K.T. GRIFFIN: Before moving my next amendment I refer to a matter to which I did not address my mind in the context of an amendment. I refer to paragraph *(d)*, which deals with 'those proceedings which do not result in conviction of the person to whom the report relates of the offence with which he was charged'.

As I indicated during the second reading debate, I suppose that technically, with a charge of murder and a conviction for manslaughter, the result of such proceedings would have to be communicated prominently. I suppose, as the Attorney-General has indicated, that that would probably be expected, anyhow. However, in relation to the lesser offences, I wonder whether this is reasonable. I suppose that it is, but I wonder whether the Attorney-General has given any thought to this matter.

The Hon. C.J. SUMNER: I think that it is reasonable. In relation to a charge and a conviction for a lesser offence I believe that provisions of the section ought to apply, and as it is worded the provision does.

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

Page 5, after line 36—Insert new subsection as follows:
(1a) A person required under subsection (1) to publish a report of the result of proceedings may apply to the Supreme Court for directions in relation to the manner in which he should comply with that subsection.

The Hon. C.J. SUMNER: I do not oppose the amendment, although I think there may be some problems with its practicality. I suppose that the publication on an acquittal is something that newspapers would want to do very quickly, and the public interest would require that it be done quickly. However, if the media sees this provision as providing some safeguard against their perhaps not complying with the provision, I am prepared not to oppose the amendment.

Amendment carried; clause as amended passed.

Remaining clauses (8 to 10) and title passed.

Bill read a third time and passed.

JURIES ACT AMENDMENT BILL

Consideration in Committee of the House of Assembly's amendments:

No. 1. Clause 4, page 1, lines 19 and 20—Leave out 'amended by striking out subsection (2)' and insert 'repealed'.

No. 2. Clause 5, page 1, lines 24 and 25—Leave out '(including a Circuit Court)'.

No. 3. Clause 26, page 6, line 30—Leave out 'reach' and insert 'return'.

No. 4. Clause 30, page 7, lines 31 and 32—Leave out all words in these lines after 'principal Act is' and insert 'repealed'.

No. 5. Page 8, after line 11—Insert new clause 32 as follows:
Repeal of Part VIII and substitution of new Part.
32. Part VIII of the principal Act (comprising sections 70 to 77 inclusive) is repealed and the following new Part is substituted:

PART VIII
FEES

Payment of Jurors.
70. (1) Every juror who is summoned and punctually attends a court in compliance with the summons is entitled to be remunerated for his service in accordance with the scale prescribed by regulation.
(2) The remuneration shall be paid out of the General Revenue of the State, which is appropriated to the necessary extent.

No. 6 New Schedule:
Page 9, after clause 38—Insert schedule as follows:

SCHEDULE

The principal Act is further amended as follows:
Long title—
The long title is repealed and the following long title is substituted:
An Act to provide for the constitution, powers and duties of juries in relation to criminal inquests; and for other purposes.
Section 3 (1)—
From the definition of 'criminal inquest' strike out 'any issue joined upon an indictment presentment or information for'. Strike out the definitions of 'inquest' and 'subdivision roll'.
Section 4—
Section 4 is repealed.
Section 18—
Strike out 'either of the last two preceding sections' and substitute 'section 16 or 17'.
Heading to Part IV—
Strike out ', JURORS BOXES AND CARDS'.
Section 20 (1)—
Strike out 'in the manner hereinafter provided' and substitute 'in accordance with this Part'.
Section 20 (2)—
Strike out 'Returning Officer for the State' and substitute 'Electoral Commissioner'.
Section 22—
Section 22 is repealed.
Section 24—
Strike out 'thereof' and substitute 'of the list'.
Section 29 (5)—
Before 'not less than' insert, 'but'.

Section 55—
Strike out 'consider their verdict, permit them to separate' and substitute 'considers its verdict, permit the jurors to separate'.
Section 61—
Strike out 'Circuit Court or'. After 'each party' insert '(including the Crown)'.
Section 63—
Strike out 'herein allowed' and substitute 'allowed under this Act'.
Section 84—
Section 84 is repealed and the following section is substituted:
84. *Proceedings for offences.* Except as otherwise provided in this Act, proceedings for offences against this Act shall be disposed of summarily.
Section 92—
Strike out 'herein contained' and substitute 'in this Act'.
First Schedule—
The first schedule is repealed.

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

That the House of Assembly's amendments be agreed to.

The Hon. K.T. GRIFFIN: I have perused the amendments. Essentially they are of a statute revision nature. The only matter that I want to raise is in relation to amendment No. 5, which. repeals sections 70 to 77 of the principal Act. The only one that may cause concern is section 75, which provides:

No juror shall be allowed to take for serving on a jury more than the sums allowed by this Act, and in no case shall any juror under any pretence whatever receive any sum by way of remuneration from the parties litigant or any of them.

That seems to be a matter of some substance. It may not be dependent only on civil juries, but I would like the Attorney-General to give me some indication as to whether that is a matter of substance and, if it is, what other provision is there for ensuring that jurors are not in any way able to take remuneration additional to their fees for service on a jury?

The Hon. C.J. SUMNER: The honourable member raises an important question, but I believe that the matter is adequately covered. The current section 75, as the honourable member said, provides that is an offence for a juror to take more than the sums allowed under the Act and, in addition, makes it an offence for a juror on any pretence to receive a payment from a party litigant. The term 'party litigant' includes the Crown in criminal matters. It was thought that there might be a problem with public servants serving on a jury and perhaps receiving special leave with pay during the time of the jury service; that could be seen as being payment to a juror from a party litigant. For that reason, that section has been repealed. However, the Act still provides a penalty in section 83 for corruptly influencing jurors. It states:

A person who unlawfully influences, or unlawfully attempts to influence, a juror, or consents thereto, shall be guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

That is a not insubstantial penalty. The use of the term 'or consents thereto' in section 83 has been held to include the juror himself who is corruptly influenced. So, I put to the Committee that section 83 of the Juries Act, which is not affected by the amending Bill, already provides a term not exceeding 10 years for anyone who unlawfully influences or unlawfully attempts to influence a juror or consents thereto. That means that both the party litigant who offered any payment to a juror and the juror who accepted such a payment would come within the terms of that section.

Further, my researchers have discovered, somewhat to my surprise, the offence of embracery, a common law offence that is a broad offence relating to any action on the part of any person, including a juror, which might influence or potentially influence a juror. So, the Government is satisfied that the repeal of section 75 will not leave a gap in the law. The offence in section 83 and the offence of embracery are adequate to cover the offence formerly provided by section 75.

Embracery, if any honourable member wishes to study the topic, is contained in Russell, *Crimes and Misdemeanors,* volume 1 at page 360, in which it is stated:

Embracery is another species of maintenance, and consists in such practices as tend to affect the administration of justice by improperly working upon the minds of jurors. It seems clear that any attempt whatsoever to corrupt or influence, or instruct a jury in the cause beforehand, or in any way to incline them to be more favourable to the one side than to the other, by money, promises letters, threats, or persuasions, except only by the strength of the evidence and the arguments of the counsel in open court, at the trial of the cause, is a proper act of embracery, whether the jurors on whom such attempt is made give any verdict or not, or whether the verdict given be true or false.

So, I will not proceed further with that. It is clear that that common law offence does exist, but in any event I would have thought that section 83 covers it.

The Hon. K.T. GRIFFIN: I thank the Attorney-General for a very clear explanation of the position. In the light of that, I am satisfied that the repeal of section 75 is not going to leave a vacuum and will, in fact, be adequately covered by the two offences, section 83 and the common law offence to which he has referred. Therefore, I am prepared to support the amendments proposed by the House of Assembly.

Motion carried.

ANTI DISCRIMINATION BILL

Adjourned debate on second reading (resumed on motion). (Continued from page 1549.)

The Hon. C.J. SUMNER (Attorney-General): In replying in this debate, I would like to thank those many members who have contributed to debate on this Bill. It is a significant piece of legislation and quite wide ranging. I will not respond at length as honourable members have indicated that the second reading of the Bill has their support, although it is quite clear that many amendments will be moved.

While on the topic of amendments, I should say that I have placed on file a number of amendments, many of which arise out of a comparison of the Commonwealth Sex Discrimination Act and the State legislation, with a view to ensuring that there is no inconsistency, but also with a view to ensuring that our legislation is in such a condition that the Commonwealth Government may be prepared to what the Federal Attorney-General has described as 'roll back' Commonwealth legislation to enable State legislation in the anti discrimination area to cover the field in South Australia.

Some of the amendments that I propose will facilitate that procedure. I understand the Commonwealth Government's position to be that, if it is satisfied that an anti discrimination regime that is satisfactory to the Commonwealth is in place in a State and that it picks up at least the benefits and rights contained in the Commonwealth legislation, the Commonwealth will consider vacating the field and leaving the State legislation in place to be administered by the local anti discrimination bureau, whether a Comissioner for Equal Opportunity or otherwise, but it still would provide financial assistance to the anti discrimination bureau.

An agreement has been entered into between the Commonwealth Attorney-General, on behalf of the Commonwealth Government, and me, on behalf of the State Government, to provide one-stop shopping, whereby the State Commissioner for Equal Opportunity can take up cases on behalf of the Human Rights Commission, which, of course, has the administration of the Commonwealth

Racial Discrimination Act and the Commonwealth Sex Discrimination Act. The Commonwealth Government will provide funds to enable the Commissioner for Equal Opportunity to fulfil that role on behalf of the Human Rights Commission.

I understand that, even if the Commonwealth was to roll back its legislation, funding would still be available, although the details of any roll back are still to be negotiated. However, at the last meeting of Ministers on human rights I raised the question whether a roll back procedure meant that the Commonwealth was also vacating the field financially, and the indication from the Commonwealth Attorney was that that was not the case, although, of course, the Commonwealth Treasurer might have other ideas. At least at this point in time we have one-stop shopping. The Human Rights Commission has given and will continue to give delegations to the South Australian Commissioner for Equal Opportunity to conduct inquiries and conciliate on its behalf.

The Hon. R.C. DeGaris: Do your amendments bring the Bill into line with the Commonwealth legislation absolutely?

The Hon. C.J. SUMNER: We have already attempted to bring the State Bill into line with the Commonwealth legislation where there was any question of inconsistency, because obviously we did not want a situation where a State Bill could be struck down as being inconsistent with Commonwealth legislation. Therefore, when the Bill was presented to Parliament we had already undertaken an exercise on inconsistency and tried to remove any potential inconsistencies between the State and Commonwealth legislation. The numerous amendments that I propose pick up additional matters and put in place provisions to ensure that the Commonwealth would be prepared to roll back its legislation.

The Hon. R.C. DeGaris: But your Bill still goes further than the Commonwealth legislation at this stage?

The Hon. C.J. SUMNER: In some aspects; certainly, in the sexual harassment area.

The Hon. J.C. Burdett: Are the exemptions in line with the Commonwealth exemptions? The Bill does not provide that, but the amendments may.

The Hon. C.J. SUMNER: We will deal with that aspect in Committee. At this stage I am outlining general statements of principle.

The Hon. J.C. Burdett: Exemptions are fairly important.

The Hon. C.J. SUMNER: We can consider that matter in Committee. The honourable member has asked whether State and Commonwealth exemptions should be the same. No doubt, we can explore that, but I merely put to the Council the principles that are involved: first, trying to avoid inconsistency and, secondly, trying to ensure that we are in the position where the Commonwealth might consider vacating the field and leaving the State legislation in place in this area. Whether or not it will do that is impossible to say at this stage, but that is certainly something that has been proposed by the Commonwealth.

I now turn very quickly to some of the matters in the Bill. First, some criticism has been made about the lack of consultation. I completely refute that. In fact, I do not think that I have done anything else but consult about this Bill since the election on 6 November. Golf clubs, bowling clubs, and the Commissioner for Equal Opportunity have been involved and the life insurance industry has been involved at great length, particularly about superannuation provisions.

A working party was established last year which produced a public report. Press publicity was given to that report which was distributed and which formed the basis of the legislation. To say that the Bill has been before Parliament for only a relatively short time is nonsense. It was introduced on 23 August which on my calculations means that it has been before this Council—not just Parliament—for some two months, and I think that must be an all-time record for a Bill. Therefore, I do not think that anyone can fairly say, as the Hon. Mr Griffin attempted to say, that this was an unsatisfactory way of dealing with matters, and that there had been inadequate consultation.

The Hon. K.T. Griffin: No-one had seen a draft of the Bill before.

The Hon. C.J. SUMNER: They have seen many drafts. In fact, I am so confused about the number of drafts I have seen in the past 12 months that I am surprised that I can understand the one that is before us now. Drafts were made available to the golf clubs and the life insurance industry. I do not think that the final draft has necessarily been seen by all the interested parties, but certainly they were aware in general terms, and in some cases in very specific terms, of what was in mind. As I say, the fact that the Bill has been on the Notice Paper since 23 August means that no-one can fairly complain that insufficient opportunity was given for proper consideration of the Bill.

I do not see any particular difficulty with the question of whether the Bill should have the anti discrimination nomenclature or equal opportunity. I will address that further in Committee. As to matters of principle, I suppose that the major concern is the question of discrimination on the grounds of sexual preference. I think that, while some concerns have been expressed about this, what the Bill does should not be over-emphasised. It is a Bill concerned with discrimination, and I suppose that in this sense the Hon. Mr Griffin's proposal to call it equal opportunity legislation and give it a more positive thrust may well run against his arguments with regard to sexual preference, if that remains in the Bill.

However, I say that this is an anti discrimination or equal opportunity Bill, if one likes, and therefore, given that that is its narrow constraint, I do not believe that people should be bothered or concerned about the fact that this will somehow or other promote homosexuality in the community. I think that the contributions of the Hons Miss Wiese and Mr Gilfillan on this topic were particularly good. We are talking about anti discrimination and all we are saying is that, if a person employed in the Public Service happens to be a homosexual male or female, that should not be a barrier to that person's employment prospects, and that person should not be discriminated against in employment opportunities, either in getting a job or in promotional opportunities, or indeed in other areas that are covered by the Bill regarding the delivery of services and the like.

The Hon. Anne Levy: I dealt with that, too.

The Hon. C.J. SUMNER: I am sorry; the Hon. Ms Levy dealt with that as well, and I would like to congratulate her on her contribution. I must have been distracted at that time. However, I remember the contributions of the Hon. Miss Wiese and the Hon. Mr Gilfillan on that topic. I ask the Council to consider the scope of the Bill: it merely says that people should not be discriminated against because of their sexuality. People who look at the situation reasonably and fairly would consider it to be equitable that any persons who work in the Public Service surely should not, if they apply for a job or promotion, be retarded in it because they happen to be homosexual. That is the basis of the Bill. It is not there to promote or proselytise homosexuality, transsexuality or anything of the kind. It is merely there with the limited scope to ensure that those people are not discriminated against because of their propensities in that regard.

If seen in that light, while I accept what the Hon. Mr Griffin has said about many people in the community having some abhorrence of the practice of homosexuality, I believe that anyone looking at it fairly would say, 'What people do in private, provided that does not impact on their work performance, ought not be used as something that

discriminates against them, which retards them in employment prospects, or which means that they are denied services and other things that the Bill is designed to cover.'

I think that the Hon. Mr Griffin said that if one is going to include sexuality one can include the aged, the intellectually disabled, religious and political convictions, and the like. I will deal with intellectual disability in a minute. With respect to some of the other matters, if a Bill of Rights is introduced at the Commonwealth level (and this is a matter of some controversy—I am not sure that the Hon. Mr Griffin wants a Bill of Rights introduced at the Commonwealth level), it would address the general question of rights and probably pick up discrimination on the grounds of religious or political convictions, and the like, because a Bill of Rights would give people the right to religious and political expression, and so on. Whether or not they will be picked up is a matter that we would have to wait on to see whether or not it was covered by the proposed Commonwealth Bill of Rights. That is not a matter that we are really in a position to determine at the moment, but it may well be covered.

The Hon. Mr Griffin referred to sections 34 and 35 of the Commonwealth Act and wished, I believe, for them to be picked up in the State legislation. I do not see that there will be any difficulty with that. The other question of substantial principle, I suppose, apart from the sexuality issue, is the one of sexual harassment. I refer to the question whether we deal with this by making harassment itself an offence or whether there must be some detriment that flows from the harassment for there to be discrimination. Again, the arguments on this topic ranged from the Hon. Mr Milne's some what flighty contribution, which received some prominence in the press at the weekend, to the Hon. Miss Laidlaw's more substantial thoughts on the matter. The Government remains unpersuaded by the argument that some detriment should flow before sexual harassment is considered to be discriminatory and would still wish to maintain the principle that in some form or other sexual harassment itself should be an offence, even though I can see that that is an area where the State Bill goes beyond the Commonwealth legislation.

I will now deal with the remarks made by the Hon. Mr Griffin on the Intellectually Disabled Services Council. The honourable member was quite off beam with his remarks on that topic. He somehow or other seemed to suggest that the Intellectually Disabled Services Council was not now performing the role outlined for it by the Liberal Government. That quite simply is not correct. The objects and constitution of the Intellectually Disabled Services Council laid down and approved by the Liberal Government, the Hon. Mr Griffin suggested were being used as the implementation of the Bright Report. The constitution and aims of the IDSC were approved by the previous Liberal Government and endorsed by the present Government—they have not changed. What has changed is that there has been a significant improvement in funds for the IDSC.

As far as I and the IDSC are concerned, it is carrying out its charter in substantially the same way as was done under the Liberal Government. To suggest that somehow or other the present Government has changed the role of that council is quite incorrect. As I said, the Chief Executive Officer of the IDSC specifically states that those objectives were approved by the previous Liberal Government and endorsed by the present Government. He says that the IDSC is not there specifically to deal with matters of discrimination but, nevertheless, its charter now is the same as it was.

I also point out that, with respect to advocacy on behalf of disabled people—whether physically or intellectually disabled—the Government appointed an adviser to the Premier on disability. One of his roles would be an advocacy role apart from a general co-ordinating role within the Government sector and liaison with the voluntary sector in this area. No doubt the adviser can fulfil the role of advocacy in this area. The criticisms made by the honourable member and his so-called commitment on behalf of a future Liberal Government really come to nothing, because what was happening under the Liberal Government is happening under the Labor Government. I do not believe that the honourable member has cause for criticism.

I should mention however, that, in the area of the intellectually disabled, some submissions have been received since this Bill was tabled, indicating that the intellectually disabled should be dealt with in this Bill in a more comprehensive fashion. I was a little surprised by those comments, because the working party's report was made available and submissions were requested on that report. At that stage the submissions made by the Intellectually Disabled Services Council were that the Commissioner in this area be given a positive role. It is contained in clause 11 of the Bill which states:

(1) The Commissioner shall foster and encourage amongst members of the public positive, informed and unprejudiced attitudes to persons who have intellectual impairments.

(2) The Commissioner may institute, promote or assist in research, the collection of data and the dissemination of information relating to persons who, as a result of intellectual impairment, face significant problems in participating in the life of the community and to the ways in which those problems may be resolved.

My recollection is that that was included in the legislation at the request of, and following a submission from, people concerned with intellectual disability and, in particular, the Intellectually Disabled Services Council and that that, because of the problems that have been foreseen—the Bright Report, and the like—for the moment was sufficient.

It was only when the Bill was tabled that there appeared to be a view that there should be in legislation a broader consideration given to the rights of the intellectually disabled. The honourable member knows that that was not something that was specifically recommended by the Bright Report with respect to the intellectually disabled, although it was specifically recommended with respect to the physically disabled. It is a very difficult area: there is no question about that. I took the view that it was not possible, just by a few easy amendments to the Bill, to incorporate the rights of the intellectually disabled. As I say, until the Bill was tabled I had thought that the concerns of the intellectually disabled had been accommodated in clause 11, to which I have already referred.

However, in the light of the submissions that have been made since the Bill was tabled, I have agreed that a working party should be established to examine discrimination on the basis of intellectual disability and to consider what options are available for inclusion in legislation of more comprehensive anti discrimination provisions in this area. As I have said, the answers are not simple. We have to take into account the Bright Committee Report and the experience in New South Wales where, I understand, action has been taken in this area. I have not said that this Bill is the end of any consideration of the rights of intellectually disabled, and the Government intends to establish this working party in an effort to see in what way the rights of the intellectually disabled can be met: whether by this legislation or in some other manner. That is an outline of what the Government intends to do in this area.

The final question that I wish to address briefly concerns resources and this week there have been advertised three new positions, to be responsible to the Commissioner for Equal Opportunity: Chief Project Officer (LE3), Senior Project Officer (A01) and Project Officer (C05). These officers will deal with matters arising under both Commonwealth

and State laws on matters of discrimination and human rights generally and, as I have said, funds have been provided by the Commonwealth to assist in the one-stop shopping concept of human rights in South Australia. I do not wish to canvass any other matters now. Presumably we can look forward to a long, enjoyable and, I hope, fruitful discussion in Committee tomorrow and the day after. I suppose the only thing I could ask of honourable members—all of us—is to exercise restraint in the light of the lengthy proceedings we will have to undergo. However, I am sure that with goodwill we can achieve a reasonably early resolution of this Bill. Again, I thank honourable members for their general support of the proposition and I look forward to further consideration in Committee.

Bill read a second time.

In Committee.

Clause 1 passed.

Progress reported; Committee to sit again.

STATE LOTTERIES ACT AMENDMENT BILL

Received from the House of Assembly and read a first time.

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

The Government has four main objectives in introducing this measure:

To enable the Lotteries Commission to conduct sports lotteries;

To allow unclaimed prizes to be retained by the Commission and offered as prizes in subsequent lotteries;

To establish clearly the authority of the Commission to make rules governing the conduct of lotteries;

To make certain drafting improvements and to remove redundant provisions.

Prior to the last election, the Government gave an undertaking to provide the Lotteries Commission with the power to conduct sports lotteries, the proceeds of which would be used for the benefit of sporting organisations. The Bill seeks to give effect to this promise by inserting an appropriate provision in the Act and directing that the net proceeds from sports lotteries be paid into the Recreation and Sport Fund established under the Soccer Football Pools Act.

It is necessary to make quite clear the mechanism by which decisions will be taken on the number of sports lotteries to be conducted in a given year and the planning and promotion of such lotteries. Because of it expertise in the area, the Lotteries Commission will have much to offer on the planning and promotion side, but provision is made also for the Minister of Recreation and Sport and his officers to be consulted about such matters.

The number of sports lotteries conducted in any year will obviously have an important influence on the proportions of overall lottery proceeds which flow to the Recreation and Sport Fund and the Hospitals Fund respectively. It is appropriate that such a key element of Budget strategy should be in the hands of the Treasurer, and the Bill makes provision for this by authorising the Treasurer to regulate the total value of prizes which may be offered in a financial year in sports lotteries.

The present legislation provides that prizes may be claimed from the Lotteries Commission for up to six months. Thereafter, they are transferred to the Hospitals Fund and may be claimed from the Treasurer for a further six months. In practice, the Commission administers all unclaimed prizes and imposes no cut-off date. Claims honoured after the statutory six month period are deducted from subsequent transfers to the Hospitals Fund.

The Commission has requested a change to the legislation to enable prizes unclaimed after 12 months to be added to the prize pool in subsequent lotteries. Such a change would cost the Hospitals Fund about $100 000 per annum in the first instance, but the Commission is confident that the 'jackpot' prizes which would result from such an arrangement would generate more than sufficient extra turnover to compensate for this loss of revenue. The Government has agreed to the Commission's proposal.

There are a number of matters of detail concerning the administration of lotteries which the Commission wishes to clarify and to make known to the public. These include the conditions of entry and participation in lotteries, the method of determining the prizes to be offered, the method of determining winning entries and so forth.

It was decided that the most flexible arrangement would be to provide the Commission with the authority to make rules governing such matters, subject to the approval of the Minister. These rules would be published in the *Government Gazette* and so would, as a matter of course, be available to the public.

The Government has taken the opportunity provided by the need to amend the Act to make certain drafting improvements as well. For example, the provisions relating to the keeping and presentation of accounts have been simplified and a requirement for an annual report inserted. In addition, a number of redundant provisions relating to the initial membership of the Commission and the operations of the Hospitals Fund have been removed (the operations of the Hospitals Fund are now governed by the Racing Act).

Clause 1 is formal. Clause 2 provides for the commencement of the measure. Clause 3 amends section 3 of the principal Act by providing further definitions of expressions used for the purposes of the Act. Clause 4 amends section 5 of the principal Act by replacing the present provision for a fixed five year term of office for members of the Lotteries Commission with provision for the term to be a maximum of five years. Clause 5 makes amendments of a drafting nature only clarifying provisions governing vacancies in the offices of members of the Commission. Clause 6 also makes amendments of a drafting nature only relating to provisions governing meetings of the Commission.

Clause 7 substitutes for the present section 10 a new section protecting a member of the Commission from personal liability for any act done or omission made in good faith in his capacity as a member of the Commission. The matters presently provided for under section 10 are, by the amendments proposed by clause 6, to be provided for under section 9 of the principal Act. Clause 8 inserts in section 13a of the principal Act (which provides for borrowing by the Commission) a new provision empowering the Commission to invest any moneys held by the Commission that are not immediately required for any other purpose in a manner approved by the Treasurer. Clause 9 repeals section 15 of the principal Act which deals with the accounts of the Commission and the auditing of its accounts. This matter is to be provided for by a new section 18a inserted by clause 13.

Clause 10 amends section 16 of the principal Act which provides for the Lotteries Fund and the application of the proceeds of the Commission's operations. The clause deletes subsections (3) to (8) which provide for three matters: the

application of moneys in the Lotteries Fund; unclaimed prize moneys; and the application of the Hospitals Fund. The clause substitutes a new subsection (3) dealing with the first matter, the application of the moneys standing to the credit of the Lotteries Fund. The proposed new subsection provides that those moneys shall be applied by the Commission in the payment of amounts required for the provision of prizes in lotteries; in the payment of amounts from time to time approved by the Treasurer for the capital, administrative and operating expenses of the Commission; in payment into the Recreation and Sport Fund of amounts required to be paid under proposed new section 16a; and in payment into the Hospitals Fund, as from time to time required by the Treasurer, of any balance remaining after making allowance for the amounts previously referred to. The matter of unclaimed prizes is now to be dealt with in proposed new section 16b. The third matter, the application of the moneys in the Hospitals Fund, no longer requires separate provision in the principal Act. With the removal of the present provisions under subsections (4) and (5) for payment of prize moneys into and out of the Hospitals Fund, the application of the moneys in that Fund will be regulated under section 146 of the Racing Act, 1976, the provision providing for that Fund.

Clause 11 provides for the insertion of new sections 16a and 16b. Proposed new section 16a provides for the conduct of 'sports lotteries'. Under the proposed new section, the Commission is required in each financial year to conduct as part of its lotteries for that year a series of lotteries to be known as 'sports lotteries', the total value of the prizes for which is to be within a range of amounts fixed by the Treasurer. The planning and promotion of such lotteries is to be undertaken by the Commission in consultation with the Minister of Recreation and Sport and persons nominated by that Minister. Upon the determination of the winning entries in each sports lottery, an amount is to be paid from the Lotteries Fund into the Recreation and Sport Fund established under the Soccer Football Pools Act, 1981, being an amount equal to the difference between the total value of the tickets sold in the lottery and the total value of the prizes won in the lottery. Proposed new section 16b provides that, where a prize is not collected or taken delivery of within twelve months from the relevant day, the prize is forfeited to the Commission and an amount equal to the value of the prize shall be applied by the Commission for the purpose of additional or increased prizes in a subsequent lottery or lotteries conducted by the Commission. The proposed new section provides that where a cheque has been issued by the Commission in payment of a prize, the prize shall not be regarded as having been collected or taken delivery of if the cheque has not been presented for payment. The 'relevant day' is, under the provision, to be the day on which the winning entries in the lottery are determined where that takes place on the same day through some procedure carried out by or on behalf of the Commission, or, in any other case, as, for example, with the Instant Money Game, on a day determined under the rules of the Commission (made under proposed new section 18).

Clause 12 makes an amendment to section 17 that is consequential on the provision under proposed new section 16a (1) *(b)* for 'jackpotting' unclaimed prizes. Clause 13 substitutes for existing section 18 (which deals with the payment or delivery of prizes), proposed new sections 18, 18a and 18b. Proposed new secton 18 provides that the Commission may, with the approval of the Minister, make rules, not inconsistent with the Act, providing for or regulating the practices, procedures and operations of the Commission. Amongst the rules proposed, are rules which would regulate the payment or delivery of prizes in various ways according to the different types of lotteries now conducted by the Commission. Proposed new section 18a replaces the present section 15 and provides for the keeping of accounts by the Commission and their audit by Auditor-General. Proposed new section 18b would require the Commission to submit to the Minister (and the Minister to lay before Parliament) an annual report on the operations of the Commission.

Clause 14 amends section 19 of the principal Act which provides for various offences in relation to lotteries and the operations of the Commission. Under the clause, monetary penalties are increased from $200 to $1000, apart from the penalty for the offences involving fraud which, if the offence is prosecuted summarily, is to be $2 000 instead of the existing $200, or, if the offence is prosecuted upon information, is to be $5 000 instead of the existing $1 000. The clause amends subsection (8) *(a)* which permits any agent of the Commission to display a notice bearing the words 'Lottery tickets sold here' without further words or symbols. Under the amendment, an agent would instead be permitted to display a notice to the effect that he is an agent authorised to sell tickets in lotteries conducted by the Commission. The clause amends subsection (10a) which prohibites the distribution, display or publication, without the written authority of the Commission, of a notice or advertisement in which the word 'Lotto' (whether with the addition of 'Cross', 'X' or any other words, letters, symbols or characters) is used as a title or description of a lottery other than a lottery conducted by the Commission. Under the amendment, the prohibition will be extended from use as a title or description of a lottery to use in connection with any lottery or game (other than a lottery of the Commission) or for any advertising, promotional or commercial purpose.

Clause 15 increases the maximum penalty that may be prescribed for offences against the regulations from $200 to $1 000. Clause 16 makes a consequential amendment to section 17 of the Soccer Football Pools Act, 1981, which provides for the establishment of the fund known as the 'Recreation and Sport Fund' kept at the Treasury. Subsection (2) of that section provides that moneys paid to the Fund under the Soccer Football Pools Act are to be used to support and develop such recreational and sporting facilities and services within the State as are approved by the Minister of Recreation and Sport. The clause amends this subsection so that it also provides for the moneys paid to the Fund that are derived from the sports lotteries conducted pursuant to proposed new section 16a to be used for those purposes.

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

ELECTION OF SENATORS ACT AMENDMENT BILL

Returned from the House of Assembly without amendment.

VALUATION OF LAND ACT AMENDMENT BILL

Received from the House of Assembly and read a first time.

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

It is substantially the same as a Bill to amend the Valuation of Land Act that was introduced in Parliament in the last session, but with two alterations. The first alteration is to provide an amendment to section 17 of the Act. This is proposed in order to enable greater flexibility in determining the most appropriate fee that is to apply in relation to a valuation performed upon the request of a department, authority or council. Presently, the fees payable by regulation in respect of this section are calculated on an ad valorem scale. However, in special cases this scale may be inappropriate as it does not take into proper account time involved in actually carrying out the valuation. It is therefore intended to establish an alternative fee scale that could be applied upon an hourly rate. However, a Crown Law opinion has advised that, if the alternative fee scale were to be prescribed by regulation and then the Valuer-General allowed to choose between the two scales on a case by case basis, this would involve a delegation of the Governor's regulation-making powers, which is not possible under the present provisions of the Act. Accordingly, it has been decided that the most effective and simple way to resolve the problem is to amend section 17 to allow fees to be approved by the Minister.

The second alteration relates to the proposed new section 25b, dealing with valuation reviews. The last Bill provided that, where an application for a review is being considered by a valuer under the new scheme, the applicant could appear and make submissions, but could not, at the time, be represented by legal counsel. During the initial formation of the legislation it was thought to be appropriate that to encourage informality and to limit costs, that such a provision in relation to the exclusion of legal representatives be made. However, representations from the Law Society of South Australia submitted that the Bill provided an element of unfair discrimination, and that parties should have the opportunity to be represented by counsel, if they so desired. The Government has accordingly reviewed its policy on this matter and decided to remove the exclusion of legal practitioners. It considers that its primary objective can still be attained, as the Valuer-General has indicated that he will inform applicants, at the time that they object, that proceedings will be of an informal nature and may well not warrant legal counsel. Furthermore, the Bill expressly provides that only questions of fact may be considered upon a review.

Apart from these two matters, the principal effect of the Bill is to provide for an independent review of valuations made by the Valuer-General for taxing and rating purposes. It will provide a process which is practical, less formal and inexpensive for the average home owner, small businessman and primary producer than the existing process which provides only for an appeal to the Supreme Court. At the present time, where a property has been valued by the Valuer-General, an owner is able to object at any time to that valuation by serving a notice of objection on the Valuer-General. The grounds upon which the objection is based are considered by the Valuer-General, who subsequently advises the owner of his decision. Recently the Valuer-General has made provision for a valuer, other than the valuer who made the original valuation, to consider complaints and objections concerning valuations but this approach is still looked upon as 'Caesar appealing unto Caesar' by owners.

Any owner who is dissatisfied with the decision of the Valuer-General now has 21 days in which to lodge a formal appeal with the Land and Valuation Division of the Supreme Court. Such appeals generally involve legal representation and expert evidence from qualified licensed valuers resulting in considerable expense which may act as a disincentive on the part of some owners to pursue an action. This Bill provides owners with an additional alternative to have the valuation reviewed without taking away this right to appeal to the Supreme Court. It enables an owner, on payment of a prescribed fee, to request a review of his valuation by an independent qualified valuer selected from a panel of valuers. Valuers can only be nominated for appointment to the panel by the Real Estate Institute of South Australia Incorporated or the Australian Institute of Valuers (South Australia) Incorporated.

A panel of independent qualified and licensed valuers will be established for each region of the State for this purpose and these valuers will be experienced in valuations in the particular region. The scope of the review will be confined to matters of valuation fact, for example, sales and other information relating to comparable properties in the area, and will not include questions of law. The Bill provides that an independent valuer shall not alter a valuation if the effect of the alteration is less than 10 per cent more or less than the Valuer-General's valuation. This provision is to ensure that nominal adjustments, which are purely a matter of opinion and not substantiated by fact, do not occur. The fee is to be refunded if the owner's valuation is amended by more than 10 per cent of original valuation. Notwithstanding a decision made by the independent valuer, both the owner or the Valuer-General reserve the right to appeal to the Supreme Court.

Clause 1 is formal. Clause 2 provides for the commencement of the measure. Clause 3 amends that provision of the principal Act which sets out the arrangement of the Act. Clause 4 amends section 17 by striking out the use of a prescribed fee and substituting a fee approved by the Minister. Clause 5 provides a new heading to Part IV of the principal Act. Clause 6 strikes out subsections (3) and (4) of section 25, the contents of which are to be inserted in later provisions. Clause 7 inserts new Divisions after section 25 of the principal Act. The proposed new section 25a provides that the Governor may establish panels of licensed valuers for regions. Valuers must be appointed on the nomination of either the Real Estate Institute of South Australia Incorporated, or the Australian Institute of Valuers, and must have experience in valuing land in the area of the region in relation to which the panel is established. Appointments are to be for periods not exceeding three years. The proposed new section 25b provides that a person who is dissatisfied with the Valuer-General's determination of an objection made under this Part may apply for a review, to be conducted by a valuer selected from the appropriate panel.

Applications cannot be made if a question of law is in issue. The valuer conducting the review must give the applicant and the Valuer-General an opportunity to make submissions, and after due consideration of all relevant information before him the valuer is to either confirm, increase or decrease the valuation. The valuer is directed to confirm the valuation if he would otherwise have altered the valuation by a proportion of one-tenth or less. The Valuer-General should make any consequential alterations to the valuation roll. The applicant will have his application fee reimbursed if his valuation is successfully reduced. The proposed new section 25c preserves a final right of appeal to the Land and Valuation Court. The proposed new section 25d is a general savings provision, allowing rating or taxing authorities to recover rates or taxes, notwithstanding that an objection, review or appeal is under way. Clause 8 provides for the consequential amendment of certain other Acts.

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

ADJOURNMENT

At 11.22 p.m. the Council adjourned until Wednesday 31 October at 2.15 p.m.