LEGISLATIVE COUNCIL

Thursday 6 November 1986

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

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

PETITION: MARIJUANA

A petition signed by 49 residents of South Australia praying that the Council reject any legislation which proposes an expiation fee for marijuana offences was presented by the Hon. M.B. Cameron.

Petition received.

AUDITOR-GENERAL'S LETTER

The PRESIDENT laid on the table a letter received from the Auditor-General.

QUESTIONS

PLANNING REGULATIONS

The Hon. M.B. CAMERON: I seek leave to make a statement before asking the Minister representing the Minister for Environment and Planning a question about planning regulations.

Leave granted.

The Hon. Barbara Wiese interjecting:

The Hon. M.B. CAMERON: Madam President, I am sure that the Minister next to the Minister who represents the Minister for Environment and Planning will accept this question on his behalf. My question relates to St Anthony's Drug and Alcohol Centre at 81-83 Fifth Avenue, Joslin, which was closed as a drug centre and used as a 'family living centre' until the end of April this year.

It ceased operations as a family centre at that stage and residents have recently discovered that it is now to become a centre for the treatment of alcoholics. The residents have been informed that $500 000 is to be spent on a 12 bed detoxification unit, which will have a staff of 26 to provide a 24-hour-a-day service. They also have been told that there is to be a car park for 40 cars and that builders are due to move in on 18 November.

I am informed that the matter went to the Payneham council, but the Minister claimed it was a matter of urgency and said it came under the provisions of clause 7 of the Planning Act, and so it was passed by the council without the usual procedure of notification of residents and environmental impact statements.

Fifth Avenue, Joslin, as most members would be aware, is a very quiet residential street, zoned R1. When St Anthony's operated as a day centre it was quite unobtrusive in the local area. However, these changes will mean it is, in fact, very obtrusive, with a 24-hour service which will potentially create considerable disturbance. The serious part of this is that local residents were not informed of the change and were given no opportunity to receive information or to raise any objection.

Under clause 7 of the Planning Act, the Crown is bound except under subsection (3) *(a)* and *(b)*, which provides:

> Notice of a proposed development is not required under subsection (2) if the development is—
>
> *(a)* such as could be undertaken by a private person without planning authorisation;
>
> or
>
> *(b)* of a kind excluded from the provisions of this section by regulation.

That is unless they come under those provisions under subsection (7) *(b)*, which provides:

> If an environmental impact statement has not been prepared and published in relation to the proposal—must contain a recommendation on whether an environmental impact statement should be prepared and published in relation to the proposal.

Subsection (8) provides:

> The Minister shall, as soon as practicable after his receipt of a report under subsection (6), cause copies of the report to be laid before both Houses of Parliament.

In this particular case it is quite clear that this will have an adverse environmental impact on the area and residents' rights have flown out the window. The Minister of Health appears to be riding roughshod over the local community by using a section of the Planning Act that was never intended to be used this way.

The Drug and Alcohol Services Council is getting a bad reputation for failing to involve residents or local people in proposals it is putting forward. There is already a court case under way on this matter. It appears that the provisions in the Planning Act which give people the right to comment on and, if necessary, object to this sort of intrusion do not apply to the Government in certain circumstances. All hell would be let loose if a private developer tried to do the same thing. My questions are as follows:

Is it normal practice for Government departments to make changes of this drastic nature in residential areas without ensuring that local residents are informed and given the opportunity to comment?

Under section 7, is it a requirement that local residents are informed of such changes? If not, could changes be made to the Act to ensure that it is?

Will the Minister request that all impending work cease until such time as local residents are properly informed and given the opportunity to discuss the matter?

I understand that there will be a public meeting on 18 November. Would the Minister guarantee that no work will start until the results of that meeting are known?

Could all development cease until an environmental impact statement is prepared and circulated in the local area?

Did the Minister of Health claim this was development under section 7 (3) *(b)*?

Did the Minister of Health in this way avoid the provisions of the Planning Act, and so leave the residents out in the cold?

Did the local council report to the Planning Commission on the proposal, of which it should have received notice under subsection (2) *(b)* of section 7 or was no notification given because the Minister of Health avoided provisions of the Planning Act by using subsection (3) *(b)*?

Will the Minister for Environment and Planning take action to see that all development is stopped by the Minister of Health until residents are given the right to comment on the proposal? I repeat, is it normal practice that residents are not advised well in advance of such a drastic step being taken?

The Hon. BARBARA WIESE: I think it is unfortunate that this question has been asked at a time when the Minister of Health is not present, because I am sure that he would be able to give details relating to the issue. However, I will undertake to have the question referred to my colleague in another place and bring back a reply.

'KILLER SANTA' VIDEO

The Hon. K.T. GRIFFIN: I seek leave to make a brief explanation before asking the Attorney-General a question about the 'Killer Santa' video.

Leave granted.

The Hon. K.T. GRIFFIN: Today's morning newspaper carries a full page advertisement for the R rated video *Silent Night, Deadly Night.* Obviously, the promoters of the video are trying to cash in on the controversy which the movie has already generated, and to do so before any action may be taken to prevent it from being sold or hired in South Australia. The video apparently focuses on an axe-wielding psychopathic Santa Claus on a murderous Christmas Eve rampage. A report on the video says:

> The movie is about a youth who becomes psychologically scarred when he sees his parents murdered on Christmas Eve by a killer Santa Claus. Thirteen years later he goes insane and embarks on a murder spree after being employed as a toy shop Santa. During his night of terror, people are killed with axes, hammers and one grisly scene, a woman is impaled on reindeer antlers.

It was reported that a spokesman for the Attorney-General had said that the video had been referred to the Classification of Publications Board for Review. That board does have the power to override the Commonwealth classification of this video and, while it has the final decision, it is required by the Act to have regard to the views of the Attorney-General.

It is, perhaps, coincidental that only two weeks ago a report on 'Kids and the Scary World of Video' was released by the State Minister of Health for the South Australian Council for Children's Films and Television. That report focused on the serious and harmful consequences of children gaining access to R rated videos. They do gain access to these videos and the effects are harmful and lasting.

This video in addition to, reportedly, being particularly violent, debases Santa Claus and the depiction of Santa Claus as other than a happy, friendly and charitable person and will undoubtedly shatter the perceptions of young people who may deliberately or inadvertently be exposed to the film. My questions to the Attorney-General are as follows:

1. As Minister responsible for the administration of the Classification of Publications Act, will the Attorney-General require the Classification of Publications Board to deal with this matter urgently?

2. As the board is required to have regard to the views of the Attorney-General, will the Attorney-General view the video and express a view on it to the board?

The Hon. C.J. SUMNER: The simple answer to the first question is 'Yes' and to the second is 'No'. The first thing that must be said about this video is that it has been classified by the Commonwealth Film Censor as an R rated video. The Commonwealth Film Censor has the responsibility for classifying videos, and those classifications are usually accepted throughout Australia, except in Queensland, as being applicable. The reason for that is that we have developed a more or less uniform system of censorship in Australia, and the States have, in effect, delegated to the Commonwealth the power to classify films and videos. This video has been classified R, and that means that it is not to be sold to minors. Under our legislation it also means that a person cannot show this R rated video to any minor unless that person is a parent or guardian of the child. There are strict controls in relation to R rated videos as far as minors are concerned.

The other point that must be made is that at present a Federal Parliamentary Select Committee, chaired by Dr Klugman, with representatives from, I think, all the political Parties represented in the Federal Parliament, is examining the whole question of videos and video censorship. The honourable member will recall that that select committee was established, I believe, about 18 months ago when there was controversy about the so-called X rated videos. That committee has not yet reported, but I hope that it will be able to provide further guidance to the community in this very vexed area of censorship and in particular in the vexed area of censorship for films and television that are violent or indeed sexually explicit.

The South Australian Council for Children's Films and Television has released a report, and the Minister of Health was present at the release. That report has been made available to the Commonwealth select committee. It would also be true to say that the effect of videos on children is still a matter of some debate and I will be interested to see, in the light of that debate, what conclusion the Commonwealth select committee comes to on that topic. However, I do not believe it should be automatically assumed that the effects of videos on children are necessarily harmful and lasting, although certainly a case could be made that that can occur in some circumstances.

I think that that piece of evidence, that report, ought to be assessed by the Commonwealth select committee. I know that it is before the select committee as part of the evidence it has received from around Australia. From a personal point of view, I have expressed my concern about the level of violence in what used to be the old R category and, as a result, the Commonwealth Film Censor changed the guidelines and there has been a tightening up of guidelines for R and M rated movies and videos in the past 18 months or so.

The question with respect to this video, however, is whether South Australia ought to change the classification from that which has been given to the video by the Commonwealth Film Censor and, as a request has been made to the Classification of Publications Board, that is a matter for that board to consider. The board is comprised of people from the community and chaired by a legal practitioner. It will view the video and assess whether or not the R rating ought to be changed. The honourable member was apparently making some assertion in this House without having seen the video although he has seen the report of the video. However, before people make assertions about it they ought to view it. I do not find the advertisements being run by the promoter of the video particularly tasteful: in fact, I find them, quite frankly, distasteful. It is a different matter to say that, just because I find an advertisement distasteful, a video ought to be banned. The decision is rightly one for the Classification of Publications Board, which has been established for that purpose.

I certainly do not support the notion of one person censorship, as has occurred in this State in the past. If we are to have a system of censorship it ought to be administered consistently through bodies established for that purpose. We have two bodies established for that purpose—the Commonwealth Film Censor with its appellate structure (the Commonwealth Films Board of Review) and in South Australia the Classification of Publications Board, which is responsible for examining both publications and videos to see whether or not any alteration ought to be made to the classification given by the Commonwealth Film Censor. That is what the Classification of Publications Board will do. I do not think it is a situation where as an individual I should attempt to impose my view on the Classification of Publications Board, particularly when I have not seen the film. In any event, in principle it ought to be left to the authorities that have been established and have expertise in

considering issues such as this when they arise in the community.

As to the future, no doubt exists that the question of video censorship will be in the public arena again from a policy point of view when the Federal Parliament select committee reports. For the moment, I will await the decision of the Classification of Publications Board on this particular video.

PUBLIC SERVICE SUPERANNUATION

The Hon. J.C. BURDETT: I seek leave to make a brief explanation prior to asking the Attorney-General, representing the Premier, a question on Public Service superannuation.

Leave granted.

The Hon. J.C. BURDETT: I understand that for some years members of the State Public Service have received no annual statements in regard to their superannuation scheme at all, whether by way of referring to their payments or their entitlement or the management of the fund. Commonwealth public servants receive an annual statement indicating their individual contributions and entitlement. There is also some sort of accounting given to each Commonwealth public servant in regard to the management of the fund. Members of Parliament will recall that we receive a comprehensive statement annually in regard to our contributions and entitlement. Superannuation is obviously and properly a serious concern for members of the State Public Service. In most cases superannuation will comprise the major part of a public servant's financial arrangements for the rest of his or her life after retirement. It seems reasonable that they should have some accounting from a Government which believes in accountability. Will the Government consider providing State public servants at all levels with a statement of their own contributions and entitlement and basic figures concerning the management of the fund annually or on some other periodic basis?

The Hon. C.J. SUMNER: I will seek an answer from the appropriate Minister and bring back a reply.

FROST DAMAGE

The Hon. PETER DUNN: I seek leave to make a brief explanation prior to asking the Attorney-General, representing the Treasurer, a question on frost damage.

Leave granted.

The Hon. PETER DUNN: Initial indications of the frost damage that occurred on Eyre Peninsula 15 to 20 days ago were that losses were severe but restricted. However, further inspections have shown that the losses are greater and over a wider area than was first thought. The effects have been very similar to those of fire. However, fire is insurable but frost damage is not. Has the Cabinet discussed in any detail the losses, financially or physically? Has it a plan to assist the producers affected by the frost damage?

The Hon. C.J. SUMNER: I am not in a position to indicate what Cabinet might or might not have discussed, but I will ensure that the matter is raised in Cabinet and that a reply is brought back to the honourable member on any action that might be contemplated.

TOURISM

The Hon. J.C. IRWIN: My question without an explanation is directed to the Minister of Tourism. How dependent is this State's tourist trade on a high number and easy availability of prostitutes—male or female—easy access to gambling facilities, and the weakest laws in Australia regarding the personal use and possession of cannabis? Would much stronger control in these areas inhibit tourism?

The Hon. BARBARA WIESE: Good heavens! I would expect that the answer is 'No'. I do not think tourism depends on any one of those three things. I have absolutely no way of gauging what sort of impact the incidence of prostitution in this State has upon whether or not people visit, because I do not know that it is even a question that has ever been asked in a market research survey—and I doubt whether many people would answer it if it were. I have no idea at all about prostitutes but I would say that the impact would be nil because prostitution, as I understand it, is occurring in most parts of the world. It certainly occurs in other States of Australia, so there would be no special reason to come to South Australia to have access to the services of prostitutes. As to drug laws, I think the question asked is very frivolous and is hardly worthy of reply. What was the third issue?

The Hon. C.J. Sumner: Gambling.

The Hon. BARBARA WIESE: As everyone is aware, gambling facilities are available to people right around Australia. If any of those questions are worthy of reply, possibly it is gambling. We have seen an increase in numbers of visitors to this State from Victoria, which has no casino. Certainly, this has had an impact on South Australian tourism because many people in Victoria have come to South Australia to gamble in the Adelaide Casino as it is nearby.

It is certainly drawing people to South Australia for considerable periods of time because market research that the casino has undertaken indicates that people are interested in visiting other attractions in South Australia as well as going to the casino to gamble. If the honourable member is suggesting that that is a bad thing, I think he should reconsider it because it is bringing much revenue to South Australia and most South Australians would agree that that is a good thing.

ELECTORAL ACT

The Hon. R.I. LUCAS: Will the Attorney-General say whether he has any intention of introducing amendments to the Electoral Act during this Parliament?

The Hon. C.J. SUMNER: I am not quite sure what the honourable member means, this Parliament or this session of Parliament?

The Hon. R.I. Lucas: Up to the next election.

The Hon. C.J. SUMNER: It is possible that there will be some amendments to the Electoral Act. The Electoral Commissioner is preparing a report on the last election in terms of its administration. It may be that there are some issues that will give rise to legislative change, but I am not in a position to indicate whether there will be an amending Bill. Secondly, if there is one—

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: Well, there has been no Cabinet decision at this stage to introduce amendments to the Electoral Act, but it is possible that there will be some amendments introduced between now and the next election.

LOCAL GOVERNMENT ACT

The Hon. C.M. HILL: I direct my questions to the Minister of Local Government. In regard to the Bill, which is

one of a series of Bills, to rewrite the Local Government Act, and about which there was some recent publicity in regard to the abolition of minimum rating, first, will the Minister assure me that her department is having full consultation with the Local Government Association in regard to all the proposed contents of that Bill? Secondly, as she mentioned some time ago that she hoped to introduce this measure into this House before Christmas, can she estimate when she expects that Bill to be introduced?

The Hon. BARBARA WIESE: With respect to the introduction of the Bill, I hope to do that in the next two or three weeks. It depends largely on the program of Parliamentary Counsel as to when the drafting can be completed, but I hope to be able to introduce it before the end of this session. With respect to the question of consultation with the Local Government Association, I assure the honourable member that there has been extensive consultation on the provisions of this proposed legislation with the Local Government Association.

I will describe the consultation process to members of the Council because there is some misunderstanding about that. It was with some distress that I read *Hansard* of the week before last and noticed that the member for Light in another place suggested that I had not consulted with local government on this issue. That is absolutely untrue. There has been extensive consultation with local government on these issues and it began with a series of discussion papers that were circulated earlier this year to all councils in South Australia in which we sought their comments on the various issues that were to be addressed in this second revision Bill for the Local Government Act.

When we received those comments from all interested parties I established a review committee made up of equal numbers from the Department of Local Government and the Local Government Association. I am very pleased that the Local Government Association chose to appoint very senior officers in the association to work on that committee. Collectively the members of that committee reviewed the numerous provisions of the existing legislation and the responses they had received from various interested parties. I am pleased to say that they reached agreement on every issue that will be contained in the Bill, bar the issue of minimum rates. That is the only issue that is outstanding and on which there has not been agreement reached between the Local Government Association and the Government.

That is an excellent outcome in view of the fact that there were some complex issues to be worked through in preparing this legislation. Indeed, there has been extensive consultation, which is continuing. I have very regular meetings with the senior officers of the Local Government Association and since the work of the review committee ceased and its report was made to me—and I have issued drafting instructions for the Bill—I have had further meetings with the Local Government Association during which it expressed its views to me personally on the issue of minimum rating.

I am told that the Local Government Association has further information to present to me which has not been available up to this time on the issue of minimum rating. I am interested to hear what further information it will be able to provide. The process has been very reasonable and members of the Local Government Association who are aware of the process agree that it has been a very fruitful consultation.

EXCHANGE OF PERSONAL INFORMATION

The Hon. DIANA LAIDLAW: I seek leave to make a short explanation before asking the Attorney-General a question about the exchange of personal information.

Leave granted.

The Hon. DIANA LAIDLAW: In the *National Times on Sunday* (26 October) the *Overflow* column featured the following:

> For the last four years, the South Australian office of the Department of Social Security has been passing microfiche to the local branch of the Federal Government's First Home Owners Scheme (FHOS). The microfiche contain the names, dates of birth, addresses and details of welfare assistance for every South Australian on Social Security files. The Federal Minister for Social Security, Brian Howe, confirmed this arrangement—that until the day of our inquiry—

the *Overflow* inquiry—

> 'the FHOS office in Adelaide did have access to DSS microfiche'. He has now called in all the microfiche and said that no further microfiche would be provided although verification of details would still be given.

I recall similar circumstances were highlighted by our President in a question she asked, on 27 July 1982, the then Minister of Housing (Hon. Murray Hill).

At that time the Hon. Ms Levy was concerned about a similar exchange of information between the Housing Trust and the Department of Social Security. Following her inquiries, the Housing Trust was required to note on each of its forms that it was obliged to exchange this information so that applicants for trust accommodation are at least aware that any information that they provide to the trust could be—and would be—supplied to the Department of Social Security. Now we see circumstances where Department of Social Security information has been readily available in regard to the First Home Owners Scheme.

First, would the Attorney-General investigate whether there are other instances where there is such a ready exchange of information between departments, in particular between the Department of Social Security and other State departments and authorities and vice versa? Secondly, in his investigations, would he seek to confirm whether that exchange of information is valid, or whether that is not so, as was the case in the instance highlighted by the Hon. Ms Levy in 1982 and in the case that was highlighted in the article in the *National Times on Sunday?* Thirdly, if such an exchange of information on welfare recipients' personal details between departments is required, would he be prepared to insist that all forms provided by applicants state that there will be this ready exchange of their personal information between departments in this State and the Commonwealth?

The Hon. C.J. SUMNER: The honourable member seems to be talking about the Department of Social Security, over which I have no authority; neither does any Minister of the State Government. I can only suggest that the honourable member take up the actions of the Department of Social Security with the relevant Federal Minister. It may be that the privacy provisions that are being considered by the Federal Government in the context of the Australia Card will lay down guidelines with respect to the exchange of information of the kind to which the honourable member has referred. The question that she raised refers to the transmission of information from the Department of Social Security, which is a Federal Government agency. I am not in a position to indicate the policy of the Department of Social Security. That is something that she will have to take up with the Federal authorities.

The exchange of information is not contrary to any law. The question is whether it is contrary to generally accepted privacy principles. I indicated to the Council the other day that the Government is examining the question of privacy principles in the context of the Federal Government's proposals on data protection and I hope that at some point principles in this area can be enunciated and, if they are, then State Government departments will have to comply

with them, if they do not do so already. I think that State departments already make attempts to comply with basic privacy principles as outlined by the OECD and the Australian Law Reform Commission. I hope that there can be development of principles that will apply to the South Australian Government sector with respect to information privacy and, if that occurs, then the State Government's agencies will be obliged to abide by those principles.

ARMTECH LTD

The Hon. L.H. DAVIS: I seek leave to make a short explanation prior to asking the Attorney-General a question about Armtech Ltd.

Leave granted.

The Hon. L.H. DAVIS: Armtech Ltd was listed on the Adelaide Stock Exchange in April 1986. The prospectus claimed that Armtech had acquired the rights to two guns designed by Mr Charles Giorgio, including a revolutionary firearm which utilised caseless ammunition. This firearm was described as the C30R. On 17 June Armtech issued a release to the Stock Exchange which stated:

> Armtech Limited, incorporated in South Australia, wishes to advise the signing of a contract to supply 19 500 units of the C60R sporting rifle to Duraprint Technologies Inc. of Nevada.
>
> The $A10 million contract involves the supply of 1 500 units per month for 13 months commencing November 1986. The units will be manufactured at the Armtech factory at Parramatta, NSW. Pretax profits for Armtech are estimated to be at least $A5 million.

In addition, Mr Bob Roget, a company director of Armtech, stated that Australian firearms manufacturer Armtech Limited had won a contract with Duraprint Technologies Inc., Nevada, to export firearms. The media release stated:

> The revolutionary design features of the lightweight C60R and C30R attracted worldwide acclaim when the prototype was demonstrated last April at the prestigious Mildex military defence exhibition in Los Angeles. A demonstration for Australian Government, business houses, the finance community, the media, and the defence establishment, will take place in Sydney later this month.

In the release, Mr Roget is quoted as stating:

> This initial contract demonstrates that Armtech products are acceptable to overseas markets.

Mr Roget then stated in that release:

> Duraprint Technologies Incorporated is a public company involved in the manufacture and distribution of armament and security products. They have an extensive marketing network in the United States and also supply various law enforcement departments around the world.

The media release then stated:

> Armtech was listed on Australian stock markets in April, at which time an independent marketing assessment forecast that annual sales of 25 000 units into the United States sporting rifle market would generate gross sales of $A13 million. The United States has 26 million registered sporting shooters who purchase 4 million rifles each year.
>
> 'We now believe we can capture a far larger share of the important USA market than was originally forecast,' said Mr Roget.

Those statements were contained in the media release dated 17 June. However, in the television program *60 Minutes* last Sunday and in other investigations (most notably the *Advertiser*) three things were revealed. Duraprint was not registered in Nevada and Duraprint has never sold rifles. It has been in the business of fingerprinting equipment and, also, security equipment. Duraprint will not sell the rifles for the sporting market as was suggested by Mr Roget, but it will sell the guns as collectors' items.

On 5 August a further announcement was made that Armtech had won a $A583 million contract for the supply of 1 million ART30 military rifles. Although the Armtech prospectus contained four pages dealing with the C30R rifle (the caseless ammunition rifle), it contained only one paragraph relating to the ART30 (or Nemesis MKII rifle, as it is described in the prospectus). The prospectus describes the ART30 rifle (the military rifle) as a more conventional weapon design. The press release of 5 August, announcing what is arguably the largest ever peacetime contract for small arms, stated:

> Australian firearms manufacturer, Armtech Ltd, has won a $US350 million contract—

that is, $A583 million—

> for its revolutionary ART30 rifle.

I stress the word 'revolutionary'—not 'conventional'. The press release continued:

> The contract with Greenhorn Limited of Hong Kong calls for the supply of 1 million rifles over a three year period, at not less than 20 000 units a month and not less than 300 000 units annually.
>
> Armtech Managing Director, Mr Bob Roget, said today that, under the terms of the contract, Greenhorn Limited had the right to determine who would manufacture the rifle. 'Our plans call for the production of the ART30 in Australia, but if there is not sufficient manufacturing capacity in Australia then Greenhorn has the right to nominate a manufacturer in Europe who is ready, willing and able to manufacture the weapons under licence,' said Mr Roget ... 'This is a rifle which is at the very forefront of Australian technological advancement,' said Mr Roget. 'This contract demonstrates the very clear commitment Armtech has to its design and the confidence that overseas purchasers have in our research and development program'.

To put it in perspective, remembering that that contract was for 1 million rifles, I am advised that the United States produced only 600 000 weapons for its soldiers for the whole period of the Vietnam war. It should be noted that the contract is between Armtech and Greenhorn. Greenhorn Ltd is, in fact, a property developer in Kowloon, Hong Kong. One of its principals has connections on the edge of the gun trade. I am advised that Greenhorn Ltd does not have a gun trading licence in Hong Kong. There are only two companies in Hong Kong that have such licences. I am also advised that Hong Kong has strict gun laws, and military weapons cannot be manufactured there.

Not surprisingly, after the announcement of that massive contract, Armtech faced a barrage of criticism and questions. The company was queried by the Adelaide Stock Exchange and delisted on Friday 8 August. It was relisted on Tuesday 12 August after responding to queries. I understand that Armtech was asked about the existence of a major European armament manufacturer that was prepared to manufacture this so-called revoluntionary rifle, but Armtech was prepared to give this information to the exchange only in confidence. The exchange, not surprisingly, declined the offer. The shares were then relisted.

Armtech was queried by the exchange subsequently when the *Advertiser* could not find Duraprint as registered in Nevada. In fact, Duraprint was registered in Utah. Armtech advised that information to the exchange. It also mentioned that Greenhorn had nominated the French company, Matra Manurhin Defence, to manufacture 1 million military rifles styled ART30 and that the principals of Matra were coming to see representatives of Armtech in mid November. However, Matra has distanced itself from this alleged contract in the past few days. The *60 Minutes* program last Sunday—

The Hon. C.J. Sumner: Are you making a speech or something?

The Hon. L.H. DAVIS: It is a complex matter and the Attorney should understand that. The *60 Minutes* program last Sunday showed a telex from Matra flatly denying any link with Greenhorn. Matra says that there were discussions, but no contracts, and I understand that the *Sydney Morning Herald* quite recently carried the story that Matra said that it had not heard of Greenhorn Ltd. The *60 Minutes* program

last Sunday raised a number of allegations, and the Stock Exchange queried Matra on Monday, and accepted its replies on Tuesday. The shares in Armtech are still being traded.

The *60 Minutes* program also suggested that Charles Giorgio, the gun designer and Director of Armtech, has been involved with gun seizures, but it did not elaborate.

It has been alleged to me that Mr Giorgio has past associations with Sydney underworld figures. That would appear to compromise his ability to hold a gun development licence from that State Government. I understand that he holds a licence at present. The prospectus refers to the fact that Mr Giorgio left Leader Dynamics in 1982, and it makes something of that at page 8. But what the prospectus does not say is that Leader Dynamics took Mr Giorgio to court in Canberra, and he was ordered to hand over his shareholding in Leader Trust and also his rights to the gun he was developing for it because, in fact, he was developing a gun for his own company in competition with the Leader gun.

In his own affidavit to the court hearing in 1982, Mr Giorgio mentions a company called Peacemaker Australia Proprietary Ltd, which employed him, and through that company there was an association between Mr Giorgio and with Mr Mallanion, who has since disappeared without trace in Sydney. He was involved in the drug trade. I also understand that another director of Peacemaker was involved in the drug trade and convicted of importing heroin. A reputable Australian company not long ago had a project with Mr Giorgio to develop a replacement rifle for the Australian defence forces, but terminated that contract after becoming nervous of Mr Giorgio's past associations. I understand that Mr Giorgio sought protection from New South Wales police in late 1984 against a wellknown Sydney underworld figure who has subsequently been killed in a gangland war.

These are serious matters and I do not for one moment wish to cast aspersions on the Adelaide Stock Exchange in its conduct of certain inquiries into Armtech. As the Attorney would well know, the powers of the Adelaide Stock Exchange are quite limited. As Minister for Corporate Affairs, will the Attorney take up these allegations that I have raised today and, if he feels it is necessary, draw them to the attention of the National Crime Authority?

The Hon. C.J. SUMNER: I will certainly take up the issues and refer them to the Corporate Affairs Commission, which has been monitoring the activities of Armtech, in any event. In fact, it was in court this week on a matter relating to this topic with respect to Armtech. Whether there is any substance in the allegations made by the honourable member at this time, I cannot say. Whether it is appropriate that they be referred to the National Crime Authority, again, I cannot say now, but the matters that the honourable member has raised, if verified, would give rise to concerns that would have to be addressed. I will certainly refer the questions to the Corporate Affairs Commissioner, Mr Macpherson, who no doubt will have the matters inquired into and, if need be, discuss the matter with the South Australian police and any other authorities that might be able to throw any light on the topic.

Armtech is incorporated in South Australia but its officers are principally resident in Western Australia. On 13 March the South Australian Corporate Affairs Commission registered a prospectus issued by Armtech. Shortly after the registration of the prospectus, shares in Armtech were listed on the Adelaide Stock Exchange. As the honourable member has said, trading in the shares was suspended briefly in August, but relisted. Still, the Adelaide Stock Exchange has not taken action against Armtech and not seen any cause for pursuing the company in terms of delisting or, indeed, recommending further inquiries. It is always open to the Adelaide Stock Exchange and other Australian stock exchanges if they feel there is any evidence of malpractice to refer those matters to the relevant Government authorities, to the Corporate Affairs Commissions in the States, or the National Companies and Securities Commission.

I would assume, if the Adelaide Stock Exchange had the information that the honourable member has just provided, it, too, would take the matter to the law enforcement authorities. However, as the honourable member points out, the Adelaide Stock Exchange continues to list the shares of Armtech having delisted them briefly in August. Certainly, there has been considerable media publicity about the company. I am advised that the company vigorously denies the allegations made in the recent *60 Minutes* report regarding the contracts, but I do not want to go into the rights and wrongs of that at the moment. Certainly, since the registration of the prospectus, the Corporate Affairs Commission has monitored, and is continuing to monitor, the affairs of Armtech.

In so doing, the commission has regard to all information presented to it from whatever source, and can now have regard to the matters that the honourable member has raised. In pursuance of that monitoring process the commission on 26 September 1986 required the company to provide it with certain information, including copies of any contracts or agreements relating to the manufacture and sale of the C30R Rifle and the Nemesis MKIII rifle and the caseless ammunition used by the C30R Rifle.

The purpose of requiring that information was to enable the commission to determine whether the company was complying with section 267 of the Companies Code, that is to ensure that the company was maintaining its accounting records in conformity with the requirements of the Code. That matter, as the honourable member probably knows, went to court. The honourable member has now made further allegations that may produce some new circumstances or throw some new light on the issue of Armtech and I will refer those matters to the appropriate authorities for investigation.

CATS

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister of Tourism, representing the Minister for Environment and Planning, a question about cats.

Leave granted.

The Hon. M.J. ELLIOTT: I noted that Ms Lenehan, in the House of Assembly, asked a question recently concerning cats. I gather her concern was primarily related to cats in urban areas and the nuisance value they create for other than their owners, in particular stray cats. As a person trained in ecology I am concerned about the effect cats are having outside the urban area. It is almost certain that cats have contributed to Australia losing several species of mammals, reptiles and birds. Extinction is almost a certainty and there are a number of other species in the process of extinction, with cats contributing to that problem.

The Hon. C.M. Hill: Are you talking about feral cats?

The Hon. M.J. ELLIOTT: The same species, yes. Even a cat belonging to a person still wanders off and kills a few birds and reptiles in its spare time. There have been suggestions from time to time that appropriate measures could be taken and the sort of thing I have heard suggested is the possibility of registering cats or cats wearing some sort of bell, although the occasional cunning cat can apparently learn how to tuck a bell into its collar when chasing birds.

We may have to come up with a bell that rings even when tucked into a collar.

If a cat is moving and ringing as it goes it gives the potential prey some warning, and the cat may then have to stick to Whiskas or whatever brand it prefers. It does sound a frivolous matter, but there is little doubt that cats have contributed to the extinction of some species of animals. Too many people think of Australian native animals as being the kangaroo and the koala and have not heard of notomys and pseudomys and other small reptiles and animals found in the Australian bush. What research has the department done or is aware of having been done on the effect of cats on native animals? Have any proposals been considered to alleviate any problems and, if so, what are they? Does the Minister or his department have any opinion on registering cats and/or requiring that they wear bells?

The Hon. BARBARA WIESE: I will certainly refer those questions to the Minister for Environment and Planning and bring back a reply. One of the committees under my control as Minister of Local Government is the Dog Advisory Committee which has considered the question of cats in the metropolitan area as it has received many complaints over the years about stray cats and their effect on local communities. It is a very complex issue because one cannot control cats in the way that one can control dogs because of the way they move around. It has been difficult for that committee to produce information or advice to the Government on how cats in built-up areas can be controlled.

IRRIGATION ACT AMENDMENT BILL

In Committee.

(Continued from 5 November. Page 1842.)

Clause 2—'Commencement.'

The Hon. C.J. SUMNER: With respect to the question of lack of consultation, the honourable member made some comments on that topic and queried the lack of consultation with the Riverland Advisory Boards over the effects of the Bill. Prior to the rehabilitation of the irrigation system in Waikerie during the early 1970s, irrigators took domestic water from open channels during irrigation periods and pumped water to tanks. During rehabilitation, every irrigator was personally interviewed concerning the fixing of a metered domestic service (free of cost) in preference to their previous arrangements. The availability of an 'on demand' domestic service was considered desirable by most irrigators who opted for installation of those services. Only about 16 out of 650 irrigators chose not to take advantage of this option.

Agreements have been signed by this majority of the irrigators who accept that the irrigation water is not suitable for drinking but is for other domestic purposes and that charges will apply each year for the services. Since a small minority were continuing to take domestic water at the general irrigation price, those persons were advantaged over the majority who had voluntarily entered into the agreements for the metered domestic supplies. Metered services were provided by the Engineering and Water Supply Department to this minority although some are yet to sign agreements. Essentially, this issue is not a new policy initiative or significant change to existing practice, otherwise this matter would have been formally presented to the advisory boards for comment. However, individual consultation has taken place with each irrigator on a progressive basis prior to installation of those domestic services.

I also would like to take the opportunity of correcting a statement that was made by the Minister of Water Resources in another place. With respect to clause 4, he was asked a question by the member for Murray-Mallee relating to supply in that area. The statement made by the Minister, on advice, that there is, 'Not a single domestic supply off the swamp schemes' is not correct. General 'stock and domestic' supplies in the swamplands are from pressurised mains due to the requirement to wash down dairies. However, in one of the 10 reclaimed regions—that is Mypolonga—there are 11 'stock and domestic' supplies off irrigation channels. These consumers have been paying a separate annual charge for these 'stock and domestic' supplies. These supplies are unmetered, consequently the charge per kilolitre does not apply and will not apply. Effectively the status quo remains for these supplies and are not affected by this legislation.

I appreciate the opportunity that the Chamber has given me to respond on clause 2 to those matters, the first of which was of a general nature and the second related to clause 4 as the Bill was in another place. There are some other questions that the Hon. Mr Dunn apparently had and the Hon. Mr Elliott may have which were raised in the second reading stage. If the honourable members would like to put them again, I have an officer here from the department who may be able to assist.

Clause passed.

Clause 3—'Interpretation.'

The Hon. PETER DUNN: It states that 'the consumption year' means a period of approximately 12 months in respect of which the volume of water supplied is assessed or measured. Is that because the meters cannot be read at exactly 12 months?

The Hon. C.J. SUMNER: They cannot guarantee that they will be read precisely 12 months apart.

The Hon. PETER DUNN: Is it normal practice to write it into legislation like this?

The Hon. C.J. SUMNER: Apparently this definition of consumption year is also in the Waterworks Act.

The Hon. PETER DUNN: I would have thought that it would be more specific than that, probably a month either side of the 12 months, but I am probably being pedantic. 'Approximately 12 months' could be quite wide, I would have thought.

The Hon. C.J. SUMNER: Apparently it is done within three weeks of the normal time. That is what they aim for. They make adjustments if it is over three weeks.

Clause passed.

Clause 4—'Rates.'

The Hon. PETER DUNN: This clause has a rather complex method of obtaining a base rate. How is that base rate set and what is it? As I understand it, on my property I am rated for one mile back from the pipeline and that gives about 900 acres in my case. This Bill contains far different criteria. Is it simple to understand for the person being rated?

The Hon. C.J. SUMNER: The rating system is different in the irrigation areas from that which applies where the honourable member has his property.

The Hon. PETER DUNN: The Bill provides that the base rate will be:

(i) based on the number or area of the blocks;
(ii) based on the number of meters belonging to, and installed by, the Minister to measure the volume of water . . .

How one can base a rate on those criteria I am at a loss to know. It then provides:

(iii) based on both of the criteria set out in subparagraphs (i) and (ii);.

That can mean anything. If one has 10 meters one pays more. It really is quite ambiguous to me. Is it so much per meter or hectare?

The Hon. C.J. SUMNER: It depends on the sort of water one gets. If one is getting bulk water for irrigation it is done in accordance with proposed new subsection (1) *(b) (i)*, which is based on the number or area of the blocks. If one is getting domestic water it is based on the number of meters as provided in paragraph (ii).

The Hon. Peter Dunn: Therefore, there is a set rate per hectare or metre?

The Hon. C.J. SUMNER: There is a set rate per hectare, depending on the property.

The Hon. Peter Dunn: For irrigation water?

The Hon. C.J. SUMNER: Yes.

The Hon. Peter Dunn: For domestic water it is based on the number of meters?

The Hon. C.J. SUMNER: Yes.

The Hon. PETER DUNN: What is the base rate for domestic water per meter?

The Hon. C.J. SUMNER: The minimum annual rate declared under the Waterworks Act is $84 this current year.

The Hon. PETER DUNN: In relation to proposed new subsection (2) *(a)*, which declares different rates in respect of water supplied, what is the difference in the rate for irrigation water as opposed to domestic water? In one instance you are rating on an area and in another instance you are rating on a meter basis. Having triggered off the minimum rate of $84, what then do you pay, compared to irrigation water?

The Hon. C.J. SUMNER: For $84 for domestic purposes one gets 271 kilolitres. For the balance one pays half the price of water under the Waterworks Act, which means this year 31c per kilolitre.

The Hon. PETER DUNN: What about for irrigation purposes?

The Hon. C.J. SUMNER: That is 3.65c per kilolitre.

Clause passed.

Clauses 5 to 7 passed.

Clause 8—'Supply of water by measure.'

The Hon. PETER DUNN: In relation to new subsection (1), the term 'not ratable land' is not the same term used in relation to local government. Is this determined under this legislation?

The Hon. C.J. SUMNER: The clause refers to land that is outside the defined area—the area defined historically as the irrigation area—but to which water is supplied from time to time. This clause provides that the Minister may supply water outside the defined irrigation areas and charge for it on such terms and conditions as the Minister determines, but it ensures that water can be supplied outside the defined ratable area.

The Hon. M.J. ELLIOTT: Will the Minister clarify the intention of this clause? People from the Riverland have suggested that what may occur here is that people have water allocated for irrigated land and may be able to have some of that water reallocated to land outside the irrigated area. Might that occur?

The Hon. C.J. SUMNER: Apparently, discussions are being undertaken at the moment on the movement of water from one block to another block within the ratable area, that is, the irrigation area.

The Hon. M.J. Elliott interjecting:

The Hon. C.J. SUMNER: No. Discussion is proceeding to get an allocation of water transferred from one block to another block. Those discussions are proceeding with Riverland advisory councils with a view to arriving at a common formula and an acceptable policy, but that does not apply to the transfer of water from a ratable area, or the irrigation area, to the non-ratable area which is referred to in section 78. That is not in the discussion.

The Hon. M.J. ELLIOTT: What are the circumstances that we are looking at here? Is it possible that a person may have an area that they wish to put under irrigation to which new water may be applied? 'New water' is water which has not been previously allocated. Is it intended that that will occur? Is it intended that it might be simply for people who are on dry blocks who want water for housing and they are in a position where they can draw water, or what is the intention?

The Hon. C.J. SUMNER: It is basically to provide that the Minister may (he does not have to) make water available to land outside the ratable area (that is, water available outside the defined irrigation areas, which apparently were defined years ago) on request and at a charge. It has been used so far only for irrigation of crops on a casual basis. I understand that if someone comes up with a proposal for a one-off crop outside the irrigation area, then under this clause the Minister may sell water to that person. The purpose of the clause is to empower the Minister to sell water to those people in those circumstances, but the power is discretionary.

The Hon. M.J. ELLIOTT: We are not talking about the private irrigators who have plantings of stone fruit, or the more permanent type of crop: we are talking about a one-off situation where they might want to irrigate wheat during a high flow year when water availability is high. Are we talking about that situation now?

The Hon. C.J. SUMNER: It does not apply to those crops, vines or trees being grown in the ratable area—the irrigation area. Does the honourable member understand that?

The Hon. M.J. Elliott: I understand the irrigation area, but I am trying to get a translation.

The Hon. C.J. SUMNER: It is the land that is defined as 'irrigation area'.

The Hon. M.J. Elliott: Are the private irrigators included within that definition.

The Hon. C.J. SUMNER: No, we are talking about Government irrigation.

The Hon. M.J. ELLIOTT: Some years ago there was a proposal for a private irrigation area, which is now known as Simarloo, which is one of the largest private plantings along the river. I believe that the Minister, in very special circumstances, gave an allocation to the area of water, which is a pretty precious resource in South Australia. There was a fairly clear undertaking that the produce from that area would all go to the overseas market, but that did not prove to be the case. Simarloo now sells entirely to the Australian market. There was a special allocation of the water, which I think this State could ill afford, and it had an effect on markets. Does this clause give the Minister alone the discretion to give some other undertaking in relation to water extra to what is being drawn from the system now? First, that would diminish the water resource and, secondly, it would aggravate what is already a problem market situation.

The Hon. C.J. SUMNER: This applies to people who want water from the Government irrigation area for a casual crop in any area outside the land which is defined as the 'irrigation area'. I do not at present have information about this private development, but I assume the matter to which the honourable member referred was not water provided through the Government irrigation area.

The honourable member can address his questions on Simarloo to the Minister of Water Resources at the appropriate time. That involved private water supplied under the

water resources legislation. We are talking about Government irrigation areas and the provision of water for which people may apply from time to time for casual crops.

The Hon. M.J. Elliott: For one year?

The Hon. C.J. SUMNER: Yes, yearly or half yearly. I understand that people must apply specifically on each occasion for the extra water for the casual crop and for defined purposes. It is not for permanent plantings. It might be for vegetables.

If the honourable member is concerned about the circumstances in which Simarloo is provided with water, as neither I nor my departmental adviser know anything about that, I suggest he raise the matter with the Minister in an appropriate form. That is a different means of allocation of water—it is private water as opposed to water for Government irrigation areas.

The Hon. PETER DUNN: Does the department intend to provide information on accounts about meter readings at each end of the meter reading period?

The Hon. C.J. Sumner: In respect to what water?

The Hon. PETER DUNN: Anywhere there is a meter. At present accounts show the number of kilolitres used during that period and the cost of that water. I receive many queries from people who think that the department has misread their meter. There is constant trouble about that.

The Hon. C.J. Sumner: Is this a general question relating to everyone?

The Hon. PETER DUNN: Is it intended under this clause to do that? The clause refers to the measuring of water, and people are charged according to the measurement. Is it intended that the meter readings at either end of the period during which the water has been used be shown on the account?

The Hon. C.J. SUMNER: Apparently, the honourable member's question relates to all water, not to this little bit of water in the Riverland.

The Hon. C.M. Hill: It relates to an ordinary suburban region.

The Hon. C.J. SUMNER: This Bill has nothing to do with ordinary suburban water. It deals with water for vegetables grown in the Murray irrigation area.

The Hon. C.M. Hill: This deals specifically with meters—the water is measured.

The Hon. C.J. SUMNER: Yes, I know. The honourable member's question relates to all accounting for water.

The Hon. Peter Dunn: It is metered water.

The Hon. C.J. SUMNER: The Bill does not say anything about accounts for water.

The Hon. Peter Dunn: Aren't you going to send accounts? Why measure it?

The Hon. C.J. SUMNER: It talks about selling water to non-ratable land.

The Hon. Peter Dunn: It has to be metered, and someone must read the meter.

The Hon. C.J. SUMNER: The question that the honourable member has asked relates to meter readings everywhere.

The Hon. Peter Dunn: If you want to expand it that far, yes.

The Hon. C.J. SUMNER: I will. The department is heading into the twenty-first century with computerisation, I understand, and it is hoped that that information can be provided when the computer is programmed to do it. However, there is a problem, and it comes about when meters are changed, for instance, halfway between readings. If we put in only the bare readings, the customer will be confused. That may make the program more difficult to write. I am advised that the department is working on this and it is believed that such information should be provided. If and when the problems can be overcome, what is obviously desirable in terms of consumer information will be provided. That is what I am advised. If it turns out to be wrong, do not blame me, because I am the Attorney-General.

Clause passed.

Clause 9—'Regulations.'

The Hon. M.J. ELLIOTT: There is no real explanation why this clause has been inserted. I imagine it relates to the fact that until now there were no clearly defined powers of recovery or the ability to charge interest when people could not or would not pay their water rates.

The Hon. C.J. SUMNER: The regulations currently state that there is a power to charge interest. It was a matter of clarifying that that power was provided in the Act. There was some doubt about that.

The Hon. M.J. ELLIOTT: In other words, there was the legal question whether or not the provision that fees could be paid and charges could be made included the ability to set interest.

The Hon. C.J. SUMNER: Yes.

Clause passed.

Title passed.

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

That the report be adopted.

If members who have queries about the details of the Bill wish to pursue matters further, I will make available officers from the department to brief them.

Motion carried.

Bill read a third time and passed.

PRIVATE PARKING AREAS BILL

Adjourned debate on second reading.

(Continued from 21 October. Page 1271.)

The Hon. BARBARA WIESE (Minister of Local Government): I will reply briefly to a few points raised by the Hon. Mr Griffin in the second reading debate. First, I thank the honourable member for his general support of this legislation although he raised some issues and I note that he has some amendments on file. The first issue I wanted to clarify was the point he raised concerning his understanding of one clause in the Bill concerning prosecution for parking offences. The honourable member thought that the clause provided for both the owner and the driver to be prosecuted when a parking offence was committed in a private parking area. This is not the intention of the Bill. Its intention is to prosecute only one person but it provides for the owner of the vehicle, who would normally be the person to whom the parking infringement notice was served, to indicate that he or she was not the driver of the vehicle at the time. We want to provide for that person to nominate the driver guilty of the parking infringement so that that person can be prosecuted. It is the intention of the Bill to prosecute only one person.

The second point was the question of penalties. I note that the honourable member does not have an amendment on file on this question but was concerned about the level of penalty. This is a maximum penalty, so the courts will decide what is an appropriate fine to impose on an offender. The other point is that the penalty that has been decided upon fits within the categories established by Parliamentary Counsel for a whole range of legislation that comes before the Parliament. As it stands the penalty is reasonable and I remind members that it is a maximum penalty and I would

expect that the courts would certainly use the discretion at their disposal in making judgment on issues such as that.

Some amendments the Hon. Mr Griffin has on file clarify parking areas and the erection of a notice in private parking areas and other matters. I intend to support those amendments as they have merit. I will discuss them at the appropriate time. He also has amendments to clause 14 which I will oppose and will give my reasons for so doing at that time. In general, I thank the Hon. Mr Griffin for indicating that the Opposition will support the legislation. There is only one issue of disagreement, clause 14, that we must solve.

Bill read a second time.

In Committee.

Clauses 1 to 3 passed.

Clause 4—'Interpretation.'

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

Page 1, line 28—Leave out 'lines (or a combination of both)' and substitute 'a combination of signs and lines'.

This amendment relates to the definition of 'disabled persons' parking area, and that is defined at present as any part of a private parking area marked out by signs or lines or a combination of both as a disabled persons' parking area. The same amendment is to be moved later in relation to the definition of 'no standing area', 'permit parking area' and 'restricted parking area'. I have some concern that if we allow those areas to be defined by lines only we are expecting a lot of the motoring public to try to interpret what the lines might mean. It is preferable to have areas designated by reference to signs or signs and lines, and it seems that that is clearer for the motoring public than simply referring to lines. I hope that my amendment will clarify the matter and assist the motoring public.

The Hon. BARBARA WIESE: The Government is willing to accept all the amendments to clause 4 as they do what the Government intended to do, anyway. It was our intention that these areas would be designated by signs as well as lines and it was proposed to do that by way of regulation. I have no objection to its being included in the legislation. In drafting the legislation it was my intention to keep it as simple as possible and for it to be a framework for the private parking areas legislation. The majority of matters to be dealt with were to be dealt with by way of regulation. I have no objection to its being incorporated in the legislation and therefore support it.

Amendment carried.

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

Page 2—

Line 14—Leave out 'lines (or a combination of both)' and substitute 'a combination of signs and lines'.

Line 16—Leave out 'lines (or a combination of both)' and substitute 'a combination of signs and lines'.

I appreciate the Minister's response. This Bill has no political mileage for any Party. My objective was to make it workable and pick up some points that I believed were necessary in implementing the legislation. We support it but want to ensure there are no loopholes. In some areas there could be construed to be loopholes and I will deal with them in a moment. I thank the Minister for her indicated support of the amendments.

Amendments carried.

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

Page 2, lines 20 to 25—Leave out paragraphs *(b)* and *(c)* and substitute:

(b) where the land is subject to a registered estate or interest conferring a right to possession—the proprietor of that estate or interest;

(c) where the land consists of a registered easement or right of way—the proprietor of the easement or right of way;

(d) where the land is not alienated from the Crown—the Minister or intrumentality of the Crown that has the care, control and management of the land.

Whilst not wanting to prolong the debate, it would be helpful for those reading *Hansard* to understand the background of this amendment. The concern I expressed in the second reading was that, with the way lines 20 to 25 are presently drafted and relate to the definition of an owner of land, it could leave some gaps in circumstances where, for example, a piece of land that was to be a private access road might be on property not owned by the owner of the premises to which access was sought over that private access road. There may, for example, be an easement granted over that private access road to the adjoining owner.

It seemed to me that, as the Bill was drafted, it was arguable that the private access road could not be covered by the provisions of this Bill because the private access road did not give access to premises on that land—that is, on the land over which the private access road was in operation. My amendments seek to ensure that where premises are on one piece of land and a private access road, a private walkway or even a private parking area is on adjoining land over which there has been a right of way or easement granted to the land on which the premises are situated, the private parking areas legislation can apply. I think my amendments do accommodate that and ensure that there are no loopholes which might require further amending legislation. So, it is better to get it right now, and I hope this will achieve that.

Amendment carried.

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

Page 2, line 40—Leave out 'lines (or a combination of both)' and substitute 'a combination of signs and lines'.

This amendment is consequential.

Amendment carried.

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

Page 2, line 44—Leave out 'on that land' and insert 'of the owner'.

This amendment is consequential on the question of ownership which has already been resolved.

Amendment carried.

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

Page 3, line 17—Leave out 'lines (or a combination of both)' and substitute 'a combination of signs and lines'.

This amendment is again consequential.

Amendment carried.

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

After line 19—Insert subclause as follows:

(2) If there are two or more owners of the same land, the powers confirmed on the owners by this Act can only be exercised—

(a) by the owners acting jointly; or

(b) by one of the owners who is, by the agreement of all, empowered to act on behalf of all of them.

This amendment deals with a situation where there are two or more owners of the same land. I think it will facilitate the operation of the legislation.

Amendment carried; clause as amended passed.

Clause 5—'Conditions for use of private walkway or private access roads.'

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

Page 4, line 2—Leave out 'the' and substitute 'each'.

This amendment is designed to ensure that there is some form of notice at each entrance to a private parking area, a private walkway or a private access road, with the conditions upon which the Act applies to that piece of land.

The Hon. BARBARA WIESE: I indicate that I will be supporting this amendment and also the amendment to clause 7, both of which deal with the same issue. It was certainly the intention of the Government that each entrance

to a private parking area should have a sign indicating the information that is necessary for people to know what the parking restrictions for that area are. It was my view that it was not necessary to include words which indicated it was one entrance or several entrances in view of the fact that the Acts Interpretation Act provides for the singular to mean the plural. It seemed to me that it was quite adequate to have the Bill drafted as it is. However, in the interests of compromise, I am quite happy to accept Mr Griffin's amendment.

Amendment carried; clause as amended passed.

Clause 6—'Offences.'

The Hon. K.T. GRIFFIN: In the light of the Minister's reply at the second reading stage that it was not the intention to make both the owner and the driver guilty of an offence, could she point to a provision in the Bill which ensures that, if one is prosecuted and convicted or pays the expiation fee, the other is not also liable? The difficulty I have is that clause 6 in the second last line provides that, if the owner is not the driver of the vehicle, the owner and the driver are each guilty of an offence, but I could not find anything elsewhere in the legislation which ensures that both of them are not liable for the same fee and both required to pay it or both liable to prosecution.

The Hon. BARBARA WIESE: That is quite true. There is no provision in the legislation which indicates that. It was my intention to include that as part of the regulations which would be given effect to by clause 14 (2) *(c)* which will be the subject of further discussion when we are later dealing with this Bill. These are issues which I think can be dealt with by way of regulation to try to keep the legislation as simple as possible. Since we are dealing with legislation which will be used primarily by councils and private landowners, it seemed to me that the Act by which they operate should be as simple and readable as possible. The vast majority of the rules by which they should operate should be incorporated in regulations.

I might indicate at this stage also that it is my intention to see that a handbook is produced for people who might use this legislation so that they can fully understand the provisions contained in this Bill. So, the honourable member is quite correct that the Bill itself does not provide for either an owner or a driver to be the person prosecuted, but it is my intention to include that in the regulations.

The Hon. K.T. GRIFFIN: I appreciate the good faith in which the Minister has indicated that. I have some very grave concerns as a matter of principle about the proposition which she puts where regulations are to be used to give defences or remove defences for offences created by statute. I do not believe that it is appropriate for regulations to do those sorts of things, which are matters of significance. If it is not intended that both the owner and the driver should be liable to prosecution, if one is prosecuted and convicted or if one pays the expiation fee, I would much prefer to see it in clause 6 of the Bill rather than leaving it to regulation.

As a matter of principle, this clause creates an offence and both the owner and the driver are guilty of an offence and are therefore both liable to prosecution under this clause. It is the statute which goes through Parliament which has created the offence. In my view, it ought to be also the statute which provides that, if one is convicted, the other should not be so convicted, or if one pays the expiation fee, the other should not be required to pay the expiation fee. That is not something which ought to be left to the executive arm of Government. There is a body of legal and academic debate on this regulation-making power which is referred to as a Henry VIII clause.

When I come to it I will be putting strongly that the two paragraphs in clause 14 should be deleted, and I will be dividing on it because I feel so strongly about the principle. To enable us to vote on the point I am putting I should probably have also had on file an amendment which dealt with the clause 6 issue, but I was not aware of what the Minister's response would be until she replied a few minutes ago. I record my concern about this clause. I do not want to vote against it because it is necessarily part of the Bill. However, depending on the resolution of the issue on clause 14 it may be appropriate then to recommit clause 6 with an appropriate amendment to deal with that issue. I would regard the division on clause 14 as the determination of the question of principle from which other consequences might follow.

Clause passed.

Clause 7—'Owner of private parking area may impose time limits and may set aside any part as a disabled persons parking area, no parking area, etc.'

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

Page 4, lines 17 and 18—Leave out 'notice fixed in a prominent position at or near the entrance to the private parking area' and substitute 'by a notice or notices exhibited at or near each entrance to the private parking area'.

This amendment is essentially consequential on earlier amendments that have been carried.

Amendment carried; clause as amended passed.

Clause 8 passed.

Clause 9—'Agreements by owner of private parking area and council for the area.'

The Hon. BARBARA WIESE: I move:

Page 5, lines 30 to 36—Leave out paragraph *(d)* and substitute new paragraph as follows:

(d) Where an offence against this Act in relation to a private parking area is alleged, the council may serve, or cause to be served, on the alleged offender a notice to the effect that the offence may be expiated by payment to the Council of the prescribed expiation fee within 21 days of the date of service and—

(i) if the offence is so expiated—no proceedings shall be commenced in a court with respect to the alleged offence;

(ii) if the expiation fee is tendered after the expiration of the period referred to above and the council accepts the payment—no proceedings shall be commenced in a court with respect to the alleged offence or, if any such proceedings have already been commenced, they must be discontinued.

The three amendments I have on file have been brought about as a result of discussions that took place with the Adelaide City Council. That is one of the reasons why there has been some delay in resuming the debate on this Bill. Originally the Adelaide City Council indicated that it was not interested in commenting on the draft Bill, but later changed its mind. As a result of meetings that subsequently took place there were some outstanding issues that I agreed I would have Parliamentary Counsel investigate. This amendment and the one that follows are two of the technical problems that were raised with me at the time. The city council was concerned about whether the provisions of the legislation as drafted were sufficient to provide for a notice to be placed on a vehicle.

It was also concerned whether the regulation-making powers were sufficient to enable regulations to be made allowing offences to be expiated after the prescribed time and on payment of any legal costs without the matter going before the court. In fact, when we checked with Parliamentary Counsel it was agreed that the clause should be amended. That is why the amendments to lines 30 to 36, and after line 36, have been drafted.

The Hon. K.T. GRIFFIN: I do not disagree with the principle of it but raise a question about paragraph (ii) which provides:

If the expiation fee is tendered after the expiration of the period referred to above—

That is the 21 days of the date of service—

and the council accepts the payment—no proceedings shall be commenced in a court with respect to the alleged offence or, if any such proceedings have already been commenced, they must be discontinued.

Is the Minister saying that the council still retains a discretion as to whether or not payments should be accepted and if it decides not to accept it, prosecutions can then continue? If there is money in the mail to pay an expiation fee which may be three months after the service of the expiation notice and the clerk records it on a receipt, does that mean that even if superior officers have decided that the prosecution should continue, that that is the end of the matter? How will it work in practice and in what circumstances can the council decide to continue with the prosecution?

The Hon. BARBARA WIESE: This provision will operate in the same way as a similar provision operates in the Local Government Act with respect to on-street parking.

The Hon. K.T. Griffin: Is it in identical terms?

The Hon. BARBARA WIESE: Yes. What happens in that case is that the power to discontinue prosecution is discretionary for councils and it operates differently in different council areas. For example, in some councils the power to make a decision as to whether or not to withdraw prosecution is delegated to a paid officer of the council and a rapid response can be made and in all cases of which I am aware the decision is made to withdraw the prosecution. In other council areas councils have chosen not to delegate the power, so whether or not a prosecution is withdrawn will depend on whether a council meeting can be held in time for the decision to be taken by the council. That is the way it has operated for on-street parking offences and I anticipate that for private parking area offences it will operate in exactly the same way.

The Hon. K.T. GRIFFIN: I am happy with that procedure. I think the way that this is drafted will mean it will have to be a conscious decision of the council before payment is accepted. I guess the debate is about when payment may be accepted. When the receipt is issued or when a delegated officer of the council makes a decision I would have thought is acceptance. I suggest there is not that sort of flexibility in this amendment. I do not want to hold up consideration by the Committee on this clause, but merely alert the Minister to what might be a potential administrative difficulty in its administration and application. There will be further opportunity in another place to amend it if necessary. However, it seems to me that this does not give as wide a discretion as that to which the Minister was referring.

The Hon. BARBARA WIESE: I do not see that the question the honourable member is raising will be a problem because under section 41 of the Local Government Act councils have a general power to delegate. Therefore, this is the legislation under which the powers of delegation can be made.

The Hon. K.T. GRIFFIN: I do not disagree with that. My point is not so much delegation. I accept that councils can delegate, and I have no problems with that. However, it is the question as to the flexibility of this provision to enable councils or the delegate of the council to decide whether or not to accept the payment. It is the acceptance of the payment which determines whether or not proceedings can be commenced after the 21 days have expired or whether or not proceedings are continued. It is the point at which discretion is exercised which, in my view, is not so flexible as the Minister suggests. I only want to point that out. I will not delay discussion on the Bill, but the Minister might care to have a look at it before the matter is finally resolved in another place.

The Hon. BARBARA WIESE: I will certainly have a look at it but, as this is identical drafting to that which exists in the Local Government Act and which has been in place for some time relating to on-street parking, I do not anticipate that there will be a problem with it.

Amendment carried.

The Hon. BARBARA WIESE: I move:

Page 5, after line 36—Insert subclauses as follows:

(2a) An expiation notice under this section—

(a) need not identify the alleged offender by name;

(b) may be served personally, by post, or by placing or affixing the notice on the vehicle allegedly involved in the commission of the offence.

(2b) Where a person tenders payment of an expiation fee after the expiration of the period referred to above, the council may, as a condition of accepting payment, require that person to pay—

(a) a prescribed late payment fee;

and

(b) if proceedings have been commenced in a court—the costs incurred by the council in relation to those proceedings.

This amendment is really consequential to the previous one and, as I said, the Adelaide City Council queried whether the drafting was adequate. I think that this amendment satisfies the questions that were raised at that time.

Amendment carried; clause as amended passed.

Clauses 10 to 12 passed.

New clause 12a—'Immunity from liability.'

The Hon. BARBARA WIESE: I move:

Page 6, after clause 12—Insert new clause as follows:

12a. A council or an authorised officer acting on behalf of a council incurs no liability for an act or omission in good faith and in the exercise or purported exercise of powers or functions under this Act.

This amendment arises also from discussions with the Adelaide City Council, which was concerned that council officers, acting in good faith, should have immunity from liability in much the same way as they do under the Local Government Act in connection with similar parking provisions relating to on-street parking. I think that that is a reasonable request and I am therefore happy to comply with it and to move this amendment.

The Hon. K.T. GRIFFIN: I agree with the amendment. I suppose one could always ask: what happens if a council officer is negligent and in some fit of pique breaks a windscreen wiper or whatever? I think that that circumstance is probably excluded from the operation of the clause and, if the new clause is identical to the provision in the Local Government Act, as I understand it to be, then I see no great difficulty with it.

New clause inserted.

Clause 13 passed.

Clause 14—'Regulations.'

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

Page 6, lines 22 to 25—Leave out paragraphs *(b)* and *(c)*.

This is an important issue and I certainly propose to call for a division on it, because I feel very strongly about a power given to make regulations which impose, modify or exclude any evidentiary burden in proceedings for an offence against the Act, or provide for, or exclude, defences for persons charged with offences against the Act. It is a very serious matter that Parliament should give to the Executive a power to modify the onus of proof or defences for persons charged with offences.

Looking at it in the worst possible light, it means that a Government, of no particular political persuasion, could impose a burden of proof beyond the general statutory burden of proof of something being proved beyond reasonable doubt or, in some cases, where there is a reverse onus, to require a burden of proof heavier than the balance of probabilities. It seems rather strange that Parliament ought to be, in effect, delegating its responsibility to the Executive to act in that way and, also, to provide for, or more particularly, to exclude, defences for persons charged with offences against the Act.

It is a very serious matter that Parliament should again delegate its responsibility to the Executive, giving it power to remove a person's defence. If a defence is to be removed, it is my very strongly held view that that ought to be done by Statute and be voted on by both Houses of Parliament rather than by the Executive, where there is only a power of disallowance by one Chamber of the Parliament, if sufficient numbers can be obtained, and disallowance of a whole set of regulations on the basis of only one being unsatisfactory is a very difficult step to take and a difficult objective to achieve. So, I oppose very strongly paragraphs *(b)* and *(c)* of subclause (2). This sort of practice is frowned upon in legal and academic circles, and in my view we ought to be conscientious in ensuring that wherever evidentiary burdens are to be established they are done by Statute and that, wherever defences are to be granted or to be excluded, that ought to be done by Statute.

The Hon. BARBARA WIESE: I indicate that I oppose the amendment probably as strongly as the honourable member supports it. I point out to the honourable member that the provisions in paragraphs *(b)* and *(c)* of clause 14 (2) are identical to those which are contained in the Local Government Act relating to evidentiary burden for on-street parking offences, which provisions were in fact put in the legislation in 1979 and 1980 by a Liberal Government. So, the honourable member is arguing against legislative provisions that his own Government included in legislation relating to on-street parking. There is certainly no sinister intention in the provisions that we are presently considering.

The object of the first provision is simply to simplify matters; it is designed to avoid the need for the prosecution to introduce evidence to prove matters that can be safely accepted as fact without prejudicing the rights of the defendant and without going to the extent of proof required in a criminal case. Examples of this are, say, not requiring the prosecution to call the owner of a car park or the mayor of a council to come to court to testify that in fact an agreement had been entered into for the private parking area to be policed by council officers.

Another example would be providing that, in the absence of proof to the contrary, the person charged was the registered owner of the vehicle, without having to call the Registrar of Motor Vehicles to prove that in fact that person was the registered owner of the vehicle. A further example would be to provide that, in the absence of proof to the contrary, the signs required by regulation to be erected were in fact erected and that the vehicle was standing in the place alleged. These are the sorts of things that we want to include in the regulations, rather than at this stage having to think of a long and exhaustive list of appropriate points to be included in the legislation.

I point out that we are dealing with a new area. There has not been provision in the past for policing of private parking areas in South Australia. It is quite conceivable that, even if we did sit down and brainstorm about the possible provisions that should be included, we would leave something out. If we have to come back to the Parliament to amend the list, we could cause hardship and certainly inconvenience to the citizens and the courts whose time would be wasted by our having to come back to the Parliament to make fairly simple amendments along the lines I have indicated. It seems to me to be quite fair and reasonable for the Parliament to delegate the power to draw up a list of regulations of this kind and to make provision for these matters by way of regulation rather than including them in an Act of Parliament.

I certainly would be prepared to undertake to ensure (if it makes people feel any happier) that the regulations do not come into effect until the Subordinate Legislation Committee of the Parliament has had a chance to peruse them. I do not intend to include unreasonable provisions in these regulations. I believe there should be general agreement about what are reasonable matters for inclusion in such regulations. I am quite happy for people to peruse the regulations before they come into effect. I really do not believe that it is necessary or desirable to hold up this legislation at this time and try to incorporate all those matters into an Act of Parliament when it is quite a time-consuming and complicated procedure to make amendments when they become necessary.

The Hon. M.J. ELLIOTT: I am handling this matter in the absence of my colleague, and I have given it as much consideration as time has allowed—and that has been very brief. I am somewhat persuaded by the arguments put forward by the Hon. Mr Griffin. I am not convinced by the argument that this measure is similar to existing legislation. That argument has already been used once today. I think we could be further entrenching this sort of attitude into legislation, and then we would have two cases to cite when the issue was raised in regard to another Bill. I am not convinced by the argument that this is similar to existing legislation. I believe that the question of evidentiary burden or defences is important.

If there is some question as to taking some time to finally work out what the regulations are, I point out that the Bill cannot be put in motion until then, in any case. I cannot see why it cannot be included as a schedule—and I imagine that that is the form it would probably take. If the Minister holds these clauses dear to her heart, perhaps she will seek to report progress. At this stage I am tempted to vote with the Hon. Mr Griffin.

The Hon. K.T. GRIFFIN: Let me say, first, that I do not suggest any sinister motive on the part of the Minister or the Government in respect of this clause. I take the Minister's point that these provisions may be identical to provisions in the local government legislation that was introduced by a Liberal Government between 1979 and 1980. However, I say that that was wrong. It is quite likely that I missed the issue at the time.

I do not claim to have been reading everyone's Bills, although I did read many of them and picked up many issues of principle. Whether it is a Liberal Government or Labor Government, I believe that this sort of clause is wrong and, whilst it may facilitate the administration of a particular piece of legislation, it does as a matter of principle still impinge upon the rights of individuals. Although it may be difficult to devise an exhaustive list of all the defences and onuses of proof and those facts which are deemed to have been proved unless there is evidence presented to the contrary, I would suggest that, if this sort of thing has been in force in the case of on-street parking since 1979-80, the experience of the past six years ought to have identified the areas where some special provision needs to be made so that they could fairly readily be included either in the Bill

itself or as a schedule to the Bill to facilitate the passing of this legislation and the promulgation of the regulations.

I suggest that, although the Minister has said that there may be some inconvenience caused to councils or individuals by not having all the onuses, burdens of proof and other matters of proof identified now, that is a small price to pay for the maintenance of what I regard as a fairly important principle: that a person's rights cannot be taken away unless the Parliament so resolves. That is a fairly important principle and, even though it is in relation to off-street parking, the issue is the same.

If the regulations have not yet been considered, I would say that that in itself is a matter for some criticism. We see, whichever Government is in power, the same thing: legislation is frequently presented to the Parliament without the whole thing being thought through. It might have the skeleton, but the regulations frequently come as an afterthought once the skeleton is there. Even though we may never change that, I think it is a bad system and I would certainly want to encourage in the development of legislation fairly detailed consideration being given to the regulations before the Bill itself is introduced into Parliament.

I can think of one good example where I was directly involved, although it was outside my immediate area of responsibility. That related to fisheries. A new Fisheries Act was proposed in the term of the Liberal Government. Officers came to us with the bare bones of a new Fisheries Act. No thought had been given to where and how it was to be applied, and they wanted to do everything by regulation. I took the view, and the Government ultimately supported it, that it was just not on to enact laws in that way. So, it was sent back to the drawing board and I still do not think it is completely satisfactory, but nevertheless many changes were made to try to put into practice the principle that I am now enunciating.

This is an issue on which I and the Minister will disagree, but I still propose, even though she has made the offer of access to the regulations before they are promulgated, to insist on the exclusion of paragraphs *(b)* and *(c)* from clause 14 (2), as set out in the amendment, in the hope that they can be included in the Bill itself by way of amendment to the principal parts of the Bill or by way of schedule.

The Hon. J.C. BURDETT: I support the amendment. Questions of changing the onus of proof and providing for or excluding defences are very much matters of principle which ought to be in the Bill. This is acknowledged in Pearce on delegated legislation when he talks about the kind of matters that ought to be in regulations and the kind of matters which ought to be in the Bill itself passed by Parliament. I refer particularly to page 7, where he refers to Henry VIII provisions, and refers to leaving to the Executive Government matters of changing principles of law which properly certainly ought to be in the hands of the Legislature, the Parliament. The kinds of things which typically need to be left to regulation are matters of technical detail, things such as those formerly in the Food and Drugs Act regulations, and now in the Food Act regulations. We get regulations several centimetres thick in highly technical language which most members of Parliament could not understand and which do relate specifically to detail. But, here we are talking about modifying the evidentiary burden of proof, something which impinges very much on every citizen and relates to our liberties. It is also providing for or excluding defences which worries me particularly, as it again impinges on the question of liberties of citizens.

I do not believe that there will be a question, as the Minister suggested, of a long exhaustive list. If we want to legislate in a particular Bill for the burden of proof (and we do get Bills that provide for reverse onus of proof and, while I usually oppose them, sometimes they are justified), it is a matter of general principle and not a matter of detail. It can be done in the Bill. In regard to providing for or exclusion of defences it is not a matter of great detail and can be thought about in advance, as the Hon. Mr Griffin says. It can be provided in the Bill or schedule.

The Hon. Mr Elliott, while stating that he did not have much time to consider the Bill, picked up the question quickly indeed. Here we are allowing the Executive Government to change the law regarding the basic rights of individuals in a very serious way. Regulations come before the Subordinate Legislation Committee and are tabled in both Houses of Parliament and may be disallowed. Nonetheless, they are made by the Executive Government. It is not appropriate that this kind of change in the law should be made by the Executive Government. Executive Government in general should not be dealing with changing the law at all, but simply in applying details in regulations which enable the principles of law set out in Acts of Parliament to be carried out. For those reasons, I strongly support the amendment moved by the Hon. Mr Griffin.

The Hon. BARBARA WIESE: I want to make a few points. I find it quite extraordinary that all these champions of principle on this issue have suddenly emerged in the Liberal Party when it was the Liberal Government that enacted the provisions in the Local Government Act. Where were these champions of principle in 1979 and 1980? The speakers we have heard from today were members of the Government at that time. They did not identify these great matters of principle at that time. The legislation has been operating very effectively. I do not think anybody has raised any issues in the community or in the courts about people's rights having been taken away by the provisions that exist in the Local Government Act relating to evidence.

It seems that the matters being raised here are really not matters of substance or principle at all. If we were dealing with serious issues of burden of proof and people's rights in matters of substance with respect to those issues, I would agree wholeheartedly with the matters raised by honourable members. In those cases provisions should be included in the legislation in order to protect people's rights. The issues we are dealing with here are matters of simple fact which should be included in the regulations.

The idea is to simplify matters, save time in the courts, ensure that people's rights are protected, and ensure that we do not have long periods where people are treated harshly by the courts because matters are either included in or excluded from legislation which affect their rights to justice in the courts. I repeat the statement I made earlier: if after this legislation has been put into operation we identify shortcomings in it, it will be a much more lengthy procedure for us to come back to Parliament with amendments than it would be to change regulations which may in fact assist individuals—not take away rights but protect their rights.

I will give an example of something that has occurred with the regulations attached to the Local Government Act with respect to on-street parking offences. It relates to the point that we discussed earlier, that is, whether or not the owner of a vehicle should be prosecuted when he or she is not the driver of a vehicle when a parking offence is committed. This matter has been of some concern to a number of people in our community and it has been raised in Parliament a number of times. If these are the issues which are to be incorporated in legislation, it will take a lot longer to rectify the problem that has been identified and to protect the interests and rights of the owner when he or she is wrongly prosecuted for an offence than would be the case

if we can change these things by way of regulation. That is just one example. There may be others, but I do not know yet because the legislation has not been enacted. It seems to me that we ought to have powers at our disposal to change simple matters. That is all that will be included in these regulations: simple matters to protect the rights of individuals with respect to parking offences. I ask members to reconsider their position on this amendment.

The Hon. M.J. ELLIOTT: I am not a lawyer, but it seems to me that the concept of evidence and defence is at the very heart of what our legal system is all about. If you want to change the way those two things are conducted to expedite the workings of a court, it seems to me that the rules which have been developed over a very long time for the sake of expedience are being altered. I know that we are simply talking about off-street parking in this case, but I certainly accept what the Hon. Mr Griffin has said—that a very important principle is involved here. I really do not think that it is an incredible burden for the proposed regulations to be a schedule to this Bill. I have not really received an adequate explanation as to why that could not have been done.

The Hon. K.T. GRIFFIN: As I said earlier, if the on-street parking regulations have been in force since 1980 or thereabouts, they have certainly been amended on several occasions. My recollection is that there was quite a controversial period only two or three years ago when regulations were promulgated to overcome difficulties being experienced by councils. I would have thought that it was a fairly simple matter now, having had the experience of the past six years, to merely translate, from the local government on-street parking regulations to this statute, the defences or other provisions relating to evidence. I think it is a serious matter. I do not believe that there will be the sort of problem created by having it in the statute, rather than in regulations, which the Minister claims. As I say, the experience of the past six years should have identified the areas where questions of proof, in terms of evidence, ought to be changed.

For example, whether the certificate of the Registrar of Motor Vehicles as to who is the owner of the vehicle ought to be taken as proved unless there is evidence to the contrary. That is quite clear. That can be included without any difficulty. Provisions about the signs and conditions can be included. A whole range of things can be provided just by sitting down for a day or so and working through them and drawing on the experience of the past six years.

The Hon. BARBARA WIESE: It is pretty clear that members will not change their minds and that I will not have the numbers on this issue. I want to indicate that with respect to a remark which was made earlier and on which I intended to comment, we have already considered regulations to accompany this Bill. We have not drafted legislation without any thought for what sort of regulations might accompany it. Of course, it would be possible to put a list of matters relating to burden of proof and defences within the legislation if we have to. The point that I was trying to make is that it seems to be unnecessarily cumbersome to try to amend those provisions if we have to do it by way of legislation every time that we discover a new point that should be dealt with.

However, if that is the wish of the Committee, then that is the way it will be, because I certainly do not consider this an issue of such importance that I would want to lose the Bill or that there should be a conference of the Houses on it. I indicate that I will continue to oppose the amendments. However, it would then be my intention to report progress on this Bill and to have appropriate amendments drafted to make provision for the matters that honourable members seem to think are so important to be included in the Bill.

Amendment carried; clause as amended passed.

Progress reported; Committee to sit again.

TRAVEL AGENTS ACT AMENDMENT BILL

In Committee.

(Continued from 5 November. Page 1844.)

Clause 2—'Commencement.'

The Hon. C.J. SUMNER: With leave of the Committee I will use this clause to respond to some of the questions raised by the Hon. Mr Griffin. In relation to uniformity the uniform provisions are set out in the schedule to the participation agreement which was signed by Ministers of the participating States on 19 September 1986 and a copy of which I will make available to the honourable member.

With respect to sufficient financial resources for a person to conduct the business of a travel agent, the reason for deleting the requirement that the applicant satisfy the Commercial Tribunal that he has sufficient financial resources to carry on the business in a proper manner under the licence is that, under the trust deed, the trustees will determine whether the applicant has sufficient financial resources. The trustees must examine this in order to determine whether an applicant is eligible for membership of the compensation fund, which is a prerequisite for licensing.

If the subsection were to remain in the Act, it would mean that the Commercial Tribunal would also have to satisfy itself that the applicant had sufficient financial resources. In practice, this would require an applicant to provide financial details to both the Commercial Tribunal and the trustees. It was decided by the participating States that the trustees should perform this task in order to provide consistency. The trustees will also be able to conduct investigations into the financial resources of travel agents after they have become members of the compensation fund, and will have the assistance of greater accounting expertise than the Commercial Tribunal. It is anticipated the trustees will publish financial guidelines. It should be noted that, if an applicant is denied membership of the compensation fund, he has an appeal to the Commercial Tribunal under section 20 (4).

The third point raised by the honourable member related to supervision by managers of travel agents. This is dealt with in an amendment to another clause. Perhaps I can deal with that in relation to clause 5. With respect to appeals against decision of the trustees, it is proposed to delete subsections (2), (3) and (4) of section 24.

The final question related to the status of the legislation and the trust deed. The New South Wales and Victorian Acts have been passed but not yet proclaimed. Western Australia has indicated that it will make some minor amendments to its Travel Agents Act. Uniform regulations are being discussed with the participating States. Proposed qualifications and experience for managers and proposed exemptions have been outlined for travel agents in South Australia. The trust deed is close to being finalised, but is still subject to advice from senior counsel. A copy of the trust deed could be given to the Hon. Mr Griffin, but it should be on a confidential basis until we receive the final draft of the trust deed.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: As the honourable member has indicated he would like it, I am happy to do that. The current target date is 1 February.

Clause passed.

Clause 3 passed.

Clause 4—'Application for a licence.'

The Hon. K.T. GRIFFIN: I understand from what the Attorney-General has just indicated that the question of adequacy of financial resources will be considered by the trustees of the compensation fund. He has also indicated that if the trustees decide to refuse an application for membership of the compensation scheme then there is a right of appeal. I accept that as a reasonable proposition. I do not think travel agents should be required to provide financial detail to both the Commercial Tribunal and the compensation scheme trustees.

As it is an essential requirement for membership of the compensation scheme that a travel agent or an applicant for a travel agent's licence should be sufficiently strong financially to ensure there is minimal risk to customers' funds, then that is the appropriate way to go. Not having yet had the opportunity to peruse the confidential trust deed, can the Attorney-General indicate who may be the trustees of the scheme; what will be the mechanism for an applicant for a travel agent's licence dealing with the trustees of the compensation scheme; will the dealing be done with the trustees directly or by delegates of the trustees; and in what State?

The Hon. C.J. SUMNER: The details have not been finalised; they are still subject to discussion, but it is probable that a person will make an application for licensing and membership of the compensation fund to the Commercial Tribunal in South Australia and the details will then be sent, probably to Sydney, where the membership of the compensation fund will be administered. Once that has happened, the individual States will process the licence in the normal way. The trustees will be either the Ministers or representatives appointed by the Ministers in the participating States.

The Hon. K.T. GRIFFIN: Does an application for membership of this compensation scheme mean that applicants will have to make application to Sydney, or attend in Sydney if there is a dispute, or if further information is required? I suspect that it would be somewhat difficult if it were all administered in Sydney and decisions were taken there, and applicants for an agent's licence would have no alternative, where there may be some dispute, but to travel to Sydney for the purpose of persuading the trustees to grant them membership of the scheme.

The Hon. C.J. SUMNER: It should all be able to be done on the basis of documents provided. The Commercial Tribunal in South Australia will facilitate receipt of those documents and their transmission to Sydney. It is unlikely that the applicants would be required to travel to Sydney, but I suppose that, on occasions, it is not beyond the realm of possibility that that could occur. In South Australia we will attempt to have one-stop shopping for applications and we will provide the mechanisms for the material to be sent to Sydney and for queries to be raised, presumably through the Commercial Tribunal in South Australia.

The Hon. K.T. GRIFFIN: I have an amendment on file but, in the light of the Attorney-General's explanation, and having made the point, I do not propose to proceed with it.

Clause passed.

Clause 5—'Supervision of business of travel agent.'

The Hon. C.J. SUMNER: The schedule to the participation agreement states that the Act must include a provision to the effect of section 36 of the New South Wales Act which provides:

> A licensee shall not carry on business as a travel agent unless, at each place at which the licensee so carries on business, there is present and in charge of the day-to-day conduct of the business at that place a person (whether or not the person is a licensee) who has the prescribed qualifications.

This provision appears to be even more stringent than the proposed amendment. If the word 'person' was deleted, the section would no longer require the element of superintendence which is necessary. It is imperative that people receive proper travel advice, and that requires personal supervision by a qualified person whenever such advice is dispensed. So, it is intended that there ought to be a person who is qualified at each place where travel agent business is conducted, so that the consumer can be assured that they are getting advice from someone who knows what they are talking about.

The Hon. K.T. GRIFFIN: I do not disagree with the need for qualified advice. That does not necessarily mean, though, that, as provided in clause 5, there ought to be someone on the premises licensed by the Commercial Tribunal to manage and personally supervise that office for every minute of the day. It seems to me that the provision applying in New South Wales is more flexible, and deals only with the day to day running of the business. I suggest to the Attorney that the introduction of the requirement for a person (whether or not it is the licensee) to be on the premises and to manage it and to personally supervise it all the time each day is really taking the matter to quite extreme lengths. With respect to the Attorney, I think that the New South Wales provision, on my first hearing of it, does give a bit more flexibility yet retains the ultimate responsibility, that is, someone who is qualified being in charge of the business but not necessarily there every minute, every hour of every day. I urge the Attorney to review the position on clause 5, as I think that it is really much too stringent for the sort of supervision that is required and for the protection of the public.

The Hon. C.J. SUMNER: I suppose it is a matter of argument. In relation to the New South Wales provision, section 36 provides for there to be present and in charge of the day to day conduct of the business someone with the prescribed qualifications, whereas our proposal is that the business must be personally managed and personally supervised by a person with qualifications. It has been put to me that in fact the New South Wales provision is even more stringent than our amendment. 'Personally supervised by' has been written in not to mean that the person has to be there for every second of the day but that the business has to be supervised by that person personally and not by an agent. But it does not actually mean that the person has to be there and that that person, for example, could not have a business lunch. I suppose it is a matter of wording, and I do not think that the honourable member disagrees with the policy.

The Hon. K.T. Griffin: No, I do not.

The Hon. C.J. SUMNER: We are saying that there must be personal supervision by a person with qualifications, meaning that that individual must be responsible for the supervision and cannot delegate it to someone else. It does not mean that they have to be there every minute of the day. I think it is a drafting matter, to which I am happy to give attention—if the honourable member does not persist with his amendment—before the matter passes in another place and to advise the honourable member of the results.

The Hon. K.T. GRIFFIN: I do not think we are differing on the question of policy: it is a question of drafting. It may be that my amendment should be accepted and there should be an additional subclause or subsection which picks up this concept of not being able to delegate that responsibility for supervision. I really relate it to the requirements of the Pharmacy Act. I have not looked at the precise wording

of that Act, but it is generally accepted that it requires a qualified pharmacist to be on the premises all the time it is open. It may be easier in drafting to make a mandatory requirement to have someone present all the time than to indicate in respect to supervision that it is something that requires an overall responsibility for the day-to-day management but not necessarily presence on the premises at all times.

For myself, I would prefer my amendment at least to be carried so there is a requirement to consider it. The measure would ultimately come back here and the drafting matter could be resolved. The difficulty is that, even if the Attorney gives attention to this matter, he may decide there is no need to change the drafting, and we will have lost control of the Bill. In that respect, I would prefer to make the amendment and then pick up the matter in the course of deliberation in the other House and bring it back here. Therefore, I move:

Page 2, line 4—Leave out 'personally'.

The Hon. C.J. SUMNER: I do not mind. The Bill will have to go to the other place and, obviously, the issue will be raised by members there. An amendment may be made there and then considered by the Council. My not calling for a division does not mean that I acquiesce in the amendment.

Amendment carried; clause as amended passed.

Clause 6 passed.

Clause 7—'Claims.'

The Hon. C.J. SUMNER: It is proposed to delete from section 24 of the principal Act subsections (2), (3) and (4), because they are either provided for in the proposed trust deed or are consistent with the proposed trust deed. The proposed trust deed will set up an appeals committee from which decisions of trustees as to compensation can be appealed. No other State legislation has an appeal provision such as subsection (4), and officers from the Consumer Affairs Departments in the participating States have indicated that such a provision would not be acceptable. Given the establishment of an appeals committee under the trust deed, it would create a type of forum shopping.

The Hon. K.T. GRIFFIN: I am really of two minds about my indication that I will oppose clause 7. It is important to have some appeals mechanism in the legislation. What worries me is that the scheme will be administered in Sydney and that decisions will be made by trustees in Sydney. If a person who suffers as a result of the defalcation of an agent is not awarded compensation, to which he might rightly be adjudged to be entitled, that person might have to go to Sydney to exercise the appellate rights.

That would be a very serious departure from some principles that I think are important. It would really put it out of reach of the ordinary person who has lost his or her money as a result of default by a travel agent. That is one of the reasons why I would prefer to have it in the Act, that is, the right of appeal to the Commercial Tribunal.

I certainly do not want to encourage forum shopping. That is undesirable, but I do think that there ought to be a readily accessible avenue of appeal available to South Australians who might not agree with the decisions of the trustees. Is the Attorney able to give me some indication of what the appeals procedure will be, from where it is going to be administered, and what are going to be the consequences for affected South Australians?

The Hon. C.J. SUMNER: The major problem is that if you have each tribunal in the States able to hear an appeal, you will have a very difficult situation with respect to forum shopping. You may well have different decisions in different States, with people being able to go to different States to get different decisions.

I understand that at least the officers in the other participating States are strongly opposed to any such provision in our Bill. In fact, I am advised that they do not have the equivalent of Part III in their Acts. They have not spelt out the details of the compensation scheme in their Acts. They have referred to it and say that it will be prescribed by regulation. They do not have the sort of detail that we have in the legislation. I am not able to say that if we keep subclauses (2), (3) and (4) in clause 24, participating States will refuse South Australia participation; I cannot tell the Committee that, but I do understand that they are strongly opposed to it because they see it as creating a very difficult situation with respect of appeal rights.

The proposition is that the trust deed will provide for an appeal, but it will not be an appeal to a tribunal. They will establish some kind of appeals committee to which people who are aggrieved by the non-payment of a claim can have resort. That is the current proposal.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: That has not been resolved but I suppose that if, for instance, a South Australian agent had gone into liquidation and 10 or 12 claims in South Australia were contested, it could be arranged for the committee (or whatever the appeal body is) to visit the jurisdiction in which the problem exists. I imagine that that would be done on a case-by-case basis.

The Hon. K.T. GRIFFIN: I am concerned enough about it to indicate at this stage that I intend to oppose the clause. The Attorney has said that it is the officers in the other States who have expressed their concern about the provision. It does not appear as yet that the Governments of those States have expressed their concern about the principle of it. I recognise the potential difficulty with forum shopping. I would have thought that there could be mechanisms established to ensure that there was not that forum shopping, perhaps even a provision in the trust deed itself which identified that any person exercising their rights in the Commercial Tribunal in South Australia should not be able to take the matter on appeal to the appeals committee established under the trust deed.

It may be that it could be limited to South Australians in terms of the appeal. I am worried about the potential for this committee to be based in Sydney and for South Australians not to be able to get at least a reasonable hearing without incurring a lot of expense, and not being able to get that hearing at the earliest opportunity. I recognise the difficulties of forum shopping. We argued this out when the Bill was before us earlier this year, and accepted the need for some sort of appeal mechanism in circumstances where there may be some injustice as a result of denial of access to the compensation fund.

I would hope that we could persist with the provisions in the principal Act, and not accept clause 7. If, at a governmental rather than an officer level, it is not possible to work out an equitable system of relief through an appellate structure, then let us look at it again. I know that that is a third bite of the cherry, but I would prefer that to giving away rights now and later not being able to recover them.

The Hon. M.J. ELLIOTT: I do not think I am going to lose sleep later tonight over this, but I am somewhat convinced by the arguments the Hon. Mr Griffin has put up in that I often feel that the ordinary person finds it very hard to get access to justice, of whatever form. He is suggesting here that it may be difficult for a South Australian to get access to a fair hearing, and that is probably the case. I also take on board the concerns that there may be some

problems getting the thing to function and fit in with what the other States are doing. What problems does it create if these subclauses remain?

The Hon. C.J. SUMNER: The problems potentially are those I have outlined. The worst problem is that we may not be able to participate in the scheme.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: I said that I did not know, and I do not know. That is the worst possible result. The problem is that if it remains, while it is only one State it is not of major consequence. However, if a number of States are involved we can have appeals under the trust deed going to different tribunals in the various States and possibly getting different decisions on the sort of principles that might apply. Under the trust deed we are looking for uniformity of administration and decision making, and that is why they propose to have some form of appeals committee. The appeals committee presumably would have to follow the rules of natural justice and would probably have on it a person with legal qualifications. They are basically the consequences.

If it passes we can say so and we will see whether they throw us out of the scheme. If they do, members will have to explain to the public why we are not in it on 1 February when everyone else is in it. If, on the other hand, they say, 'It is only you, so we will live with it,' I suppose there is no harm done except the potential to have South Australia, by an appeal mechanism, making decisions which have an effect on the way the scheme is administered in other States.

The Hon. K.T. GRIFFIN: It would be politically sensitive for other States to deny us access to the fund on the basis that we want reasonable appeal rights. At this stage I am prepared to take the risk on that in the sense that I would hope it is reasonable to expect that some accommodation can be made even in the way the trust deed is drafted. If senior counsel is looking at that trust deed, it may be appropriate for the Minister to arrange for senior counsel to give some advice on this issue.

Bearing in mind the points that I have made in relation to access to an appellate structure and with three more sitting weeks before the end of this session, it might be possible to resolve the matter in the light of that advice. I prefer to keep the provisions which are in the Act at present. If it becomes obvious that there is just no way that it can work effectively in conjunction with the appellate structure under the trust deed, I am certainly prepared to have another go at it.

The Hon. M.J. ELLIOTT: I am still thinking along the same lines. It was only early this year that we first voted on these clauses and thought that they were a good thing. Certainly, we thought that what we were putting in at that time was an ideal situation. It has not been said that this ideal situation is not workable; what has been said is that perhaps it is not workable, depending on how the other States behave. Accessibility is important. I do not think that the Attorney-General has given any guarantee in terms of accessibility. Without that guarantee, I do not support the clause.

The Hon. C.J. SUMNER: I am sure that the trustees will not conduct their appeal procedures in Sydney if there are 50 appellants in South Australia. That would be bizarre in the extreme.

The Hon. M.J. Elliott: What if there are two?

The Hon. C.J. SUMNER: If there are two here and 50 in New South Wales, perhaps it will be done in New South Wales. That may be right. In any event, the trust deed may prefer to try to preclude the appeal provisions, although I am not sure how it can. If it is in the Act, I suppose it is too bad. In view of the honourable member's indication, there are two ways of handling this: first, if in the next 10 days, while the Bill is in another place, we find that it is in an unacceptable form, we will bring it back; and, secondly, if we are not sure, we will just not proclaim the clause.

Clause negatived.

Title passed.

Bill read a third time and passed.

STATUTES AMENDMENT (PAROLE) BILL

The House of Assembly intimated that it had agreed to the Legislative Council's amendments.

EGG CONTROL AUTHORITY BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

It provides for the repeal of both the Marketing of Eggs Act 1941 and the Egg Industry Stabilisation Act 1973 and their replacement with a new Egg Control Authority Act to provide for the continuation of production control.

The egg industry in South Australia is currently controlled under the two Acts to be repealed, the Marketing of Eggs Act 1941 and the Egg Stabilisation Act 1973.

The Marketing of Eggs Act 1941, which was proclaimed as a wartime measure provides for the establishment of the South Australian Egg Board and all eggs from commercial farms are vested in the board. The board has powers to control egg marketing, set egg prices, administer egg weight and quality regulations and carry out promotional activities. The board does not generally handle eggs other than to manufacture egg pulp, the majority of shell eggs are graded, packed and distributed by packers and producers registered with the board. The board operates the only egg pulping facility in South Australia and all eggs surplus to local shell requirements are pulped and either sold on the local market or exported at a financial loss. Losses associated with the pulping operation are currently equalised over all producers by means of hen levies.

The Egg Industry Stabilisation Act 1973 was proclaimed in 1973 to control egg production by means of hen quotas at a time when egg production was increasing and exports had become unprofitable.

This will mean that egg marketing will be deregulated and egg producers and packers will be free to market their eggs where they wish and set their own prices. However, producers will be protected from over production of eggs by continuing hen quota legislation for the present. Over a period of five years, it is expected that hen quotas would be lifted to allow a fully free market situation to apply.

The South Australian Egg Board will be abolished and replaced by a smaller Egg Control Authority which will administer hen quotas.

Arrangements have been made for the relocation of Egg Board employees into the Public Service.

The assets of the South Australian Egg Board will be sold and the funds remaining after meeting the costs associated with the redeployment of board staff and the setting up of the Egg Control Authority will be lodged in an Egg Industry Fund. This fund will be administered by an Egg Industry Fund Committee of five members, including three representatives from the egg industry. The fund will be used to support industry projects including promotion, research and extension approved by the Minister on the advice of the committee. The egg pulping plant operated by the board will be sold by public tender and will operate on a commercial basis to meet the needs of the South Australian food manufacturing industry for regular supplies of egg pulp.

Egg quality control and weight grading will continue to be carried out by industry but consumer interests in these matters will be protected by new regulations which are being developed to supplement existing regulations under the Food Act 1985 and the Packages Act 1976.

The estimated costs of the proposed Egg Control Authority are less than $200 000 compared to $1.5 million for the South Australian Egg Board. Funds to meet the costs of the Authority will be provided by egg producers by means of a voluntary levy on egg quotas. If at any time, producers indicate by non-payment of levies that they no longer require the protection of hen quotas, the Minister has the power to terminate the Act.

This Bill will mean that producers will be required to negotiate the sale of eggs directly with wholesalers and retailers. There will be no legislative provisions for equalisation and producers will negotiate the sale of surplus eggs for pulp. The industry will receive clear price signals from the market place and will be able to adjust production accordingly.

It is the intention of the legislation that the industry will take the major role for regulating egg supplies. Of the five members of the Egg Control Authority three will be industry representatives from both producers and sellers.

The Authority will report to the Minister and have the power to monitor egg production set and police hen quotas, collect levies, monitor quota prices and collect research levies on behalf of the Commonwealth. The intention is that hen quotas will be managed with the flexibility to allow particular packers or producers to be able to temporarily increase their egg production to take advantage of any future profitable export markets for either shell eggs or egg pulp.

The Bill will also reduce current Egg Board administration and promotional costs by an estimated 10c a dozen and it is expected that producers will benefit from reduced hen levies and consumers will pay less for their eggs. Ms President, this legislation is aimed at lifting artificial price fixing, regulated marketing and unnecessary imposts being placed on the consumer.

These unsavoury activities have become accepted within the industry over the years and have encouraged inefficiencies that have led to South Australians paying 30c to 40c more per dozen eggs than in most other States. This is despite the fact that similar situations exist in other States. In Victoria, for example, estimates of the cost of regulation to consumers range as high as 50c per dozen. Ms President, egg marketing in South Australia needs a 'shake up' in a dramatic way. Let there be no doubt about it, the majority of efficient producers are in favour of deregulation but many are afraid to speak out because they fear a reaction, whether perceived or real, from the Egg Board. I make this statement on the basis of discussions I have held with individual producers. Some of these allegations include warnings that outspoken producers would have their hen quotas either reduced or taken away. This is an intolerable situation.

In view of these alleged activities, I call on the Opposition and members of the Australian Democrats to carefully consider the Government Bill and give it their support. To do otherwise, would be to endorse an unacceptable situation and uphold the strong-arm tactics being used to placate the feelings of a few influential egg producers. The Liberal Party and the Democrats have always shouted their support for free markets, uncluttered by bureaucracy. If they are honest and genuine in their intentions, then they have an ideal opportunity to put their preaching into practice by supporting this Bill in the financial interests of all South Australian consumers.

Clauses 1 and 2 of the Bill are formal.

Clause 3 repeals the Marketing of Eggs Act 1941 and the Egg Industry Stabilisation Act 1973.

Clause 4 provides for interpretation of expressions used in the Bill. Of significance are the following:

'hen'—female domesticated fowl of genus *gallus domesticus*:

'poultry farmer'—a person who, in the course of a business, keeps more than 20 hens for the production of eggs.

Clause 5 establishes the Egg Control Authority, a body corporate capable of suing and being sued.

Clause 6 sets out the membership of the Authority—five members appointed by the Minister (two nominated by the United Farmers and Stockowners of South Australia Incorporated and one representing the interests of egg packagers).

Provision is made in relation to the terms and conditions of appointment of members, the appointment of a presiding officer, deputies, removal from office, vacancies and the filling of vacancies.

Clause 7 deals with procedure at meetings of the Authority.

Clause 8 provides—

(1) acts of the Authority are not invalid by reason of defective appointment of members;

(2) immunity from liability for acts of members in good faith and in the exercise of powers, functions or duties.

Clause 9 requires members to disclose the nature of any interest in contracts of the Authority and not to take part in decisions relating to such contracts. Where disclosure is made, the contract is not avoidable, and the member is not liable to account for profits arising from the contract.

Clause 10 deals with expenses and allowances of members.

Clause 11 deals with the staff of the Authority.

Clause 12 deals with the functions and powers of the Authority. These include:

— advising the Ministers in relation to administration and enforcement of the measure and legislative proposals affecting the egg industry;
— any other prescribed functions;
— power to deal with property, enter contracts, or acquire rights and liabilities.

Clause 13 provides for the establishment of the Egg Industry Fund. The fund will consist of any surplus remaining from the assets of the South Australian Egg Board. The income of the fund is to be applied in promoting and developing the egg industry, research for the egg industry, and meeting the costs of administering and enforcing the Act.

Clause 14 provides for the establishment of the Egg Industry Fund Advisory Committee. The committee consists of five persons (three representatives of the egg industry, one

employee of the Department of Agriculture) and is required to advise the Minister on the management of the fund.

Clause 15 sets out the functions of the committee. Clause 16 deals with appointment of inspectors.

Clause 17 deals with powers of inspectors. An inspector may at any reasonable time, enter and search any premises or vehicle used for the keeping of hens or production of eggs or for packing or hatching eggs or for producing egg pulp.

An inspector may ask questions of persons, copy documents, examine hens, inspect objects, seize and remove objects that constitute evidence of an offence or take photographs.

A person to whom a question is put must answer it truthfully unless it would tend towards self-incrimination. A person of whom a requirement is made must comply.

Clause 18 prohibits persons for pretending to be inspectors. Penalty: $1 000.

Clause 19 provides that inspectors are immune from liability for acts in good faith in the exercise or purported exercise of powers, duties or functions.

Clause 20 provides that a daily hen quota operates as a licence to carry on business as a poultry farmer.

Clause 21 prohibits carrying on business as a poultry farmer without a licence. Penalty: $10 000.

Clause 22 provides for the Authority to fix quota periods. Not less than three months before the expiration of a quota period, the Authority must publish the next quota period.

Clause 23 provides for State and individual hen quotas. The Authority fixes the State hen quota for each quota period. A formula is provided to establish a licensee's daily hen quota during a quota period. Under the formula, a licensee's proportion of the State hen quota remains constant. The Authority must, not less than two months before the commencement of each quota period, advise a licensee of the duration of the quota period and the licensee's daily hen quota for the quota period.

Clause 24 provides a system whereby a licensee can keep more hens than his quota during part of a quota period if he keeps less than the quota during another part of the period. He must inform the Authority of his program and the Authority may refuse its consent. The daily average of the hens kept must equal or be less than the licensee's daily hen quota.

Clause 25 enables the Authority to impose conditions to be observed by licensees in relation to the business of poultry farming and to vary or revoke such conditions. It is an offence to breach a condition. Penalty: $10 000. The conditions are transferable with the daily hen quota.

Clause 26 provides for disposal of daily hen quotas. No daily hen quota a part of a daily hen quota may be sold or leased except—

— as part of, and together with, the licensee's poultry farming business;
— by the Authority on behalf of the licensee;
— or as authorised by the Act.

Where the Authority sells or leases a daily hen quota the transaction must be by public tender, and the proceeds, after certain deductions, are payable to the owner. Where a person acquires a daily hen quota by gift or succession, the person must inform the Authority within 28 days.

Clause 27 provides that if a licensee is convicted of an offence against the Act the Authority may forfeit the licensee's daily hen quota. The Authority must then sell the quota by public tender and pay the proceeds to the former licensee.

Clause 28 provides a right of appeal to the Supreme Court against a decision of the Authority to impose a condition or forfeit a daily hen quota.

Clause 29 provides for voluntary contributions, assessed by the Authority, to be paid by licensees toward the cost of administering and enforcing the Act.

Clause 30 provides that where the Minister considers that, by reason of the non-payment of contributions, the Act cannot be administered and enforced effectively, the Minister may fix a day as the day on which the Act will expire.

The clause goes on to provide for the winding up of the Authority, the satisfaction of its debts, and the payment of any remaining surplus into the fund which must be applied as the Minister determines in developing the egg industry.

Clause 31 provides for the auditing of accounts.

Clause 32 deals with offences by bodies corporate.

Clause 33 deals with service of notices.

Clause 34 will allow the Authority to permit licensees to exceed their quotas for limited periods to take advantage of temporary markets.

Clause 35 provides that offences constituted by the measure are summary offences.

Clause 36 is an evidentiary provision.

Clause 37 empowers the Governor to make regulations.

The schedule sets out the transitional provisions consequent upon the repeals effected by the Bill.

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

RATES AND LAND TAX REMISSION BILL

Adjourned debate on second reading.
(Continued from 4 November. Page 1796.)

The Hon. L.H. DAVIS: The Opposition supports this Bill, which provides for the repeal of the Rates and Taxes Remission Act 1974. We have no objection to that measure, nor do we object to the extension of benefits to pensioners who are not presently given concessions on water rates. The impact of this Bill is to extend the benefits, which presently apply to pensioners residing in most private irrigation areas and Government irrigation areas, to 17 other smaller private water boards and trusts that include pensioner home owners.

I am pleased to note that this initiative came from the shadow Minister of Water Resources (Hon. Peter Arnold) who wrote to the Government in August 1985 pointing out that there was an anomaly that pensioners residing within the Sunlands irrigation area and other areas were not covered. We are pleased to see that the Government has responded to his initiative in this legislation and the Opposition is pleased to support it.

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

FAIR TRADING BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to provide for the appointment and powers and functions of the Commissioner for Consumer Affairs, to make provision in respect of certain unfair or undesirable trade practices, and for other purposes. Read a first time.

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

South Australia is regarded as a world leader in consumer legislation. During the 1970s South Australia enacted many consumer protection laws which were world firsts. Much of this legislation was a matter of *ad hoc* responses to particular situations, for example, the Mock Auctions Act, the Pyramid Sales Act and the Unordered Goods and Services Act. Separate legislation was usually enacted for each business practice sought to be controlled and therefore there was no cohesive body of law dealing with trading practices generally.

The first Commissioner for Consumer Affairs and his successor have suggested an approach under which legislation that applies to business practices generally (as opposed to the regulation of a specific area of business, such as credit or the sale of second-hand cars) would be contained in a single Act. This would involve rationalisation and consolidation of many of the general laws dealing with consumer protection and fair trading and would provide an appropriate framework into which any future legislation of this kind could be integrated.

This Bill and its companions, the Trade Practices (State Provisions) and Statutes Amendment (Trade Practices and Fair Trading) Bill, seek to bring about that rationalisation and consolidation. The office of Commissioner for Consumer Affairs was created in 1970 by amendments to the Prices Act 1948. That Act confers on the Commissioner general powers to investigate complaints and generally act on behalf of consumers. It also provides for the appointment of authorised officers to investigate and conciliate on consumer complaints and enforce the provisions of other consumer protection legislation. By Part II of this Bill, and the amendments to the Prices Act effected by the Statutes Amendment Bill, the Commissioner's functions and the powers of authorised officers' have been cut adrift of the Prices Act and now stand alone being slightly recast in the process: so that, for example, the Commissioner is now empowered to encourage trade, industry and professional associations to develop and enforce codes of practice. A new function also calls on the Commissioner to prepare and disseminate guidelines to traders in relation to their obligations under the laws administered by the Commissioner.

The following Parts of the Bill deal separately with business practices which need to be specified and controlled in more detail. Part III deals with door-to-door trading practices and mirrors legislation developed for all States by Tasmania and South Australia as a result of the decision of the Standing Committee of Consumer Affairs Ministers to pursue uniform legislation throughout Australia in relation to these practices. These provisions are substantially the same as the present Door to Door Sales Act which will be repealed on the commencement of the Fair Trading Act.

Part IV deals with Mock Auctions and preserves the current prohibition on these entertainments effected by the Mock Auctions Act. That Act also will be repealed. Part V deals with reports which were previously the subject of regulation by the Fair Credit Reports Act. That regulation has been widened to ensure that people who are denied benefits may demand from the person denying the benefit all the sources of information underlying the denial and not just those sources that we call reporting agencies. As demanded by the Fair Credit Reports Act, this Part also seeks to ensure that those reports will be fair and accurate and based on the best available evidence. The Fair Credit Reports Act will be repealed with the commencement of these provisions.

Part VI resites and reworks some provisions dealing with the limited offer of goods, conditional sales and price tickets contained in the Prices Act. They have been updated to reflect contempory consumer expectations. Part VII deals with advertisements using the Commissioner's name in vain and enacts a new procedure designed to ensure that businesses do not make claims in advertisements unless they are in a position to substantiate those claims. Part VIII collects together provisions previously before the Council as clause 38 of the Commercial and Private Agents Bill and clause 2 of the Summary Offences Act Amendment Bill (No. 4.). Unfair practices in relation to the collection of trading debts should be dealt with in a Fair Trading Act.

Part IX re-enacts the current provisions of the Trading Stamp Act and that Act is repealed. Part X re-enacts the enforcement powers of the Commissioner previously contained in the Prices Act. Those powers have been added to by the adoption of provisions similar to (but narrower than) those given to the Victorian Director of Consumer Affairs in relation to deeds of assurance. It is proposed that the Commissioner be able to negotiate with recalcitrant traders and obtain enforceable assurances that they comply with their legal obligations. Power will also be given to the Commercial Tribunal, similar to the power vested in Victoria's Market Court, to issue injunctions prohibiting unlawful conduct—as a back-up to the Commissioner's efforts to encourage fair trading.

Part I, comprising clauses 1 to 4, contains preliminary provisions.

Clause 1 is formal. Clause 2 provides for commencement.

Clause 3 defines words and expressions used in the Bill. In particular:

'business' is defined to include a trade or profession:

'consumer' means a person who acquires, or proposes to acquire, goods or services or purchases or leases, or proposes to purchase or lease, premises, but does not include a person acting in the course of a business:

'goods' includes things growing on, or attached to, land that are severable from the land:

'premises' includes land:

'related Act' means an Act or provision of an Act that the Commissioner for Consumer Affairs will administer or that is prescribed to be a related Act:

'services' does not include benefits in respect of the supply of goods or interests in land:

'supply' includes conferring a right to goods, or a right to possess or use goods, or conferring a right to services:

'trader' means a person who in the course of business supplies, or offers to supply, goods or services or sells or lets, or offers to sell or let, premises.

Clause 4 provides that the Crown will be bound by the proposed Act. Part II, comprising clauses 5 to 12, contains administrative provisions. Clause 5 provides for the appointment of the Commissioner for Consumer Affairs who will be a public servant. Clause 6 provides that the Commissioner will have the administration of the proposed Act. Clause 7 provides for the appointment of authorised officers who will have certain functions under the proposed Act and the related Acts (see Division 1 of Part X in particular for functions of authorised officers). Authorised officers will be public servants.

Clause 8 sets out the Commissioner's functions. The Commissioner will have educational, advisory, research and reporting functions as well as the function of attempting to resolve disputes between consumers and traders by conciliation.

Clause 9 provides that the Commissioner may cooperate with private or public persons or bodies within or outside South Australia.

Clause 10 provides for the Commissioner or the Minister to delegate powers under the proposed Act or the related Acts.

Clause 11 is a secrecy provision and prohibits a person from divulging information acquired under the proposed Act or a related Act except with the consent of the person to whom the information relates, for the administration of the proposed Act or a related Act, to a police officer, to certain interstate authorities or in legal proceedings.

Clause 12 requires the Commissioner to make an annual report on the administration of the proposed Act. The report must be tabled in the Parliament.

Part III, comprising clauses 13 to 27, deals with door-to-door trading. The purpose of this Part is to regulate sales that take place at a consumer's home or place of employment when the initial approach was not made by the consumer. This Part is divided into four divisions dealing with preliminary matters, formation of contracts, trading practices and rescission of contracts, respectively.

Clause 13 defines words and expressions used in this Part of the Bill. In particular:

'dealer' is defined so as to include all classes of persons who may be involved in negotiations for selling goods or services on a door-to-door basis:

'door-to-door trading' includes trading by telephone and personal visits made before negotiations for entering into a contract actually commence:.

Subclauses (2) and (3) make further provision in relation to contracts and negotiations.

Clause 14 is an application provision relating to contracts. Contracts will be covered by this Part if negotiations leading to the formation of the contract occurred in South Australia at a place other than the trade premises of the supplier under the contract and if the dealer was engaged in door to door trading and was not invited by the consumer to attend at that place. Subclause (2) relates to invitations from consumers and provides that an invitation arising from a communication made by or on behalf of a supplier or dealer will be regarded as solicited except if the communication was not made to the consumer personally. Subclause (4) provides for the regulations to exclude contracts from the application of this Part. Subclause (5) preserves the operation of section 552 of the companies (South Australia) Code which relates to share hawking.

Clause 15 prohibits the inclusion in contracts of terms intended to exclude the operation of this Part. Such provisions will be void and the supplier and dealer will each be guilty of an offence. This clause extends to related contracts or instruments such as guarantees (see the definition in clause 13).

Clause 16 states that a contract to which this Part will apply by virtue of clause 14 is a prescribed contract if its value exceeds $50. A contract is also a prescribed contract if a value is not stipulated, and two contracts relating to the same transaction will each be a prescribed contract if the transaction could have been effected by one contract only. Insurance contracts, credit contracts and contracts excluded by the regulations will not be prescribed contracts.

Clause 17 sets out requirements to be complied with in relation to prescribed contracts. Such a contract must contain the full terms of the agreement and must be printed or typewritten (apart from insertions or amendments). The consumer will not sign until after the contract has been executed by or on behalf of the supplier. A copy of the contract must be given to the consumer. The dealer must be identified. The contract must contain a statement in large type as to the cooling-off period. The consumer must be given notices as to rescission of the contract. Generally, the contract and these notices must be legible. An acknowledgment by the consumer that he or she has received a copy of the contract or the notices as to rescission will not be conclusive proof of that receipt.

Clause 18 prohibits a supplier or dealer accepting money or other consideration from the consumer during the cooling-off period. Also, the supplier must not supply services during the cooling-off period. The cooling-off period is 10 days from the making of the prescribed contract (see clause 13).

Clause 19 provides that a dealer may call on a person only between the hours of 9.00 a.m. and 8.00 p.m. Monday to Saturday and not at all on Sundays or on public holidays. However, prior arrangements for different times may be made with consumers.

Clause 20 requires a dealer to state the purpose of his or her call and to identify himself or herself and the supplier. If requested, a dealer must leave premises.

Clause 21 prohibits harassment or coercion of consumers by dealers or other persons.

Clause 22 provides that a consumer may rescind a contract to which this Part applies within six months if there has been a breach of this Part in relation to the contract. Also, a consumer may rescind a prescribed contract within the cooling-off period or within six months if clause 17 (1) has not been complied with. These rights of rescission may be exercised despite affirmation of the contract by the consumer and despite full execution of the contract (this abrogates the general rules of contract law).

Clause 23 provides that a consumer rescinds a contract by giving notice of rescission to the supplier. This notice must state the grounds for rescission except if rescission takes place within the cooling-off period. The notice must be in writing, either in the prescribed form or in a form that clearly indicates the consumer's intention. The notice may be given personally to the supplier or served by post.

Clause 24 provides for restitution after rescission of a contract—the supplier must refund any consideration received or its value and the consumer must return goods received or refund their value or the value of any services received (except in respect of services supplied during the cooling-off period—see clause 18 (2)). Subclause (2) relates to goods that are not collected by the supplier after rescission—after 28 days the goods will become the property of the consumer. A consumer will be liable for damage to goods except damage arising out of normal use or out of circumstances beyond the consumer's control. If restitution of goods is not possible, rescission may still occur but in this case the consumer must pay the value of the goods (see subclause (4)). A court may make orders to enforce rights under this clause.

Clause 25 provides that if a contract is rescinded any related contract or instrument, such as a guarantee, will be void.

Clause 26 prohibits waiver of rescission rights by consumers. (A dealer or supplier cannot therefore require such a waiver as a condition of a contract.)

Clause 27 prohibits the bringing of proceedings to recover amounts claimed to be owing by a consumer under a rescinded contract or the taking of other similar action.

Part IV, comprising clause 28, relates to mock auctions.

Clause 28 prohibits the promotion or conduct of a mock auction. Subclause (2) provides that an auction of goods is a mock auction if goods are sold for less than the highest bid made (except if the goods are found to be damaged or defective), the right to bid is restricted to persons who have bought or agreed to buy other goods, or goods are given away or offered as gifts.

Part V, comprising clauses 29 to 37, relates to reporting on consumers by reporting agencies or traders.

Clause 29 defines words and expressions used in this Part of the Bill. In particular:

'prescribed benefit' (being a benefit sought by a consumer in circumstances in which a reporting agency or trader might make a report about the consumer) is defined to mean a benefit of a commercial nature or affecting employment or the occupation of premises:

'prescribed report' means a communication of information about a person but does not include a communication made with the knowledge of the person and of information known to him or her (for example, a personal reference):

'reporting agency' means a person engaged in the business of providing prescribed reports.

Clause 30 provides that this Part will apply to residents of South Australia and persons carrying on business in the State.

Clause 31 requires reporting agencies and traders to adopt procedures that ensure fairness and accuracy in prescribed reports—for example, hearsay evidence is not to be used unless it is substantiated or the lack of substantiation is stated. Also, information concerning race, colour, religion or political belief is not to be included in prescribed reports at any time. Written prescribed reports must be retained, and records made and retained of oral reports, for six months.

Clause 32 requires a trader who denies a prescribed benefit to a person on the basis of a prescribed report about the person to give the person a copy of the report, or the record of the report, and the name of the reporting agency or trader who provided the report.

Clause 33 requires a reporting agency to disclose to a person all information in its files relating to the person and to give to the person copies of all prescribed reports made by the agency about the person and the names of the traders to whom those reports were provided.

Clause 34 provides for the correction of errors in information used in prescribed reports given by reporting agencies or traders or otherwise compiled by reporting agencies. If an error is alleged, the reporting agency or trader holding the information must attempt to verify or supplement the information and must report back to the person alleging the error. If a change is to be made to the information, this change must be notified to all persons who received a prescribed report based on the information from the reporting agency and to all other persons nominated by the person to whom the information relates. Appeals may be made to the Commercial Tribunal in respect of failing to correct information. Pending the determination of an appeal, a prescribed report based on the information in question must state that an appeal has been made in respect of the information.

Clause 35 provides that communications made about the credit-worthiness of a person are privileged.

Clause 36 provides for offences against this Part, including knowingly providing false or misleading information for the purposes of a prescribed report, divulging information from the files of a reporting agency without authority and obtaining information from a reporting agency or trader by false pretences.

Clause 37 empowers the Commercial Tribunal to make orders against a reporting agency or trader to ensure compliance with this Part, to prohibit the agency or trader from making prescribed reports or to require the agency or trader to comply with specified conditions when making reports. These orders may be made upon the application of the Commissioner. It will be an offence not to comply with an order.

Part VI, comprising clauses 38 to 40, relates to certain retail transactions.

Clause 38 prohibits limited offers of goods and failing to supply goods as demanded, but it is a defence in each case to show that the defendant did not have sufficient goods to be able to make higher offers or meet the demands or that the defendant was acting with the approval of the Commissioner.

Clause 39 prohibits selling goods or supplying services on condition that other goods or services must be purchased, unless the Commissioner has approved this practice.

Clause 40 provides that price tickets must set out the price in a prominent position and in clear and legible figures.

Part VII, comprising clauses 41 and 42, relates to certain advertisements.

Clause 41 prohibits the publication, without the approval of the Commissioner, of advertisements suggesting that a consumer affairs authority (see clause 3) has approved or refrained from disapproving anything stated in the advertisement or the goods or services referred to in the advertisement.

Clause 42 empowers the Commissioner to require a person publishing an advertisement relating to goods, services or premises to provide proof of any claim made in the advertisement.

Part VIII, comprising clause 43, relates to the recovery of trading debts.

Clause 43 relates to actions or representations made by a creditor or an agent (that is, a person acting on behalf of a creditor or employed by a creditor to recover debts). A creditor or agent will be prohibited from engaging in certain conduct—for example, demanding payment of amounts that the creditor or agent does not honestly believe to be owing to the creditor, making personal calls on public holidays or before 8.00 a.m. or after 9.00 p.m. on other days, communicating with a debtor's employer, family or neighbour except to determine the debtor's whereabouts. The clause also prohibits the making of false representations to a debtor as to legal proceedings in the event of non-payment of a debt or the existence of official authority to demand payment.

Part IX, comprising clauses 44 and 45, relates to trading stamps.

Clause 44 defines words and expressions used in this Part of the Bill. In particular:

'prohibited trading stamp' is defined to mean a third-party trading stamp (that is, a trading stamp redeemable by a person other than the manufacturer or vendor of the goods or services) or a trading stamp relating to tobacco products, including cigarettes.

Clause 45 prohibits providing or offering to provide a prohibited trading stamp in connection with the sale of goods or services, redeeming a prohibited trading stamp or publishing an advertisement relating to prohibited trading stamps (except if the publisher did not know and could not

be expected to know that the trading stamps were prohibited).

Part X, comprising clauses 46 to 56, deals with enforcement of the proposed Act and, to some extent, the related Acts, and Division 1 provides for certain powers of the Commissioner and authorised officers.

Clause 46 provides for the Commissioner to institute, take over or defend proceedings on behalf of a particular consumer in cases raising questions of law affecting consumers generally or a particular class of consumers or where it is in the public interest to do so. The Minister and the particular consumer must consent. The clause applies where the monetary claim does not exceed $100 000 or $50 000, in cases relating to premises, or $25 000 in other cases. Subclause (7) provides for the conduct of proceedings under this clause. The clause is based on section 18a of the Prices Act 1948, under which the Commissioner now has similar powers.

Clause 47 provides for the obtaining of information for the purposes of the proposed Act or a related Act. Persons may be required to answer questions or to produce books or documents, but a person cannot be required to incriminate himself or herself. There is an offence of failing to comply with a requirement or giving a materially false answer.

Clause 48 provides for the entering and inspection of premises for the purposes of the proposed Act or a related Act. Books or documents may be seized and tests conducted and samples taken during an inspection. Books or documents so seized may be retained but must not be held for longer than is necessary and may be inspected while retained. Unnecessary disruption of work or business must be avoided during an inspection and an authorised officer is required to identify himself or herself upon entry.

Division II of Part X relates to the enforcement of the proposed Act or a related Act by deeds of assurance or prohibition orders.

Clause 49 provides that the Commissioner and a trader, who has engaged in conduct constituting an offence, may enter into a deed of assurance under which the trader gives an assurance that he or she will refrain from engaging in such conduct and the Commissioner will not proceed against the trader, unless the trader acts contrary to the assurance.

Clause 50 provides for a register of such assurances which will be open to public inspection.

Clause 51 provides for an offence of acting contrary to a deed of assurance.

Clause 52 empowers the Commercial Tribunal to make an order against a trader who has acted contrary to an assurance. The order will prohibit the trader from engaging in conduct that consitutes an offence. The Tribunal may also vary or discharge such an order. The Commercial Tribunal Act 1982, will apply to breaches of such orders.

Division III of Part X contains certain general provisions relating to enforcement.

Clause 53 provides that offences against the proposed Act will be summary offences and that prosecutions must be commenced within 12 months after the alleged commission of an offence.

Clause 54 provides for expiation of offences against the proposed Act or a related Act. The offences in question will be prescribed in the regulations as will the expiation fee. An authorised officer may serve an expiation notice on a person suspected of committing an offence and if the person pays the fee no proceedings will be taken against him or her. Payment of the fee will not be an admission of liability. The Commissioner may withdraw an expiation notice if he or she thinks that an offence was not committed or alternatively that the offence should be prosecuted in the normal way.

Clause 55 contains provisions conferring vicarious liability for breaches of the proposed Act on principals, employers, directors of bodies corporate or persons who would derive pecuniary benefits from contracts formed in contravention of the Act.

Clause 56 contains evidentiary provisions in relation to authorised officers, delegations, contracts under Part III, dealers, proceedings under clause 46 and books or documents.

Part XI, comprising clauses 57 to 62, contains certain miscellaneous provisions.

Clause 57 provides that legal remedies existing apart from the proposed Act will not be affected.

Clause 58 prohibits a person from hindering an authorised officer exercising powers under the proposed Act or any other Act.

Clause 59 prohibits a person from impersonating an authorised officer.

Clause 60 provides for the manner of service of documents under the proposed Act.

Clause 61 provides that the proposed Act will apply notwithstanding any statement to the contrary in a contract or other agreement.

Clause 62 provides for the making of regulations. In particular, the regulations may prescribe codes of practice for traders or may exempt persons or transactions from the operation of the proposed Act.

The Schedule contains certain transitional provisions relating to the transfer of officers from the Prices Act 1948, to the proposed Act and to the application of the door-to-door trading provisions contained in Part III of the Bill.

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

TRADE PRACTICES (STATE PROVISIONS) BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act relating to certain trade practices. Read a first time.

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

This Bill enacts as State legislation Division I of Part V, and related provisions, of the Commonwealth Trade Practices Act. The Bill is the result of an agreement by the Standing Committee of Consumer Affairs Ministers on uniformity in consumer protection legislation between the Commonwealth and the States and Territories. The Standing Committee has been attempting for some time to bring about greater uniformity of consumer protection laws nationally.

Considerable work has been undertaken by the Commonwealth and State and Territory Governments over the past few years to reach a consensus on satisfactory consumer protection provisions in Part V Division I of the Trade Practices Act that could be mirrored in State and Territory legislation. As a result of this work the Commonwealth Government amended the Trade Practices Act earlier this year and complementary legislation may now be enacted.

The amendments to the Trade Practices Act came into operation on 1 June 1986. Victoria enacted a Fair Trading Bill in 1985 which came into operation in April 1986, based on the unamended Part V Division I of the Trade Practices Act and intends to amend its Act in line with the subsequent amendments to the Trade Practices Act that came into operation in June 1986. New South Wales, Western Australia and Tasmania intend to allow to follow suit in the near future.

The Trade Practices Act provisions are incorporated in a separate Bill and not in the proposed Fair Trading Bill because of the substantially different nature of the definition of 'consumer' and the enforcement procedures in the Trade Practices Act. This will also make it easier to maintain uniformity between the Commonwealth and the State Act, as any amendments to Part V Division I of the Trade Practices Act can be more readily incorporated if the State equivalent is identified separately.

The Commonwealth Trade Practices Act does not generally apply to the activities of individuals because of the constitutional limitations on the power of the Commonwealth. This Bill however will ensure that the provisions will apply not only to corporations but also to individuals and in doing so will extend the consumer protection provisions of the Trade Practices Act and enable the enforcement of those rights and obligations through the South Australian Courts.

Part 1, comprising clauses 1 to 13, contains as well as formal and administrative provisions, the definitions clause and a series of further interpretation provisions.

Clause 1 is formal. Clause 2 provides for commencement.

Clause 3 defines certain words and expressions used in the Bill; in particular:

'acquire' and 'supply' include, in relation to goods, exchange, lease, hire or hire purchase and purchase or sell, and, in relation to services, accept or provide, grant or confer:

'business' includes a non-profit business:

'goods' includes vehicles, animals, minerals, trees and crops, and gas and electricity:

'services' is widely defined to include any rights, benefits, privileges or facilities provided, granted or conferred in trade or commerce, whether in respect of real or personal property, under contracts relating to the performance of work or to amusement, entertainment, recreation or instruction or to the payment of remuneration in the nature of royalties, or otherwise; but 'services' does not include the supply of goods or the performance of work under a contract of employment:

'unsolicited goods' and 'unsolicited services' are defined to mean goods or services sent or supplied without any request being made.

Subclauses (2), (3), (4) and (5) extend the meaning of 'conduct'; 'engaging in conduct' includes doing or refusing to do any act, whether in relation to a contract, arrangement, understanding or convenant; 'refusing to do an act' includes refraining from doing an act or making it known that an act will not be done; and 'offering to do an act' includes making it known that applications, offers or proposals to do an act will be accepted, on a particular condition or not.

Clause 4 states that a provision of the proposed Act that renders a provision of a contract or convenant unenforceable will apply at the time when the provision of the contract or convenant had the prohibited effect.

Clause 5 provides for the application of the proposed Act to a person who acquires goods or services as a 'consumer'. Subclause (1) provides that a person will acquire goods or services as a consumer if the price of the goods or services does not exceed $40 000 or the goods or services are of a kind ordinarily acquired for personal, domestic or household use or consumption and, in the case of goods, the goods are not to be resupplied or used in a manufacturing process. Clause 6 also applies in respect of goods being a commercial road vehicle, and provides for cases where the price of goods or services is not immediately apparent.

Clause 6 extends the meaning of 'acquisition', 'supply' and 're-supply'; 'acquisition' includes acquisition of property in, or rights in relation to, goods; 'supply' and 'acquisition' each include agreeing to supply or acquire and also refer to supply or acquisition of goods or services together with other property or services; and 're-supply' includes supply of goods in an altered form or condition or incorporated with other goods.

Clause 7 relates to the purpose of a contract, arrangement or understanding and the purpose or reason for a person's conduct. In both cases, a particular purpose or reason need not be the only purpose or reason so long as it is a substantial one.

Clause 8 provides that 'loss' or 'damage' includes injury and damages in respect of an injury.

Clause 10 provides for the severance from a contract of provisions to be prohibited by the proposed Act.

Clause 11 relates to representations about future matters and provides that if such a representation is made without reasonable grounds, proof of which lies on the person making the representation, the representation is to be taken to be misleading.

Clause 12 provides that the proposed Act will apply to transactions, conduct and representations occurring within South Australia, whether in whole or in part, and also that the Crown will be bound by the proposed Act.

Clause 13 provides that the Commissioner for Consumer Affairs will administer the Act, subject to direction by the Minister.

Part II, comprising clauses 14 to 32, regulates conduct engaged in trade or commerce, including the making of representations.

Clause 14 contains a general prohibition on engaging in conduct, in trade or commerce, that is, or is likely to be, misleading or deceptive. Subclause (2) provides that the succeeding provisions of Part II do not limit this general prohibition.

Clause 15 prohibits unconscionable conduct in connection with the supply or possible supply of goods or services. Subclause (2) provides for matters to which a court may have regard in determining whether conduct is unconscionable, including the relative bargaining positions of the parties, the price of equivalent goods or services and any conditions applying to the transaction. The court may also have regard to whether the consumer was able to understand any documents relating to the transaction and whether any undue influence or pressure was exerted on the consumer. Subclause (3) provides that the mere institution of legal proceedings or reference of a dispute or claim to arbitration is not to be taken to be unconscionable conduct. Subclause (4) provides that a court should not have regard to circumstances that were not reasonably foreseeable at the time when the alleged unconscionable conduct occurred, but circumstances existing or conduct occurring before the commencement of this proposed section may be looked at. Subclauses (5) and (6) together confine the application of the proposed section to 'consumer' transactions.

Clause 16 prohibits the making, in trade or commerce, of misleading representations in respect of the characteristics or price of goods or services, the sponsorship, approval

or affiliation of the supplier, the need for goods or services, or conditions or warranties.

Clause 17 concerns false or misleading representations made in respect of the sale of land or the grant of any interests in land. The representations that are prohibited relate to the sponsorship, approval or affiliation of the seller and the characteristics and price of the land or interest in land. Also, gifts or other free items must not be offered. Subclause (2) prohibits the use of physical force or undue harassment or coercion in connection with the sale of land or the grant of any interest in land. Subclause (4) defines 'interest in land' and subclause (3) provides that this proposed section will not limit the application of the other provisions of Part II in relation to the supply or acquisition of interests in land.

Clause 18 applies to offers of employment and prohibits conduct that is liable to be misleading in relation to the availability, nature or terms or conditions of the employment.

Clause 19 requires a supplier of goods or services to state the cash price of the goods or services whenever any representation is made as to an amount that would be part only of the consideration payable (for example, a deposit).

Clause 20 prohibits the offering of gifts, prizes or other free items in connection with the supply of goods or services if it is not intended to provide the gifts, prizes or items as offered.

Clause 21 prohibits conduct that is liable to be misleading in relation to the characteristics of goods.

Clause 22 prohibits conduct that is liable to be misleading in relation to the characteristics of services.

Clause 23 relates to bait advertising and subclause (1) prohibits the advertising of goods or services at a specified price where there are reasonable grounds for believing that the goods or services will not be available at that price for a reasonable period and in reasonable quantities. Subclause (2) requires a person who has advertised goods or services at a specified price to supply them at that price for a reasonable period and in reasonable quantities. Subclause (3) provides that it is a defence to a charge under subclause (2) if it is established that goods or services of the same kind or equivalent goods or services were offered for supply immediately or within a reasonable time and at the advertised price and in a reasonable quantity.

Clause 24 prohibits referral selling, that is, inducing a person to acquire goods or services by offering a rebate, commission or other benefit if the person refers other people to the supplier.

Clause 25 prohibits acceptance of payment for goods or services if the supplier does not intend to supply the goods or services as agreed or there are reasonable grounds for believing that the goods or services will not be available as agreed.

Clause 26 relates to representations about business activities. Subclause (1) prohibits the making of false or misleading representations about the profitability or other material aspects of businesses that may be carried on at or from residences. Subclause (2) prohibits similar representations in respect of business activities requiring the performance of work or both the performance of work and the investment of money.

Clause 27 prohibits the use of physical force or undue harassment or coercion in connection with the supply of goods or services to a consumer or the payment for goods or services by a consumer.

Clause 28 relates to pyramid selling schemes. Subclause (1) prohibits the receiving of payments as a promoter of or a participant in a scheme, where the person making the payment is induced to do so by the prospect of himself or herself receiving payments or other benefits under the scheme. Subclause (2) prohibits a promoter of or a participant in a scheme from attempting to induce a person to become involved in the scheme. Subclause (3) prohibits a person taking part in a scheme under which another person is induced to make payments by the prospect of himself or herself receiving payments under the scheme. Subclause (4) provides that the prohibitions against inducements apply whether or not the inducements relate to legally enforceable rights, that an inducement is prohibited where the prospect of receiving payments is a substantial part of the inducement and that payments may be only partly for the benefit of a person but still caught by the prohibitions in subclauses (1) to (3). Subclause (5) provides that a scheme will be caught if goods or services or both are to be provided by the promoter or promoters of the scheme under transactions arranged by participants in the scheme. Subclause (6) makes further provision in relation to the application of this clause.

Clause 29 prohibits the sending of unsolicited credit cards or debit cards. Unsolicited in this clause denotes sent without a request in writing from the person who will be liable for the use of the card or sent otherwise than in renewal of or substitution for or as a replacement for a previous card. Subclause (2) restricts the application of the clause to the sending of cards by or on behalf of the issuer. 'Credit card' is defined in subclause (3) to mean an article intended for use in obtaining cash, goods or services on credit and 'debit card' means an article intended to be used to obtain access to a bank or other account for withdrawing or depositing money or obtaining goods or services.

Clause 30 prohibits the asserting of a right to payment for unsolicited goods or services or for making an entry in a directory, unless there is reasonable cause to believe that a right to payment exists or that the making of the entry was authorised. Subclause (4) provides that unless the making of an entry in a directory was authorised there is no liability to pay for it and that any amount that has been paid may be recovered. Subclause (5) sets out the circumstances in which an assertion of a right to payment will be taken to have been made. Subclause (6) provides for when a person will be taken to have authorised the making of an entry in a directory. Subclause (7) provides that unless the contrary is established an invoice purportedly sent by or on behalf of a person will be deemed to have been so sent. Subclause (8) provides that a defendant under this clause must establish that there were reasonable grounds for believing that a right to payment existed or that the making of an entry in a directory was authorised. Subclause (9) provides that 'directory' does not include a newspaper or a publication of the Australian Telecommunications Commission and that 'making' means including, or arranging for the inclusion of, an entry in a directory.

Clause 31 relates to the liability of the recipient of unsolicited goods. Subclause (1) provides that the recipient is not liable to pay for the goods or for loss of or damage to the goods (except loss or damage resulting from a wilful and unlawful act occurring during the specified period). Subclause (2) provides that unsolicited goods may not be recovered after the specified period and then become the property of the recipient. Subclause (3), however, provides that subclause (2) does not apply if the recipient unreasonably refused to allow the sender or owner of the goods to repossess them, if the goods are repossessed or if the recipient should have known that the goods were not meant for him or her. Subclause (4) sets out the specified period applying under subclauses (1), (2) and (3)—the period will

be one month or three months depending on whether the recipient gives notice that the goods are unsolicited goods.

Clause 32 applies to prescribed information providers (that is, persons who carry on a business of providing information, including radio and television licensees, the ABC and SBS—see subclause (3)). Subclause (1) provides that clauses 14, 16, 17, 21, 22 and 26 do not apply to publications by prescribed information providers except publications by advertisement or except in relation to the provision of goods or services, or the sale or grant of interests in land, by the prescribed information provider itself or if the publication was made pursuant to a contract with supplier of the goods or services or interests in land. Radio and television broadcasts are covered (see subclause (2)).

Part III comprising clauses 33 to 44, relates to enforcement and remedies.

Clause 33 states when a person is to be taken to be involved in a contravention of a provision of Part II.

Clause 34 provides for offences against Part II, other than clauses 14 or 15. The offences are minor indictable offences.

Clause 35 provides for penalties—maximum $100 000 for a company and $20 000 in other cases. Subclauses (2) and (3) provide for the aggregation of penalties.

Clause 36 provides for an injunction to be granted in the course of proceedings on indictment for an offence.

Clause 37 provides generally for injunctions restraining unlawful conduct or for requiring the doing of any act or thing. Injunctions may be granted *ex parte*; interim injunctions may be granted; and injunctions may be rescinded or varied. Subclause (5) provides for the power of the court to grant restraining orders and subclause (6) applies to mandatory injunctions. Subclauses (7) and (8) relate to cases where the Minister or the Commissioner for Consumer Affairs applies for an injunction.

Clause 28 provides for the making of orders to disclose information to the public or a particular person or class of persons or to publish advertisements. The orders may be made against persons involved in contraventions of Part II, other than clause 15.

Clause 39 gives a right of action to recover damages for loss suffered by reason of conduct done in contravention of Part II, other than clause 15. A three year limitation period applies.

Clause 40 is an evidentiary provision. Findings of fact in certain proceedings will be *prima facie* evidence in other proceedings under the proposed Act.

Clause 41 relates to conduct of the directors of a body corporate or of the servants or agents of a body corporate or other person. The conduct and state of mind of a director, servant or agent will be imputed to the body corporate or other person.

Clause 42 sets out a number of defences to contraventions of Part II, including: reasonable mistake, reasonable reliance on information supplied by another person, acts or defaults of another person and other matters beyond the defendant's control, and, in relation to the publication of an advertisement, publication in the ordinary course of business of a publisher who had no reason to suspect that publication of the advertisement would be a contravention.

Clause 43 provides for orders to be made by the court to compensate a person for loss or damage suffered as a result of a contravention of Part II. The orders may be made on the application of that person or of the Commissioner acting on behalf of such a person or on the court's own initiative. A two year limitation period will apply where the contravention in question is a contravention of the proposed section 15. The possible orders include: declaration that a contract is void, an order to vary a contract, an order refusing to enforce a contract, an order for the refund of money or return of property, an order for payment of damages, an order to repair goods or supply parts for goods, an order to supply specified services, an order to execute an instrument in relation to the creation or transfer of an interest in land.

Clause 44 provides for injunctions of the type usually known as 'Mareva injunctions'. These injunctions will be directed to the property or assets of a defendant to proceedings for an offence, for an injunction related to conduct, for damages or for an order under the proposed section 43, and may prohibit any dealings in the property or assets so as to preserve them in anticipation of judgment being given against the defendant. It will be an offence not to comply with an order made under this proposed section.

Clause 45 provides for the making of regulations.

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

STATUTES AMENDMENT (TRADE PRACTICES AND FAIR TRADING) BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Prices Act 1948, and certain other related Acts; and to repeal the Door to Door Sales Act 1971, the Fair Credit Reports Act 1974, the Mock Auctions Act 1972, the Pyramid Sales Act 1973, the Trading Stamp Act 1980, the Unfair Advertising Act 1970, and the Unordered Goods and Services Act 1972. Read a first time.

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

This Bill effects a number of amendments to legislation which are consequential upon the provisions of the Fair Trading Bill 1986, and the Trade Practices (State Provisions) Bill 1986.

It is intended that the consumer protection provisions in the Prices Act will be incorporated in the Fair Trading Act and thus the Bill makes consequential amendments to some of the provisions of the Prices Act. Further it is proposed that the regulation of a number of trade practices, now regulated under separate Acts, will be effected in either the Trade Practices (State Provisions) Act or the Fair Trading Act. The Bill therefore repeals these individual Acts.

The opportunity has also been taken to improve the drafting of some provisions in the Prices Act and to delete some provisions of that Act which are now obsolete.

Clause 1 is formal.

Clause 2 provides for commencement.

Clause 3 is formal.

Clause 4 amends the long title to the Prices Act 1948, in consequence of the substantive amendments to that Act proposed by this Bill.

Clause 5 amends section 3 of the Prices Act 1948, by inserting new definitions of 'authorised officer' and 'commissioner', by striking out the now unnecessary definition of 'consumer' and by striking out subsection (2), a construction of references provision, which is also no longer necessary.

Clause 6 substitutes sections 4 to 10 of the Prices Act 1948, which relate to the administration of that Act. The new section 4 provides for the appointment of a commissioner for Prices and the new section 5 states that the commissioner has the administration of the Act. The new section 6 provides for the appointment of authorised officers to exercise certain powers under the Prices Act. The new section 7 provides for the delegation of the powers under the Prices Act of the Minister and the Commissioner for Prices. The new section 8 prohibits a person from divulging information acquired under the Prices Act except with the consent of the person to whom the information relates, for the administration of the Act, to a police officer, to certain interstate authorities or in legal proceedings. The new sections 9 and 10 provide for means by which authorised officers can obtain information for the purposes of the Prices Act—by requiring persons to answer questions or to produce books or other documents, by entering and inspecting premises, by seizing samples of goods or books or documents—but unnecessary disruption of business or work must be avoided and books and documents must not be held for longer than is necessary and may be inspected while held.

Clause 7 repeals sections 18a and 18b of the Prices Act 1948, which relate to protection of consumers. Equivalent provisions are contained in the Fair Trading Bill.

Clause 8 repeals section 32 of the Prices Act 1948, which relates to accepting goods in a quantity and of a quality less than that agreed upon. The Trade Practices (State Provisions) Bill will cover such cases.

Clause 9 repeals sections 33a to 33e of the Prices Act 1948, which apply to certain practices relating to the sale of goods. Equivalent provisions are contained in the Fair Trading Bill.

Clause 10 repeals section 49a of the Prices Act 1948, which provides for immunity of suit for officers acting under the Act. As all such officers will be in the Public Service of the State the immunity provisions of the Government Management and Employment Act 1985 will apply (see section 78 of that Act which also provides that the Crown will be liable for the acts of its servants).

Clause 11 repeals the existing schedule to the Prices Act 1948, which, because of the proposed new secrecy provision, is not necessary.

Clause 12 amends the Builders Licensing Act 1986, which will be a 'related Act' under the proposed Fair Trading Act (that is, an Act that the Commissioner for Consumer Affairs will administer and to which the administrative provisions of the Fair Trading Act will apply). References to the Commissioner for Consumer Affairs are corrected; section 43, relating to powers of entry and inspection, is struck out since the Fair Trading Bill contains equivalent provisions that will apply to the Builders Licensing Act; and, lastly, a reference to authorised officers under the proposed Fair Trading Act, rather than the Prices Act, is inserted.

Clause 13 amends the Consumer Credit Act 1972, which will be a 'related Act' under the proposed Fair Trading Act. References to the Commissioner for Consumer Affairs are corrected; and sections 8, 10, 11 and 12, relating to delegations, immunity from suit, secrecy and powers of entry and inspection, are struck out since the Fair Trading Bill contains the necessary equivalent provisions that will apply to the Consumer Credit Act.

Clause 14 amends the Consumer Transactions Act 1972, which will be a 'related Act' under the proposed Fair Trading Act. References to the Commissioner for Consumer Affairs are corrected and a new section 6a inserted, which provides that the Commissioner will administer this Act.

Clause 15 repeals the Door to Door Sales Act 1971. Part III of the Fair Trading Bill contains new provisions relating to door to door trading.

Clause 16 repeals the Fair Credit Reports Act 1974. Part V of the Fair Trading Bill contains new provisions relating to reports given to traders in respect of consumers.

Clause 17 amends the Land Agents, Brokers and Valuers Act 1973, which will be a 'related Act' under the proposed Fair Trading Act. A reference to authorised officers under the proposed Fair Trading Act, rather than the Prices Act, is inserted.

Clause 18 amends the Misrepresentation Act 1971; the provision to be struck out contains a reference to the Unfair Advertising Act 1970, which is to be repealed (the proposed Trade Practices (State Provisions) Act will apply to unfair advertisements).

Clause 19 repeals the Mock Auctions Act 1972. Part IV of the Fair Trading Bill contains new provisions relating to mock auctions.

Clause 20 repeals the Pyramid Sales Act 1973. The Trade Practices (State Provisions) Bill contains new provisions relating to pyramid sales.

Clause 21 amends the Second-hand Goods Act 1985, which will be a 'related Act' under the proposed Fair Trading Act. References to the Commissioner for Consumer Affairs are corrected, and a reference to authorised officers under the proposed Fair Trading Act, rather than the Prices Act, is inserted.

Clause 22 amends the Second-hand Motor Vehicles Act, 1983, which will be a 'related Act' under the proposed Fair Trading Act. References to the Commissioner for Consumer Affairs and authorised officers under the proposed Fair Trading Act, rather than the Prices Act, are corrected.

Clause 23 repeals section 33 of the Trade Measurements Act 1971, which relates to false statements of the measurements or mass of goods. The proposed Trade Practices (State Provisions) Act will cover such cases.

Clause 24 repeals section 31 of the Trade Standards Act 1979, which provides that a person shall not provide materially inaccurate information in respect of goods or services. The Trade Practices (State Provisions) Bill contains similar provisions.

Clause 25 repeals the Trading Stamp Act 1980. The Fair Trading Bill contains equivalent provisions.

Clause 26 amends the Travel Agents Act 1986, which will be a 'related Act' under the proposed Fair Trading Act. References to authorised officers under that proposed Act, rather than the Prices Act, are corrected, and sections 27 and 28, which relate to powers of inspection and secrecy, are struck out since the Fair Trading Bill contains equivalent provisions that will apply to the Travel Agents Act.

Clause 27 repeals the Unfair Advertising Act 1970. The proposed Trade Practices (State Provisions) Act will apply to unfair advertisements.

Clause 28 repeals the Unordered Goods and Services Act 1972. The Trade Practices (State Provisions) Bill contains provisions in respect of unordered goods and services.

The Schedule makes further amendments to the Prices Act 1948, for the purposes of consolidating that Act.

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

ADJOURNMENT

At 5.57 p.m. the Council adjourned until Tuesday 18 November at 2.15 p.m.