LEGISLATIVE COUNCIL

Wednesday 17 September 1986

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

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

MILLION MINUTES OF PEACE

The Council observed one minute's silence in acknowledgement of the International Year of Peace.

PAPER TABLED

The following paper was laid on the table:

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

Pursuant to Statute—

Commissioner for Equal Opportunity—Report, 1984-85.

QUESTIONS

PARLIAMENTARY LOBBIES

The Hon. K.T. GRIFFIN: I seek leave to make a brief statement before asking you, Madam President, a question about parliamentary lobbies.

Leave granted.

The Hon. K.T. GRIFFIN: I have put on notice a question to the Attorney-General to establish the cost of redecorating and refurnishing the President's room. I understand that you, Madam President, now have a new secretary who is using the robing room in the Legislative Council lobby area, behind the Legislative Council Chamber, as an office. As a matter of long established practice in the Houses of Parliament in South Australia, while a House of Parliament is sitting the lobbies are out of bounds to everyone other than members of both Houses, Clerks serving the Chambers, Parliamentary Counsel and messengers. Ministerial officers, press secretaries, public servants (other than when going to the officers' box in the Chamber when a Bill is being considered) and other staff of Parliament are not permitted access to the lobbies when a House is sitting.

There are good reasons for the limit on access to the lobbies, including the fact that elected members of Parliament frequently conduct discussions with their parliamentary colleagues from all Parties on a variety of issues. Some of those discussions are sensitive but will be compromised if an unauthorised person is occupying a room in those lobbies and can overhear the discussion. In addition, it should be said that the Chamber and its lobbies are under the control of the Council and not any one person, even the Presiding Officer. Therefore, Madam President, my questions to you are:

1. Do you propose that your secretary should occupy permanently the robing room in the Legislative Council lobby?

2. By what authority does that person occupy the robing room in the lobby?

The PRESIDENT: I do propose that the President's secretary should occupy that room. As is well known to all members of this Council, there is a great shortage of rooms in this Parliament and many members and staff, most unfortunately, have to share rooms in a way that is quite undesirable. I am attempting, if possible, to do something about this, but it seemed to me that it was totally inappropriate that a room that was large enough to be used and occupied by a staff member should remain unoccupied and therefore be wasted, particularly in view of the fact that these days Presidents hardly need a room in which to robe as there is not a change of clothes required by the President before entering the Council.

I should point out that, as I understand it, the allocation of rooms on this side of the building is at the discretion of the President; that is my reading of Standing Orders. Consequently, I felt it desirable to make use of that room and have suggested that my secretary use that room while she is engaged on work in this building. Also, on other occasions I have been approached by people wishing to pass through the lobbies; in particular, some of the female staff have requested permission to go through the lobbies, as that is the most direct means to the only ladies toilet on this floor. I have given permission for such members of staff to go through the lobbies when that is the most direct approach, to the ladies toilet.

I was approached with this request and understood at the time that it was within my discretion to give such approval—which I gave. I understood that the previous President had been approached to give permission for such passage through the lobbies to a limited number of people, and that he also had understood that it was within his power to indicate whether someone should be able to use the lobby in this way. If the honourable member wishes to consider the matter further, I shall be only too happy to discuss it with him, but it was certainly my understanding that it was within my discretion to give people the right to go through the lobbies.

I have not exercised this in any flippant way, and I feel that the small number of exceptions which I have allowed are humane and those for which one would expect permission to be granted but, as I say, if the honourable member wishes to have further discussions on the matter I shall be only too happy to do so. I am certainly mindful of the use which is made of the lobbies and the Parliamentary tradition associated with them.

ROXBY DOWNS

The Hon. I. GILFILLAN: I seek leave to make a brief explanation prior to asking a question of the Attorney-General, representing the Government, on the subject of the appointment of caterers to Roxby Downs.

Leave granted.

The Hon. I. GILFILLAN: Section 12 of the Indenture Act specifically urges the joint venturers to employ South Australian companies and facilities wherever possible, and quite rightly and emphatically emphasises that that is part of the intention of that section of the indenture Act. It has been brought to my notice that an advertisement has appeared in the South Australian *Advertiser* asking for cooks, kitchen hands, leading hand cleaners and cleaners for SHRM industrial caterers.

It transpires that SHRM Australia Pty Limited is actually an integral branch of a French company, of which the French Embassy is properly proud. Its full name is *Societe Hoteliere et de Ravitaillement Maritime*. I raise the matter to point out that the necessary skills do not reside exclusively in France: that the cooking, cleaning and other requirements that are asked for and are to be provided through this company are, I suggest, quite capable of being provided by South Australian companies. The questions that I will ask the Attorney-General will, I hope, give the Government an opportunity to react to this situation where

a French company has been appointed as caterers to the Roxby Downs joint venturers, in spite of section 12 of the Indenture Act and in spite of the fact that there are many companies in South Australia well capable of providing these services. Therefore, I ask the Attorney-General:

1. Does he believe that there are no South Australian companies competent to cater for these catering needs at Roxby Downs?

2. Does the indenture Act require the joint venturers to give preference to South Australian companies?

3. Does the Attorney-General welcome this appointment of a French company, or does he deplore that appointment?

4. If the Government is displeased about this matter, will it convey that displeasure to the joint venturers and impress on them that they must abide by the terms of the indenture in regard to the use of South Australian companies and personnel?

The Hon. C.J. SUMNER: I am not aware of the circumstances outlined by the honourable member and am not in a position to indicate whether or not his alleged facts are correct. I will have the matter referred to the appropriate Minister and bring back a reply in due course.

MARIJUANA

The Hon. R.I. LUCAS: I seek leave to make a brief explanation before asking the Minister of Health a question about on-the-spot fines for marijuana smoking.

Leave granted.

The Hon. R.I. LUCAS: Members would have read in this morning's *Advertiser* of the tragic case of Ken Cole, coach of the Adelaide 36'ers in the National Basketball League and his losing his position for smoking marijuana in front of players and officials in Brisbane last Sunday. Mr Cole is quoted as saying:

> I didn't let anyone down. Marijuana brings only a $50 fine in South Australia and the Minister of Health says it's not nearly as dangerous as alcohol.

Mr Cole is a little ahead of himelf, because the Government and the Democrats have not yet passed the Minister's legislation.

However, the Ken Cole affair shows us how dangerous the Minister's proposition to decriminalise marijuana smoking is for those prepared to pay an on-the-spot fine. Ken Cole was an enormously popular and respected sports personality in South Australia.

The Hon. C.J. Sumner: You've got to be joking!

The Hon. R.I. LUCAS: I am interested to hear the Attorney-General's remark, 'You've got to be joking.' He can rationalise that comment later, if he wants to. As I said, Mr Cole was an enormously popular and respected sports personality in South Australia, especially among young people. This has been encouraged by the 36'ers success in Adelaide and the extensive television coverage of basketball replays by Channel 10, especially early on Saturday mornings, when many young basketball fans watch those replays. There are, of course, many other prominent people who have admitted smoking marijuana, people such as rock stars Boy George, Paul McCartney, Joe Cocker, etc.

The Hon. C.J. Sumner: What about you? You're about the right age.

The Hon. R.I. LUCAS: I do not know whether the Minister knows something that I do not know: I do not know whether he is referring to the fact that I am a rock star or smoke marijuana.

The Hon. K.T. Griffin: No, I am the rock star.

The Hon. R.I. LUCAS: The Hon. Trevor Griffin is the rock star—ask Peter Garrett. Rock stars, cricketers like Ian Botham and personalities like Ken Cole have a tremendous influence over the attitudes of young people. The Minister's proposition, supported by the Democrats, would mean that people like Ken Cole, Ian Botham and Boy George could smoke marijuana quite openly and publicly in South Australia in the secure knowledge that as long as they paid the $50 licence fee there will be no further penalty. My questions are:

1. Does the Minister believe that such a situation will encourage more young people to take up and continue smoking marijuana?

2. Will he now withdraw his legislation?

The Hon. J.R. CORNWALL: I am pleased that the Hon. Mr Lucas has asked me a Dorothy Dixer. He has given me an opportunity to tell the House about the information that I have circulated in a press release. It was never my intention, nor that of the Government, that any impression should be given to the public that we were other than opposed to the smoking of marijuana. I have said consistently, and I repeat, that it is a psychoactive drug and my strong advice to anyone and everyone who cares to listen is that it should not be smoked. It cannot do any good in the overwhelming majority of circumstances, and it can do some harm.

An anomaly in the Bill has been drawn to my attention on a number of occasions. It is that the smoking of tobacco in a taxi would attract a maximum penalty of $200 but the smoking of marijuana in a taxi would attract a maximum penalty of $50. I have moved to correct that anomaly. I am happy to give informal notice that in Committee I will move an amendment that will make it an offence to smoke marijuana in public or other prescribed places. That will include taxis and public transport. That offence will attract the current maximum penalty of $500. It will be dealt with by the courts and it will be recorded as a criminal conviction. The expiation procedures will still apply to smoking marijuana in private, to personal possession, to possession of an instrument or instruments and to personal cultivation.

The Hon. K.T. Griffin: I find your position inconsistent and contradictory.

The Hon. J.R. CORNWALL: I regret that the Hon. Mr Griffin finds this humorous. He is a wonderful judge! We will tell the Council about his 1982 political judgments one day and why he is no longer the Leader. I would not be able to hold up my head on either the front or back benches if I were him.

The Hon. L.H. Davis: The master of the political slur.

The Hon. J.R. CORNWALL: Ever since Mr Davis has been in this place he has been practising to be a wit, but he has only ever got half way there. For the offence of smoking marijuana in public or other prescribed places, under the amendment that I have said that I will move in Committee, the penalty will be the current maximum of $500. The offence will involve a court appearance and upon conviction it will be recorded as a criminal conviction.

TOBACCO INDUSTRY

The Hon. CAROLYN PICKLES: I seek leave to make a brief statement before asking a question of the Minister of Health about the tobacco industry.

Leave granted.

The Hon. CAROLYN PICKLES: I have noticed an article in the *Advertiser* today about correspondence from a tobacco company called Amatil to the State Theatre Company. Amatil has apparently made extraordinary statements regarding its intention to withdraw funding from the State

Theatre Company if the Government proceeds with the Tobacco Products Control Bill. Has the Minister been threatened with withdrawal of any sponsorships? Will he bow to the blackmail inherent in the letter written by Amatil to the State Theatre Company?

Members interjecting:

The Hon. J.R. CORNWALL: The Opposition appears to take exception to the use of the word 'blackmail' by my colleague, the Hon. Carolyn Pickles. The spokesman for Amatil, Mr Fairweather, is reported—and as I understand it reported quite accurately—in this morning's *Advertiser* saying that they had certainly threatened to withdraw sponsorship from the State Theatre Company.

The Hon. R.I. Lucas: A commercial decision. It is their money: they can do what they like.

The Hon. J.R. CORNWALL: The Hon. Mr Lucas interjects and says that it is a commercial decision, that they can do with it as they wish. That is perfectly true, but the crude tactics of the tobacco industry as epitomised by the reported actions of Amatil stand exposed for what they are.

The Hon. R.I. Lucas: You have been rolled once; you have been rolled again. Roll-over John they call you.

The Hon. J.R. CORNWALL: The choirboy seems to find this amusing, Ms President. He is singing away in his soprano voice and laughing. He is laughing about an industry that kills 16 000 Australians prematurely every year.

The Hon. R.I. Lucas interjecting:

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: He is laughing about an industry that kills 1 400 South Australians prematurely every year.

The Hon. R.I. Lucas interjecting:

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: He is still practising, Ms President.

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order, Mr Davis!

The Hon. J.R. CORNWALL: I have not been personally threatened by anyone in the industry. I find it most regrettable that, when there is a Bill before the Council that has nothing to do with sponsorship whatsoever and which, in practice, has little to do with advertising, it should provoke such a crude response from Amatil. The recent threats made by the tobacco industry, as reported in this morning's *Advertiser*, have made it necessary for me to clarify the Government's intentions regarding health warnings on tobacco advertising.

I am very pleased to do that, and I thank the Hon. Ms Pickles for the question which, incidentally, for the edification of Mr Cameron and his colleagues, was most certainly not a Dorothy Dixer. Clause 7 of the Tobacco Products Control Bill (which is currently before this Council) to which Mr Davis referred, states that an advertisement for a tobacco product shall not be published unless it incorporates or appears in conjunction with a prescribed health warning. This is the section of the legislation that has been specifically pinpointed by sections of the tobacco industry as supposed justification for threatening to withdraw sponsorship for sporting and artistic events. However, the clause is similar (if not entirely identical) in intent to legislation already passed by this Parliament in a 1975 amendment to the Cigarettes Labelling Act.

You, Ms President, and I am sure that our colleague, the Hon. Chris Sumner, will remember it very well because it was one of the first pieces of legislation to go through the Council after we were elected in 1975. That particular Bill included a provision that the clause relating to advertising containing health warnings would not be proclaimed unless there was a move by a majority of States towards similar legislation. That clause has gone unproclaimed for over a decade—in fact, now for more than 11 years—because that condition (that is, that a majority of the States moved towards similar legislation) has never been satisfied. There is no difference in intent in the new legislation. Let me make that perfectly clear. The Tobacco Products Control Bill simply seeks to include in one comprehensive Act all legislation pertaining to tobacco products in this State.

The Government has no intention of proclaiming clause 7 of the new legislation in the foreseeable future, even though there is no mention in the new Bill of proclamation being conditional on action by other States. The only scenario in which it would be proclaimed is if there was a national move for similar legislation throughout the country. Of course, as I have said on many occasions, such legislation can be effective only if it exists on a national scale. It would be plainly ludicrous for national sporting events, such as test cricket and racing (to name but two), sponsored by tobacco companies to be subject to a variety of contradictory legislation regarding advertising controls on a State by State basis. That can only happen nationally.

It is also important to note that clause 7 specifically empowers the Governor to exempt by regulation certain kinds of advertisement from the requirement to display health warnings. Even if clause 7 were to be proclaimed in the fullness of time, it would still be possible for special consideration to be given to individual cases such as advertising on cars competing in the Grand Prix (a point which seems to have worried the Hon. Mr Lucas from time to time). In this context—and in every other context—the objections of the tobacco industry must be seen for what they are: at best they are spurious, misleading and unnecessary. I can understand the tobacco industry's position. The simple fact is that the per capita consumption of tobacco in this country is now at its lowest for more than 40 years, and it is certainly at its lowest since the Second World War. The tobacco industry is not only a killing industry, it is a dying industry. If the Hon. 'Mr Moneyman' opposite—Mr Davis—or any of his colleagues have shares in tobacco companies, I give them some good advice: they should divest themselves of them immediately.

DISTINGUISHED VISITOR

The PRESIDENT: I draw the attention of honourable members to the fact that the Hon. Gianni Giadresco, who is a member of the Italian Parliament for the electorate of Ravenna, is in the gallery today. On behalf of all members of the Council, I wish him well and hope he enjoys his time in South Australia.

WELFARE FRAUD

The Hon. DIANA LAIDLAW: My questions to the Minister of Community Welfare are as follows:

1. Was the Minister consulted by the Federal Minister for Social Security before a decision was taken to exclude South Australia from the introduction this month of tougher penalties against people fraudulently receiving welfare benefits?

2. If so, did the Minister argue for South Australia to be excluded at this time?

3. Does the Minister consider that the effectiveness of the so-called national anti-fraud program will be undermined by the adoption of this piecemeal approach, which excludes South Australia and Tasmania?

4. Is the Minister concerned that the exclusion of South Australia from the crackdown measures may precipitate an influx into this State of people involved in fraudulent welfare practices, believing South Australia to be a welfare fraud haven?

The Hon. J.R. CORNWALL: My answers are as follows:

1. No.
2. No.
3. No.
4. No.

KALAMATA EARTHQUAKE

The Hon. M.S. FELEPPA: My question is to the Minister of Ethnic Affairs. First, has the Government considered sponsoring an appeal for the victims of the earthquake at Kalamata, in the south of Greece? Secondly, does the Minister have any knowledge of whether or not any Australian visitors were injured in this tragedy?

The Hon. C.J. SUMNER: I do not have any information on the second question. However, I will provide the honourable member with any information at a later date. Obviously, the earthquake in Greece is a matter about which we should all express our sympathies to the Greek Government and its people. The South Australian Ethnic Affairs Commission has discussed the matter with the South Australian Consul General for Greece, Mr Karabetsis, to ascertain whether or not any action is needed by South Australian authorities. I understand that some consideration is being given to the establishment of an appeal. I expect there to be further discussions on that matter over the next day or so. When those discussions have been concluded, I will advise the honourable member of whether an appeal is to be launched and, if so, its details.

CFS FUNDING

The Hon. M.J. ELLIOTT: Does the Attorney-General have a reply to the questions I asked on 31 July about CFS funding?

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

1. Subsidy payments:

	$
1985-86	2 187 000
Budgeted 1986-87	2 500 000

2. Non-subsidy payments including: salaries, training, regionalisation, administration, communications, fire prevention, publicity and promotion and work associated with the Mount Lofty Supplementary Development Plan.

	$
1985-86	3 066 000
Budgeted 1986-87	4 930 000

The CFS budget for 1986-87, gazetted on 30 June 1986, includes an $1.8 million increase in funding over and above the 1985-86 budget.

3. There have been no cuts to funding. Subsidy funds have been increased (refer to 1. above).

4. Yes.

5. The need for restructuring subsidies was raised by the Parliamentary Public Accounts Committee in 1983 and has been the subject of discussion since that date.

6. Vehicle and equipment requirements have been aligned with the assessed risk. Vehicle standards have not been reduced.

7. The CFS Director has advised that all vehicles previously approved by the board to receive a subsidy are being funded.

8. No.

9. The meaning of the question is not understood. However, the honourable member may be assured that the CFS confers with other fire authorities to ensure high vehicle standards.

10. The Government has not considered proposals to amend the Country Fires Act other than with respect to volunteer compensation arrangements. The CFS Director is developing proposals to amend the Act to clarify a number of operational matters and to establish a clear chain of command. The Director will continue to consult with the interested parties including the Local Government Association in the development of these proposals.

11. The CFS Director advises that the proposals being developed do not include changes to existing control provisions.

12. The Government has no intention of interfering with moneys raised by brigades.

13. The recent decision of the CFS board to change subsidy arrangements was taken in the overall interests of firefighting throughout the State and to ensure that all volunteers have access to adequate equipment commensurate with the fire risk in their areas.

REMAND CENTRE

The Hon. R.J. RITSON: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister of Correctional Services, a question on medical waste in the remand centre.

Leave granted.

The Hon. R.J. RITSON: In the *News* of 3 September the Hon. Dr Cornwall referred to the position of the Health Commission and stated that a plan involving a medical unit within the remand centre employing 12 nurses, one medical officer, three domestic staff, one clerical officer, a radiographer, a visiting dentist and physiotherapists was 'unnecessary and elaborate'. On 4 September the Hon. Dr Cornwall defended the Health Commission position, but on 9 September press reports stated that State Cabinet ordered the Health Commission to provide the medical staff for the remand centre. It is a fact that the Hon. Dr Cornwall was right and that the Health Commission was right. The published number of occupants of the remand centre is 165. From my naval experience as a medical officer, that is about two-thirds the crew of a destroyer. That number of people would provide about 90 minutes work a day, at most, for a medical practitioner—it is a small fraction, about one-tenth, of a rather quiet general practice, in terms of numbers in the population that one is serving.

The institution is five minutes from Royal Adelaide Hospital. It is a fact that radiographic facilities have been abandoned in other health centres set up by the Government. The Parks is one example, and the idea of installing such facilities was abandoned in the case of the Noarlunga Medical Drop-in Centre, both those health units serving much larger populations. The Minister of Health was right: to spend $600 000 a year on a population of 165 young adults would be something that would raise the eyebrows of a Medicare computer if a medical practice extracted that amount of money per year out of that small number of people.

Does the Minister not consider that his insistence on this medical staffing, as reported in the press, represents a terrible waste? Why does the Minister want to spend this money out of State coffers when arrangements with a visiting general practice could provide some dollars through

Medicare and Dr Blewett which have already been catered for in Medicare funding? Will the Minister tell Parliament exactly what levels of medical and allied health professional staff are to be instituted in the remand centre?

The Hon. C.J. SUMNER: As this is a matter in which the Minister of Health has been involved, I ask him to respond to the question.

The Hon. R.J. Ritson: He got rolled—

Members interjecting:

The PRESIDENT: Order! The Minister of Health has the call.

The Hon. L.H. Davis: He is the Minister of the year!

The Hon. J.R. CORNWALL: That must have got up your nose, I am sure—my terrible low standing in the community.

The Hon. M.B. Cameron: Surprise!

The Hon. J.R. CORNWALL: I am sure it surprised you, but it did not surprise a lot of people, including my wife. The children were a little more surprised. As I said at the time, I think I have been a far better father to many other people's children than I have been to my own because I have been extraordinarily busy. I have led a very busy and interesting life and for that I am grateful to my good friends and colleagues. Thank you for the opportunity to make that valedictory address. It is not true, as the Hon. Dr Ritson suggested, that I got rolled in Cabinet: I was not in Cabinet on that day. I was interstate. I had an acting Minister of Health who was in fact the Hon. Mr Blevins.

Members interjecting:

The Hon. J.R. CORNWALL: I am quite unable to say whether my interests were well represented. However, let me say that there are a number of inaccuracies in the Hon. Dr Ritson's explanation as well as a number of quite clear and gross misunderstandings. First, we are not talking about providing merely a medical service: we are talking about providing a service from a number of health professionals, including doctors and a dentist. Secondly, let me make it clear that the general standard of health—and this is a recorded fact—of the population in any remand centre, and this will be the case in the Adelaide Remand Centre, is generally below the level of the general community. That just happens to be fact.

The other point that the Hon. Dr Ritson made was that the Royal Adelaide Hospital is only five minutes from the remand centre—that is perfectly true. If people are ill enough to require hospitalisation, they will be taken to Royal Adelaide Hospital: they will be taken by two warders and guarded 24 hours a day, and the cost of that is great. The cost of not staffing the infirmary, when we looked closely at the figures, would have been at least $400 000 a year just for additional warders to transfer remandees to care and attention outside prison, let alone the other health services that could have been and will be delivered by visiting or permanent medical practitioners or other health professionals. So, it is certainly not as simple as it seems.

Also, the idea of providing fee-for-service medical attention using bulk billing and Medicare was examined. That was not possible because it would breach the Medicare agreement. Dr Blewett may be many things, but stupid he is not: he is an extremely intelligent human being who would not fall for the three card trick, I can assure the honourable member. So, we are not able to rob Peter to pay Paul. The Medicare agreement would have been breached. We were unable to do that.

The Hon. R.J. Ritson: How?

The Hon. J.R. CORNWALL: Because there is quite specific purpose funding for the staffing of our institutions. That is how, and that would be quite clear to anyone with an IQ above 72, I would have thought. Certainly, during the negotiations we looked at a number of possibilities. My view was that the original staffing as proposed did appear to be in the Mercedes Benz class instead of the Holden Commodore class. However, when one balances that against the additional cost of overtime for warders or officers at the remand centre, on balance it is nowhere near as extravagant financially as it would appear.

Notwithstanding that, the approval is in practice an interim approval: the level of staffing will be reviewed before the end of this financial year. If it is possible that the infirmary can be staffed (I stress that—the infirmary, because if it were not staffed it would become necessary to take patients requiring even simple bed rest out of the remand centre) with less nursing staff, in particular, that will be done. If it is possible to provide medical and other health services in any more cost effective way, that will be done. However, it was far more important in the short term that the remand centre be commissioned. The old Adelaide Gaol is in a disgraceful state and was grossly overcrowded, and there was also an outbreak of scabies, just to mention three compelling reasons why it was absolutely imperative that the new remand centre be staffed and commissioned at the earliest practical time.

The decision was therefore taken by Cabinet to go ahead and to staff the infirmary at the optimum level recommended in the plans that were developed. As I said, that will be reviewed before the end of the financial year. If it is at all possible to staff it in a more cost effective way and still remain within the standards that are laid down by the United Nations, that will certainly be done. As I have frequently said, in matters of money I may be careless with my own but I am always scrupulously careful with the money of other people.

The Hon. R.J. RITSON: As a supplementary question, does the Minister mean now that he was wrong the first time when he referred to the excessive cost of the department's proposition and is he not now changing his mind on that point?

The Hon. J.R. CORNWALL: No, Ms President. I have explained that at very considerable length and do not think I should take up the Council's time going through it again.

MOTOR REGISTRATION OFFICE

The Hon. G.L. BRUCE: I wish to ask a question of the Minister of Health, representing the Minister of Transport, on the motor registration office and seek leave to make a short explanation before doing so.

Leave granted.

The Hon. G.L. BRUCE: Some three or four years ago in this Chamber I raised the question of having to wait to pay a fee on motor registration when one went into one of the motor registration offices. The answer came back that it was being looked at, was a one-off and would not happen again. I have been some times since and still had to wait. In fact, last Friday I had the dubious pleasure of going up to the Modbury office of registration. It was 11.12 when I went in to pay and 11.31 before I was called to the counter. I had a wait of 19 minutes. During that time no fewer than 50 people were in that office throughout that 20 minute period. I find that most disturbing, that one has to queue up to get rid of money. I would have thought that it would be the only place I have ever been where one had to line up to dispose of one's money, so my question is: could the Minister check and advise if the waiting time to pay moneys to the motor registration branch in the case I have outlined

is an isolated case or is it the norm, not only at this branch but at all branches?

I would stress that I do not usually go to that office. I usually go to the Enfield office and have always found I have had to wait at least five or ten minutes. When I raised the question some three years ago I think it was a 20-minute wait. If it is the norm, could some investigation take place to try to alleviate the waiting time for customers queing to pay money to the Motor Vehicles Registration Branch?

The Hon. J.R. CORNWALL: I will be pleased to refer that question to my colleague in another place and bring back a reply.

INTERNATIONAL CONVENTIONS

The Hon. J.C. IRWIN: I seek leave to make a brief explanation before asking the Attorney-General a question relating to international conventions.

Leave granted.

The Hon. J.C. IRWIN: The Attorney-General would be aware of a number of international conventions signed by federal governments. For example, yesterday under notices of motion we had notice of a Bill for an Act to give effect within South Australia to the United Nations Convention on contracts, etc. I can further cite the United Nations Convention on the elimination of all forms of discrimination against women, in particular article 6 which provides:

> State Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

I ask the Attorney-General:

1. Exactly what are our obligations as a State Parliament to uphold international conventions signed on our behalf by Federal Governments?

2. Would he agree that if we pick up components of a convention we like and discard components we dislike are we not in effect not upholding the conventions which we sign?

The Hon. C.J. SUMNER: The question the honourable member asks has a number of ramifications. The first point I would make is with respect to the question he referred to relating to the exploitation of women—and no doubt this is the point he will make when the Prostitution Bill is debated, but I do not want to preempt what he might have to say or what the response might be to that. I think it needs to be stated now, as the honourable member has raised it, that it is not clear that this Bill would be in contravention of the convention to which the honourable member has referred but, no doubt, that is a matter which can be debated during the debate on the Prostitution Bill.

The only point I make at this stage is that the matter is not necessarily clear. I think it is open to some difference of opinion and interpretation. I could provide the honourable member with a fuller answer at some future time to the questions that he has raised with respect to international treaties and conventions. Obviously, if the treaties and conventions are incorporated into national law, either Federal or State, they are binding on the people of Australia and the people of South Australia by virtue of being the law of this country. With respect to matters which have not been incorporated into the domestic law, the very fact that a convention is signed does not automatically make the international convention the domestic law of the individual country but, usually, the convention has in it some exhortation to the countries which are signatories to the convention to ensure that their law accords with the convention.

Sometimes there is inserted into conventions that are negotiated by Australia what is called a Federal clause. That indicates to the international community that Australia is a federation and that the convention will have to be implemented by the individual Governments of the federation. Those Federal clauses can take various forms. The Labor Government view, I think, is that they would have what I might describe as a weaker Federal clause than the Fraser Government attempted to insert in international conventions.

Whatever the result of those, there is usually some clause or reservation, at least—if not a formal reservation, some explanation or declaration—that as far as Australia is concerned we are a federation and the convention is to be implemented by the Commonwealth and the individual States of the federation. With respect to consultation on the signing and preparation of international conventions and treaties, my experience is that the Federal Government has consulted with the States on those conventions through the appropriate forum, which is usually the State-Federal Ministers meetings, and often the Standing Committee of Attorneys-General ends up with a large number of these as, in fact, does also a standing committee on human rights in Australia, which comprises State and Federal Ministers, has been responsible for input and monitoring Australia's human rights performance and the signing of treaties.

So, the States are involved although they are not involved in any formal sense. There was a suggestion at the last Constitutional Convention that there ought to be some formalisation of the procedures whereby Australian national Governments are involved in negotiations for the preparation of the treaties and international conventions, and that there should be some formal mechanism whereby those consultations occur with the States, the component parts of the federation.

I trust that has answered the honourable member's question. If on the perusal of my reply he wishes any further information, I would be happy to provide it for him. If he would like a more elaborate briefing on what is done in this area, I can also provide that to him.

QUESTION ON NOTICE

GRAND PRIX

The Hon. K.T. GRIFFIN (on notice) asked the Attorney-General: In relation to the 1986 Australian Formula One Grand Prix:

1. With which companies, firms or individuals have contracts been entered into with respect to the use of the logo or other insignia relating to the Grand Prix?

2. With what companies, firms or individuals have contracts been entered into for the provision of services in respect of the Grand Prix?

3. With what companies, firms or individuals have contracts been entered into for construction or other work in preparing the Grand Prix facilities?

The Hon. C.J. SUMNER: For commercial reasons it is not considered appropriate to provide the names of individual companies; I have provided the number of companies in each instance and have indicated the percentage of those which are South Australian based companies.

1. 52—73 per cent
2. 15—86.7 per cent
3. 65—98.5 per cent

WELFARE BENEFICIARIES AND NEEDY FAMILIES

Adjourned debate on motion of the Hon. Diana Laidlaw:

That recognising that pensioners and other welfare beneficiaries are the neediest groups in our South Australian community, and that the economic position of low and single income families with children has deteriorated markedly over recent years, this Council—

1. registers its protest that these groups will be substantially worse off as a consequence of measures announced in the Federal budget last week;
2. expresses its concern that the continuing decline in the economic position of pensioners, other welfare beneficiaries and low and single income earners with dependents will impose additional obligations on social services provided by the State Government and non-government welfare organisations;
3. calls on the State Government to urge the Federal Government to give priority to initiatives to free families from excessive financial stress; and
4. requests the President of the Council to convey this resolution to the Prime Minister.

(Continued from 27 August. Page 664.)

The Hon. J.R. CORNWALL (Minister of Community Welfare): I propose to move a number of amendments to this motion. I state that I agree with its broad and general principles: no reasonable person could argue with them, nor should argue with them.

As a State Government we are moving in a number of very significant areas to lessen the impact of poverty on our community, and to implement positive strategies which will protect people from poverty traps and help them back into the mainstream of life. The statistics about poverty and its development over the past decade in this country make for very sobering reading. In moving her motion, Ms Laidlaw noted the distressing fact that the number of people living in poverty in Australia has doubled over the past 10 years to a current figure of upwards of 2.5 million. There is overwhelming evidence that the face of poverty in this country has fundamentally changed. No longer are the aged pensioners or even the single unemployed predominant on the bottom of the income pyramid, although goodness only knows they are still around the poverty line.

The very poorest people in our community are young families with unemployed or single parents, and the number of children living in poverty has risen dramatically, the national total now standing at about 750 000. In 1976, 8.6 per cent of all children in Australia were in families receiving income-tested social security payments. This figure had more than doubled to reach 19.8 per cent by June 1985. Fortunately, the latest statistics show that it is a little lower than that in South Australia, but the reality is that one child in every six in this State lives below the poverty line. That means, in practice, that one child in six in this State goes to school each day poorly and inadequately clothed—cold in the winter—and goes to bed at night very often hungry. They are the sorts of thoughts that are sobering for any caring person in the community and the sorts of statistics that cannot be given too often, particularly at a time in our history when the reactionary forces of the New Right talk more and more about less and less public assistance via redistribution through governments.

In the area of housing, national studies show that access to affordable housing to soften the impact of poverty is increasingly more difficult. In January this year nearly 2 200 households sought help from the State Government's Emergency Housing Office—an increase of more than 50 per cent on the same month last year. The amount of financial assistance allocated by the office in January was over $200 000—the highest monthly figure ever recorded and 30 per cent over that provided in January 1985. The 1980s have seen the development of some insidious traps which have worked very much against low income earners. The plastic credit card explosion which has been more widespread and riddled with problems than the "never-never" hire purchase arrangements of the 1960s has led to a massive escalation in personal debt.

According to the Australian Consumers Association, low income earners are choosing to go into debt rather than to go without. In a study of spending habits in Australian households, it was found recently that the bottom 10 per cent of income earners spend an average of $141 each week—a figure that does not include income tax, mortgage repayments, superannuation and life insurance. This same group earns a gross income averaging only $113 a week.

The vicissitudes in western economies world-wide have had a significant impact on Australia as a major importing and exporting nation. Those impacts have unfortunately been absorbed almost exclusively by those at the bottom of the income scale, creating new target groups and the need for more flexibility, care and compassion by our welfare systems, Commonwealth and State. We hear a great deal about everybody having to offer up some sacrifice while our terms of trade remain as they are. We are told consistently—and are reminded consistently—about the very difficult economic times in which we live. That is perfectly true, but it is clear that some people are asked to give up a great deal more than others. It is consistently those who have less to offer up who are asked to give up more and more. It is interesting, as I have said before, to look at the other end of the scale. Gross profit in the corporate sector has grown by 30 per cent over the past four years, and at the same time tax paid by the sector grew by only 4.9 per cent. Investment in the same period has averaged an annual growth of 20.9 per cent. I am not critical in any sense of the priority given to attempting to stimulate the economy and create more employment. However, at the same time as that has been happening the people most in need have in many cases been given the least attention.

This then is the scenario, and it is one that requires clear, compassionate and well devised strategies if we are to soften or nullify the impacts of poverty on an increasing percentage of our population. The amendments which I shall move recognise the vital role the Federal Government must play in alleviating poverty and there have already been some positive indications that the Commonwealth is acting on its responsibilities in this area. The review of social security payments to families and the recent announcement of a national scheme for the payment of child maintenance are positive initiatives which will have positive outcomes for low income families. The review of social security payments, of course, is the most extensive that has been carried out in that area for more than three decades.

Within its own sphere, the State Government is developing some positive and active policies to redress injustice in the community, and to promote the overall health and well-being of the South Australian public. We are continuing to develop a comprehensive social justice strategy as the Government's long-term framework for tackling injustice.

The strategy acknowledges that there are a range of policies, transgressing single Government portfolios, which have major impacts on poverty. A broadranging and ongoing commitment from every Government agency is required if any effective progress is to be made. We cannot go on compartmentalising poverty as something that neatly slots only into the welfare basket.

The philosophy of the social justice strategy is, without apology, active and interventionist. It seeks to intervene in the poverty cycle and, rather than offering people short-term relief, put them on a trampoline-like effect and bounce

them out of poverty and back into the mainstream of life. It is a move away from the residualist and predominantly nineteenth century notions of charity and handouts—exemplified, unfortunately, from time to time by the ideas favoured by the Hon. Ms Laidlaw—to a more dynamic and modern approach. The social justice strategy continues the work already begun by the Anti-Poverty Task Force in 1984. Eleven major points have been identified and agreed as areas in which to begin devising detailed strategies across the community and Government.

The eleven points are to: protect the community from credit traps; make Government departments aware of their impact on poverty; increase access to low cost finance; direct concessions to those in greatest need; reduce the cost of living for people in poverty; fight to ensure that Commonwealth pensions, benefits and taxes are provided at a realistic level; expand access to work opportunities; promote co-operative exercise; ensure relevant education; promote a network of community-based services; and conduct a public campaign to inform people of their rights and entitlements and to sensitize the public to social injustice. I made a spectacular start on that not long ago.

These elements are all part of a detailed strategy currently being developed which is expected to go to Cabinet for approval before the end of this year. They are initiatives which will be taken on board by the Government as part of its overall philosophy and sustained for at least a decade. That sort of commitment is required if we are to have any positive impact on poverty. We can no longer continue to follow the largely nineteenth century welfare models which still encumber us and which simply patch up and tend to society's casualties as they fall. The role of a modern health and welfare system must be to identify why these casualties occur and to become involved actively in prevention and to redress the incidence at its source.

The formulation of the social justice strategy complements the more active social welfare strategy being developed by the Department for Community Welfare and the important initiative in the health area of the creation of a Social Health Office. Social health is one of the major international developments in new and modern approaches to our vital health problems and is based on a definition of health not only as the absence of illness, but as a state of total individual and community well-being. We now have an understanding of how the interaction between individuals and social and physical environments can impact on health status. Overwhelming evidence links social, economic and political factors with the health status of the population. We know that people at the lower end of the socio-economic scale tend to die earlier, and experience more sickness, than those at the higher end. Just as a range of policies and Government departments impact on poverty, so it is with health.

Many health-related policies lie outside the sphere of what is commonly understood as being within the parameters of current health policy. The distribution of, and access to, housing, education, transport and technology, for example, have proven health impacts. The role of the Social Health Office will be actively to promote the health of the South Australian public through the co-ordinated development and implementation of the whole range of public policy. The office will facilitate the co-ordinated development and implementation of the whole range of public policies for the maximum health impact.

Combined with the social justice and social welfare strategies, the development of the Social Health Office will be the third major prong in addressing the health and welfare issues of the 1980's and beyond. It is a Government commitment to developing policies based around the prevention of ill-health and poverty, rather than the palliative relief or cure. It is an exciting development, and one that places this State to the forefront in Australia, and well abreast of world trends. I call on all members of this Council to support the Government's actions, and the motion as amended. The amended motion recognises the positive steps the Government is taking, and also, quite appropriately, seeks to convey the views of this Chamber to the Federal Government. I therefore move:

Leave out all words after 'Council' in paragraph 1 and insert in lieu thereof the following:

1. recognises the importance of tackling the structural barriers which compound the problems of low-income families;

2. endorses the State Government's long-term social justice strategy which seeks to restore equity to all South Australians;

3. recognises the vital and important part the Federal Government must play in alleviating poverty and urges the Federal Government to give priority to—

(a) ensuring that Commonwealth benefits and taxes are provided and set at a realistic level

(b) urgent action to remove poverty traps;

4. recognises the Federal Government's initiative in the review of social security payments to families and looks forward to a positive outcome for low-income families;

5. calls on the State Government to urge the Federal Government to give priority to initiatives to free families from excessive financial stress;

6. requests the President of the Council to convey this resolution to the Prime Minister.

The amendment is self-explanatory, but I shall go through its provisions. First, the Council is asked to recognise 'the importance of tackling the structural barriers which compound the problems of low income families'. The vicious cycle of poverty requires active and interventionist policies. Secondly, the amendment calls on the Council to endorse 'the State Government's long-term social justice strategy which seeks to restore equity to all South Australians'. This cannot be achieved overnight nor even in the short term. It can and will be achieved through the five and 10 year programs that are being developed, based on the 11 major points that I have already explained to the Council. Thirdly, the amendment:

'recognises the vital and important part the Federal Government must play in alleviating poverty and urges the Federal Government to give priority to—

(a) ensuring that Commonwealth benefits and taxes are provided and set at a realistic level

(b) urgent action to remove poverty traps.

That requires little explanation. Fourthly, the amendment asks the Council to recognise 'the Federal Government's initiative in the review of social security payments to families'. That is the first time that has been done for more than three decades. The fourth paragraph of the amendment also 'looks forward to a positive outcome for low-income families'.

Fifthly, I revert to the original motion as moved by the Hon. Ms Laidlaw—and 'call on the State Government to urge the Federal Government to give priority to initiatives to free families from excessive financial stress'.

Finally, in common with the original motion, the amendment 'requests the President of the Council to convey this resolution to the Prime Minister'.

The Hon. I. GILFILLAN: Madam President, I should like your clarification of Standing Orders. When an amendment is moved, does that allow members to speak again?

The PRESIDENT: No, I am afraid not.

The Hon. I. GILFILLAN: There may be no separate debate on any amendment?

The PRESIDENT: That is correct. There can be separate debates in Committee but there is no Committee stage on the motion before the Council.

The Hon. M.J. ELLIOTT: I am pleased to speak in support of the motion moved by the Hon. Ms Laidlaw. Any person with knowledge of what is happening in our society is more than aware that a large number of people have been hurt badly and are suffering. The Federal Budget has made things even worse for many of them. I cannot help but make a small aside relating to the Hon. Ms Laidlaw. She is one of the Liberals whom I see as having a social conscience and she would not support the draconian New Right thinking which would have an even worse effect than the policies of the Federal Government.

The motion is excellent, and I find no fault with it. I will not be supporting the amendments, not because I do not see some merit in them, but because it is obviously a political exercise, since it has removed any paragraphs that were critical of the Federal budget, and that budget was bad. I would have been more than happy to support the amendments of the Minister of Health if he had moved them as additional paragraphs. However, to delete certain paragraphs that are important and to replace them with other paragraphs that praise the Federal Government for the wonderful things it is doing, which it is really not doing, would be a serious mistake.

The Hon. DIANA LAIDLAW: I thank all members, including the Minister, who have contributed to this debate. I thank the Minister because I believe that most of his remarks confirmed and spoke to the very motion that I moved in the first place. I do not accept his amendments because they bring in totally new matters. If the Minister is keen to seek endorsement for some of the programs that the State Government is introducing, I believe they should be dealt with other than by drastic amendment to my motion. I indicate also that by so drastically amending the motion the Minister, unfortunately, is also denying the integrity of the many people and groups that I quoted in support of the motion.

In fact, I would possibly not have moved this motion in the first place if I had not received from SACOSS, ACOSS, Catholic Welfare and other groups very explicit letters damning the Federal budget for aggravating the financial plight of pensioners, beneficiaries and low and single income families in this State. I will just refresh the Minister's memory that ACOSS released a statement on the eve of the budget entitled 'Unjust budget is severe blow for poor people', and the following day (20 August) another statement entitled 'The budget impact on poor people is even worse than anticipated'.

The Hon. J.R. Cornwall: How come you line up with people like Andrew Hay?

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: You are debating from a very weak point. Don't try to distract me from the subject. It is a great pity that a man who has been named Father of the Year would, in the following week, seek to deny by his amendment the plight of poorer people in our community, who are very aggrieved and have had their position aggravated by the Federal budget. I am unable to accept the amendment that the Minister has moved.

Amendment negatived; motion carried.

PROSTITUTION BILL

Adjourned debate on second reading.

(Continued from 27 August. Page 672.)

The Hon. J.C. BURDETT: I oppose the second reading of this Bill. The practice of prostitution is degrading of humanity and of women in particular. Against the background that, not prostitution itself, but certain practices relating to prostitution are presently and have, in some cases, long been illegal, to decriminalise them now would amount to the State condoning this degradation.

I refer to the background paper on the law relating to prostitution tabled in this place. It is very patent that this was made available to the Hon. Carolyn Pickles before she made her speech. I am pleased that the Attorney-General has somewhat belatedly made it available to all members. The penultimate paragraph on page 1 states:

> Some sections of the community regard prostitution as an immoral and undesirable activity. These people tend to take the view that it is the duty of the State to curb prostitution and to minimise its effect through the criminal law. This view appears to be based on the premise that the State should be responsible for establishing and maintaining moral standards.

While I do not see why the State should disregard moral standards (and I shall say something about this later) I think that this description of the views of opponents to decriminalisation by the unnamed author or authors of the background paper is at the same time naive and patronising. It is true that it is not necessarily the role of the State to uphold morality as such, particularly sexual morality. For example, according to accepted moral codes adultery is gravely immoral but not only is it not an offence but it now has practically no legal consequences.

My opposition to the decriminalising of practices relating to prostitution is on the grounds that the practice is degrading, exploitative and socially undesirable, relating as it often does to the drug trade, organised crime, blackmail and other anti-social practices. I am by no means satisfied that it will cease to be related to these practices when and if certain practices relating to prostitution are decriminalised. Incidentally, I find it astonishing that the author or authors of the background paper are not named.

It is not unusual for the State to prohibit or control socially undesirable practices or practices which may have adverse social consequences. For example, some forms of gambling are prohibited and others closely controlled. I think it is a fair implication from what the Hon. Carolyn Pickles has said publicly, both inside and outside the Chamber, that she regards prostitution as socially undesirable.

It then becomes a question of what sort of controls are desirable. I suggest that the present controls, subject to some strengthening to make them more readily enforceable and subject to providing for specific penalties in regard to the clients of prostitutes, are more appropriate than the Hon. Carolyn Pickles' proposals.

When the subject of prostitution is raised by politicians, it always attracts media attention and lively public interest. However, there was not, prior to the raising of this issue by the Hon. Carolyn Pickles and others, a public outcry or public demand for a change in the present law. Since the matter has been raised there has been public interest and some public debate through the media, but it still cannot be said that there has been any kind of public outcry against the existing law.

Our legal system certainly has its origins in the Judeo-Christian ethic. The common law offence of keeping a bawdy house (that is, a brothel), is centuries old and a specific penalty is provided in section 270 (1) *(b)* of the Criminal Law Consolidation Act. This offence is abolished by clause 3 of the Hon. Carolyn Pickles' Bill, which excludes common law offences related to prostitution, and the schedule deletes the references to this offence in section 270 (1) *(b)* of the Criminal Law Consolidation Act.

Our Parliaments certainly have departed from the Christian ethic on many previous occasions but not always suc-

cessfully. For example, the family law system based on the Commonwealth Family Law Act, which provides for an exclusively no fault system of divorce, has got into an awful mess and I do not think that the Commonwealth Government or the people responsible for the Act know how to get out of it. I suggest that this and other experiences indicate that we ought to be very careful before departing from the principles on which our legal system was based. We ought not to depart from those principles without good reason—and certainly no good reason has been demonstrated to me in this case.

If the Bill does pass, and the speeches so far have indicated that it probably will, I shall certainly propose a sunset clause. At the very least, Parliament should consider the situation after the Bill is operating to consider whether it is in fact better or worse or the same as at the present time. In my view, the report provision in clause 9 of the Bill is not strong enough in this situation.

The Hon. Carolyn Pickles, in her second reading explanation, said that she does not support prostitution but neither does she view prostitutes as criminals. Neither do I (as I shall explain in a moment), and in my view neither does the present law. It depends on how you define a criminal. I use the term as meaning one who has been convicted of an indictable offence. All of the offences at present committed by prostitutes as such are summary offences under the Summary Offences Act and I would no more call a convicted prostitute a criminal than I would a person convicted of a traffic offence or other offence punishable summarily.

The indictable offences set out in the Criminal Law Consolidation Act are not offences committed by a prostitute as such. For example, the offence of procuring, which is an indictable offence, may be committed by any person whether themselves a prostitute or not. I do not regard prostitutes as criminals, unless they have in fact been convicted of an indictable offence, whether related to prostitution or not—the same as anybody else.

It has been pointed out that under the present law the prostitute's client is not specifically guilty of an offence. This is a substantial point. It does appear to me that the prostitute's client (in the cases where the prostitute herself commits an offence) clearly aids, abets, counsels or procures the commission of an offence and is punishable as a principal. However, I acknowledge that prosecutions are not in fact instituted against prostitutes' clients. In my view, in general, the client is as guilty as the prostitute and the present law ought to be changed to make the client specifically guilty of the offence.

The Hon. Carolyn Pickles says that prostitution laws have never succeeded in eradicating prostitution. In South Australia this has never been attempted. If it were the intention of the Legislature to try to eradicate prostitution, then prostitution would have been made illegal. But prostitution has not been made illegal in South Australia. There are only certain specific offences related to prostitution. If a man and a woman or two men in a private place made an agreement whereby one of them agrees to prostitute his or her body for fee or reward, then no offence is committed whether or not the agreement is carried out. As Fr. John Fleming in the Opinion article headed 'Facts Ignored in the Brothels Debate' in the *Advertiser* of 8 September 1986 points out, the present law can hardly be blamed for not achieving what it never set out to achieve.

In my opinion, the present laws have suppressed and reduced the practice of prostitution in the particular areas which they struck at and I do not believe for a moment that if the Bill passes the practice of prostitution will not increase. While it will be difficult to measure, I make the confident prediction that, if this Bill passes, the number of brothels and the practice of prostitution will increase. In any event, while it is true that prostitution will always be with us, it is equally true that murder, rape, burglary and all the other nasties will also always be with us. However, no-one in this Chamber would seriously argue that therefore we decriminalise them or that we do not do the best we can to prosecute the people who commit these offences. The same can be said about the lesser offences (and these associated with prostitution are lesser offences) such as traffic offences.

The Hon. Carolyn Pickles suggests that decriminalisation of some activities in regard to prostitution will allow police resources to be diverted to more socially important areas, for example, the prosecution of drug dealers. I seriously doubt whether this will happen. Prostitution will continue to relate to criminal activities, including the drug trade itself, and will continue to need police surveillance.

The Hon. Carolyn Pickles refers to the fact that prostitutes operate within the law from about 74 escort agencies. There are two answers to this: first, if you cannot stop one aspect of a socially undesirable practice, what argument is that to say that you do not take what steps you can to stop another aspect of it? Secondly, if a law shows a weakness, the usual approach is to strengthen the law so as to remove the weakness. It should not be beyond the wit of the Parliamentary Counsel to frame legislation which would catch escort agencies and/or prostitutes associated with them, although I acknowledge that prosecution would be difficult.

The Hon. Carolyn Pickles referred to the question of health in relation to prostitution, as anyone claiming to deal comprehensively with the subject of prostitution must. The massive increase in the incidence of sexually transmitted diseases—and particularly fears about AIDS—would make one at first blush (if that is the appropriate term in this case) suspect that prostitution may be responsible for this increase. However, all significant studies (including the Neaves report, the 1979 House of Assembly select committee report and the background paper) indicate that prostitutes are, to use the words of the select committee, 'not major contributors to the incidence of VD'.

It is interesting to note that factors leading to the increased incidence of sexually transmitted diseases listed by the Neaves report include: 'changing attitudes to sexual morality, an increase in the number of people with more than one sexual partner and ignorance about the means of disease prevention.' The evidence is that, in the main, prostitutes take every precaution to ensure that they do not contract sexually transmitted diseases and that they are screened regularly for such diseases. There is, thus, not a strong case for licensing of prostitutes or brothels on health grounds and, of course, the Hon. Carolyn Pickles' Bill does not seek to do this. There is no reason to suppose that the Bill would improve the health situation in regard to prostitution, and she does not claim that it would. She refers to other measures independent of the Bill for the prevention and treatment of sexually transmitted diseases and I commend her for her efforts in this regard.

On 25 March 1986, the Minister of Health in answer to a question on AIDS asked by the Hon. Martin Cameron said (page 1096, *Hansard*):

> The third point that I made previously and now make again is that, if we are serious from a health aspect about controlling sexually transmitted diseases, it is a duty for this Parliament, in my submission as Health Minister, to take whatever steps are necessary to decriminalise prostitution . . . We cannot have any system of registration, regulation or licensing which would involve regular testing so long as we pretend that prostitution does not exist.

But the reports are all against him. Among many other arguments against licensing on health grounds, the report of the House of Assembly select committee says (at page 18):

> There was almost universal rejection by prostitutes of licensing as degrading and the opinion was expressed that they would prefer to operate illegally outside such a system.

In her second reading explanation, the Hon. Carolyn Pickles lists as the first of the five main aims of the Bill, 'to prevent the sexual exploitation of young people'. That is a laudable aim, but I should have thought that the position is already fairly well covered and I do not think her Bill advances the matter much.

Clause 4 (1) of her Bill makes a person who causes or induces a child to commit an act of prostitution or to have sexual relations with a prostitute guilty of an indictable offence and subject to a penalty of seven years imprisonment.

Section 65 of the Criminal Law Consolidation Act (which section is repealed by this Bill) provides that any person, being the owner or occupier of any premises or having or acting or assisting in the management or control thereof, who induces or knowingly suffers any person under the age of 17 years to resort to or be in those premises for the purpose of having sexual intercourse shall be guilty of a misdemeanour and be liable to be imprisoned for a term not exceeding seven years.

The premises need not be a brothel and, unlike the Bill, it is not necessary to prove an act of prostitution. The Bill does take away the requirements to prove *mens rea* (that is, guilty knowledge—knowledge of the age of the person involved) and that is an improvement. The Bill provides that a person who by coercion or undue influence causes or induces a child to commit an act of prostitution is guilty of an indictable offence and liable to a penalty of 12 years imprisonment. This is a stronger penalty than at present but I suspect that in practice the accused person will be charged with the lesser offence because of difficulties of proof in most cases.

The Hon. Robert Ritson has referred to the matter of the present law relating to unlawful sexual intercourse where, again, *mens rea* does not apply. However, this only applies where unlawful sexual intercourse occurs. The *mens rea* requirement in regard to minors ought to be removed and this could easily be effected by a simple amendment to the present law. Randall Ashbourne in the *Sunday Mail* of 17 August says:

> Labor MLC Ms Carolyn Pickles said last night her private member's Bill would include tough provisions to control prostitution.

Two paragraphs later he says:

> The Pickles Bill would remove the criminal penalties for off street prostitution but still outlaw soliciting and introduce long mandatory gaol sentences for people who tried to coerce others into prostitution.

This is wrong. The Offenders Probation Act applies to all of the offences created under the Bill. Where the penalty stated in the Bill is, for example, seven years imprisonment, the court could, again for example, impose a fine. It is not clear whether Randall Ashbourne in the fifth paragraph of his article is still stating what the Hon. Carolyn Pickles has said but, in any event, I have had far too much experience with the press to hold her responsible for the mistake.

In passing, it is interesting to note that the size of an advertisement consisting of a display on a fixed structure is restricted to 2 500 square centimetres as opposed to, for example, the one square metre in the Electoral Act and there is no limitation as to the number of advertisements or their proximity to each other.

The schedule strikes out sections 63 and 65 of the Criminal Law Consolidation Act, but curiously not section 64 *(a)*. Section 64 *(a)* provides that any person who by threats or intimidation procures any person to have sexual intercourse shall be guilty of a misdemeanour and liable to be imprisoned for a term not exceeding seven years. Clause 5 of the Bill provides that a person who by coercion or undue influence causes another to commit an act of prostitution is guilty of an indictable offence; the penalty is imprisonment for seven years. The term 'undue influence' is defined in the Bill.

The two provisions are in similar but not identical terms. It is a well established rule of statutory interpretation that a provision in an Act is not repealed by implication. If the Bill passes in its present form we would have two similar but not identical provisions in force and I would suggest that the Hon. Carolyn Pickles considers this in the Committee stage. Section 64 deals with all sexual intercourse and not just prostitution, but I suggest that the degree of duplication is such that it ought to be addressed. The definition of 'brothel' in the Bill differs from that in the Summary Offences Act. It provides:

> 'brothel' means a place at which a prostitute or prostitutes provide prostitution services on a regular basis.

The words 'on a regular basis' are an addition to the present definition. In the case of a prosecution for operating a brothel contrary to or without planning consent, it would be necessary to prove the regular basis and I propose to move an amendment to remove these words.

I am opposed to the principle of the Bill and do not propose to move amendments to the detailed operation of the Bill. If the Bill is defeated, I undertake to introduce a Bill to make prosecution under the present law more achievable, to make the prostitute's client specifically guilty of an offence, and to catch escort agency operations. I understand that some of my colleagues will introduce amendments in the Committee stage to make the Bill, if it passes the second reading, more acceptable than it is at present and in the Committee stage I shall give consideration to such amendments. However, for the reasons stated above I oppose the second reading.

The Hon. DIANA LAIDLAW: My remarks in support of the second reading are based on my understanding that this endeavour by the Hon. Ms Pickles to decriminalise prostitution in South Australia will pass the Council with the support of the nine Labor and two Democrat members. The merits or otherwise of the case to decriminalise prostitution have been well canvassed by a select committee in another place in 1979; in New South Wales a similar select committee reported in 1985; the Neave Committee reported in Victoria in 1985; and there have been contributions from honourable members in this debate.

Therefore, I do not intend to restate those arguments. Rather, I intend to focus on a number of what I consider to be glaring weaknesses in this Bill because, notwithstanding the arguments for and against the issue of decriminalisation, I believe that the Bill is an inadequate and poor attempt to address the complexities of the issue. A background paper on the Law Relating to Prostitution prepared by the Attorney-General's Department and circulated for public discussion last month urged considerable caution in approaching options for change and after outlining the pros and cons of four options for change (which were maintaining the *status quo* or strengthening the present law, legislation and regulation or decriminalisation with safeguards) the background paper summarised the issues, as follows:

> Whatever approach is adopted in South Australia it should aim to:

1. Minimise prostitution.
2. Reflect community expectations.
3. Help to remove the exploitation of prostitutes.
4. Protect young people against sexual abuse and exploitation.
5. Protect the community against nuisance and offence.

I believe that judged on any of these counts one cannot help but conclude that this Bill is inadequate. Honourable members who have spoken in favour of decriminalisation would have to reach the same conclusion if they were willing to address the Bill as a separate exercise from the issue of decriminalisation.

It is my intention to address two issues only—planning considerations and, later, child prostitution—because I believe that on both counts this Bill is simplistic in its approach and in some respects dangerous.

I will deal with planning considerations firstly. In South Australia we have an established system of development control whereby there is no land use or change of use which does not require planning approval. To date there has been only one exception made to this rule, and that exception relates to the ASER development. A few years ago this Parliament agreed to exempt the State Government from obtaining planning approval from the Adelaide City Council for development in relation to the ASER project.

That decision is one which has since attracted a great deal of controversy, resentment and opposition, and I therefore believe it is amazing that we would now be asked by the Hon. Ms Pickles to consider a Bill which would seek to provide that the only land use activity in South Australia other than ASER not obliged to seek planning approval would be those uses which relate to small brothels. Section 8 (1) *(b)* of the Bill proposes that it would not be unlawful to use premises as a small brothel provided that the premises are not within a restricted zone.

The precedent for exemption from planning approval that we are being asked to accept is an issue in itself. I suggest that members should contemplate the possibilities for the future if they agree that it is now acceptable that a brothel which is currently deemed to be illegal is suddenly to be elevated to the status of being exempt from planning approval. To elevate small brothels from an illegal use to such an august and exclusive position in our community is undesirable and unacceptable.

Planning is about balancing the rights of property owners and developers against the community of interest. In accepting that principle the community, through our local councils, have accepted as valid detailed regulations to protect the community of interest in balance with the individual interest. As most of the community complaints about the operation of brothels today arise from grievances over nuisance, I wonder how the Hon. Ms Pickles can justify the exemption of small brothels from planning approval.

Councils that have contacted me and a submission that has been received, I believe, by all members from the Local Government Association are united in their resolve that all brothels large and small should be subject to scrutiny by planning authority, which can assess the suitability of the location of the brothel, especially in regard to such matters as existing development in the vicinity, noise, traffic and parking, and the response of adjoining owners and occupiers. Coupled with the matter of precedent in terms of our planning code, I believe that the fact that the precedent is being sought on behalf of brothels is an initative which this Council should resist with vigour. It is my intention, therefore, to move an amendment to the Bill during the Committee stage to strike out clause 8 (1) *(b)* and a further amendment to strike out clause 8 (2) *(b)*. The latter outlines the characteristics of a small brothel and reads as follows:

A brothel is a small brothel if, and only if, the following conditions are satisfied:

(i) the brothel is not part of, or attached to, residential premises occupied by a person who is not engaged in the brothel;

(ii) not more than two prostitutes are engaged at any one time in providing prostitution services to the brothel;

(iii) not more than two rooms are used for the purposes of providing prostitution services.

This clause, in my view, contains many matters of concern which are shared also by local councils and police. Beyond the question of exempting small brothels from planning approval, which I have already addressed, the concerns relate to the practical matters which the Bill conveniently evades, such as who is to be responsible for being satisfied that a small brothel is, in fact, operating in such a manner.

Subclause (2) of that clause proposes that a small brothel is one which does not engage more than two prostitutes at any one time. What does the term 'engage' mean? Does it mean that the brothel can employ 20 prostitutes but that only two are providing prostitution services at any one time, or does it mean that the brothel is limited to employing only two prostitutes or, again, that only two prostitutes are present but may not be working at the time when some yet undefined authorised person comes to satisfy himself or herself that the premises engages only two prostitutes?

The proposal is extremely clumsy and unworkable, and that is the advice of a number of lawyers—not just one—to whom I have spoken, who have all agreed that it is attractive for them and the courts to interpret in the future. Likewise, clause 8 (2) *(b)* (i) and (iii), relating to the type of premises and the number of rooms to be used for the purposes of providing prostitution services, are unclear as to the practical implications, particularly the concentration of small brothels. It is considered feasible by people to whom I have spoken on this matter that the proposal allows a very resourceful developer to convert a commercial building into self-contained units and then lease them to individual prostitutes.

Such a resourceful developer—and with the blessing of the Government—could create a first for South Australia. It has been suggested to me that under this Bill we could see a 'red stump' to match our existing 'black stump' in Grenfell Street. We do not even need a red light zone. This probability is not beyond the realms of imagination, nor is the concern that a small brothel could be a 20-room premises but have two rooms assigned only for use in providing prostitution services.

In relation to clause 8 (2) *(b)*, I note also that the proposal advanced by the Hon. Ms Pickles is inconsistent with the recommendation of the Neave report, which has been adopted by the Victorian Government, that a small brothel is deemed to be a premises occupied by one prostitute, whereas this Bill provides that it be two prostitutes who are engaged in the delivery of the service.

I would be interested to hear the reasons for this inconsistency. The Bill also seeks to establish, in relation to large brothels, that no planning authorisation shall be granted in a restricted zone. Clause 8 (2) *(a)* seeks to define a restricted zone as a residential zone, and then in turn interprets residential zone as meaning:

(a) an area designated as a residential zone by the development plan under the Planning Act 1982, and

(b) an area designated as a residential zone or residential precinct under the City of Adelaide Development Control Act 1976.

This interpretation fails to acknowledge that there are very substantial areas of housing currently used for residential purposes in zones designated by councils as commercial, light industrial and the like. The Hon. Ms Pickles will not interject, but she is tossing her head about. It is interesting

that she believes she knows more about the Planning Act than the five or six councils which have telephoned me, the letters that I have received from the Local Government Association and the Adelaide City Council. It would be very interesting to hear why and how the Hon. Ms Pickles is at odds with all those authorities which deal with this matter and have the—

The Hon. Carolyn Pickles interjecting:

The Hon. DIANA LAIDLAW: The Hon. Ms Pickles may object, but she was looking directly at me and shaking her head at the same time. It is most interesting: I look forward to her response later. It also fails to acknowledge that some councils designate residential areas as living areas, as rural living or township.

The Hon. Carolyn Pickles interjecting:

The Hon. DIANA LAIDLAW: If you can't take the pace, get out. Nobody asked you to come in here.

Members interjecting:

The ACTING PRESIDENT (Hon. R.J. Ritson): Order!

The Hon. DIANA LAIDLAW: Residents in none of these areas can be assured that a brothel will not be approved for establishment in or near their home. Yet residents fortunate enough to live in an area zoned 'residential' have this assurance. I believe that this distinction between households is unwarranted and, in fact, discriminates against the very people unable to purchase housing in areas zoned exclusively as residential. Those areas, as honourable members know, normally attract higher purchase prices. I move to a more technical point, one that I think is extremely important recognising the number of Labor members who live in the Adelaide City Council area. I highlight in respect of the interpretation of 'a residential zone' that under the City of Adelaide Development Control Act 1976 there is no such thing as an area designated as a 'residential zone', yet to read the interpretation the Hon. Ms Pickles has in her Bill one sees that it certainly reads that there is such an area marked as a 'residential zone'. However, there is no such area.

There is, however, provision for a 'residential precinct'. Therefore, my advice is that the Bill requires amendment so that the appropriate clause adequately reflects the mover's intention. As it stands, there would be no restricted zone in the Adelaide City Council area and large brothels could be permitted to establish in North Adelaide next door to the homes of the Attorney-General, and the Hons Mr Chatterton, Peter Duncan and Dr Blewett, who are all residents of North Adelaide—

The Hon. R.I. Lucas: And Nick Bolkus.

The Hon. DIANA LAIDLAW: —as is Mr Bolkus, and within the City of Adelaide near or adjacent to the Hon. Ms Wiese or the Hon. Frank Blevins. I am sure that they, like the Adelaide City Council, would wish this clause clarified for their benefit and the benefit of other residents. It is proposed also that the restricted zone relate only to the requirement that brothels be located 100 metres from a church, school or kindergarten. The Local Government Association has pointed out—and I believe that this is correct—that there is no such thing as a 'kindergarten' any longer and that they are now 'preschools', so perhaps the Hon. Ms Pickles could consider that matter.

In addition, I believe that there is merit in the proposal accepted by the Victorian Government that other places frequented by children should be looked at in terms of restriction of distance from a brothel. In addition, I will be moving that the restricted zone be 250 metres rather than the limited 100 metres.

I believe that it is fair to move an amendment to the definition of 'brothel' to delete the words 'a regular basis' at the end of the interpretation. That serves no useful purpose and, in fact, may create a reason for litigation or dispute later. The matter of signs has been dealt with by the Hon. John Burdett, so I will not canvass that particular subject. Those are my concerns in relation to planning considerations. As I indicated earlier, I have a variety of concerns about child prostitution. However, I seek leave to continue my remarks later.

Leave granted; debate adjourned.

FREEDOM OF INFORMATION BILL

Adjourned debate on second reading.

(Continued from 20 August. Page 476.)

The Hon. R.J. RITSON: I support the concept of freedom of information. I support, also, the remarks made by my colleague the Hon. Mr Cameron. One of the matters facing Parliaments today that follow the Westminster system is the question whether the system of Ministerial responsibility is still adequate as a check and balance against the exercise and potential abuse of Executive power. If we look at the American system we see that what the Americans have chosen is a system of virtually electing a monarch with many of the powers of the pre Stuart Kings of England, but with a limited term of office and with powerful parliamentary committees that can require the Monarch and his Executives to answer questions and give information. The committees have the right to refuse money for particular projects, a right which is regularly used by the Congress in that country.

In the Westminster system we have a requirement that the Chief Executives—that is the Ministers—must also be members of Parliament, in contrast to the American system where they stand outside of the Parliament. We have a weak committee system which cannot require the Executive to give information on oath to committees and which cannot really require a Minister to answer a question truthfully—or even require a Minister to answer a question at all. We rely on two things: first, that the Minister must be re-elected at the polls and if he is particularly awful then maybe he will not be re-elected; and, secondly, that the conventions concerning action to be taken if one should mislead the Parliament—the convention that questions will be answered truthfully—will be observed. However, I put to the Council that as the years go by those forms of calling the Executive to account are diminishing. We see in this Council regularly the spectacle of Ministers who, when asked questions, give extremely long non-answers about something else and so Question Time is increasingly a series of propaganda statements by Ministers rather than serious answers.

The Hon. J.R. Cornwall: It is abused by members of the Opposition who give 10 minute explanations to questions.

The Hon. R.J. RITSON: The Minister of Health seems to be getting disturbed as I speak about this. I am speaking abstractly, but he is responding. In a Freudian way—if the cap fits, wear it.

As we find the Westminster system without its strong committee system and its powers to examine the executive, and the ethos and convention of ministerial responsibility becomes a less and less satisfactory means of calling the Government to account, we must look elsewhere. The citizens, directly or indirectly through their elected representatives to Parliament, deserve the right to more information. Unless we go over to the American system, which would be a radical change that we should not undertake, we need

some formal and compulsory way of getting information from the Government. This Government, more than any other Government, and in particular the Minister of Health more than any other Minister, has terrorised the public servants and statutory officers involved to the point where the simplest request by an Opposition member about the most uncomplicated and uncontroversial information is met with a panic-stricken silence by public servants lest they be punished by the Government, or feel the sharp edge of the Minister's tongue.

I support this proposition wholeheartedly. If instituted, it will ensure the survival of the Westminster system, because without some way of penetrating the wall of silence erected by governments in general, but particularly this Labor Government, we may ultimately be promoting the cause of republicanism and a strong committee system. I support the second reading.

The Hon. G.L. BRUCE secured the adjournment of the debate.

COMMERCIAL AND PRIVATE AGENTS BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to provide for the licensing and control of commercial and other private agents; to repeal the Commercial and Private Agents Act 1972; and for other purposes. Read a first time.

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

That this Bill be now read a second time.

This Bill is to repeal and replace the Commercial and Private Agents Act of 1972. The present Bill is the result of a close and careful review of the 1972 Act, and is a major overhaul of the licensing and regulatory scheme of that Act. With some exceptions, mostly of a technical nature, it is the same as the Bill introduced in the last session. The existing Commercial and Private Agents Act was passed in 1972 with the aim of licensing and controlling the following classes of agents: debt collectors (known as 'commercial agents'), private investigators (known as 'inquiry agents'), loss assessors dealing with motor vehicle accidents and workplace injuries, process servers, and security agents.

The power of licensing and disciplining these agents was entrusted to an independent Commercial and Private Agents board. Various substantive provisions were designed to ensure that the conduct of those agents regulated would conform with acceptable community standards.

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

The common theme running through these apparently diverse occupations is the private prevention of criminal acts and the private enforcement of civil rights. That is why they were brought together in the original Act and this is why, with some adjustments and changes, the new Bill seeks similarly to regulate the conduct of those engaged in these varying activities on behalf of private persons or companies, ancillary to the publicly organised processes of law enforcement. The original Act introduced to this Parliament by the then Attorney-General, the Hon. L.J. King, has been widely acknowledged as a leader in this field. However, in the light of developments in the approach to occupational licensing generally, and of emerging patterns of conduct and organisation in the industry, some problems became apparent.

In 1983, shortly after coming into Government, the Government established a working party to review the Act. The working party was chaired by the then Deputy Director of the Commercial Division of the Department of Public and Consumer Affairs and made up of representatives of agents' associations and two police officers. Its terms of reference were to review the Commercial and Private Agents Act 1972-1978 and consider in particular—

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

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

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

The working party reported early in 1984. The report was released for comment in April 1984. Further comment was sought from interested bodies on a draft Bill. The present Bill draws extensively on the recommendations of the working party. It also includes several changes resulting from further consideration and from the consultations carried out during development of the working party's proposals.

The underlying intention of the Bill remains the same as that of the Act it is proposed to repeal: to regulate the activities of those who, as agents, are occupied in the private prevention of criminal acts and the private enforcement of civil rights. The Government remains satisfied that, in general, these activities, closely allied as they are to those of the police and of the judicial process, require regulation to guard against unacceptable conduct and impropriety.

The Bill brings the licensing of commercial and private agents under the Commercial Tribunal, as is being progressively done with occupational licensing systems generally. This will lead to the abolition of the Commercial and Private Agents Board but, as in other areas, the expertise of that board will be preserved by the addition of appropriate industry and consumer representatives to the panels established under the Commercial Tribunal Act. Again, consistent with current licensing procedures, the existing system of separate and annual licences for the various occupations will be replaced by the single continuous licence, requiring an annual return and fee, and endorsed to authorise whichever activities the tribunal is prepared to licence in each case. The requirement for commercial agents to lodge a fidelity bond is abolished, but the trust account and audit requirements and inspection powers are strengthened. In the interests of uniformity with other licensing legislation administered in the Department of Public and Consumer Affairs, these provisions have been re-cast in the present Bill.

Provision is also made for the development of codes of practice to reinforce the disciplinary powers of the tribunal. The existing Act provides for the licensing of the range of occupations I have already mentioned. The Bill approaches the matter from a different angle, reflecting the philosophy that it is the para-police and extra-judicial private activities that are at issue, rather than the names of occupations.

The various categories of agent are not separately named, with the exception of commercial agents, to whom special obligations apply. The general definition of 'agent' in clause 4 of the Bill will contain almost all of the activities currently performed by separate licence holders, and some additions, in accordance with working party recommendations. These activities will be arranged to reflect the para-police, extra-judicial processes to be controlled: from the protection of property and persons, the prevention of crimes and the checking of personal details, to the private service of court

processes once judicial intervention has been sought. Extra-judicial collection procedures will be dealt with in the separate definition of 'commercial agents'.

The 1972 Act provides for the licensing of loss assessors, so far as their work deals with claims arising out of motor vehicle or workplace accidents. Consistent with the present Bill's emphasis on activities rather than occupational titles, loss assessors and loss adjusters will no longer have to be licensed under this category. Provision is made for exemption of those loss adjusters who meet specified standards and qualifications.

The working party recommended that the occupations of giving advice about or selling or installing commercial electronic alarm devices be regulated. When coupled with its further recommendations that all licensees be properly trained or supervised the working party considered that the proposed regulation would 'reduce significantly instances of unwanted activations caused by poor installation or the fitting of equipment not suited to its operating environment'. The definition of agent will adopt this recommendation. Regulations will limit the scope of the licensing requirement to those whose whole business involves dealing with the more sophisticated sorts of alarm systems.

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

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

These exemptions apply also to employees of exempt persons or organisations. They reflect the fact that all the groups listed are already under some form of established regulation which it would be undesirable to duplicate. However, the Government will be alert to complaints about the activities of exempted people. An exemption is not a permit to disregard the standards of behaviour required of licensees under this Bill.

The 1972 Act gave an exemption to employees of non-agents. The review of the Act discussed problems in this lack of control of "in-house" agents. Accordingly, that exemption has been narrowed, so that it will now only be available to employees whose performance of licensable activities is only incidental to their main duties. This will mean that people employed entirely to perform for their employers activities included in the definition of "agent" will require a licence, unless the employer is exempt. However, employees of small businesses who are only occasionally engaged in those defined activities will not require a licence. The exemption for secretarial or clerical staff of agents has been preserved. To meet appropriate special cases, a power to grant further exemption by regulation has been retained.

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

This prohibition is supported by retaining, in clause 15, the inability of unlicensed persons to recover fees and charges and by adding a specific right of action for consumers to recover fees and charges paid in ignorance of that inability.

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

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

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

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

The protection for consumer debtors against defaulting commercial agents to whom they have made payment is made by the declaratory clause 29, which makes clear the common law rule that payment to a commercial agent acting on behalf of a creditor discharges the liability of the debtor to the creditor for the amount paid.

Much concern has been expressed about some practices in debt collecting. It is clear that the practices are not confined to licensed commercial agents. For that reason, controls on debt-collecting practices which were included in the previous Bill and directed at commercial agents will now be transferred to the proposed Fair Trading Bill which is part of a package of measures being developed to rationalise and bring uniformity to a large body of law in this area. In that legislation the controls on debt-collecting practices, which were originally proposed to apply only to commercial agents, will apply to all people collecting trading debts.

The present Bill still provides that an agent seeking any payment in addition to the debt is limited to fees to be prescribed by regulation or the amount actually charged to the creditor, whichever is less. Any claim for such fees may

be challenged for reasonableness before the Commercial Tribunal.

The Bill establishes explicit control over the form and content of letters of demand used by commercial agents. Agents will be able to seek approval for pro forma letters, which will be guided by the code of practice. Forms of letter or documents not approved in advance will have to be lodged within 14 days of first use. The prohibition against providing documents or forms that enable non-agents to pretend to be agents has been retained. I seek leave to have the detailed explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal.

Clause 2 provides for the commencement of the measure and, where necessary, for the suspension of operation of specified provisions of the measure.

Clause 3 provides for the repeal of the Commercial and Private Agents Act 1972.

Clause 4 provides definitions of expressions used in the measure.

'Agent' is defined as meaning—

(a) a commercial agent;
or

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

(i) obtaining or providing (without the written consent of a person) information as to the personal character or actions of the person or as to the business or occupation of the person;

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

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

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

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

(vi) controlling crowds;

(vii) searching for missing persons;

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

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

(x) a function of a prescribed kind.

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

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

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

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

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

(e) a function of prescribed kind.

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

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

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

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

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

(e) any of the following:

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

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

(iii) a person who holds prescribed qualifications in loss adjusting and practises as a loss adjuster;

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

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

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

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

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

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

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

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

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

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

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

Clause 8 commits the administration of the measure to the Commissioner for Consumer Affairs subject to the control and direction of the Minister.

Part II (comprising clauses 9 to 18) deals with the licensing and disciplining of agents.

Clause 9 provides that every licence under the measure is to bear one or more endorsements authorising the holder

of the licence to act as an agent by performing one or more of the classes of functions prescribed by regulation.

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

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

Clause 12 provides for applications for licences. Applications are to be made to the Commercial Tribunal and are to be subject to objection by the Commissioner for Consumer Affairs or any other person. Under the clause, the tribunal is to grant such a licence in the case of an applicant who is a natural person if the person is over 18 years of age, resident in South Australia, a fit and proper person to hold the licence with particular endorsement sought and has attained or complied with any standards or requirements of education, practical skill or experience prescribed in relation to that endorsement. In the case of an applicant that is a body corporate, the tribunal must be satisfied that every person in a position to control or influence substantially the affairs of the body corporate is a fit and proper person for that purpose. In the case of an application for an unconditional endorsement, the tribunal must also be satisfied that the applicant has made suitable arrangements to fulfil the obligations that may arise under the measure and has sufficient financial resources to carry on business in a proper manner under a licence with that endorsement.

Clause 13 provides that a licence is, subject to the measure, to continue in force until the licence is surrendered or the licensee dies or, in the case of a body corporate, is dissolved. A licensee is to pay an annual fee and lodge an annual return with the Registrar of the Commercial Tribunal.

The clause provides that, where a licensee dies, the business of the licensee may be carried on by the personal representative of the deceased, or some other person approved by the tribunal, for a period of 28 days and thereafter for such period and subject to such conditions as the tribunal may approve.

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

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

Clause 16 provides that the Commercial Tribunal may hold an inquiry for the purpose of determining whether there is proper cause to discipline a person who has acted as an agent (whether with or without a licence). An inquiry is only to be held under the clause if it follows upon the lodging of a complaint by the Commissioner for Consumer Affairs, the Commissioner of Police or some other person. The Registrar of the tribunal may where appropriate request either Commissioner to carry out an investigation into matters raised by a complaint. Where the tribunal is satisfied that proper cause exists to do so, it may reprimand the person the subject of an inquiry; impose a fine not exceeding $5 000; suspend or cancel the person's licence or an endorsement to the licence or impose conditions on an endorsement to the licence; disqualify the person from holding a licence or a licence with a particular endorsement. There is to be proper cause for disciplinary action against a person where the person—

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

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

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

(d) being a licensed person—

(i) has obtained the licence improperly;

or

(ii) has ceased to be a fit and proper person or, in the case of a corporation, has a director who is not or has ceased to be a fit and proper person to be a director of a corporate licensee;

or

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

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

or

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

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

Clause 18 requires the Registrar of the tribunal to keep a record of disciplinary action and to notify the Commissioner for Consumer Affairs of the name of any person disciplined and the disciplinary action taken against the person.

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

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

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

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

clause provides for a maximum penalty of $2 000 for contravention of the provision.

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

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

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

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

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

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

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

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

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

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

Clause 31 empowers the tribunal to restrict or prohibit any dealings with the moneys in the trust account of an agent or to appoint an administrator of a commercial agent's trust account.

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

Clause 33 provides for the annual audit of an agent's trust account by an auditor registered under the Companies (South Australia) Code.

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

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

Clause 36 requires a bank or other financial institution to report any deficiency in a trust account to the Commissioner.

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

Clause 38 provides that a commercial agent shall not when recovering or attempting to recover a debt on behalf of another seek or demand (directly or indirectly) from the debtor any payment in addition to the amount of the debt other than the amount allowed under the regulations, or the amount which the agent has charged the creditor, for the agent's services in recovering the debt, whichever is the lesser amount. The clause fixes a maximum penalty of $2 000 for breach of this provision.

Clause 39 provides that where a commercial agent takes possession of a motor vehicle subject to a security interest, the police must be notified of that fact and given particulars of the vehicle. The clause fixes a maximum penalty of $1 000 for breach of the provision.

Clause 40 provides that a commercial agent shall not, for the purpose of recovering a debt on behalf of another, use or send to a person a document or letter demanding payment of the debt unless the form of the document or letter has been approved by the tribunal or a sample of the form of document or letter is lodged with the Commissioner within 14 days after its first use by the agent. The clause provides for a maximum penalty of $1 000 for breach of the offence. The clause provides any form of document or letter approved by the tribunal shall be deemed to comply with any provisions as to the form of documents or letters of demand contained in a relevant code of practice prescribed by regulation under the measure.

Clause 41 provides that a commercial agent shall not invite the public, or any debtor from whom the agent is seeking to recover a debt, to deal with the agent at any place other than the registered address of the agent. A maximum penalty of $1 000 is fixed for a breach of this provision.

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

Clause 42 provides that no person (whether licensed as an agent or not) shall supply or lend any document or form

or provide any other assistance for the purpose of enabling another falsely to pretend to be a commercial agent. A maximum penalty of $2 000 is fixed by the clause for any breach of its provisions.

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

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

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

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

or

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

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

Clause 47 provides for the service of documents.

Clause 48 creates an offence of providing information for the purposes of the measure that includes any statement that is false or misleading in a material particular.

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

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

Clause 51 provides for continuing offences.

Clause 52 provides that proceedings for offences against the measure are to be disposed of summarily and must be commenced within 12 months and only by the Commissioner for Consumer Affairs, an authorised officer under the Prices Act, or a person acting with the consent of the Minister.

Clause 53 provides for the making of regulations. The schedule contains appropriate transitional provisions.

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

SALE OF GOODS (VIENNA CONVENTION) BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to give effect within South Australia to the United Nations Convention on Contracts for the International Sale of Goods; and for other purposes. Read a first time.

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

That this Bill be now read a second time.

It gives effect within South Australia to the United Nations Convention on Contracts for the International Sale of Goods. The United Nations Convention on Contracts for the International Sale of Goods was adopted by a Diplomatic Conference in April 1980.

Before Australia can accede to the Convention, Australian domestic law must be brought into conformity with the provisions of the Convention. Agreement has been reached by the Commonwealth and the States that this should be done by the Commonwealth, in relation to its Territories, and the States each bringing their law into conformity with the Convention rather than the Commonwealth legislating for the whole of Australia using the external affairs power.

The aim of the Convention is to assist international trade by providing a uniform law applicable to the formation and operation of international sales contracts. The Convention applies to a contract if *(a)* the parties have their places of business in different contracting States, or *(b)* the rules of private international law lead to the application of the law of a contracting State. The second of these tests has the effect that the Convention may apply in Australia to some contracts even if Australia does not become a party to the Convention.

The Convention does not apply to certain specified classes of sales. Of particular significance are the classes of 'goods bought for personal, family or household use' and 'sale by auction'.

The Convention is drawn from and incorporates elements of the relevant laws of a number of legal systems. In particular, it adopts principles commonly recognised in both the common law and civil law systems. The influence of the civil law is particularly evident, but the departure from common law principles is confined to relatively few matters.

The Convention has been tailored to the special needs of international trade, for example:

- it recognises established international trade usages (Article 9);
- it encourages the parties to rely on less drastic means than litigation to resolve disputes (Articles 46, 47, 50, 63 and 65);
- it limits the right to avoid a contract (Articles 49, 64 and 82);
- it confers a right on the seller to 'cure' defects in the seller's performance (Articles 34, 37 and 49);
- it requires parties to preserve goods in their possession (Articles 85-88);
- it requires prompt notice to be given of a non-conformity in goods or a third party claim on goods (Articles 39 and 43);
- it expressly recognises forms of communication such as telex (Article 13);
- it makes allowance for the redirection of goods in transit in relation to the duty to inspect (Article 38);
- it enables a party to suspend the performance of a contract if the other party at any time appears to be unable to perform and cannot on request provide adequate assurance of the ability to perform (Article 71);
- it enables a party to avoid a contract for anticipatory breach (Articles 72 and 73);
- it suspends action for damages for a breach caused by an impediment beyond a party's control (Article 79).

Article 7 provides that in the interpretation of the Convention regard is to be had to its international character, the need to provide uniformity in its application and the observance of good faith in international law. Throughout the Convention there is a recognition of the desirability of enabling the parties to a contract to have the maximum freedom to determine by agreement the terms of their contract and the manner in which the contract is to operate.

Present indications are that traditional trading partners of Australia may well become parties to the Convention. As noted above, the Convention will have some application in Australia even if Australia does not become a party to it, so Australians involved in international trade will need to familiarise themselves with the new law even if Australia does not accede. I seek leave to have the detailed explana-

tion of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal.

Clause 2 provides that the measure shall not commence until after the Convention enters into force in respect of Australia.

Clause 3 defines the Convention.

Clause 4 provides that the Convention shall have the force of law in South Australia.

Clause 5 provides that the provisions of the Convention prevail over any other South Australian law to the extent of any inconsistency.

Clause 6 is an evidentiary provision.

The schedule to the measure contains the Convention.

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

COMMONWEALTH POWERS (FAMILY LAW) BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to refer to the Parliament of the Commonwealth certain matters relating to family law. Read a first time.

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

That this Bill be now read a second time.

It refers to the Commonwealth Parliament power to legislate with respect to the maintenance of children and the payment of expenses in relation to children or child bearing, the custody and guardianship of, and access to, children.

Section 51 (xxi) and (xxii) of the Constitution empowers the Commonwealth Parliament to legislate in respect of 'marriage' and 'divorce and matrimonial causes; and in relation thereto parental rights and the custody and guardianship of infants'.

In exercise of this power the Commonwealth Parliament has conferred jurisdiction on the Family Court of Australia to make orders in relation to the maintenance, custody and guardianship of, and access to, children of the marriage of the parties. The Commonwealth Parliament has no jurisdiction to legislate in respect of children who are not children of the marriage and custody and guardianship disputes concerning these children must be dealt with by State courts.

This Bill will enable the Commonwealth Parliament to confer on the Family Court of Australia jurisdiction to deal with maintenance, custody and guardianship of, and access to, all children in Australia.

The fragmentation of family law jurisdiction has given rise to confusion, inconvenience and expense for litigants who are unlucky enough to have chosen the wrong court in which to bring their action. Disputes as to jurisdictional questions benefit no-one.

The fragmentation of jurisdiction also leads to anomalies. As the law stands at present, custody and guardianship disputes in relation to one child can, depending on the parties to the dispute, fall within the jurisdiction of both the State and Commonwealth courts. For example, the father of an ex-nuptial child in the custody of its mother must bring his action in the State court. However, if that child is living in the household of its mother and her husband a custody dispute between the mother and her husband would fall within the jurisdiction of the Family Court.

The divided jurisdiction not only creates confusion and anomalies but it:

- requires the maintenance of two legislative and court systems dealing with issues falling within the same category;
- denies some children access to the Family Court, which is a specialist jurisdiction staffed by judges with special qualifications and training, assisted by counsellors and other experts in the field;
- represents at least a partial derogation from the status of children legislation, in that the exclusion of ex-nuptial children from the system that applies to nuptial children does not give effect to the principle that all children should be dealt with in the same way.

Discussions on how to eliminate the problems caused by this fragmentation of jurisdiction have been continuing for many years both in the Constitutional Convention and in the Standing Committee of Attorneys-General. Standing Committee C of the Constitutional Convention recommended in 1974 that certain family law matters should be the subject of references of power by the State to the Commonwealth pursuant to section 51 (37) of the Constitution.

Agreement has finally been reached by New South Wales, Victoria, Tasmania and South Australia on the terms of the reference and with the enactment of this measure the unsatisfactory situation which has lasted too long will be resolved with the enactment of Commonwealth legislation in 1987.

It should be noted that the Bill does not give to the Commonwealth Parliament power to legislate in relation to adoption and child welfare. These are areas where the State has a long history of expertise and well developed practices and procedures to ensure that the welfare of children is protected.

These are disparate areas which do not give rise to the same conflicts and confusion which arise in the custody and guardianship jurisdiction. I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal.

Clause 2 provides for the commencement of the measure.

Clause 3 provides that certain matters, relating to the maintenance, custody and guardianship of children, are referred to the Parliament of the Commonwealth for a period commencing on the commencement of the Act and ending on a day to be fixed by subsequent proclamation. However, by virtue of subclause (2), the reference does not include matters relating to the adoption of children or the taking of action under the Children's Protection and Young Offenders Act 1979 or the Community Welfare Act 1972.

Clause 4 provides that the Governor may, by proclamation, fix a day on which the reference under the Act shall terminate.

The schedule specifies certain Acts the operation of which are not to be affected by the reference of powers under this Act.

The Hon. DIANA LAIDLAW secured the adjournment of the debate.

FAMILY RELATIONSHIPS ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 13 August. Page 278.)

The Hon. K.T. GRIFFIN: This Bill seeks to remove from the Family Relationships Act a sunset clause that was enacted at the end of 1984 in respect of the status of children born as a result of *in vitro* fertilisation procedures or artificial insemination by donor procedures. I reflect that at that time there was a debate as to whether the basis for determining the status of children born by those procedures, as set out in the Government Bill at the time, was an appropriate basis for inclusion in legislation, largely because of a level of uncertainty about the scope of the definition.

On that occasion I moved for the establishment of a select committee, which finally the Government supported, on terms of reference which were amended by the motion of the Minister of Health. That select committee is presently meeting to look at a whole range of issues affecting the procedures of *in vitro* fertilisation, artificial insemination by donor and embryo transfer, the legal questions, the social questions, the medical questions and the questions of funding.

The issue that is addressed in this Bill will be addressed in the course of the deliberations of that select committee. So, it seems to be inappropriate that, on the one hand, at the time of the establishment of the select committee at the end of 1984 the Government's legislation with respect to family relationships and the status of children should be enacted with the sunset clause and, on the other hand, the Attorney now seeks to remove that sunset clause even though the select committee has not yet reported. I recognise that the sunset clause stipulates 31 December 1986 and that the select committee has not yet reported although it has made considerable progress. Therefore, in that sense the sunset clause needs to be extended.

In his second reading explanation the Attorney-General dealt at length with the basis upon which children born as a result of those procedures to unmarried couples should have their status determined. There is not a clear legal definition which is a consequence of the legally recognised marriage relationship. Madam President, I do not wish at this point to address the substantive issue as to the basis of determination of the status of children, because I believe that what I should be addressing is whether or not the sunset clause should be extended.

The circumstances surrounding the enactment of the sunset clause with the support of the then Australian Democrats have not changed. I submit to the Council that, in lieu of debating the substantive issue and making a final decision on the substantive issue, we ought to be addressing only the question of the extension of the sunset clause. I will be moving in Committee an extension to the sunset clause to 31 December 1988—two years hence. That might seem an unduly long period but, in the light of the experience with the first sunset clause, which was enacted at the end of 1984, two years is a reasonable period within which final decisions can be made on the basis that will determine the status of children born to couples other than those who are legally married.

I suppose that one could suggest that the select committee will report well before that time and I hope it does. If it does, this question can be resolved by amending legislation brought forward before the date in the amended sunset clause—31 December 1988—is reached. Accordingly, the Opposition will support the second reading of the Bill to enable consideration to be given to the sunset clause and hopefully we will gain the support of the Democrats on that issue on the basis that they supported the sunset clause previously in consequence of the establishment of a select committee. This proposition that I put merely extends that position, leaving the final substantive resolution of the issue to a time after the select committee has reported on a whole range of issues related to IVF, AID and embryo transfer procedures. For that purpose I support the second reading.

Bill read a second time.

In Committee.

Clause 1 passed.

Clause 2—'Application of Part.'

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

Page 1, lines 13 and 14—Leave out 'subsection (2)' and insert 'from subsection (2) "1986" and substituting "1988".'

Instead of deleting the sunset clause, my amendment extends its operation to 31 December 1988. That will overcome the immediate difficulties of the early expiry of the sunset clause and enable us to resolve the substantive question at a later stage rather than pursuing a debate on that issue now before the select committee has reported.

The Hon. C.J. SUMNER: My view on this matter has always been that there is no need for a sunset clause in this legislation, and that was my view when the matter was debated in 1984. The question of the status of children born by AID or IVF procedures is not really affected by the results of the Select Committee on Artificial Insemination by Donor, *In Vitro* Fertilisation and Embryo Transfer Procedures in South Australia, which has been established by this place and which is chaired by my colleague the Hon. Dr Cornwall.

That select committee was established to examine the many ethical considerations which arise in relation to these procedures, but the Bill which was passed in 1984 and which is now the law (and I might add that it was prepared after some discussions by the Standing Committee of Attorneys-General, although not universally agreed to) only deals with the limited question of the status of the children who were born by these procedures. It says nothing about the moral or ethical issues related to them. That matter is being addressed by the select committee, and I do not wish to intervene in that matter at this stage.

All this Bill is saying is that if these procedures are used and issue result from those procedures, they should have a certain status: they should have the status of being the children of the social parents, not the biological parents. That was the simple issue I argued in 1984, and I argued that it was not appropriate to have a sunset clause in legislation of this kind.

My recollection is—and the fact that there is a sunset clause in there means—that the Australian Democrats sided with the Opposition and decided that it was appropriate for a sunset clause but, consistent with my previous view of the matter, I do not believe a sunset clause is necessary, given the limited scope of this legislation, namely, that it only deals with the status of the children born following these procedures.

I do not know whether the select committee is addressing itself to this topic. I would be surprised if it was, in fact, because the status of the children is not an issue which is really of major significance. The ethical and moral issues relating to the use of the procedures, when they should be used, how they should be used, what resources should go into them and what priorities should be given to people to participate in the procedures are all issues which are more of an ethical-medical nature and which are being addressed by the Select Committee. This Bill deals with the legal status of the children, and I think as such it stands on its own. I cannot see, as I could not see in 1984, the case for a sunset clause to be inserted.

The Hon. K.T. GRIFFIN: The Opposition does not quarrel with the principle of trying to establish the status of

children born as a result of IVF and AID procedures, but we argued in 1984 and argue again that the question of status is, to some extent, bound up with the sorts of issues which the Select Committee is considering, particularly in relation to donated sperm or ovum, and in relation to the fact that a genuine domestic relationship formed between parties who are not legally married is a criterion that does create some difficulty, even though it has been adopted in other legislation.

I have been through all that argument and I recognise that the Attorney-General has a different view on the issue. The simplest course to follow now is to extend the sunset clause—and I propose an extension to 31 December 1988. When the select committee has in fact reported on the whole range of issues, we can then argue further the substantive questions relating to status.

That is the essence of the position which I put: extend the sunset clause, and the substantive question can be debated when the select committee reports. If we remove the sunset clause, we need to address now the substantive issue, and the deliberations of the select committee do have some impact on that sort of question: that is, I prefer to extend the sunset clause rather than delete it.

The Hon. I. GILFILLAN: I had already decided, prior to the moving of the Hon. Mr Griffin's amendment, that the sunset clause should be extended. There was some confusion in the earlier debate on the Bill. The Attorney-General was accurate in separating two issues. The substantive question, the emotion surrounding the morality or otherwise of allowing ostensibly unmarried people to have access to these procedures, is profound. It would be very disconcerting to me, as a member of a select committee which has spent hours researching this matter and which will no doubt spend many more hours, not to have concluded our work and reported to the Council before the matter was finalised or even debated substantially in this Chamber. I am somewhat daunted by the Hon. Trevor Griffin's threat that, if we are going to have an extension of the sunset clause, he then intends to debate the substantive motion.

The Hon. K.T. Griffin: Not now.

The Hon. I. GILFILLAN: I would hope not.

The Hon. K.T. Griffin: If the sunset clause is rejected, then we debate the substantive issues.

The Hon. I. GILFILLAN: I am not terribly keen about that. That is a pretty substantial argument for extending the sunset clause, and I do not see that it does anything to interfere with the operation of the current legislation. We support the Hon. Mr Griffin's amendment.

Amendment carried; clause as amended passed.

Title passed.

Bill read a third time and passed.

TRUSTEE ACT AMENDMENT BILL

In Committee.

(Continued from 16 September. Page 842.)

Clause 2 passed.

Clause 3—'Authorised investments.'

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

Page 1—

Line 18—Leave out 'and'.

After line 22—Insert new word and paragraph as follows:

and

(c) by inserting after subsection (7) the following subsection:

(7a) No trustee other than the Public Trustee may invest trust funds in a common fund referred to in subsection (1) *(g)* (vi).

This amendment is moved simply to reflect the statement contained in the Attorney-General's second reading speech that there is no intention that the Public Trustee's common fund be open to public subscription. The amendment makes clear that no trustee other than the Public Trustee may invest trust funds in a common trust fund as referred to in subsection (1) *(g)* (6); and that is the common fund of the Public Trustee. It seems to me that it is reasonable that we limit the ability to invest in that common fund in that way. This is consistent with the Attorney-General's second reading explanation in which he clearly indicated that it is not proposed to open Public Trustee common funds to public investment.

The Hon. C.J. SUMNER: I do not think that this amendment is necessary. I am not quite sure why the honourable member has moved it. The Public Trustee is subject to the law, as is any corporation or individual. The Public Trustee's powers are set out in section 77 of the Administration and Probate Act, and I suggest to the honourable member that perusal of those powers indicates that the power to invite the public to subscribe to investments does not exist.

Although the Public Trustee has powers in addition to those related to dealing with deceased and protected estates, no existing power would enable the Public Trustee to compete in the private sector for funds to be invested in its common fund, or to invite the public to subscribe to such investment. Therefore, I do not believe that the amendment is necessary, given the powers of the Public Trustee, which do not extend to inviting the public to subscribe to investments in the Public Trustee common fund, or to enable the Public Trustee to compete in the private sector. Although the amendment is not necessary (it seems to be legislating for the sake of legislating), if that is what members opposite want I will not raise any objection to it.

The Hon. K.T. GRIFFIN: This amendment is necessary for two reasons: first, the Attorney-General made a specific reference in his second reading explanation which suggested to me that the matter had at least been addressed and, more particularly, because section 5 of the Trustee Act deals with the investments in which trustees may invest. There is an interesting legal question whether that would enable members of the public to go to the Public Trustee and say, 'We want you to take this investment because section 5 of the Trustee Act says that it is an authorised trustee investment.'

There may be some legal debate about this matter, so I would prefer to include a provision to put it beyond doubt. As the Attorney-General has indicated that he has no objection to my amendment, I am pleased that the principle, at least, has been accepted by both sides.

Amendment carried; clause as amended passed.

Title passed.

Read a third time and passed.

ADMINISTRATION AND PROBATE ACT AMENDMENT BILL

Read a third time and passed.

CONSTITUTION ACT AMENDMENT BILL (No. 3)

Adjourned debate on second reading.

(Continued from 16 September. Page 843.)

The Hon. C.J. SUMNER (Attorney-General): I have the following response to comments made by the Hon. Mr

Griffin on the second reading. First, it is not true to say this Bill provides for an acting appointment 'for an indefinite period' or an 'appointment at large'. It is clearly and unambiguously limited to a period for which the holder of office is unavailable to carry out official duties—no more, no less.

Secondly, there is provision for public notice, in the first place, of which Minister will act for whom and for *(a)* a specific period, or *(b)* for a specified period terminating on a given event (for example, where the Minister returns from leave, or overseas or whatever), or *(c)* for any period a particular Minister is unable to carry out official duties. Thus *(a)* and *(b)* are both directed to specific known events of a specific duration or a duration for which the Minister is unavailable to carry out official duties. Provision *(c)* is directed to a proposal to allow the Government of the day to draw up one notice (to be gazetted) so that, if ever a Minister is unavailable, there is clearly designated one (and one only) acting Minister who can act. This has at least three advantages:

(i) it will obviate the necessity for a separate and time-consuming act of the Governor in appointing an acting Minister;

(ii) it will allow the departments of Government to know immediately the acting Minister to whom they can refer matters and advice for sometimes very urgent action;

(iii) it enables the public to know precisely who it is that will fill a given Minister's shoes during his or her absence or incapacity.

Thirdly, it is not unusual or unprecendented under the present Act for a Minister to act for more than one absent or unavailable Minister. An initial gazettal under proposed section 67 (2) *(b)* is intended to specify only one acting Minister who will act for one other. If a change to those arrangements is necessary (for example, because the designated acting Minister is, in the circumstances, himself or herself unavailable) then a new, specific gazettal will be necessary. By and large, a standing notice should obviate the present necessity of fresh action on each and every occasion a particular Minister is unavailable.

Fourthly, there can be only one acting Minister for one other—the wording is 'a Minister to act in the office of another Minister', not 'such Minister or Ministers to act in the office of another'.

Fifthly, the whole notion of acting for another is predicated at all times on the fact of that other being 'unavailable to carry out official duties'. Clearly, therefore, when the Minister is available, it is his (and his only) commission that is operative. By force of the Act itself, (that is, by its very terms and nature) there can be no acting Minister.

The whole policy of the Bill is to promote flexibility and obviate tedious, repetitious and in many cases wholly unnecessary paperwork. It is deregulatory. It is inherent in—indeed, it is an indispensable precondition of—the Bill that there is and remains at all times complete Ministerial accountability for any one portfolio, that there is no splitting or division of responsibility for any one portfolio, and that when the Minister is available there can be no acting Minister.

I do not believe that any of the issues raised by the Hon. Mr Griffin have merit. I oppose the amendments that he foreshadowed. If one wanted to take an even more radical approach, one could indicate that all Ministers should have the power and authority to act for other Ministers where the actual Ministers were not available.

The Hon. K.T. Griffin: It could be done under this amendment.

The Hon. C.J. SUMNER: It cannot be done under the amendment, as I have outlined to the honourable member. The Government is one Government; it acts in a corporate way. If one wanted to, one could consider a perfectly feasible proposition of permitting any Minister to act for a designated Minister who was not available. That would overcome many of the problems that one often encounters in finding acting Ministers for Ministers who are temporarily out of the State, in the country, or are unavailable. This proposition does not go that far. It provides, quite simply, that there can be a designation of an acting Minister.

We specify what Ministers will act for other Ministers when dealing with legislation in this Council. It seems to me that there is no real problem with designating generally a Minister who can act for another Minister (that is, designate an acting Minister) to perform the duties of that Minister when he or she is not available. Clearly, that situation is desirable to cut down the formalities that currently have to be gone through. The honourable member has been in Government. It is absurd that every time that one has to get an acting Minister that one has to go through a formal Cabinet submission, a formal procedure in Executive Council, minutes in Executive Council, and the Government Printer has to prepare a fresh commission that has to be sealed and signed by the Governor. All that has to happen just to have an acting Minister for one day because I happen to go to Melbourne to a Standing Committee of Attorneys-General meeting.

It is surely a more preferable situation to go down the track of this Bill where acting Ministers can be designated and can act for those Ministers when they are not available and are not carrying out their official duties and, if there are any special circumstances, they can be similarly approved and gazetted. Quite frankly, I would have thought that this Bill would be supported by the Parliament as providing a greater efficiency in Government, to try to overcome some of the unnecessary paperwork. There is absolutely no detriment whatsoever to the public interest in this legislation.

Bill read a second time.

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Appointment of acting Ministers.'

The Hon. K.T. GRIFFIN: If the Attorney-General goes to Melbourne for the day he does not have to have an acting Minister appointed for that day; even if he goes to Melbourne for two days he does not have to have an acting Minister appointed.

The Hon. C.J. Sumner: I appreciate that; you don't have to. That is true. What happens if something crops up back in Adelaide and you haven't got an acting Minister.

The Hon. J.C. Burdett: Ring up.

The Hon. C.J. Sumner: Ring up, that is fine. What happens where it statutorily requires the official approval of the Minister and he is stuck in Melbourne because of a plane strike or something? It is absurd.

The Hon. K.T. GRIFFIN: There is a mechanism by which that can be resolved now. The real problem with that part of the Bill (new section 67 *(b)*) is that from the point of view of public accountability there will be an acting Minister, who will be appointed perhaps on the day that all the Ministers are sworn in, and that will be notified in the *Government Gazette*, but the public will never know when that acting Minister is acting or not acting; and they will not know whether, say, in the morning it is the Minister acting and in the afternoon it is the acting Minister acting, if the Minister has gone away to Murray Bridge or somewhere else—

The Hon. C.J. Sumner: That is absurd.

The Hon. K.T. GRIFFIN: It is not absurd. What I am saying is that there has to be proper accountability of Ministers and acting Ministers and that the public—the people who elect Governments—have a right to know who is the person who is taking a course of action. That person has to accept public accountability. It is all very well to say that there is a corporate responsibility for Government, but that also can hide a large measure of wrong, and things can be covered up. Individual Ministers and acting Ministers in that corporate structure should be subject to public scrutiny and be publicly accountable. If one allows the appointment of an acting Minister at large, then there is no way that the public, the Opposition, or the Australian Democrats, will be able to ascertain and pin the responsibility to an acting Minister—

The Hon. C.J. Sumner: I have never heard so much unadulterated nonsense in this Parliament in my 10 or 11 years in it. I am absoltely astonished by the garbage that can come out of someone with legal experience.

The Hon. K.T. GRIFFIN: The reaction of the Attorney-General indicates that I have touched a nerve. The Opposition is supporting the removal of the provision that there should be a formal commission under the public seal of the State on each occasion that an acting Minister is appointed. We have no difficulty in accepting that; and in the Attorney-General's own words, that will reduce a lot of paper work required in the appointment of acting Ministers.

In that respect new section 67 (2) *(a)* is supported because the appointment requires a specified period to be designated or a period terminating on the occurrence of a specified event, and notice of that appointment on each occasion will be given. That makes it clear on the public record and everyone can find out who is undertaking a particular responsibility on a particular occasion. I move:

Page 1, lines 31 to 34—Leave out all words in these lines.

My amendment is designed to eliminate the possibility of an appointment of an acting Minister at large.

The Hon. I. GILFILLAN: I may have to wait some time before aspiring to the exalted office of a Minister of the Crown, and this matter is probably of academic interest to us. I am persuaded that the revered position and the eminence of a Minister, and the signal responsibility that he or she has to exercise, mean that one cannot allow smudging between one person being the Minister on a particular hour of a particular day and another person taking over. The changeover would be confusing if there was a delay in communication.

It seems a little enough requirement, when someone is assuming responsibility for a portfolio and acting as a Minister, that it be done in the way outlined. I can see that there will be some trimming of the requirements by reducing the requirement for the seal to be on documents. The Attorney-General is drawing a very long bow indeed when he compares this case to Ministers in this Chamber acting for Ministers in another place. In fact, there is singular inactivity on behalf of Ministers in another place. Ministers in this place cheerfully say that they will refer matters to their colleagues in another place and then take no responsibility at all. It is a completely erroneous comparison. We feel persuaded that the amendment moved by the Hon. Mr Griffin is sensible. It retains the distinctive characteristic of a person being a Minister for a specified period of time with the full responsibility that goes with it. Therefore, we support the amendment.

The Hon. J.C. BURDETT: I support the amendment. I will not duplicate what the Hon. Trevor Griffin and the Hon. Ian Gilfillan have already said. Section 26 of the Acts Interpretation Act provides:

In every Act every word in the singular number shall be construed as including the plural number.

So the proposed new section 67 in the principal Act whereby the Governor may appoint a Minister to act in the office of another Minister would include several Ministers to act in the office of another Minister. It may not be one acting Minister who is appointed for a long period, perhaps for the duration of the term of office of the Government—it may be all of them. For example, the Premier could appoint the other 12 as Ministers acting for him. In fact, to take the matter to an absurdity, each Minister could appoint the other 12 as Ministers acting for him. I acknowledge that that is unlikely but, when we are dealing with an Act of Parliament, we must examine what can happen, in particular, in the Constitution Act.

I have outlined an abuse that could occur. I am sure that it is not contemplated by the Attorney or the Government in introducing this Bill. However, we do have to consider abuses which can occur, and there have been many examples in the past where legislation has been used for purposes never intended. This is just one small, additional point on top of the more substantial points raised by the Hon. Trevor Griffin and the Hon. Ian Gilfillan and a further reason why I shall support the amendment.

The Hon. C.J. SUMNER: I must confess that I have rarely heard such unadulterated clap-trap as has been expressed by members opposite with respect to this Bill, and I include the Hon. Mr Gilfillan who seems to have been conned by the Liberal Party on this matter. I cannot believe that a person of his intelligence would have been conned by the propositions put forward by the Hon. Mr Griffin. They have absolutely no merit whatsoever—none.

The Hon. J.C. Burdett: Demonstrate it.

The Hon. C.J. SUMNER: I will. It seems to me that it is a typical nitpicking, conservative and obstructionist approach to what ought to happen in government. In this modern day and age we happen to be living in circumstances somewhat different from those of 100 years ago. For absolutely no good reason members opposite want to impose on the working of Governments procedures of 113 years ago. The Hon. Mr Griffin knows, having been in Government, just what a load of codswallop it is.

The Hon. J.C. Burdett: There is no problem with it at all.

The Hon. C.J. SUMNER: There is no problem: you can do it. However, every time there is an acting Minister you have to go through a Cabinet submission, minutes in Executive Council and a sealed commission. People receive these sealed commissions every couple of weeks showing that they are an acting Minister. In this modern age, it really is absolute nonsense.

The Hon. C.M. Hill: It gives you something to frame.

The Hon. C.J. SUMNER: That is right. I already have quite enough to frame and I do not want any more. That is the fact of the matter. I do not want to have to waste the time of Executive Council, the Governor's time and Cabinet's time virtually every week working out who will have to be an acting Minister because a particular Minister happens to be in, say, Brisbane for two or three days.

The honourable member said that it is not necessary to have an acting Minister. Technically, that is correct. It is clear that we do not appoint acting Ministers in all circumstances: that would be a ridiculous situation. On occasions, I must travel interstate and, in fact, I am travelling interstate tomorrow and there will not be an acting Attorney-General for that period. The Attorney-General has certain responsibilities that only he can carry out. If some crisis erupts requiring the Attorney-General's signature and he happens

to be in Brisbane on ministerial business, there is no-one to act in that capacity.

This legislation is a flexible response to a current situation where we have modern travel. If, 113 years ago a Minister left the State for some considerable time (and it is probable that that was not done all that often, in any event), it was reasonable to have a procedure to appoint an acting Minister. Now Ministers fly off regularly on Government business all around Australia for two or three days at a time. Given that that happens, there is in this procedure the capacity to overcome the sorts of rigidities that there are in the system of appointing acting Ministers.

As I have said, I am surprised that a forward thinking person such as the Hon. Mr Gilfillan (who claims to be a progressive and who no doubt wants efficiency in government) should be joining with the Liberals in what I have already indicated is just simply a conservative and obstructionist approach to introducing greater efficiencies in government. Basically, that is what it is all about.

The Hon. K.T. Griffin: It's more about accountability.

The Hon. C.J. SUMNER: It has nothing to do with accountability. The arguments raised by the honourable member are absolute arrant nonsense. I do not usually use those terms in this Chamber, but the honourable member's arguments were absolute nonsense and had no merit whatsoever. The Opposition has put forward a trumped up argument for some reason, perhaps because it felt that it had not amended enough Bills lately. The Opposition has put forward trumped up arguments to amend a perfectly reasonable Bill. Any objective analysis of the legislation—and I am surprised that the Hon. Mr Gilfillan has not applied his objective mind to it—would indicate that there was no substance to the honourable member's argument.

The Hon. Mr Griffin refers to accountability. The Bill provides that there is accountability. The acting Minister cannot act willy-nilly whenever he wishes. The acting Minister designated and appointed acts when the Minister is unavailable to carry out official duties: that may be because he has decided to have a week's holiday in, say, Moonta Bay, because he is in Brisbane for a Government ministerial meeting, or perhaps because he is ill; it could be for a whole range of reasons.

Surely it is reasonable that there be a designated acting Minister in those circumstances. There is no question of accountability. The Minister is the accountable person, ultimately, for the administration of his portfolio. If the acting Minister takes a decision, it is not the individual who is accountable; it is the Government as a whole in any event that is accountable and responsible in a corporate sense. However, I suppose one should exclude from that the special area of decisions taken by the Attorney-General as the chief prosecution officer for the Crown; they are decisions which are not subject to Cabinet directions and are not corporate decisions in that sense.

Apart from that exception, the responsibility for government is a corporate responsibility and, if an acting Minister has taken a decision, the Government as a whole takes responsibility for that decision. Indeed, the Minister himself must take responsibility for that decision. One would expect, on a matter of controversy, that any sensible acting Minister would attempt to contact the Minister before the decision was made or the signature was put on the document concerned.

So, there is responsibility. There is some responsibility, first, in the Minister; there is responsibility in the acting Minister; and there is responsibility in the Government. To suggest that this is a Bill somehow or other that dissipates that accountability or responsibility is, as I said, arrant, arid nonsense. Therefore, I am quite surprised that, first, the Hon. Mr Griffin, given his experience and knowledge of the way that the system works, has bothered to put up this proposition. I can only assume that he is being obstructive for the sake of it, or perhaps it is his normal conservative approach to life. I am even more surprised by the Hon. Mr Gilfillan's apparent reluctance to see greater efficiencies in government when clearly those efficiencies will not be to the detriment of the public interest.

The Committee divided on the amendment:

Ayes (10)—The Hons. J.C. Burdett, M.B. Cameron (teller), Peter Dunn, M.J. Elliott, I. Gilfillan, C.M. Hill, J.C. Irwin, Diana Laidlaw, R.I. Lucas, and R.J. Ritson.

Noes (7)—The Hons. G.L. Bruce, B.A. Chatterton, J.R. Cornwall, M.S. Feleppa, C.J. Sumner (teller), G. Weatherill, and Barbara Wiese.

Pairs—Ayes—The Hons. L.H. Davis and K.T. Griffin. Noes—The Hons. Carolyn Pickles and T.G. Roberts.

Majority of 3 for the Ayes.

Amendment thus carried; clause as amended passed.

Title passed.

Bill read a third time and passed.

CRIMINAL LAW CONSOLIDATION ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 16 September. Page 850.)

The Hon. C.J. SUMNER (Attorney-General): In response to the Hon. Mr Griffin's queries on the Bill. I suggest that I provide a response and that the Bill be taken into Committee. He can then consider the response, and it may be that he will then have amendments with which we can deal next week.

First, trees, growing crops, fruit and similar vegetable produce are not, while they are still annexed to the land, the subjects of larceny. But it is common law larceny to take them after they have been severed from the land. While still annexed to land trees, crops, etc. are part of the realty: when severed they are personally—both species of property are covered in the definition in clause 3 (a).

Second, the suggested phrase 'may be carried out' really takes the matter no further. The word 'may' means, according to the Oxford English Dictionary, 'possibility', 'contingency' or 'chance'. While not synonymous with 'likely' (that is probably), there appears to arise a connexion that is too tenuous and remote. The word 'likely' is used throughout the relevant provisions of the present Act and has a settled construction. As for the indirect communication of a threat, the Government believes that woul be covered anyway, as a matter of general principle, but it will consider any amendment to proposed section 19 (3) on its merits.

Third, the comments relating to 'may be carried out' are also applicable to clause 5.

Fourth, the Government, too, is concerned to ensure acts or omissions depriving children of food, clothing, etc., are covered. The present section 29 (b), and section 30, refers to the 'health' of a person or child being at risk of permanent injury.

This is obviously an extreme version of harm to another and can be equated with grievous bodily harm (already covered by the Bill). However, consideration will be given to an amendment which seeks to clarify this important point.

Fifth, the sort of mischief aimed at by present section 35 is subsumed under proposed section 29. The penalty in the

latter is 14 years imprisonment or eight years. Present sections 36 and 37 are also subsumed under section 29. The existing penalties are inconsistent and wayward. In any event, taking into account the normal length of actual stay in prisons, 14 and eight years are a rationalisation and provide a consistency not presently there. As for the type of act referred to by the honourable member, I would suggest proposed clause 30 covers it (that is, custody or control of an object with intent to kill or cause grievous bodily harm).

Sixth, the O-Bahn (whether the bus itself or its track) is not a species of property left outside the very wide definition of 'property' in section 5. It would be covered, in my view.

Seventh, I believe, when the Bill's provisions (that is, Part IV) are read together with the proposed amendment to the Summary Offences Act, that all contingencies are covered and there is sensible rationalisation and gradation of penalties according to the gravity of the respective offences.

Eighth, in regard to crops and trees: I have already dealt with the circumstances in which they are part of the realty or whether they are personal property. With respect to dams, they are part and parcel of a person's realty and are covered in the proposed definition of 'property'.

Ninth, the $2 000 limit is not arbitrary and arose to fit in with the scheme of minor indictable offences. Act No. 109 of 1981, introduced by the Hon. Mr Griffin, inserted the following definition of 'minor indictable offence' in section 4 of the Justices Act (where material):

'minor indictable offence' means—

(b) a group III offence except—

(iii) an offence involving interference with, damage to, or destruction of, property where the loss resulting from the commission of the offence exceeds $200; or

(iv) any other offence relating to property, the value of which exceeds $2 000.

A minor indictable offence is an indictable offence which is dealt with as if it were a simple offence charged on a complaint (that is, by summary procedure) unless either the defendant makes an election to be tried by a judge and jury or the magistrate decides the summary trial should be converted into a preliminary examination for the purposes of committal for trial or sentence. Therefore, where the damage does not exceed or would not have exceeded $2 000, a person charged under proposed sections 85 (1) and (3) can elect to be tried by judge or jury or allow the matter to be dealt with by a magistrate alone. A magistrate can only punish a minor indictable offence by a period of imprisonment of up to two years or a fine of up to $2 000. I refer honourable members to section 129 (2) of the Justices Act.

Therefore, it is intended the $2 000 figure referred to in sections 85 (1) and (3) would be linked to the figure which is determined, under the Justices Act, to be the threshold between a minor indictable and a major (that is, wholly indictable) offence. A change in one will require a change in the other.

Tenth, it must be remembered the acts covered endanger life: where death occurs, obviously murder and manslaughter will still apply, together with their penalties of life imprisonment, respectively mandatory and maximum. As already indicated, 14 and eight years seek to reflect sentencing realities.

The effect of proposed penalties and their handling by the courts will need to be closely monitored by the Attorney-General's Department. However, the draftsman has had to cope with a bewildering and inconsistent array of penalties in the present Act. Moreover, the model Act used to provide the basis for this legislation (namely, the United Kingdom's Criminal Damage Act 1971) provides for generally: *(a)* life imprisonment for arson; and *(b)* 10 years imprisonment for other offences.

It was considered this did not provide a sufficiently sensitive range of penalties for the spectrum of offences sought to be covered. What is in the Bill is a sensible rationalisation enabling the courts to reflect the requisite degree of public opprobrium in appropriate cases.

Bill read a second time.

In Committee.

Clause 1—passed.

Progress reported; Committee to sit again.

ADJOURNMENT

At 6.7 p.m. the Council adjourned until Thursday 18 September at 2.15 p.m.