LEGISLATIVE COUNCIL

Thursday 12 February 1987

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

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

ASSENT TO BILLS

His Excellency, the Governor, by message, intimated his assent to the following Bills:

Animal and Plant Control (Agricultural Protection and Other Purposes),

City of Adelaide Development Control Act Amendment,

Commercial and Private Agents,

Commercial Arbitration,

Commercial Tribunal Act Amendment,

Commonwealth Powers (Family Law),

Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act Amendment,

Constitution Act Amendment (No. 3),

Correctional Services Act Amendment,

Country Fires Act Amendment (No. 3),

Criminal Law Consolidation Act Amendment,

Criminal Law Consolidation Act Amendment (No. 2),

Crown Lands Act Amendment,

Dairy Industry Act Amendment,

Education Act Amendment,

Evidence Act Amendment,

Fisheries Act Amendment,

Fruit and Plant Protection Act Amendment,

Goods Securities,

Industrial Code Amendment,

Irrigation Act Amendment (No. 2),

Land Agents, Brokers and Valuers Act Amendment,

Liquor Licensing Act Amendment (No. 2),

Little Sisters of the Poor (Testamentary Dispositions),

Local Government Act Amendment (No. 2),

Local Government Act Amendment (No. 4),

Medical Practitioners Act Amendment,

Mental Health Act Amendment,

Metropolitan Milk Supply Act Amendment,

Motor Vehicles Act Amendment (No. 3),

Motor Vehicles Act Amendment (No. 4),

Occupational Health, Safety and Welfare,

Ombudsman Act Amendment,

Parole Orders (Transfer) Act Amendment,

Private Parking Areas,

Radiation Protection and Control Act Amendment,

Rates and Land Tax Remission,

Road Traffic Act Amendment (No. 3),

Second-hand Motor Vehicles Act Amendment,

Stamp Duties Act Amendment (No. 2),

Statutes Amendment (Executor Companies),

Steamtown Peterborough (Vesting of Property) (No. 2),

Summary Offences Act Amendment (No. 2),

Summary Offences Act Amendment (No. 3),

Summary Offences Act Amendment (No. 4),

Tertiary Education,

Tobacco Products (Licensing),

Travel Agents Act Amendment,

Volunteer Fire Fighters Fund Act Amendment,

Workers Rehabilitation and Compensation,

Wrongs Act Amendment.

DEATH OF HON. R.R. LOVEDAY

The PRESIDENT: It is with deep regret that I formally draw the attention of the Council to the recent death of the Hon. Ron Loveday, who was a former member of the House of Assembly and a former Cabinet Minister. He was the member for Whyalla from 1956 to 1970, a member of the Land Settlement Committee from 1961 to 1965, Minister of Education from 1965 to 1967 and Minister of Education and Aboriginal Affairs from 1967 to 1968. As President of the Council, I express the deepest sympathy of the Council to his widow and family in their sad bereavement and I ask all honourable members to stand in silence as a tribute to his memory and his very meritorious public service.

Honourable members stood in their places in silence.

PETITION: BOTANIC PARK

A petition signed by 206 residents of South Australia praying that the Council request the immediate return of the area designated for a car park, located in the south-east corner of the Botanic Gardens, and urge the Government to introduce legislation to protect the parklands and to ensure that no further alienation will occur before the enactment of this legislation was presented by the Hon. I. Gilfillan.

Petition received.

PETITION: STAGE COMPANY

A petition signed by 90 residents of South Australia praying that the Council urge the State Government to review its decision to withdraw funding at the end of 1986 for the Stage Company was presented by the Hon. L.H. Davis.

Petition received.

PUBLIC WORKS COMMITTEE REPORTS

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

Brighton High School—Redevelopment Stage II—Final Report.

Marla Township Construction—Progress of Work.

Roxby Downs (Public Facilities)—Interim Report.

Roxby Downs (Public Facilities)—Final Report.

PAPERS TABLED

The following papers were laid on the table:

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

Pursuant to Statute—

Regulations under the following Acts:

Audit Act 1921—Delegations.

Country Fires Act 1976—Forms.

Dangerous Substances Act 1979—Toxic and Corrosive Substances.

Summary Offences Act 1953—Expiation Fees.

Supreme Court Act 1935—Fees.

Tobacco Products (Licensing) Act 1986—Records.

Rules of Court—District Criminal Court—Local and District Criminal Courts Act 1926—Crimes (Confiscation of Profits).

Rules of Court—Supreme Court—Supreme Court Act 1935.

Crimes (Confiscation of Profits).

Execution on Judgments and Orders.

Solicitor Profit Costs.
Various.
Casino Supervisory Authority—Report, 12 December 1985 to 30 June 1986.
Court Services Department—Report, 1985-86.
South Australian Metropolitan Fire Service—Report, 1985-86.

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

Pursuant to Statute—

Regulations under the following Acts:
Building Societies Act 1975—Prescribed Securities and Loans (Amendment).
Consumer Credit Act 1972—Print Type and Dimensions.
Consumer Transactions Act 1972—Print Type and Dimensions.
Liquor Licensing Act 1985—
Liquor Consumption at Glenelg.
Liquor Consumption at Port Augusta.

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

Pursuant to Statute—

South Australian Ethnic Affairs Commission—Report, 1985-86.

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

Pursuant to Statute—

Regulations under the following Acts:
City of Adelaide Development Control Act 1976—Prescribed Instrumentalities.
Discharged Soldiers Settlement Act 1934—Public Map.
Fisheries Act 1982—Prescribed Species.
Health Act 1935—
Chloropicrin.
Qualifications of Managers and Directors of Nursing Homes (Amendment).
Highways Act 1926—Goolwa Ferry Permit Revocation.
Metropolitan Milk Supply Act 1946—Penalties.
Motor Vehicles Act 1959—
Classes of Licence.
Registration and Inspection Fees.
Planning Act 1982—Goolwa Planning Control.
Road Traffic Act 1961—
Australian Design Rules
Car Types.
South Australian Health Commission Act 1976—
Compensable Patients.
In-patient Fee (Amendments).
Non-Medicare Patients.
Pastoral Act 1936—Resumption of Travelling Stock Reserve, Hundred of Penola.
Planning Act 1982—Crown Development Report—Chandlers Hill Kindergarten.
Reports:
Controlled Substances Advisory Council—1985-86.
Border Groundwaters Agreement Review Committee—1985-86.
Citrus Board of South Australia—30 April 1986.
Greyhound Racing Control Board—1985-86.
Institute of Medical and Veterinary Science—1985-86.
Department of Services and Supply—1985-86.
South Australian Trotting Control Board—1986.
State Transport Authority Superannuation Scheme and State Transport Authority Pension Scheme—1985-86.

By the Minister of Tourism (Hon. Barbara Wiese):

Pursuant to Statute—

Adelaide Festival Centre Trust—Report, 1986.
South Australian Institute of Technology—Report, 1985.
South Australian Film Corporation—Report 1985-86.

By the Minister of Local Government (Hon. Barbara Wiese):

Pursuant to Statute—

Regulations under the following Acts:
Local Government Act 1934—
Certificate of Validity.
Forms.
How-to-Vote Cards.
Prescribed Bodies.
Local Government Finance Authority Act 1983—Prescribed Body (Amendments).
Public Parks Act, 1943—Disposal of Allotment 164, Section 524, Hundred of Noarlunga.
Corporation By-laws:
District Council of Naracoorte—No. 22—Controlling the Foreshore.
Corporation By-laws:
District Council of Victor Harbor—No. 27—Controlling the Foreshore.

MINISTERIAL STATEMENT: GUARDIANSHIP BOARD

The Hon. J.R. CORNWALL (Minister of Health): I seek leave to make a statement.

Leave granted.

The Hon. J.R. CORNWALL: It has been practice to report to the Council, from time to time, on matters of public importance. On this occasion I wish to advise members of my deep concern about a number of attacks made upon the Guardianship Board. I want to place on record my conviction that these attacks are unwarranted and that individual members of the board, in particular the Chairman, have been subjected to unfair criticism. In rejecting untrue and unsubstantiated allegations which have been levelled at the board, I express the hope that the process of setting the record straight will clear the way for the Guardianship Board to maintain its role as an independent, semi-judicial body operating in an extremely difficult area.

I believe that all South Australians can look back with pride upon the proclamation of mental health legislation in 1979 which set up the Guardianship Board as a semi-judicial tribunal. That enlightened legislation charged the board with responsibility for the oversight of people whose health and safety are at risk because of mental illness or mental handicap. The board is also responsible for ensuring administration of the financial affairs of such persons if they are unable to do so for themselves. There is a strong element of civil liberties in the legislation which tries to strike a balance between medical discretion on the one hand and legal rights of the individual on the other. It must be patently obvious to anybody who cares to review the operation of the legislation that the board has achieved that difficult but extremely desirable balance. I say to those who apparently wish to decry the work of the board that it is necessary to examine its role as arbiter or guardian in many hundreds of cases. It is certainly not good enough to present a one-sided version of any single case which has come before the board for review.

I remind members that the board consists of five members from different disciplines. The Chairman is either a District Court Judge, a special magistrate or a legal practitioner of at least seven years standing. The current Chairman, of course, is a magistrate. The other members comprise a psychiatrist, a psychologist and two other persons who have, in the opinion of the Governor, appropriate qualifications for membership. Each member has a deputy holding similar qualifications to the principal member. The procedure at hearings before the board is informal compared with normal criminal and civil court procedures. The board sits regularly on four days a week to deal with its steadily increasing workload. An increasing proportion of the board's work is concerned with the welfare and financial management of elderly persons.

This trend is increasingly important, particularly in view of the number of applications the Guardianship Board now has to handle. Prior to its commencement in 1979, the estimated number of annual applications was 200. Since

then, the board's burgeoning workload has seen the yearly total of applications reach 717 in 1985-86. During that year no less than 53 per cent of the hearings resulted in guardianship orders being made. In many cases, additional orders for custody, treatment or administration of financial affairs were made with respect to persons received into guardianship.

The remaining 47 per cent of referrals in 1985-86 resulted only in administration orders. Where a person is unable to manage her or his financial affairs because of mental illness or mental handicap, the board can appoint an administrator to carry out that role. I want to emphasise that it is not necessary for a person to be under guardianship before an administration order can be made—in fact, the majority of people under administration orders are not under guardianship. Administration orders are frequently made for elderly persons suffering from Alzheimers disease or other dementing conditions.

Under the terms of the Mental Health Act the board is required to appoint the Public Trustee as administrator unless there are special reasons to appoint some other person. It is ridiculous to suggest that decisions made by the Guardianship Board cannot be resisted. The board's decisions are open to challenge, not only by appeal to the Mental Health Review Tribunal but also by the right of a protected person, or any person having a proper interest in that person's welfare, to further appeal to the Supreme Court. This was a very wise provision in the legislation, which was, of course, framed as a result of the work of a select committee of the Lower House, including three members of the Liberal Party. In addition, the board itself reviews orders regularly, either upon its own motion or at the request of the protected person or another interested party.

It is a matter of some regret that another member of the Liberal Party, in fact a former Attorney-General of South Australia, the Hon. Mr Griffin, has fuelled the attacks made upon the Guardianship Board in recent times. On 4 February he told the *Advertiser* that he was going to raise questions about the activities of the Guardianship Board in State Parliament. He said he was concerned about the 'apparent insensitivity' of decisions made by the Guardianship Board and the Public Trustee and he was critical of 'another bureaucracy making decisions to the exclusion of the family'. Nobody disputes Mr Griffins's right to raise questions concerning the Guardianship Board or his right to criticise its decisions provided, of course, that he does not deliberately distort the picture. To describe the Guardianship Board as 'another bureaucracy making decisions to the exclusion of the family' is totally false. The board is not a bureaucracy and, far from excluding the family, the board actively seeks them out.

Mr Griffin knows full well that, within five days of an application being received at the board, letters go to people identified in the application as having an interest in the outcome. Furthermore, if there is no mention of a spouse or child, the board's social workers make inquiries to ascertain whether there are any. People having an interest in the case are advised that an application has been received and will be listed for hearing. They are advised of the date and time of hearing and invited to attend. They are also invited to attend any review hearings. The practice in all hearings, whether original hearings or review, is to allow each person to speak before a decision is reached. The procedure is informal but the rules of natural justice are followed. The person who is the subject of the application or order has the right to know what is being said and has the right to comment on whatever is proposed.

Mr Griffin made his opportunistic and dishonest remarks in commenting upon a case which was reported by the *Advertiser*. The same case was the topic of an item on the *Willesee* program broadcast earlier this month. The presentation in the television program was disgusting, not just because it ignored the facts provided to the *Willesee* reporter by the Chairman of the Guardianship Board, and not just because it deliberately omitted salient information. It was disgusting because a program with a national reputation, claiming to be fair and ethical in its reporting of events, knowingly filmed a person with a mental handicap and broadcast her responses. Those responses were broadcast to persuade the audience that the *Willesee* program was correctly and impartially reporting the patient's husband's complaints. It was a throwaway line that contemptuously summed the case up as one of 'Government interference' and misrepresented the position of the Chairman of the Guardianship Board.

The case of Mrs Phyliss Rita Jones, a resident of the Julia Farr Centre, has been publicly identified by her husband, Mr Wally Jones, of Kurralta Park. At the instigation of Mr Jones, certain details of his wife's condition and factors affecting the Guardianship Board's consideration of her case have been promulgated in the media. I do not wish to rebut every single point on which Mr Jones and the media have either knowingly or unwittingly distorted the facts and I do not intend to debate the matter in such a way as to significantly add to the details which have been divulged. It is essential, however, that I nail the untruths sufficiently to reassure South Australians that the Guardianship Board is working effectively and fairly.

Building upon Mr Jones's account of events, the *Willesee* program opened by telling its viewers that Wally Jones had discovered his marriage vows run a poor second to the powers of five bureaucrats. After 30 years of marriage, they had now found that outsiders determined their future. This was, said Mike Willesee, a 'marriage break-up of a different kind'. Film showed the reporter asking Mrs Jones, a patient at the Julia Farr Centre, if she would like to be living with her husband. 'Oh, yes. Can I?', was the response. I stress that the reporter knew this patient was the subject of a Guardianship Board order because of her mental handicap. I condemn this sort of behaviour. It was broadcast to back up the reporter's contention—as the pivotal point of the program—that the Guardianship Board was breaking up the Jones's 30-year marriage by ordering that Mrs Jones remain in the Julia Farr Centre against the wishes of her husband who wanted to care for her in their home. This was and remains absolutely untrue. The reporter knew perfectly well that her report was false. Having informed viewers that Mrs Jones had been resident at the Julia Farr Centre for two years, she said, 'Her husband would like to have her home but he now has to have the permission from this semi-judicial board to do so.'

The plain truth is that Mrs Jones has never been under guardianship and her husband has always been at liberty to remove her from the Julia Farr Centre. Although her doctors would not advise removal, Mr Jones has the right to arrange for his wife to leave the centre at any time. Mike Willesee correctly informed his viewers that the Chairman of the Guardianship Board had refused to be interviewed. Since the Chairman is a magistrate and subject to the direction of the Chief Justice that judges and magistrates must not give interviews, that was a proper course of action. However, Mr Willesee neglected to tell his audience that although an interview had been refused his reporter had been provided with a statement by the Chairman of the Guardianship Board. This statement puts the whole matter of the

Jones case in a different light, but it was not a shedding of light which the reporter or the program wished to take into consideration. Their failure to do so was both unprofessional and unethical. For the information of members I will read the statement made by the Chairman of the Guardianship Board and provided to the *Willesee* program by my office before the program went to air. He stated:

The Guardianship Board is a semi-judicial body established under the Mental Health Act 1977. The board provides assistance for persons who by virtue of mental illness or mental handicap are incapable of looking after their own health and safety or incapable of managing their financial affairs.

On 18 October 1985, upon the application of a medical practitioner, the Guardianship Board made an order appointing Public Trustee to be the administrator of the financial affairs of Mrs Phyliss Rita Jones. The board did not consider that there were special reasons to appoint an administrator other than Public Trustee, pursuant to section 28 of the Mental Health Act 1977.

The board has made no order for guardianship; nor has the board given any direction as to where Mrs Jones should live or what treatment she should receive. The board was satisfied that there were suitable arrangements existing in October 1985 for Mrs Jones's treatment and care and noted that there was no real dispute between Mr Jones and the Julia Farr Centre as to the appropriateness of her placement at the centre.

The only order made by the board with respect to Mrs Jones relates to the management of her financial affairs. That order was varied on 17 June 1986 to accommodate Mr Jones's financial difficulties as far as possible without jeopardising his wife's accommodation.

Mr Jones has the right at any time to request the board to review the administration order and the right of appeal against that order to the Mental Health Review Tribunal and ultimately to the Supreme Court. At Mr Jones's request, the administration order is to be reviewed by the Guardianship Board again on 28 February 1987. While that review is pending it would be improper for the board to comment further.

I have spent a considerable amount of time explaining to the Council the manner in which the Guardianship Board has been misrepresented. There are several other significant areas in which Mr Jones or the media reports are completely at odds with the facts. I do not wish to go into further detail except to refer to one central and pertinent fact which has been omitted in any public discussion to this time. The terms of the will of Mrs Jones's late father are being strenuously contested between Mr Jones and members of Mrs Jones's family. It is a fact that Mr Jones has encountered some financial difficulties since his wife has been in the Julia Farr Centre. However, they would have arisen whether or not the Public Trustee was the administrator. To this point the Department of Social Security has refused formally to recognise the separation for pension purposes.

Ms President, were the media to concentrate on any one of the 3 000 or so cases decided by the Guardianship Board in the past seven years and present only one side of the story, readers or viewers might be titillated. As Minister of Health, however, I believe it is my duty to defend the Guardianship Board and to inform the Parliament of the unethical and unprofessional nature of the attacks made upon it. I am sure that fair-minded South Australians will agree with me that this sort of behaviour must be condemned.

MINISTERIAL STATEMENT: 1985 STATE ELECTIONS

The Hon. C.J. SUMNER (Attorney-General): I seek leave to make a statement on the report of the Electoral Commissioner on the conduct of the 1985 State elections. I also seek leave to table a copy of that report.

Leave granted.

The Hon. C.J. SUMNER: Most members will remember that we spent considerable time and effort early in 1985 ensuring that the legislation under which our electoral system operates is sound and capable of withstanding the test of time. I am happy to say that no significant difficulties were encountered in administering that legislation. However some minor amendments may be necessary. Consequently, the Government will review the legislative changes recommended by the Electoral Commissioner over the next couple of months. Cabinet will then consider whether amendments to the Electoral Act are necessary.

The changes contemplated by the Commissioner involve simplification of the nomination process particularly in relation to the lodging of voting tickets, the removal of an anomaly associated with declaration voting, bringing the Constitution and Electoral Acts into line in the areas of qualification for enrolment and candidature for the Legislative Council, simplification of non-voters follow-up and providing a minimum penalty for failing to vote, and removal of the property ownership requirement of some prisoners to protect the franchise. Another small amendment involving prisoners is to restrict the retention of the franchise to those imprisoned in South Australia.

There are some other matters not requiring legislative change that are worth noting. The cost of conducting the elections was approximately $2.1 million. Whilst significantly higher than in 1982, the per capita cost remained the lowest in Australia. This was a pleasing result given the need to adjust to new Assembly district boundaries and new voting systems. The latter I should point out at this stage caused few difficulties for the electorate and resulted in a level of formality which has not been experienced for many years. The 63 per cent reduction in informality for the Upper House and the 40 per cent reduction for the Lower House, together with a higher turnout at the elections, resulted in a participation rate significantly better than that experienced in 1982. Council informal votes were reduced from 10.1 per cent in 1982 to 3.7 per cent in 1985. Legislative Assembly informal votes reduced from 5.8 per cent in 1982 to 3.5 per cent in 1985.

The approaches taken to certificated voting, in which absentee votes, postal votes, electoral visitor votes, etc., were incorporated under the general title of declaration voting and the use of counterfoils to improve control were particularly successful and are likely to be copied by other electoral administrations. Mobile polling for remote areas, another innovation in 1985, resulted in an increased turnout of 145 per cent over 1982 and a significant reduction in costs in real terms.

The cardboard ballot boxes introduced in 1985 for use in counting centres (non-counting centres where boxes must be transported to the scrutiny retained the metal boxes for security) proved to be very cost effective, given the high storage costs of metal and plastic boxes. It is likely that voting screens also will be made of cardboard by the time of the next State elections resulting in further savings in storage and handling.

Naturally enough, not everything went according to plan and the Commissioner has some concerns in a couple of areas. The handling of complaints against candidates' minor infractions he feels needs review on the ground that an investigation of a complaint, if public, may have a greater bearing on the result of an election than the infringement that led to the investigation.

Another area of concern is the relatively high incidence of official error. Fortunately, the level was not significant enough to affect the result of any election. The Commissioner proposes improving the training packages presented to polling officials together with some administrative changes

to minimise the risk of errors affecting the outcome of an election.

I table the report and I have indicated what the Government proposes to do with it; namely, to consider it over the next couple of months to see whether the recommendations of the Electoral Commissioner should be dealt with by way of legislation.

I invite honourable members in this Council and in the other place to put to me any concerns that they have about the conduct of the election, or any comments that they wish to make on the report of the Electoral Commissioner. I invite the Parties and candidates that participated in the election to do likewise if they feel that a submission would be useful.

The Hon. L.H. Davis: Joh's Party?

The Hon. C.J. SUMNER: If it exists by then, but that is something that we do not yet know about. I suggest that any member, candidate or political Party that wishes to make such a submission should address that submission to me.

QUESTIONS

NURSES' CAREER STRUCTURE

The Hon. M.B. CAMERON: I seek leave to make a statement before asking the Minister of Health a question about nurses' career structure.

Leave granted.

The Hon. M.B. CAMERON: I am informed that last year an agreement was reached between the South Australian Health Commission and the South Australian Salaried Medical Officers Association (SASMOA) to provide on-call allowances for medical staff of $70 a night. The estimated cost to the Royal Adelaide Hospital for these on-call allowances is $1 million a year. My information is that the Health Commission did not provide extra funding to the hospital to cover this on-call allowance agreement.

I am informed that the hospital has now been told that the funds necessary to cover the on-call allowances can be taken from funds allocated to the career structure agreement reached with nurses. If this is the case, the end result is that many of the positions that would have been upgraded under the nurses' career structure agreement will now not take place. I understand that this could not only occur within the direct hospital system but also within other areas too. I have been given examples where there has been a refusal to provide what is considered to be an appropriate position, and hence wage level, under the new career structure.

Was an agreement reached between the Health Commission and SASMOA to provide an on-call allowance? Was additional funding provided to the hospitals, in particular the Royal Adelaide, to cover this? If not, why not? Will the Minister request the Health Commission to withdraw the directive that the money to cover on-call allowances can be taken from funds allocated to the nurses' new career structure, if that has happened?

The Hon. J.R. CORNWALL: First, with regard to on-call allowances and the whole question of overtime and conditions surrounding overtime for interns, residents and registrars, this matter will shortly be the subject of a significant review. It has concerned me for some time that, despite the fact we graduate more doctors than anywhere else in this country (and almost anywhere else on earth) per thousand of population, somehow or other we have interns and residents who are working 80 and 90 hours a week. I have received complaints—

The Hon. M.B. Cameron: Thirty-six hour stretches.

The Hon. J.R. CORNWALL: Allegations of 36 hours worked in a stretch have been made. That is unusual, but it is not unusual for them to work unacceptably long hours. No-one can perform at their peak over a 24 hour stretch and in the stressed area of accident and emergency services I suggest that that is not only undesirable but, in some circumstances, may place patients potentially at risk.

The question of structures for interns, residents and registrars will be reviewed in the near future. This is most important. The other matter is that not only does one have to ask whether it is a good employment practice but whether in fact it is necessary. As I have said, we are graduating a little in excess of 160 new doctors a year. We have a limited number of teaching and associate teaching hospitals. We go through the performance every year of trying to find places for all the graduates. We finish up placing one in Darwin and perhaps one in Launceston and offering, after great negotiation, one or two places perhaps in Victoria. Despite that, we have conditions where they are working 80 and 90 hours a week and more. It just simply does not make sense. Not only is it poor employment practice, but I suspect that it may be costing South Australian taxpayers more money than it should.

It is against that background that the review will be conducted. As to specific negotiations between the Health Commission and the Royal Adelaide Hospital, or any other hospital, concerning how they might bring their individual units in on budget, I am not personally aware of any directive or suggestion that on-call allowances should be financed by one means or another. I am perfectly happy to look at that specifically. With regard to career structures for nurses, the principles that will apply in implementing improved clinical career structures for nurses were agreed and ratified in the South Australian Industrial Commission.

The full recurrent cost of those career structures and the significantly improved salaries which were granted to student nurses, enrolled nurses and registered nurses across the board is estimated at $37.5 million. They are currently being implemented. I have had some discussions with the Royal Australian Nursing Federation as recently as 10 days ago. They are a matter for negotiation between the commission, individual hospitals and the RANF and, to some extent, the Public Service Association. There have been claims made, I am informed, which are in excess in some areas of what we ('we' being the Health Commission and health management) understood to be what was ratified in the commission. If all of those additional claims were met we could be up potentially for an additional $5 million. I have made it very clear to the commission that any claims above and beyond the agreement ratified in the Industrial Commission are to be resisted.

PUBLIC LIBRARIES

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Minister of Local Government a question about public libraries.

Leave granted.

The Hon. L.H. DAVIS: Public libraries are located in nearly all local government areas of South Australia. Last year the public library program received a most unexpected blow when the State Government totally eliminated the local purchase subsidy on paperbacks and slashed the subsequent capital grant per branch from $7 000 to $2 000. The

local purchase subsidy provided flexibility for libraries, enabling them to purchase publications of interest to the local community. The capital grant provides funds for chairs, tables and other equipment.

Both these programs are funded on a 50-50 basis by the State Government and the relevant local government authority. Rather remarkably, the Minister of Local Government, who is responsible for libraries in South Australia, did not bother to consult with representatives of either local government or public libraries—and libraries are supposed to be about information and communication. Quite reasonably, in the absence of any discussion, local government and public libraries had expected no major changes. Indeed, some public libraries around the State suddenly found that they had spent more money than they were actually receiving. The Minister would be aware that there are some public libraries out of pocket. The Minister would also be aware of the outrage around South Australia about this matter. She has received dozens of letters of protest from the majority of affected councils, from libraries, community groups and library users. There is particular concern in rural areas. On Friday 6 December, a Local Government Association meeting in the South-East was addressed by the Director of Local Government, Ms Anne Dunn. A report of that meeting appeared in the *South-Eastern Times* on Monday 9 February noting that Ms Dunn predicts that the next State budget will be no better and perhaps worse than the last budget. She was clearly hinting at possible further cuts in funding for local government.

My questions to the Minister are as follows:

1. Does the Minister accept the very strong criticism from local government and public libraries about the failure to consult on funding, and the consequent funding crisis being faced by some public libraries?

2. If further cuts are to be made in the next financial year, as hinted at by the Director of Local Government, will the Minister ensure that there will be proper consultation with representatives from both local government and the public libraries?

3. Does the Minister agree with the Director of Local Government, Ms Dunn, that the next State budget could perhaps be worse? If so, what has happened in the 12 months since the Labor campaign slogan 'South Australia up and running' was floated?

The Hon. BARBARA WIESE: It seems that during the summer break the honourable member has been unable to find anything new to think or talk about. I had hoped that we might have had a series of questions this year that at least touched on one or two new subjects—but we do not seem to be having that at all. We will just have a re-run of the questions that were asked last year, following last year's budget. On more occasions than I can recall the Hon. Mr Davis has asked questions about funding for libraries in South Australia.

The Hon. C.J. Sumner: Is he the shadow Minister for libraries?

The Hon. BARBARA WIESE: No, he is not the shadow Minister. I do not know why he is concentrating on this area rather than on his actual responsibilities.

The Hon. C.J. Sumner: He seems to be making a bid for shadow spokesman on the Treasurer.

The Hon. BARBARA WIESE: Yes. I was wondering about how Dr Eastick in the other place feels about the role that the honourable member is playing in relation to local government issues, as I am sure that he must feel rather slighted that his responsibilities are being taken over by the Hon. Mr Davis. In relation to library funding, I shall repeat some of the things that I have already said in this place, matters that I had hoped the Hon. Mr Davis might have taken some notice of when I answered last year questions similar to that which he has asked today. As I have indicated on a number of occasions, certainly we had some problems with last year's budget and we had to make some very tough decisions during the preparation of last year's budget. Indeed, many of those decisions were made very late in the budget process, as we were given information from Canberra fairly late in the budget process of the sort of federal funding cuts that would take place. For that reason it was very difficult in a number of areas to consult with community organisations about changes that would occur during the course of the current financial year. The changes that took place in respect of the subsidies to which the honourable member has referred were among those issues.

I remind the honourable member that decisions about subsidies and the arrangement of funding for community libraries are made by the Libraries Board and, as I have said before, I believe that the Libraries Board made very reasonable decisions last year about the way in which the money would be distributed between the local subsidies programs and the central subsidies programs. The emphasis that was placed on maintaining the subsidy levels for the central book collection was appropriate, because in the long term this eased the burden of the reduced funding that had to be absorbed by all libraries. I want to stress again that the libraries network in South Australia was not the only area funded through State Government sources that had to bear some of the burden of the budgetary decisions that had to be made, and there is no reason at all why the libraries program should have been treated any differently from any other Government program about which we had to make decisions.

While I am on that subject, I would also like to point out to the Hon. Mr Davis and other members in this place that the community libraries program in this State is the best funded community libraries program in the nation. No other State Government in Australia funds libraries to the extent that the South Australian Government does. We fund on a 50-50 basis in this State—and not one other State in Australia matches that. The highest level of funding achieved by any other State is 30 per cent. I remind the honourable member that in some States the subsidy from State Government sources for public libraries is as low as 10 per cent. So, for him to come into this place and criticise the Government for its record in the development and funding of library services is absolutely outrageous.

The Hon. L.H. Davis: I am criticising your lack of communication.

The PRESIDENT: Order!

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: The Hon. Mr Davis knows as well as any other member in this place that it would be quite inappropriate—and in fact not possible at this stage of our budget preparations for the coming financial year—for me to release any information about funding arrangements that might apply during the next financial year. However, I can say that this year the Libraries Board is planning to develop a new funding formula for the local subsidies program based on a *per capita* formula that would then give local libraries greater autonomy over the way in which local subsidy money can be spent. People in the community libraries will welcome this move because, as I have said, it will give them greater autonomy over the amount of money that they will receive from the State Government in meeting the services and demands in relation to their local communities. As to the level of funding, as I have said, I can

make no predictions about that at this stage. It is true, as the Director of Local Government has apparently indicated at a meeting in the South-East, that the next State budget will be a difficult budget for us to frame and we will again have to make some tough decisions in a number of areas. At this time I am not able to say what those decisions will be or which areas of Government will be affected by them.

CUSTODY AND ACCESS

The Hon. K.T. GRIFFIN: I seek leave to make an explanation prior to asking the Minister of Community Welfare a question on the matter of departmental conflict with the Family Court.

Leave granted.

The Hon. K.T. GRIFFIN: Nearly 12 months ago the Minister indicated that a working group of departmental officers and Family Court officers had been established in an endeavour to sort out the conflicts that had arisen over custody and access cases, particularly where belated allegations of child sexual abuse were made by a mother against a father. In August last year I asked the Minister questions about the working party's report, and he indicated that he hoped that it would be available by 15 September, when he also expected the task force report on child sexual abuse to be available. Since then, the report on child sexual abuse has been made available, as has the report by Mr Ian Bidmeade on in need of care orders under the Community Welfare Act. The report this week of the formation of a group of men and women for the prevention of institutional abuse of children, and the growing number of complaints which I and other members are receiving about departmental behaviour, demonstrate clearly that no progress has been made by the working group in relieving the tensions. A number of complaints have been made to me where the department appears to have rushed in to obtain an in need of care order from the Children's Court, giving the Minister guardianship of a child, even though there are existing Family Court orders for custody and access. The cases in both courts are adjourned repeatedly and many months elapse before hearings occur. One of the difficulties associated with that is lack of access and maintenance orders that the Children's Court can order in the context of the adjourned hearings.

The complaints to me suggest an arrogance on the part of the department in interfering in families and adopting the 'We know best for you' attitude towards children. The allegations are that intervention occurs on the flimsiest of bases in some cases and has no regard for the long-term relationships between children and their mothers and fathers. Families are split and long delays in resolving the issues aggravate the tensions. Separation of child from parent (usually the father) creates even more problems. The interests of children have to be protected and justice has to be done to all those involved where allegations are made by or on behalf of one parent against another, but the complaints made to me suggests that neither is happening at the moment in many cases.

The real risk is that with the measure of ill-will that the department appears to be creating at the moment the real cases of child abuse will be missed or ignored. There is a growing resistance amongst some people who have an obligation to report suspected child abuse cases because they are becoming more and more reluctant to become involved because of the hassles, particularly repeated attendances required at court. The plea from all those who have complained about the department is that something drastic has to be done to achieve real objectivity and a higher level of professionalism and speedier disposition of cases. My questions to the Minister are:

1. When is the conflict between the department and the Family Court to be resolved and by what means?

2. Will the Minister appoint a totally independent and professionally recognised person to review the conflict objectively to find solutions as a matter of urgency?

The Hon. J.R. CORNWALL: PIAC, the Prevention of Institutional Abuse against Children, was established apparently in the past few months ostensibly to raise issues of concern which its members say have been received about increasing allegations of child sexual abuse, in cases where there is a dispute over custody, guardianship or access to children. The real purpose of the group to a significant extent, however, remains a mystery. Two of its members have requested the Ombudsman to investigate certain practices in the Department of Community Welfare. One case has been closed—no case was made out against the department or its officers—and the other is still being considered by the Ombudsman. The department and I as Minister are happy to support any self-help organisation, particularly for people accused of abusing children.

Two DCW regional directors have interviewed representatives of PIAC and have been very keen to listen to reasonable suggestions. I am yet to be convinced that this new group is anything more than a platform for personal retribution for one or two of its members. One of those members, a very prominent person in this small group, came into the DCW central office late in December and promised during that visit to get the three senior officers and the Minister in 1987. One has to presume that this is probably part of that campaign. If the organisation wishes to debate the many complex issues of child protection, I point out that they have all been canvassed in the recent excellent report by the child sexual abuse task force. That task force comprised some 40 people and had representatives from the law, medicine and health professions as well as the caring professions, social welfare workers and education people. It divided into three quite separate groups—one to look at education and how that might be used in a protective and preventive way to stem the tide of reported physical, psychological and child sexual abuse cases.

Another group looked at the health and welfare aspects and as a result of their recommendations the Government made available around $800 000 full year equivalent funding in 1986-87 as a significant start to look at the various protective, preventive and therapeutic aspects of this very serious problem. The third group of course looked at the law. That naturally falls in the province and under the purview of my colleague the Attorney-General. I understand some of those matters will be addressed quite possibly in this session of Parliament, especially the recommendations as they relate to the admissibility of evidence from young children.

It is a nonsense—a total nonsense—to suggest that somehow community welfare workers and social workers in the field are contriving to cause a burgeoning in reported incidents of child sexual abuse. When I talk to staff in the various offices, regions and districts, the one thing that strikes me above all others is that they are being overwhelmed by the child protection work. The one thing that they would like to do above all else is get back to a significant role in preventive work generally in the welfare spectrum and would particularly like to get back to the community development approach that they were able to adopt in the 1970s. Nobody would like to see the burden

of work appearing greater in our offices to be reduced more than the field workers would.

The sad fact is that child sexual abuse has been with us for a very long time. It is only because the taboos have been lifted and that at last at least some members of this society have been able to face up to the reality and move from the denial phase that Mr Griffin appears to be still in that children are being increasingly protected to the level that they ought to be in this State. It is a very vexed area. Inevitably, on the odd occasion there may be reported incidents which, upon investigation, are not proven. As the law stood it was virtually impossible in the majority of cases to get a suspected child sexual abuser into the court, let alone get a successful conviction. Mr Griffin ought to be very careful before he goes down a path of lining up yet again with some suspect allies.

I repeat that it is a very vexed area. Nobody would like to see preventive education work to the extent that yet again in the community welfare officers we could get back to the pro-active role we would all like to see developed in the late 1980s into the 1990s. The situation sadly at the moment is that despite additional resources these officers are still being overwhelmed. I also say in closing, in case Mr Griffin has not read the task force report on child sexual abuse, that it is a very comprehensive document indeed—almost 300 pages. The point is made very clearly by experts in the field—people such as Dr Flora Bottica, Australia's outstanding expert in this field whom I have managed to attract back to South Australia and who will be returning here in the near future, tell me that it is not within the knowledge or experience of young children to describe the sorts of things that they do when they have been sexually abused. Let Mr Griffin lift his game and move from the denial phase, which sadly he is still in, and let him take a more enlightened view on this very serious community problem.

The Hon. K.T. GRIFFIN: As a supplementary question, when is the conflict between the department and the Family Court to be resolved and by what means? When does the Minister expect the report of the working group to be available?

The Hon. J.R. CORNWALL: As to the resolution of the conflict, I hope that that occurs as soon as is reasonably practicable. I have not yet received a report from the committee. In that sense, I am pleased that Mr Griffin just occasionally serves a useful role in that he has reminded me, despite my very heavy workload (and now that we are well and truly back at work), that I should ask where it is and I will do that forthwith. I will bring back an answer as soon as I can.

The Hon. R.I. Lucas interjecting:

The Hon. J.R. CORNWALL: Mr Lucas says that he has been working away: he has not been very visible. He must have laboured largely in vain.

The Hon. R.I. Lucas interjecting:

The Hon. J.R. CORNWALL: No, not all in the media—that is perfectly true—only John Howard, Andrew Peacock, Uncle Joh and a few of his collegues who have dominated the media in recent weeks.

ROXBY DOWNS

The Hon. I. GILFILLAN: I seek leave to make a short explanation before asking the Minister of Tourism, representing the Minister of Mines and Energy, a question about tendering at Roxby Downs.

Leave granted.

The Hon. I. GILFILLAN: Members will remember that last year the Democrats raised the issue of a French firm securing the catering contract at Roxby Downs, which action flew directly in the face of an undertaking in the indenture that the work and contracts should be made available on a preferential basis to South Australian companies. As a result of that incident, we sought information from Roxby Management Services Pty Ltd as to what procedure it followed in relation to tendering. Through the Parliamentary Library Research Officer we asked Roxby Management Services a series of questions. Parliamentary research had failed to obtain an answer to a letter dated 25 September 1986. I have a note that the last effort made by the Parliamentary Library to obtain an answer was by a facsimile sent on 4 December.

Very serious and persistent attempts have been made to obtain answers to these questions through the only channels available to us and to the Parliamentary Research Officer. I ask the Minister representing the Minister of Mines and Energy to persist in obtaining answers to these questions from Roxby Management Services so that we can be reassured that it is honouring the requirement in the indenture that preference be given to South Australian companies and entities for tenders at that place. The questions that have been put to Roxby Management Services by letter dated 25 September 1986 and then later by facsimile by the Senior Research Officer are as follows:

1. In what manner and by what procedure are tenders called for and successful tenders selected?
2. What criteria are used for the selection of successful tenders?
3. What support service tenders have been called for and let during the past 12 months and which companies or entities have been successful?
4. In the past 12 months, which South Australian companies have tendered for the supply of what support services and which of these companies were successful?
5. In regard to which tenders for the supply of support services have there been no South Australian tenders received?
6. In regard to supply of catering and cleaning services at Olympic Dam (or the environs of the Roxby mining project):
   (a) when and how were tenders called;
   (b) did any South Australian companies lodge tenders and, if so, which companies; and
   (c) was SHRM Australia Pty Ltd (or some similarly named entity) successful and, if so, how and why was that entity selected?

I ask the Minister to urge her colleague to persist in obtaining answers to these questions.

The Hon. BARBARA WIESE: I will refer those questions to my colleague in another place and bring back a reply.

TERMINATION OF PREGNANCY

The Hon. J.C. BURDETT: I seek leave to make a short explanation before asking the Minister of Health a question about termination of pregnancy.

Leave granted.

The Hon. J.C. BURDETT: The report of the working party to examine the adequacy of existing services for the termination of pregnancy in South Australia of May 1986 proposes on page 103 that section 5 of the Births, Deaths and Marriages Registration Act be amended so that in the definition of 'child' a foetus aborted under the terms contained in section 81 *(a)* of the Criminal Law Consolidation Act be excluded. In the report it is further stated that there should be no need to register as a birth the delivery of a foetus aborted under the terms contained in the Criminal Law Consolidation Act.

The recommendation means that under the circumstances laid down in the Criminal Law Consolidation Act a birth should be deemed not to be a birth. I recognise that the Births, Deaths and Marriages Registration Act is not within the administration of the Minister of Health but, rather, it

is within the administration of the Minister of Consumer Affairs. Because the recommendation is contained in a report which was instituted by the Minister of Health, I ask him whether it is intended to implement that recommendation of the working party and, if so, when?

The Hon. J.R. CORNWALL: The report to which the Hon. Mr Burdett refers was released for public comment and response about, I think, seven or eight months ago. Because of the significant number of recommendations and the sensitive nature of at least some of them, it was my view that it ought to be released for an adequate period so that even people like Father John Fleming could not allege that there had been insufficient time for every group and individual in the community who might have an interest to make a response.

At this time no action has been proposed in response. However, I might say that in the early budget discussions with my officers in the commission, I have made it clear that I would like a high priority to be given to implementing or to beginning to implement some of the recommendations as they relate to pregnancy advisory centres. The recommendations of the report in that area are very sound and enlightened. They take an approach that could not attract criticism from any reasonable person in that they quite clearly respect the right of those women who conscientiously believe that they have a right to abortion on request to obtain those services within the law and with expedition. At the same time, the report strikes a balance in that counselling and support services will be available for those individuals who hold a conscientious belief that they find abortion either distasteful or, in some cases, abhorrent. Under the recommendations of the report, they ought to be offered and will be offered alternatives. As I say, all of those matters are currently being collated.

We will make a start with regard to the recommendations concerning pregnancy advisory centres during the 1987-88 financial year. As to the recommended legislative changes, quite frankly, at this stage I have not considered or addressed them. I certainly have not consulted with my colleague who is responsible for the administration of the other Acts. No doubt we will need to address those matters within the next six months but, as I said, it is a sensitive area and one on which I wished to ensure that everybody had the opportunity to comment.

ENVIRONMENTAL IMPACT

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister of Health, representing the Minister for Environment and Planning, a question concerning the report of the Committee of Review of the Environmental Impact Assessment Process.

Leave granted.

The Hon. M.J. ELLIOTT: On 19 November I moved a motion that was eventually passed on 3 December by the Council, that motion being:

That this Council urges the Minister for Environment and Planning to release the report of the Committee of Review of the Environmental Impact Assessment Process immediately.

The Minister has had that report for six months, although the committee, which had worked on it for two years, requested its immediate release. While I was wading through the papers that had accumulated over the holidays I came across a letter dated 13 August from the Minister, which said:

I understand that the report of the review committee on EIA procedures is in its final drafting stages. The recommendations of that committee are likely to be of interest to the public and I anticipate being able to release the report as a public document in the next few weeks.

I ask two questions:

1. What has occurred that has changed the Minister's original undertaking to release the report within a few weeks?

2. Will the Minister respect the wishes of the committee, which worked on that report for two years, and the wishes of this Council, and will he release the report immediately?

The Hon. J.R. CORNWALL: This was the subject of debate in this place, as I recall, in late November or early December and I responded on behalf of the Government. It was a considered, measured and sensible response and, if he has forgotten, I refer the Hon. Mr Elliott to that. However, since he wishes me to raise it with my colleague in another place I will be pleased to do that and bring back a reply.

ADOPTION

The Hon. DIANA LAIDLAW: I seek leave to make an explanation before asking the Minister of Community Welfare a question on adoption.

Leave granted.

The Hon. DIANA LAIDLAW: In recent weeks I have received numerous calls and letters expressing very strong opinions on the recommendations of the report of the Review Committee into Adoption Practices and Policies in South Australia. A common thread of all these representations has been the belief that the Government is attempting to limit public response to the report and to railroad through the changes. The very scarce supply (and the Minister would be aware of this) of the report itself would seem to support this charge of limiting public response. The report was released on 7 December, a time when, as the Government would be aware, most people are distracted, it being the end of the year, with activities preparing for Christmas or annual holidays. The closing date set for the receipt of public submissions is tomorrow, which is Friday 13 February. Many people involved in this area of adoption believe it will be a very unlucky and superstitious day for them.

In response to the many representations that I received, I called on the Minister two weeks ago to extend the closing date by one month. That call has since been taken up in correspondence to the *Advertiser* and by organisations directly involved in adoption practices, including Australians Aiding Children and the Korean Friendship Group, among others, which have written to the Minister asking for an extension of time. In passing, I note that the short time that the Government has provided for public submissions contrasts dramatically with the time that the review committee had (more than 10 months) in which to complete its report, and that period involved several extensions of time and very limited consultation with individuals and groups.

I therefore ask the Minister whether he is prepared to acknowledge the integrity of the concerns and the profound ramifications of the report for the lives of many thousands of individuals in this State. Does he agree that the closing date for receipt of submissions (tomorrow) is too soon and will he agree to extend, even at this eleventh hour, the closing date for at least one month?

The Hon. J.R. CORNWALL: I thank the Hon. Diana Laidlaw for raising this. At least it might stimulate some community discussion. I have had great difficulty getting adequate public debate on this issue because it was overwhelmed by a small number of people who conducted a very nasty personal campaign against me over inter-country adoptions. Of course, the decision regarding inter-country adoptions was taken nationally by all social welfare Minis-

ters. The National Party Minister from Queensland, the Liberal Party Minister from Tasmania and all the Labor Ministers, State and Federal, agreed that there should be cost recovery for inter-country adoptions except when there was genuine financial hardship, in which case the Director-General has the power to waive that fee completely if need be.

That matter tended to dominate, rather than this very important review, which was the first of its kind for a generation. It makes a number of very important recommendations to bring us out of the very dark and unhappy age that has persisted for something like 35 years. Enshrined in that current legislation is thinking that is very much in tune with the dark days of the 1940s and 1950s with regard to illegitimacy and adoption *vis-a-vis* the enlightened attitude of the 1980s. The report on adoption policy and practice was released on Monday 8 December 1986 and a period of 10 weeks was allowed for public comment.

I know that some of us are inclined to take our holidays during the summer season, but none of us, I believe, takes 10 weeks. Major groups represented in the adoption process as listed in the review report were consulted by the review committee in the compilation of the report, so they all had an input there in the first place. Copies of the report were distributed to members of Parliament, contributors, major interest groups, and those who requested it in the week of 8 December. By mid-January, 500 copies had been distributed and a reprint was ordered. Approximately 600 copies of the report have been distributed. To date, 51 written submissions have been received by the department in addition to the letters received relating specifically to the matter of inter-country adoptions.

Cabinet instructed that written submissions only be received, together with responses through a phone-in organised through the department. That phone-in was conducted on 22 January and was the only time during the discussion that we received reasonable media coverage—television, radio and metropolitan and country newspapers. There were 185 calls received on eight lines over 1½ days and there was a five page questionnaire filled out for every one of those callers. Responses have been received from the three major interest groups, that is, the adoptees, relinquishing parents, and adoptive parents as well as from professional practitioners and organisations. Most have focused on information about origins and most have been both positive and constructive.

Tomorrow is the 13th. As I am a very reasonable person, and in view of the fact that it is certainly not my intention to introduce legislation during the month of February, I am perfectly happy to extend the date for responses by a further two weeks, so I am happy to announce to the Parliament, in response to Ms Laidlaw's request, that the date has now been extended to 27 February.

REPLIES TO QUESTIONS

The Hon. C.J. SUMNER: I seek leave to have the following replies to questions (answered by letter during the recess) incorporated in *Hansard* without my reading them.

Leave granted.

CONSUMERS ASSOCIATION

In reply to **Hon. I. GILFILLAN** (18 September).

1. Yes.

2. and 3. In 1985-86 the association received a grant of $20 000 from the State Government. The association also received a special grant of $6 000 from the Government in January 1986 to assist it to overcome its critical financial situation at that time. This financial year CASA again received a grant of $20 000, which it expended within the first four months of the year. In response to representations from the association the Government has made an additional $6 000 available to CASA, bringing its funding this financial year up to the same level as 1985-86. The Government believes it has continued to fund CASA at an appropriate level. The Government does not consider itself responsible for underwriting the entire operating costs of the association.

4. CASA has continued to receive support from this Government throughout its term in office. After the Liberal Government reduced funding to CASA to $10 000 from 1982-83 to 1983-84, the Bannon Government restored the association's funding to a level of $20 000 and has continued to make annual grants to CASA.

LAND TAX ACT AMENDMENT BILL

In reply to **Hon. L.H. DAVIS** (29 October).

The Valuer-General has provided the following statistics:

	1985-86		1986-87	
	Complaints	Objections	Complaints	Objections
Brought forward	75	6	92	6
New	1 261	384	3 884	950
Total	1 336	390	3 976	956
Reduced	702	201	1 418	350
Unaltered	524	182	1 300	231
Increased	18	1	26	1
Carried forward	92	6	1 232	374

This increase reflects the fact that the whole of the State was revalued in 1986-87 as against one-fifth of the State in 1985-86.

What is the Government's intention with respect to land tax after the exemption period has expired?

Continuation of the present exemption will be considered in the context of the 1987-88 budget.

LOLLIES

In reply to **Hon. G.L. BRUCE** (30 October).

A to Z Munchies Confectionery Distributors and A to Z Confectionery Wholesalers are registered business names of a firm which commenced trading on 21 April 1986. The firm pays teenagers on a commission basis to sell prepackaged confectionery door to door. The Minister of Labour has advised me that independent commission agents, regardless of age, are not subject to award conditions. The teenagers, aged from 12 to 15 years, work in groups under regional supervisors. The supervisors are instructed that the teenagers are not to work beyond 8 p.m.

The firm which trades as A to Z Munchies Confectionery Distributors and A to Z Confectionery Wholesalers has no connection or association with any charity. It appears some

confusion had arisen with Charity Delights Pty Ltd, a company that raises money in a similar way for Relatives of Challenged Individual Inc., which is a registered charity. Some of the teenagers who work for A to Z Munchies formerly worked for Charity Delights and did not realise the new business has no connection with charities. When the proprietor learned of this he called a meeting of all supervisors and directed them to inform all sales staff of the true position.

RANDOM BREATH TESTING

In reply to **Hon. M.B. CAMERON** (5 November).

1. The presence of THC (the active component of marijuana) can be detected in various ways, e.g. in blood, urine, breath, or saliva samples, or by identification of distinctive brain wave patterns. However, a positive THC result obtained by any of these means does not provide sufficient evidence in isolation that the donor of the sample was impaired.

2. If the police suspect a driver is under the influence of drugs or alcohol, a breath test is taken. If the result of this test is a zero blood alcohol content reading, the police patrol may call out the police doctor and instigate a search of the vehicle and/or the driver for illicit drugs. If drugs such as marijuana are found or the driver admits to being under the influence or agrees to a blood sample being taken, the driver can be charged with driving under the influence (DUI) under section 47 (1) of the Road Traffic Act. The driver may also be charged with possession or use of an illicit drug.

3. As noted in the answer to the first question, the available tests for the presence of marijuana are not suitable for roadside screening. The enforcement approach outlined in answer to the second question will be followed until advances in technology make an alternative approach feasible.

4. On 1 December 1986, Cabinet approved funds to allow an increase in testing from the current level of 110 hours per week in the metropolitan area to 250 hours per week. This will be achieved by requiring the 16 metropolitan Subdivisional Traffic Patrols and the four Traffic Task Force Patrols to perform one hour of RBT each day. In addition, a minibus will be purchased to allow the police to pull over a stream of traffic, rather than just two cars at a time.

In the country there are currently 27 trained breath analysis operators involved in RBT. A further 37 operators will be trained from existing staff. These increases in both staff and hours of testing should result in a doubling of the number of drivers tested each year. This will not happen immediately, but will involve a steady increase in testing over the next few months. The increased level of testing will be supported by extensive publicity informing drivers of an increased risk of detection of drink driving.

PUBLIC SERVICE SUPERANNUATION

In reply to **Hon. J.C. BURDETT** (6 November).

I agree that there is value in members of the State superannuation scheme receiving annual notices setting out their entitlements and also receiving information on the management of the Superannuation Fund. However, the Superannuation Board believes that a notice of entitlements needs to be far more substantial than that produced for Commonwealth public servants (which indicates only the employee's own accumulation and not pension entitlements).

The programming for these more extensive notices is complex but has been substantially completed. I expect the first notices to be issued within a few months. As far as information on scheme management is concerned, the Superannuation Board is currently working with the Superannuation Fund Investment Trust on the preparation of a simplified annual report for issue to scheme members.

BUSINESS MIGRATION

In reply to **Hon. L.H. DAVIS** (25 November).

Before proceeding to answer this question, I would point out that the migrants in question have been granted 'permanent residency' and not citizenship as referred to by you. Migrants are required to meet residency and other qualifications before applying for citizenship status. The Department of State Development actively markets the Business Migration Program overseas and provides support for the proposals of applicants whose qualifications and experience are considered to offer benefits in the development of the South Australian economy. The Department of Immigration and Ethnic Affairs assesses overseas applicants for migration under the program on the basis of business background and normal migration requirements. However, entry into Australia is not made conditional upon the fulfilment of a specific business proposal.

In addition, the Department of State Development does not have a record of having sighted a copy of the contract relating to the injection of funds into the business as indicated. It is estimated that, through the Business Migration Program, South Australia has received at least $90 million new capital. It is further estimated that investment in this State of this level could lead to the generation of up to 2 000 new jobs, both directly and indirectly.

VIDEO GAMES

In reply to **Hon. K.T. GRIFFIN** (26 November).

I refer to your question on 26 November 1986 relating to video games, and advise that I referred your question to the Classification of Publications Board. I now enclose a letter received from Mr R.C. White, the Chairman of that Board, which sets out the board's position. You will note that the board will continue to monitor the situation and raise the matter with me if it should give rise to more serious concern. You will also note the Chairman's reference to section 33 of the Summary Offences Act, confirming the advice that I gave you in my answer to your question in Parliament, namely, that a person could commit an offence under section 33 of the Summary Offences Act if that person produced or sold a computer program stored on disc or tape, which computer program resulted in the display of offensive matter.

It is the Crown Solicitor's opinion that a person who publishes or sells a disc or cassette of a computer program, the subject matter of which is indecent or offensive, may be prosecuted under section 33 of the Summary Offences Act, although as indicated in Mr White's letter such a disc or cassette or program cannot be classified under the Classification of Publications Act or Classification of Films for Public Exhibition Act. The effect of this is that persons publishing or selling a disc or cassette receive less protection than those dealing in films, video tapes or books, as classification of these generally produces exemption from section 33 of the Summary Offences Act, because of that classification. I should also indicate that although the Crown

Solicitor is of the view that such computer videos would be covered by section 33 of the Summary Offences Act, there is an argument to the contrary. In the light of the advice from the Classification of Publications Board, I will continue to monitor the position and take any further advice which they proffer. I can also indicate that I have asked for this matter to be placed on the agenda of the Commonwealth-State officers or the Ministers meetings on censorship.

TOTARO REVIEW REPORT

In reply to **Hon. C.M. HILL** (4 December).

With respect to your question of 4 December 1986 asked in the Legislative Council, the following information is provided in regard to the Totaro Review Report.

The action taken on the recommendation is as under:

Recommendation 9.5

A senior officer of the Ethnic Affairs Commission should be nominated as the commission's regular and active representative on the Equal Opportunities Advisory Panel.

With introduction of the Government Employment and Management Act, the Equal Opportunities Advisory Panel was disbanded and Equal Employment Opportunities (E.E.O.) responsibilities have been devolved to all managers in agencies.

The commission's Chairman and officers maintain close liaison with Department of Personnel and Industrial Relations (D.P.I.R.) Equal Opportunities Unit. The commission has representation on the E.E.O. Management Working Party and liaises closely with E.E.O. Management Planning Coordinators in agencies.

Recommendation 9.6

The Public Service Board should be requested to include the Ethnic Welfare Adviser of the Department for Community Welfare on the Equal Opportunites Advisory Panel.

The Department for Community Welfare has adopted an E.E.O. Management Plan. The Ethnic Welfare Adviser was involved in its formulation and is involved in its monitoring and implementation.

Recommendation 9.7

The commission should press for the appointment of a person with background and expertise in ethnic affairs to the Equal Opportunities Branch of the Department of the Public Service Board.

CO-5 level officers with expertise and background in ethnic affairs has been appointed to the D.P.I.R. Equal Opportunities Unit for a period of 12 months.

Recommendation 9.8

A person with background and expertise in Ethnic Affairs should be appointed to the staff of the Commissioner for Equal Opportunity.

Officers of the Commissioner's Office are appointed on the basis of merit and commitment to equal opportunities. Sensitivity to equal opportunity for persons of non-English speaking background is part and paracel of the commitment to equal opportunities required of officers.

Two staff-development training seminars have occurred involving officers, which focused specifically on ethnic affairs issues.

A Community Employment Program worker was employed for six months to look at and report on ethnic affairs needs in relation to the work of the Commissioner's Office. That report was compiled by a woman of Italian origin. The report was recently completed and is with the Commissioner who is examining the recommendations of the report.

The Acting Senior Legal Officer is Latvian born. On Monday 9 February 1987, an Australian Aboriginal woman will commence duties as a Conciliator.

Recommendation 9.9

The commission should promote increased attention by Equal Opportunities Officers to ethnic issues.

Achievements in the area of Equal Employment Opportunities (E.E.O.) for persons of non-English speaking background (N.E.S.B.).

1. Equal Opportunities Panel of P.S.B.

The SAEAC participated on this panel until it was dissolved in 1985. Prior to the establishment of the commission, the Ethnic Affairs Adviser was a member.

The inquiry into the composition of the State Public Service by David Rimmington was a direct result of the involvement of the commission on this panel.

The panel also advised the board that study leave provisions should include attendance at interpreting/translating courses. In addition, a training scheme of three months duration was initiated to enable bilingual staff to gain experience as interpreters and information officers. On the advice of the panel, the board carried out a number of cultural awareness/E.E.O. seminars for middle management.

2. Merit Working Party

The SAEAC participated on the Merit Working Party of the Review of Public Service Management. The Working Party looked at the concept of merit and defined it in culturally inclusive and non-discriminatory terms.

3. Review of Public Service Management

The commission made submissions to the review and subsequently to the Government in relation to the E.E.O. provisions of the Government Management and Employment Bill.

4. Equal Employment Opportunity Management Planning Working Party

Since its inception in 1984, the commission has been a member of this Working Party of E.E.O. coordinators and has provided advice and information on E.E.O. issues for persons of N.E.S.B. The provision of advice has not been confined to the forum of this Working Party.

5. Working Party on Employment of Persons of N.E.S.B. in the Public Service

The commission initiated the establishment of this Working Party. It met under the auspices of the P.S.B. The function of the Working Party was to look at the removal of barriers to the recruitment and promotion of N.E.S.B. in the public sector. The report of the Working Party was accepted by the board and its recommendations included in the manual 'E.E.O. Made Easy'.

6. Agreement with Department of Personnel and Industrial Relations (D.P.I.R.) on E.E.O. Strategies for Persons of N.E.S.B.

An agreement has been reached between the commission and D.P.I.R. on the strategies to be undertaken by each agency, to improve recruitment and promotion prospects for N.E.S.B. persons. The agreement is currently with the Minister of Labour.

7. Legislative Review

The commission has been successful in ensuring the following Acts include E.E.O. and multicultural access and equity provisions:

- Children's Services Office Act.
- Office of the Commission for the Ageing Act.
- Workers Rehabilitation and Compensation Act.
- Occupational Health and Safety Act.

8. Equal Opportunity Act 1984

A representative of the commission participated on the Working Party to review the Anti-Discrimination Legislation in South Australia. The commission also made submissions to the Government on the draft Bill.

As a result of Government action, the Racial Discrimination Act 1976 was repealed. The new Act allows complaints of discrimination on the grounds of race to be dealt with either by conciliation or arbitration. The Act also gives the Commissioner for Equal Opportunity an educative role.

The commission is cooperating with the Office of the Commissioner for Ethnic Opportunity in a community education program for ethnic minority communities.

9. Data Collection

A commission representative has been participating on a Working Party convened by the Equal Opportunities Branch of D.P.I.R., which is considering the inclusion of confidential E.E.O. data through the AustPay System.

10. Review of Base Grade Clerical Selection

The D.P.I.R and the commission are cooperating on a Review of the Base-Grade Selection Test to ensure that it is not culturally biased.

11. English in the Workplace

The commission participated in discussions with the United Trades and Labor Coucil, Adult Migrant Education Scheme and D.P.I.R. negotiators on English in the Workplace. An agreement has been reached with the South Australian Health Commission and the State Transport Authority for English courses in work time for workers of N.E.S.B.

12. Ethnic Affairs Management Commitments

Cabinet approved the progressive introduction of Ethnic Affairs Management Commitments as a means of improving the access to services and programs by N.E.S.B. people.

A public service which reflects the ethnic and gender composition of the community is an essential element in the planning and delivery of effective services.

In the tertiary education sector, Equal Opportunities Officers have acted as the representatives of their institutions in negotiations with the commission. Task Forces set up to review sevices in education, health, welfare and labour all included nominees of the SAEAC. Reports of all Task Forces called for the employment of bilingual and bicultural staff to facilitate access to services by N.E.S.B. clients. In addition, recommendations were made on the participation of N.E.S.B. persons in the decision-making processes.

Ethnic Affairs Management Commitments so far received include E.E.O. Strategies.

SELECT COMMITTEE ON ENERGY NEEDS IN SOUTH AUSTRALIA

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

That the Hon. Carolyn Pickles be substituted for the Hon. B.A. Chatterton, resigned, as a member of the Select Committee.

Motion carried.

QUESTIONS ON NOTICE

STATE HERITAGE

The Hon. M.J. ELLIOTT (on notice) asked the Minister of Health:

1. How long does it take for buildings to be processed for inclusion on the Register of State Heritage Items?

2. Is it correct that the number of people assessing heritage buildings has been reduced from four to two?

3. Is it also correct that the two people lost were the most experienced?

The Hon. J.R. CORNWALL: The replies are as follows:

1. Inclusion of a property on the Register of State Heritage Items requires both field and archival investigation and a legal process. Field research and archival investigations may take as little as a few days to several months, depending on the complexity of a particular property and its history. In an emergency situation to protect a property from damage or destruction it can be placed on the interim list within a few hours. In the ordinary course of events it takes several months from the time a property is researched and a nomination report is prepared for it to be entered on the interim list and then a further six to nine months before it is entered on the Register of State Heritage Items.

2. Yes.

3. Consideration was given to the range of skills necessary to ensure a well balanced team of specialists remained to carry out the function and the general performance of the individuals concerned. Experience as such was only one of the factors taken into account when deciding which contracts would not be renewed.

CONTAINER DEPOSITS

The Hon. M.J. ELLIOTT (on notice) asked the Minister of Health:

1. Is the Minister aware that the South Australian Brewing Company has spent approximately $1 million in changes to labelling and can lids to accommodate the proposed changes to deposit legislation as outlined earlier in the year?

2. Is it the case that the South Australian Brewing Company has still not been officially notified of the new changes to container deposit legislation?

3. Is the Minister prepared to allow me to see the legal opinion that he sought which caused the abrupt change in Government direction in relation to container deposits?

The Hon. J.R. CORNWALL: The replies are as follows:

1. Other than the information published in the press, the Government has no detailed information.

2. No.

3. No.

SELECT COMMITTEE ON ENFIELD GENERAL CEMETERY ACT AMENDMENT BILL 1986

The Hon. BARBARA WIESE (Minister of Local Government): I move:

That the time for bringing up the report of the select committee be extended to Tuesday 10 March.

Motion carried.

SELECT COMMITTEE ON ARTIFICIAL INSEMINATION BY DONOR, *IN VITRO* FERTILISATION AND EMBRYO TRANSFER PROCEDURES IN SOUTH AUSTRALIA

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

That the time for bringing up the report of the select committee be extended to Tuesday 14 April.

Motion carried.

FAIR TRADING BILL

Adjourned debate on second reading.

(Continued from 6 November. Page 1918.)

The Hon. K.T. GRIFFIN: The Opposition is prepared to support the second reading of this Bill, which was introduced on 6 November. Although at the time it was not regarded as being a matter of great urgency, towards the end of that rather busy part of the session it appeared that we would have to deal with it before we rose in December and would have to address very important issues along with other heavy legislation such as workers compensation and occupational health and safety.

However, the Attorney-General was persuaded to leave the matter on the table, and that was appreciated, and since the Bill was introduced it has been considered by a number of community, professional, business and trade organisations. I understand that a number of them have made submissions to the Attorney-General, as they have made them to me.

One of the concerns expressed to me by several of the trade and commercial organisations was that on 14 August last year a letter was received from the Commissioner for Consumer Affairs requesting comment on a package of three Bills by 27 August, and they regarded that as quite impossible to achieve and were then very much concerned to have more time to consider the Bills, which were finally introduced in November.

This Bill is one of three Bills relating to fair trading and trade practices. I shall address some comments to the other two Bills at a later stage of the proceedings. To some extent the Bills are designed to achieve a greater level of uniformity between the States and the Commonwealth on consumer affairs matters.

However, in some respects they do differ from Commonwealth legislation, and there are differences between the Bills, for example, in the description of a consumer. Those differences in respect of the definition of 'consumer' in these Bills does not take into account that there is yet another definition in the consumer credit legislation. So, one of the major concerns that has been drawn to my attention by people who have had an opportunity to consider these Bills is that there needs to be more consistency in terminology—for example, in the definition of 'consumer'—as well as in other aspects of the Bills defining particular aspects of trading or business activity which might be subject to regulation.

The Bill before us deals with door-to-door trading, mock auctions, fair reporting, retail transactions, advertisements, recovery of trading debts, trading stamps, and other administrative and enforcement matters. It brings together into one piece of legislation all the consumer type legislation in those areas of activity. As a matter of principle that is very much supported. This objective was part of the Liberal Party policy at the most recent State election, and it will certainly assist the commercial community if all the relevant legislation affecting their activities is in one Bill—although the other areas which might affect the commercial community, such as consumer credit and trade practices, are covered by other legislation.

In dealing with this Bill, I believe it is appropriate to identify those areas in relation to which I have a concern or in respect of which others have raised a concern or which need some clarification. I shall do this running through the Bill so that the Attorney-General might be able to obtain some responses and provide them to the Council prior to considering the Bill in Committee. I refer first to the definitions in clause 3. The definition indicates that 'business' includes a trade or profession. That rather suggests a widening of the jurisdiction of the Commissioner for Consumer Affairs, with this type of consumer protection legislation to deal with professions, such as the medical profession, which is already subject to regulation under its own Act of Parliament, the legal profession, which, again, is subject to its own Act of Parliament, the accountancy profession, and a number of other professions.

I would like the Attorney-General to explain whether the Government intends that the ambit of this fair trading legislation should in fact include those sorts of professions, the extent to which the Government proposes that those professions be bound, and the nature of the practices that the Government envisages will be subject to regulation under this Bill.

The definition of 'consumer' is different from the definition given in the trade practices legislation, and the consumer credit and consumer transactions legislation. There is no monetary limit by which the consumer may be described. According to the definition in this Bill, 'consumer' means 'a person who acquires, or proposes to acquire, goods or services or purchases or leases, or proposes to purchase or lease, premises, not being a person acting in the course of a business'. That is a fairly wide definition. Of course, it may be, given the nature of the consumer practices which are to be proscribed by this legislation, that it is not possible to bring that definition into line with that in other consumer protection legislation. However, I would like the Attorney-General to address the question and to identify why it is not possible to have a more comprehensive and uniform definition across the whole spectrum of consumer protection legislation.

In addition, that definition does not seem to exclude a person who is in the course of establishing a business or profession, at the time when such a person is putting together the necessary premises or other facilities for carrying on a business, or even establishing the necessary stationery and office equipment. In my view, such a person would not be caught by the definition and therefore anything which is preliminary to the commencement of a business or a profession would seem to be within the purview of this Act, and I suggest that that is not appropriate. It may be that we have to extend the definition so that anything done that is preliminary to commencing a business is not within that definition.

I draw attention to the definition of 'goods'. The Bill provides that ' "goods" includes anything growing on, or attached to, land that is severable from the land'. I am concerned about the breadth of that definition. If taken to its extreme it could be taken to mean a transportable home which is resting on stilts, and it could relate to other goods which might not be in the nature of consumables or consumer items but which nevertheless were transportable or severable from land. It seems to me that if that is what can be encompassed within the definition it is too wide, and we ought to consider limiting it so that we do not have this provision extending to goods such as transportable homes.

Part II of the Bill deals with administration of the legislation. The establishment of a Commissioner for Consumer Affairs is provided and the functions of the Commissioner are established. One submission made to me is that the functions of the Commissioner as set out in clause 8 are too wide, that in fact giving the Commissioner power to monitor business activities affecting consumers is really giving him a highly intrusive responsibility, way beyond the necessary administration of this legislation. Of course that would be a basis on which the powers of enforcement, entry

to premises, the seizure of books and papers, and the requirement to answer questions can be based.

The ambit is much too broad. I have no difficulty personally with the Commissioner having a function of investigating practices that may adversely affect the interests of consumers generally or a particular class of consumer, but I do have a concern about giving the Commissioner powers to monitor business activities affecting consumers. That is relevant also when I make some reference to the enforcement provisions in Part X.

In clause 10, the Commissioner has the power to delegate his or her powers, as does the Minister under subclause (2). I have some concern that this may enable the Commissioner to delegate his or her powers under this or a related Act to persons who are not public servants and who may have no relationship directly to the authority of the Commissioner or the Department of Public and Consumer Affairs. To that extent some consideration ought to be given to a limitation on the power of the Commissioner to delegate so he may delegate only to other persons in the Public Service as is provided, as I recollect, under the provisions of the Statutes Amendment (Fair Trading and Trade Practices) Bill.

Part III of the Bill deals with door-to-door trading. Some concern has been expressed to me that a cooling-off period has been set at 10 days commencing on and including the day on which the contract is made. I would agree that that period seems to be long, but presently it is a 14 day period under the Book Purchasers Protection Act as it relates to books and eight days in relation to other goods. So, a compromise of 10 days appears in those circumstances to be not unreasonable.

The definition of 'door-to-door trading' in clause 13 has caused some concern, particularly to the Retail Traders Association and also to charitable organisations such as the RSPCA and other groups undertaking telephone canvassing and selling of products to consumers. The Bill provides:

> 'door-to-door trading' means the trading practice under which—
> *(a)*
> (i) a person goes from place to place; or
> (ii) makes telephone calls, seeking out persons who may be prepared to enter, as consumers, into contracts for the supply of goods or services.

The point made to me is that under the present Door-to-Door Sales Act there is no embargo on those sorts of telephone contacts which may be the commencement of discussions between a trader and a prospective purchaser on goods which the prospective purchaser might require. If the telephone call is made and subsequently the prospective consumer attends at the premises of the trader then the cooling-off period applies and all the other consequences of falling within the definition of 'door-to-door trading' apply to the transaction into which the trader and that telephone contact may subsequently enter.

The Retail Traders Association made the point in its submission (which I understand the Attorney-General has), as follows:

> The association is concerned at the definition of 'door-to-door trading' expressed in clause 13 (1). This definition is significantly different to the current provisions of section 6 (1) of the Door-to-Door Sales Act 1971, particularly in its extension to include the making of telephone calls. The association believes that clause *(a)* (ii) ought to be deleted from the definition of 'door-to-door trading'. Many retailers frequently contact persons by telephone—often these persons are longstanding account customers who appreciate such personalised service. If such a telephone call involves or is subsequently followed up with negotiations, then the retailer would be *prima facie* bound by the provisions of the Bill, as expressed in section 14. Whilst no objection is made to maintaining existing controls attention should be given to ensuring the proposed provisions do not extend the scope of the Act.

I certainly have some sympathy with the view of the Retail Traders Association on that point. In that context, I have also referred to charitable organisations which do have a telephone contact program as a result of which those contacted on the telephone may agree to purchase goods from the charitable organisation. If that were to be prescribed by this legislation it would certainly make it difficult for those organisations and would mean that they are then subject to all of the constraints of this piece of legislation as it relates to door-to-door sales.

In clause 14 of the Bill, again relating to door-to-door sales, subclause (3) provides that the part does not apply to a contract of a kind excluded by the regulations from the application of this part. I ask the Attorney-General, in replying, to give some indication whether at this stage any contracts are proposed for exclusion by reference to those contracts in regulations. If so, could he give some information about what they may be?

Clause 15 deals with the contents of a contract and with the prohibition of certain contractual terms. Subclause (1) *(d)* provides that the contract is not to contain a provision of a kind prohibited by the regulations. I have expressed concern previously about legislating by regulation in this way, and I would like the Attorney-General again to indicate what sort of provision might be contemplated for inclusion in the regulations so that a contract falling under the description of a door-to-door sales contract should not thereafter include that sort of provision.

Clause 16 refers to a prescribed contract. The prescribed amount is referred to in the Bill. It is to be $50 under subclause (5), which also allows the prescription of some other amount by way of regulation. It is important to gain an appreciation of what other amount might be considered for prescription by regulation. That clause also refers in subclause (3) to the sorts of contracts that are not prescribed contracts and, in paragraph *(c)*, a contract of a kind declared by the regulation is not to be a prescribed contract. Again I would like some indication of what sort of contract might be contemplated for inclusion in the regulations for the purpose of this paragraph.

I have some concern about clause 16 (4), which provides that, in proceedings in which it is alleged that a contract for the supply of goods or services is a prescribed contract, the contract shall be presumed to be such a contract in the absence of proof to the contrary. It is a reverse onus clause, but it is not just because of that fact that it causes me concern. I would have thought that a contract could be judged on its terms and that it would be important not so much to deem a contract alleged to be a prescribed contract to be such a contract in the absence of proof to the contrary, but to have the contract produced and for the court before which proceedings are taken to make a conscious decision as to whether or not a contract is within the definition of a prescribed contract.

I think that this sort of clause is dangerous when it comes to categorising contracts. One cannot really quarrel with a presumption of the validity of a certificate from the Commission for Consumer Affairs, for example, or some other presumptions which are in a sense mechanical or procedural, but, when it comes to reversing the onus with respect to the nature of a contract for the purposes of the Door to Door Sales Act, I have some concern. Unless there is a good reason for leaving it in, I am inclined to the view that it should be removed by amendment.

In clause 17 (1) certain requirements must be complied with in relation to a prescribed contract caught by the door to door sales provisions of the Bill. This subclause requires that, if a contract provides for the carrying out of work of a prescribed nature, then it must detail particulars of the

work. There is no indication as to what 'prescribed nature' might be and I would like some clarification of that.

With respect to clause 18, reference again is made to the supply of services of a kind excluded by regulations from the application of subclause (2). There is no indication as to what might be contemplated in those regulations. This relates to the cooling off period. Clause 27 (1), which still relates to door to door sales, provides:

> Where a contract to which this Part applies has been rescinded, or is capable of being rescinded, under this Division, no person shall, for the purpose of recovering an amount alleged to be payable by the consumer under the contract or a related contract or instrument—*(a)* bring, or assert an intention to bring, legal proceedings against the consumer.

Also, no person can place the name of the consumer on any list of defaulters or debtors, or take any other action against the consumer. There is a defence that, at the time of the alleged offence, the defendant did not know and could not reasonably be expected to have known that the contract had been rescinded or was capable of being rescinded.

The difficulty with the clause is that there is a maximum penalty of $5 000 for an offence. The concern that I have is that there may be a legitimate debate as to whether or not a contract has been rescinded and there should not therefore be any prohibition against a party who has a genuine dispute as to whether or not the contract has been rescinded to raise that question, if necessary in correspondence with the other party, but more particularly in legal proceedings. I think that if there is a dispute the party's right is to be able to resort to litigation in order to have the matter resolved. Clause 27 as it appears in the Bill suggests an attempt to override the rights of a citizen to take matters to litigation and to be able to say that such legal proceedings are being pursued, not so much to recover the money but, rather, to resolve the dispute as to whether or not the contract is in fact a prescribed contract or has been rescinded and whether any part of it might be severable from that part which offends against the Bill, if it does so offend, and for the party who desires to prove those points to be able to have the matters resolved once and for all in the courts. This clause seems to be a very serious infringement of the rights of parties ultimately to resort to litigation to have issues resolved.

The fair reporting provisions of the Bill are contained in Part V and some questions have been raised about these provisions. I presume that the Attorney-General has a submission from the Australian Finance Conference which raised the question as to whether credit providers are caught by the fair reporting provisions of the Bill—it seems that they are. The Australian Finance Conference raised the practical difficulties which arise from credit providers checking orally with each other about the credit worthiness of persons who have applied for credit. At the moment it appears that they would be covered by these provisions. Of course, that means that they would have to keep a written record for at least six months of every such inquiry. That creates some difficulty and I think that it ought to be more closely scrutinised.

In relation to the Retail Traders Association, again concern has been expressed that there might be an over-regulation of persons who might utilise facilities such as the Credit Reference Association of Australia Ltd, which is really a cooperative of all retailers and traders who are members of it, the services of which are also utilised by State and Federal Government agencies. The Credit Reference Association of Australia Ltd also has raised some questions about this Bill, particularly about clause 31 (5), because that provides that a trader who receives an oral prescribed report shall, at the time of receipt, make a written record of the contents of the report and shall retain that record for six months after the receipt. I think that the provision shows some lack of appreciation of the way that business houses and small businesses operate. Frequently they check on somebody who may actually be in the shop at the time and they will get an indication as to whether or not that person is a good credit risk.

They do not sit down immediately and make a written report of the conversation. If it is a large retail organisation, they may make a number of those requests for a report and they may receive those reports each day. Those reports may be received in quite a number of different places within the retail organisation. I think it is a particularly onerous requirement that there should be a written record of the contents of that inquiry and that the result of the inquiry be kept for six months after receipt.

The other difficulty is that a lot of information is now communicated by computer and, as I understand it, the members of Credit Reference Association of Australia Limited do, in fact, receive a lot of their information by pressing a button on an in-house or on-line computer terminal. No written record is kept of the information received, although it is on the master tape at the Credit Reference Association. If the person who has received the report is required to keep a written record of the communication by computer, that raises yet another perspective and it creates even more difficulties. I would have thought that there was no real need for clause 41 (5), but I would be open to persuasion to the contrary if there are good and compelling reasons that I may have overlooked. However, on the face of it and after discussion with a number of people, it seems to me to be rather an onerous and unnecessary requirement on business.

With respect to clauses 32 and 33 the question is raised whether the obligation is extended to the receipt of data by computer. There is reference to a report in rating and a report that was oral, but there is no reference to information that might be communicated by an on-line computer. It seems to me that that has to be addressed, if only to provide some greater certainty in the way in which this will apply to a whole range of business and commercial activity.

Clause 34 relates to the correction of errors. Subclause (4) provides:

> Where a reporting agency or trader amends, supplements or deletes information, the agency or trader shall give notice in writing of that amendment, supplementation or deletion to—
>
> *(a)* Every person nominated by the person to whom the information relates; and
>
> *(b)* In the case of a reporting agency, every person provided by the agency with a prescribed report based on the information within 60 days before the making of the amendment, supplementation or deletion.

This seems to give to the debtor or the person in respect of whom the report is being made and in respect of whom a correction has been made a right to nominate to whom the information is to be given. There is no limit on it. It is open ended and it could mean hundreds of people as it reads at present. I do not think that that was ever intended but I would propose some sort of limitation on it, such as every person nominated by the person to whom the information relates where there has been a trade or dealing with the consumer or information has been provided on that consumer to that other person, or some other similar sort of limitation which would not give the consumer an open go to have the information communicated to a whole range of people unnecessarily.

It seems to me that in clause 36 there needs to be some extension to the bases upon which information may be divulged. Paragraph *(d)* provides that a person who 'divulges information relating to another person from the files of a

reporting agency without proper authority to do so is guilty of an offence'. There is a question of what is proper authority and some attention needs to be given to that. I also suggest that it may be that some information has to be divulged for the purpose of legal advice or proceedings, and that ought to be recognised as an exception to the embargo imposed by clause 36.

Clause 37 relates to the powers of the commercial tribunal. We have moved some amendments, and they have been enacted, relating to appeals from the commercial tribunal. I do have some concern with the lack of an appeal except by leave where there is not a matter of law involved. It seems to me that the tribunal can place some fairly heavy burdens on an agency or trader and in those circumstances there ought to be an appeal as of right.

I have some difficulty with clause 42 because it seems to me to be very wide ranging. It allows the Commissioner to:

> . . . require a person, who publishes or causes to be published a statement promoting, or apparently intended to promote the supply of goods or services or the sale or letting of premises by the person, to provide the Commissioner, within the period specified in the notice, with proof of any claim or representation made in the statement.

It is a very wide ranging power. It could overlap areas such as the jurisdiction of the Corporate Affairs Commission under the prospectus and prescribed interest provisions of the Companies Code. I want to ensure that that provision in clause 42 does not apply to those agencies that already have power to require the production of documents or papers or to substantiate claims. In addition, it seems to me that the statutory offence which is established by clause 42 gives the Commissioner complete discretion and that, if the Commissioner is not satisfied with the information that is provided, that in itself is a basis for issuing proceedings alleging that the person of whom the information has been required has failed to provide that proof as required by the notice. I would like to see that that is more flexible so that perhaps the Commissioner may take the matter to the court for an order requiring substantiation and for the court to be able to order compliance or to take other steps to protect the consumer if, in fact, the proof is not established on the balance of probabilities.

Part VIII deals with the recovery of trading debts. This is a particularly vexacious, troublesome and controversial part of the Bill because, among other things, a creditor or the agent of a creditor shall not for the purpose of recovering a trading debt make any personal calls or telephone calls for the purpose of demanding payment on a public holiday or between the hours of 9 p.m. of one day and 8 a.m. of the next. I am very concerned about these legal time limit hurdles being placed in the way of creditors collecting their debts. There are isolated instances where there may be a personal call or a telephone call to a debtor at some unusual time of the day or night or on weekends. But by far and away the majority of calls, both personal and telephone calls, to debtors are made either by a creditor or by a person acting on behalf of a creditor at generally reasonable times of the day or night, and it seems to me to be quite extraordinary that the Government is proposing in this Bill to give to debtors yet another avenue by which they can escape from legal and moral obligations to a creditor.

I suggest that in 99.9 per cent of cases of bad debt the creditor has a legitimate and proper claim and has made goods or services available in good faith that they will be paid for. It seems to me to be unreasonable to so weight the scales in favour of the debtor as to make it virtually impossible for a creditor to collect his or her debts.

The embargo on calling on public holidays, or between the hours of 9 p.m. of one day and 8 a.m. of the next, really takes no cognizance of the fact that many people do shift work and are unapproachable or uncontactable at any time other than between 9 p.m. of one day and 8 a.m. of the next, or even on public holidays. It takes no cognizance of the fact that there are professional debt dodgers who will use this to defer the obligations which they should legally and morally be meeting, and it takes no cognizance of the fact that a number of debtors may, in fact, be away from their homes for long periods of time, say, working in the inland or offshore and only be contactable either on public holidays or at the times proscribed by this legislation. Therefore, I strongly oppose that part of clause 43 relating to the limits on capacity to collect debts.

In addition, in subclause (1) *(d)* we have communications by a creditor or an agent of a creditor with a debtor being proscribed where the person (that is, the debtor) has notified the creditor or agent in writing that all communications in relation to the debt are to be made to a specified legal practitioner appointed to act on his or her behalf and the person has appointed the legal practitioner to so act. That may be all well and good where a debtor has acted in good faith and the legal practitioner acts expeditiously, but it ignores the fact that there are many people who will seek legal advice merely to defer the payment of their legal and moral obligations, and that there are legal practitioners who are dilatory and who are not inclined to deal promptly with communications of this sort, particularly where they might have some sympathy for the debtor and might play their part in stringing out the creditor for an inordinate period of time.

I see no reason at all why a creditor or an agent of a creditor should not continue to contact a debtor at any time, notwithstanding that the debtor has instructed a legal practitioner to act except, of course, where perhaps legal proceedings have been issued. In those circumstances, I suggest that it is unethical for a person then to be contacting a party who has a legal practitioner acting for him or her. The other difficulty with clause 43 is that it would seem to deal with debts which might be owing by a trade supplier to a debtor. The point has been made to me that by virtue of the definition of 'trading debt' the sorts of limitations which are being imposed on creditors and agents of creditors by this clause will militate against trade suppliers contacting those to whom they have made materials or other goods or services available. That, of course, will add yet another burden to the business community in times of quite considerable economic difficulty.

The other difficulty with clause 43 is that in subclause (1) *(g)* a creditor or agent of a creditor is not to take any other action that is declared by regulation to be unlawful. I object to that. I see no reason at all why, if any other action is intended to be proscribed, it should not be in the Bill. I object to regulations being used to make laws which proscribe actions which presently are lawful and reasonable in circumstances such as those covered by clause 43, and in many other circumstances.

I will now raise some questions about the enforcement provisions in part X. In clause 46 the Commissioner is given power to assume the conduct of legal proceedings on behalf of a consumer. That is done where the consumer makes a written request of the Commissioner, and the Minister approves. In those circumstances, the Commissioner can then take over proceedings, prosecute them, defend them and generally determine what can or cannot be done in relation to those legal proceedings. The consent of the consumer is irrevocable, except with the agreement of the Commissioner.

I suggest that, if this clause is to stay in the Bill, the Minister may also have a role to play and the Commissioner should be able to be directed by the Minister as to what should or should not be done in a particular matter. The difficulty that I think consumers have with this clause is that, whilst it might be convenient in the initial stages for the Commissioner to act for a consumer and assume the conduct of the litigation, it means that a consumer is then bound by all the decisions which are taken by the Commissioner—that any result which might be adverse to the interest of the consumer is a result over which the consumer generally has no control.

I think that there ought to be some protection given to a consumer in relation to those sorts of obligations which might result from a decision of a court where a consumer has requested the Commissioner to do something or to take a particular course of action but the Commissioner has declined to do so and as a consequence the consumer has a liability which that consumer was intending to avoid. In clause 46 (5) reference is made to the Commissioner not instituting, defending or assuming the conduct of proceedings if they involve a monetary claim exceeding a prescribed amount which in relation to premises is $100 000, in relation to proceedings in the capacity of mortgagor is $50 000, or in all other cases $25 000 or such greater amounts as may be prescribed.

What I would like from the Minister is an indication as to what greater amounts might be prescribed within the foreseeable future, if that is a possibility. I think that it ought to be put on the record that, in effect, what is happening with the commission taking over the conduct of proceedings is that the consumer is then, *de facto*, receiving legal aid. One has to balance that, of course, against the other party who will have to defend the proceedings at his, her or its own cost, weighed against the virtually unlimited resources of Government. Let me say, also, in relation to clause 7 *(d)* that the other difficulty I see is that, if the Commissioner has taken over the conduct of proceedings and any amount other than costs is awarded against the consumer then that is recoverable from the consumer even though the consumer may have wanted to withdraw from the proceedings. I find it rather concerning that a consumer will be lumbered with the payment of amounts awarded by a court where the consumer was trying to either settle or otherwise avoid that obligation but the Commissioner declined to withdraw from the case.

The other difficulty is that there may be a counterclaim against a consumer, and it seems to me that if the Commissioner applies for a separate hearing that counterclaim is to be heard separately. There is no reference, of course, to a set-off, which is different from a counterclaim, but whatever the nature of the claim or set-off it seems to me that more consideration has to be given to the additional costs that the consumer might bear as a result of the counterclaim or set-off being heard separately.

Clause 47 of the Bill allows an authorised officer to require any person to answer any questions orally or in writing and to verify the answer to a question by an oath, affirmation or statutory declaration or to produce books or documents. In respect of this clause, I point out that there is no recognition of legal professional privilege. There is no recognition that a person ought not to be required to answer questions or to produce documents or papers that might tend to incriminate. Some protections ought to be built into clause 47 to take account of those matters. I shall address more comment to that issue when we consider the Statutes Amendment (Trade Practices and Fair Trading) Bill, which deals specifically with the powers of the Commissioner for Prices but which, nevertheless, is related to the powers of the Commissioner for Consumer Affairs under this Bill. Clause 48 provides that:

> . . . an authorised officer may at any reasonable time *(a)* enter and search any premises; *(b)* make any inspection, conduct any test and take any samples; and *(c)* take any books or documents.

Further, an authorised officer may retain them, and may do certain other things in relation to those documents, books and papers. Under this clause, the Commissioner for Consumer Affairs has more power than does a police officer. No warrant is required before entry and search (that is, a warrant issued by a judicial officer) and the power to enter and search without a warrant may also be a power to search domestic premises as well as commercial premises. I have some very grave concerns about the extent to which the Commissioner is to exercise and have those powers without some sort of supervision by a judicial authority.

I draw the attention of the Council to the fact that under the Companies Code the Commissioner for Corporate Affairs is subject to a number of constraints in relation to entering and searching premises and in relation to the answering of questions, and it is appropriate to have regard to those constraints which put a more appropriate balance on the rights of citizens *vis-a-vis* the Commissioner than does the provision in the Bill at present. Also, I draw attention to the provision in clause 47 (1) *(b)*, which provides that the requirement to verify the answer to a question may extend to by an oath, affirmation or statutory declaration. I suggest that it is inappropriate for an authorised officer, regardless of other constraints, to require an oath or affirmation, because an oath or affirmation is made only in the courts, and a statutory declaration is the appropriate vehicle by which that can be required, if it is to stay in the legislation. Clause 48 (4) provides:

> An authorised officer must, at the request of the occupier or the agent of the occupier of premises entered or about to be entered under this section, produce a certificate of authority . . .

I suggest that there ought to be a much stronger obligation on the authorised officer and that the authorised officer ought to be required to produce that authority without waiting for the occupier to request it. Occupiers of domestic or commercial premises are remarkably reluctant to make those sorts of demands. They may be ignorant of the law or of their rights and it seems to me that all the onus ought to be put on the authorised officer rather than waiting for an occupier of premises to respond to a request by an authorised officer to enter premises by requiring the production of a certificate of authority immediately the request to enter is made.

Clause 54 provides for the expiation of certain offences. It is not clear what offences are to be expiated. Subclause (1) stipulates that 'prescribed offence' refers to an offence declared by the regulations. I would like the Attorney to give some indication of what prescribed offences are to be declared by regulations. It is interesting to note in passing that the provisions of clause 54 are different from the provisions in the controlled substances legislation relating to on-the-spot fines for marijuana use. In this clause the Commissioner has power to withdraw an expiation notice 'if the Commissioner is of the opinion that no reasonable grounds exist for proceeding . . .'—and I have no difficulty with that—'or if the Commissioner is of the opinion that the person should be prosecuted for the prescribed offence . . .' So, the Commissioner has an option to withdraw an expiation notice, even if payment has been made, and to proceed in the court. But, of course, that is not an option which is available under the on-the-spot fine legislation, passed last year at the instigation of the Minister of Health. This provision in clause 54 is more akin to the provision

that exists in relation to expiation notices under the Road Traffic Act.

Clause 55 deals with the question of vicarious liability. A concern expressed to me by one of the trade organisations was that it seems to allow a number of people to be prosecuted for the one offence. I must say that that is my understanding of clause 55: it also reverses the onus of proof in respect of an employer or a principal; where an agent or employee is convicted, in relation to a body corporate where the body corporate is convicted the director is also to be guilty of an offence. Clause 55 (2) provides:

> Where an offence is committed against this Act in relation to the formation of a contract, any person who has derived or would, if the contract were carried out, expect to derive a direct or indirect pecuniary benefit from the contract is also guilty of an offence and liable to a penalty not exceeding the maximum prescribed for the principal offence, unless it is proved that the person could not, by the exercise of reasonable diligence, have prevented the commission of the principal offence.

These sorts of provisions are in a lot of legislation. I think we must look at the principle of it, as they appear now to be so prevalent. I shall further comment on this scheme during the course of debate in Committee. I draw the attention of the Council to the revised formula which was adopted earlier in this session in the workers compensation legislation and more particularly in relation to the occupational health, safety and welfare legislation.

In respect of the miscellaneous provisions of the Bill, I merely draw attention to clause 62 (2) *(a)*, which enables the regulations to prescribe codes of practices to be complied with by traders. I would like the Attorney-General to indicate what, if any, codes of practices are contemplated at present.

I have tried to deal at length with a variety of issues arising under this Bill. There may be others that I raise during the Committee stage but, in light of the need to have some detailed responses to the issues I have raised, and because the Bill is of such importance to a wide range of people within the business and commercial community, as well as consumers, it is appropriate to alert the Attorney-General to the issues about which I have concern and to the questions that need further clarification. With those matters in view, I am prepared to support the second reading of this Bill.

The Hon. C.J. SUMNER (Attorney-General): I thank the honourable member for his contribution to this debate and for indicating the areas that he wishes me to address in my reply. To enable that to happen I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

TRADE PRACTICES (STATE PROVISIONS) BILL

Adjourned debate on second reading.

(Continued from 6 November. Page 1921.)

The Hon. K.T. GRIFFIN: The Opposition is prepared to support the Bill. It is largely uniform legislation resulting from 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 Commonwealth has amended its Trade Practices Act to allow State complementary legislation to be enacted, and those Federal amendments came into operation on 1 June 1986. As I understand it from the Minister's second reading speech, Victoria has a Fair Trading Act which came into effect in April 1986. New South Wales, Western Australia and Victoria intend to follow soon with uniform legislation. I would like the Minister to indicate what is the position in Queensland, the Northern Territory and Tasmania.

Some aspects of the trade practices legislation are rather heavy handed, but as a matter of practice and convenience I do not think that much can be done about that at this stage. Generally speaking, the Federal Trade Practices Act does not apply to the activities of individuals who carry on business and deals with corporations, but as a result of this complementary legislation those sorts of restrictions imposed by the Federal Trade Practices Act will apply to individuals in addition to corporations. The rights and obligations will be able to be enforced through the South Australian courts.

I have already made the point, in dealing with the Fair Trading Bill, that the consumer is much more widely defined in this legislation than under the current consumer protection laws in this State.

The Bill is designed to deal with goods or services up to $40 000 or such greater amount as may be prescribed and goods over $40 000 or such greater amount as may be prescribed where the goods were of a kind ordinarily acquired for personal, domestic, or household use or consumption or the goods consisted of a commercial road vehicle and those goods were not acquired for the purpose of resupply or for the purpose of using them up or transforming them in trade or commerce or in the process of production or manufacture or repairing or treating other goods or fixtures on land.

Basically the Bill makes it unlawful in trade or commerce to engage in conduct that is misleading or deceptive or is likely to mislead or deceive. A wide range of conduct is prescribed, such as bait advertising—offering prizes or gifts in certain circumstances, referral selling, pyramid selling, harassment and coercion, unsolicited credit and debit cards and unsolicited goods are included in that range of conduct.

Some concern has been expressed to me on clause 29, although such concern relates more to some federal amendments which I understand have not yet been proclaimed. Clause 29 relates to unsolicited debit and credit cards and provides that a person shall not send a prescribed card to another person except in certain circumstances, namely, where a request in writing has been made by the person who will be under liability to the person who issued the card in respect of the use of such card or in renewal, replacement or substitution for a prescribed card of the same kind as previously sent to that other person in pursuance of a request in writing by the person who was under a liability to the person who issued the card previously so sent in respect of the use of that card. The prescribed card is a credit card, debit card or article that may be used as a credit card and a debit card.

The concern expressed to me is that it is quite possible that although debit cards are issued—and I understand that some building societies and credit unions can issue Visa cards presently as debit cards—it is simple for such to be converted to a credit card without the knowledge of any issuing credit provider. For example, a building society can issue a debit card and at the point of sale, if there is insufficient money standing to the credit of the account in respect of which the debit card is to be used and the supplier of the goods debits a larger amount than the existing credit, instead of being a debit card it then becomes a credit card as credit has been advanced. Yet, the credit provider has not been party to that act or decision and it may in fact be without the immediate knowledge of the person using the card. So, there is an ease with which the debit cards issued at the request of a person may in fact become credit cards

and, with the electronic funds transfer system becoming more and more popular, I think that that risk is even greater.

I understand that in the federal legislation a 1986 amendment provided that a corporation shall not take any action that enables a person who has a credit card or a debit card to use the card as a debit card or a credit card, as the case may be, except in accordance with a request in writing by the person. Whilst that Commonwealth amendment does not apply in the circumstances covered by the South Australian Bill at present, it may come before us by way of amending legislation. If that occurs it will create even further difficulties for those who issue debit or credit cards. I ask the Attorney-General to consider how that will affect credit providers and card issuers in South Australia and whether it is intended to enact as part of the State law subsection 2 *(a)* which is contained in the Commonwealth legislation. If that is the case, when is that likely to occur?

Bankers, credit unions and building societies are all likely to be affected by that Commonwealth legislation, particularly if it is to be translated into an amendment in South Australia. Clause 18 provides:

> A person shall not, in relation to employment that is to be, or may be, offered by the person or by another person, engage in conduct that is liable to mislead persons seeking the employment as the availability, nature, terms or conditions of, or any other matter relating to, the employment.

It seems curious that a provision relating to employment should be placed in a Trade Practices Bill. I think that provisions relating to employment would be more appropriately contained in the Industrial Conciliation and Arbitration Act. I certainly do not support such misleading conduct and I am prepared to support the prescribing of it, but it seems curious that it should be included in this legislation rather than in legislation which is more pertinent to employment and industrial matters.

Clause 36 enables a judge to make a range of orders, including injunctions under clause 37 and orders under clause 38. Those orders relate to preventing a person from taking certain action and from doing certain things. It seems rather curious that there is no description of the court which can make those orders, except that in clauses 37 and 38 reference is made to the District Court having the power to grant those injunctions and to make those orders, although in other parts of the Bill reference is made only to the court. In relation to the federal legislation, the federal court can make those orders. At the moment the District Court does not have power, as I understand it, to grant an injunction.

Because the cost structure of the District Court is almost akin to the Supreme Court, I think that it would be more appropriate to allow only the Supreme Court to exercise the powers set out in clauses 37 and 38 of this Bill. That would then give to the Supreme Court an equivalent jurisdiction to that exercised under the federal legislation by the federal court. I do not think that the District Court is the appropriate court to make those sorts of orders, and I will propose an amendment to allow the jurisdiction to be exercised by the Supreme Court.

When I read the reference to the District Court in clauses 37 and 38, it occurred to me that it could have been a typographical error or an oversight, particularly if this legislation is supposed to be uniform with that which exists in New South Wales, where of course the District Court has a much higher status and jurisdictional level as well as wider powers than is the case with its counterpart in South Australia. That may be why reference is made to the District Court in those two clauses.

With respect to the defences which are set out in clause 42, some suggestions were made that those sorts of defences also ought to be set out in the fair trading legislation. At the same time as the Attorney-General considers all the other matters that I have raised in relation to fair trading, he might also care to consider whether it is appropriate to extend the defences in the fair trading legislation to defences similar to those contained in clause 42 of this Bill.

Clause 32 refers to certain prescribed information providers. I think that refers particularly to the Australian Broadcasting Commission, the Special Broadcasting Service and those media outlets that have been granted licence under Part IIIB of the Broadcasting and Television Act. I certainly do not have any great problem with it, but it seems that constitutionally the State does not have jurisdiction to regulate those bodies anyway, and it is rather curious therefore that this provision is contained in the Bill. Of course, it may be only because of a desire to be abundantly cautious.

Those are the principal matters that I wish to raise in relation to this Bill. There may be other technical matters that I will raise during the Committee stage. At the moment, I support the second reading.

The Hon. C.J. SUMNER (Attorney-General): I thank the honourable member for his contribution and, in order to enable me to respond, I seek leave to continue my remarks later.

Leave granted; debate adjourned.

STATUTES AMENDMENT (TRADE PRACTICES AND FAIR TRADING) BILL

Adjourned debate on second reading.

(Continued from 6 November. Page 1922.)

The Hon. K.T. GRIFFIN: This Bill was part of the parcel of three Bills and is, to some extent, consequential upon the Fair Trading Bill and the Trade Practices (State Provisions) Bill. Nevertheless, it does contain material that requires more detailed consideration. It repeals legislation such as the Mock Auctions Act, The Pyramid Sales Act, the Door to Door Sales Act and the Fair Credit Reports Act, all of which are consequential upon the other two pieces of legislation to which I have just addressed some remarks.

The major area of concern in this Bill is with clause 6, which deals with the powers of the Commissioner for Prices. It relates to amendments to the Prices Act and is very largely a reflection of the powers of the Commissioner for Consumer Affairs, reflected in the Fair Trading Bill. The points that I made in relation to the powers of the Commissioner for Consumer Affairs under the Fair Trading Bill are also pertinent to clause 6 of this Bill because the Commissioner does have power to delegate, and some consideration should be given to the sorts of persons to whom the delegation may be made. For example, under proposed new section 6, the authorised officers are only to be persons employed in the Public Service of the State. It seems to me that delegation under proposed section 7 ought also to be limited to those who are employed in the Public Service of the State.

However, the more important consideration is in relation to proposed sections 9 and 10, which give the authorised officer power to require any person to verify the answer to a question by an oath, affirmation or statutory declaration, or to produce books or documents. If the questions are not answered, the book is not produced, or the answers are not verified as required, a prosecution may follow with a maximum penalty of $10 000, being the penalty that the court may impose. I make the point in passing that I do not think that it is appropriate to have any reference to an oath or affirmation in whatever form this proposed section takes.

However, I think that the authorised officer who has very wide powers to enter premises ought to be limited. A war-

rant should be issued by a magistrate, and there should be some limitation on the power to enter domestic premises. There should also be some recognition of legal professional privilege and of the fact that a lawyer whose offices might be entered in consequence of this legislation has a right to maintain confidentiality in respect of all clients' files, not only in respect of a particular person who may be under investigation by the Commissioner for Prices.

In addition, there should be some recognition of the right for a person being questioned to refuse to answer those questions or to refuse to produce the books or papers where they are likely to be incriminatory. There has always been a protection against self incrimination. Generally there has been a recognition of the principle of legal professional privilege, and it is appropriate in this legislation as in other legislation to ensure that specifically those matters are addressed.

When talking on the Fair Trading Bill, I referred specifically to the Companies Code. I draw attention to the fact that, under section 12 of the Companies Code, the Corporate Affairs Commission can require certain documents or papers to be produced by way of a notice in writing. If the books and papers are not produced, there may be an application for power to enter and seize and, under section 13 of the Companies Code, that authorisation is granted by a magistrate.

The other aspect of the Companies Code that could bear close examination with a view to perhaps adopting it for the Commissioner for Prices and the Commissioner for Consumer Affairs is the recognition of legal professional privilege in section 16.

There is also a provision which enables a person to refuse to make a statement or to produce books on the ground that the statement might tend to incriminate, but under section 14 (6), where the person claims before making a statement that the statement might tend to incriminate him, whilst the answer is still required, the statement is not admissible in evidence against him in criminal proceedings other than in proceedings under that section, namely, section 14.

We adopted that in relation to another piece of legislation that came before us a year or two ago. Although I cannot remember the detail of it, it was a useful way by which we did not stifle investigations but on the other hand ensured that the protection against self-incrimination was recognised.

In other legislation that has come before us—I think workers compensation and occupational health and safety—we have recognised protection against self-incrimination. It is recognised also in a variety of other legislation. We have recognised also legal professional privilege, and there is good reason in this particular case of the Commissioner for Consumer Affairs and the Commissioner for Prices to once and for all endeavour to clarify the powers of that Government officer.

I have made the point that the Commissioner really has powers that are much wider than those presently enjoyed by the police. The police must have a search warrant before they can enter premises. The police cannot require a person to answer questions and must give an appropriate caution, yet none of that applies to the Commissioner for Prices or the Commissioner for Consumer Affairs. Under this legislation and under the Fair Trading Act the Commissioner has power to investigate a whole range of things, not necessarily where an offence is suspected. Of course, that is unusual in itself.

The powers of the Commissioner really ought to be limited to those occasions where there is some reasonable suspicion of an offence having been committed and not just merely going on a fishing expedition to get information upon which, for example, to base some regulations, to proscribe certain conduct or to get information from which one might base amendments to legislation.

So, the powers of the Commissioner not only must be exercised not just in the interests of consumers but also must be more directly related, in my view, to the offences referred to in the Bills and the conduct required of people carrying on business as well as consumers under these Bills. For that reason I raise the issue of the powers of the Commissioner. I recognise that under the Prices Act the Commissioner already has wide powers, but in the context of this package of legislation I suggest that the powers are wider still.

I think it is an appropriate time to look at the principles which relate to powers to enter premises and require answers, and to ensure as much as possible that we set up some code of conduct by statute which ensures that the Commissioner has reasonable powers, but not powers which might be subject to abuse or which might impinge upon and infringe the sensitivities and civil liberties of ordinary citizens as well as those who might be carrying on legitimate and reasonable business activities. Those matters need to be given attention by the Attorney-General, and I certainly envisage pursuing them vigorously during the Committee stage of the Bill. In that context, therefore, I support the second reading.

The Hon. C.J. SUMNER (Attorney-General): I thank the honourable member for his contribution and, to enable me to respond, I seek leave to conclude my remarks.

Leave granted; debate adjourned.

ROAD TRAFFIC ACT AMENDMENT BILL (No. 6)

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.

In light of the fact that this Bill has been dealt with in another place, I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

The purpose of this Bill is to facilitate the use of photographic detection devices in the reduction of road accidents by introducing owner onus provisions to the Act. In the first instance it applies to red light cameras, but the Bill has been drafted in such a way as to allow for the future use of speed detection cameras, should the Government so approve, without requiring amendment to legislation.

Red light cameras were subjected to a trial in South Australia in 1984-85 and found to be an effective means of reducing accidents caused by red light running. A working group appointed by the government reported on the implementation of a red light camera program in South Australia and recommended that a program be established. However, the working group noted that significant administrative difficulties had been experienced by the police in identifying the drivers of offending vehicles. This problem was also experienced in Victoria, which led to the introduction of owner onus legislation there in 1985. The working group recommended that owner onus legislation be introduced in South Australia before the commencement of a red light camera program.

Without owner onus legislation, police would be required to interview the owner of an offending vehicle to determine the identity of the driver. With a projected initial offence rate of 9 000 drivers per year, this would involve unacceptably high workload levels, and detract from the effectiveness of the cameras. The proposed Bill, by making the owner liable for an offence unless the owner can prove that he or she was not the driver, allows the automatic despatching of traffic infringement notices by mail. Having received a traffic infringement notice, the owner can then take one of three courses of action:

(a) expiate the penalty by paying the fine within 60 days;

(b) supply police with a statutory declaration of evidence which would lead to the withdrawal of the traffic infringement notice;

(c) proceed to court.

Where the case proceeds to court, the owner has two possible defences:

(i) the offence did not occur; or

(ii) he or she was not the driver at the time.

However, where the owner is a body corporate, the latter defence is framed in terms of proof by the body corporate that no officer or employee of the body corporate was the driver at the time of the offence. Where an offence is found to have occurred under owner onus legislation, the person who expiates the offence or is found guilty of the offence will not be subject to demerit points or licence disqualification. This provision has been included because the Bill does not require the explicit identification of a driver. However, the police can, if they wish, pursue a case without using the owner-onus provisions of this Bill, that is, by using the interview method described above. This may occur in serious cases where identification of the driver is necessary for charges to be laid under other sections of the Act. In addition to the present Bill amending the Act, changes to the regulations will be necessary. These will be made prior to the date of operation of this legislation.

Clause 1 is formal.

Clause 2 provides that the measure is to come into operation on a date to be fixed by proclamation.

Clause 3 provides for the insertion of new sections 79a and 79b. Proposed new section 79a provides that the Governor may, by notice published in the *Gazette*, approve apparatus of a specified kind as photographic detection devices, and, by subsequent notice, vary or revoke any such notice.

Proposed new section 79b makes provision with respect to the use of photographic detection devices in connection with certain offences. The proposed new section, by the definition of 'prescribed offence', sets out the offences against the Road Traffic Act in relation to which evidence derived from photographic detection devices may be used. These are as follows:

section 20 (4)—exceeding the speed limit at road works.

section 46 (1)—reckless or dangerous driving.

section 48—exceeding the general speed limit.

section 49 (1) *(a)*—exceeding the speed limit for towns, etc.

section 49 (1) *(d)*—exceeding the speed limit at school crossings.

section 50 (1)—exceeding the speed limits in zones.

section 53 (1)—exceeding the special speed limit for trucks, buses, etc.

section 75 (1)—failing to comply with traffic lights.

Proposed new subsection (2) provides that where a vehicle appears from evidence obtained through the operation of a photographic detection device to have been involved in the commission of one of the prescribed offences, the registered owner of the vehicle is to be guilty of a separate offence unless it is proved—

(a) that although the vehicle appears to have been involved in the commission of a prescribed offence, no such offence was in fact committed;

or

(b) (i) where the registered owner is a natural person—that the registered owner was not driving the vehicle at the time;

or

(ii) where the registered owner is a body corporate—that no officer or employee of the body corporate was driving the vehicle at the time.

The penalty for the new offence is to be the general penalty fixed by section 164a (2) of a fine not exceeding $1 000.

Proposed new subsection (3) provides that a prosecution for the new registered owner offence may, where there is more than one registered owner, be brought against one of the registered owners or some or all of them.

Proposed new subsection (4) provides that before a prosecution is commenced for a registered owner offence, a traffic infringement notice must first be served on the registered owner and the registered owner must be allowed an opportunity to expiate the offence in accordance with the Summary Offences Act.

Proposed new subsection (5) provides that, in relation to a registered owner offence, any traffic infringement notice or summons must be accompanied by a notice in a form approved by the Minister containing—

(a) a statement that a copy of the photographic evidence on which the allegation is based may be viewed on application to the Commissioner of Police;

(b) a statement that the Commissioner of Police will, in relation to the question of withdrawal of the traffic infringement notice or complaint, give due consideration to any exculpatory evidence that is verified by statutory declaration and furnished to the Commissioner within a period specified in the notice;

and

(c) such other information and intructions as the Minister thinks fit.

Proposed new subsection (6) provides that a traffic infringement notice or summons in respect of a prescribed offence is also to be accompanied by a notice stating that the photographic evidence may be viewed on application to the Commissioner of Police.

Proposed new subsection (7) provides that where a person is found guilty of, or expiates a prescribed offence or a registered owner offence, neither that person nor any other person is liable to be found guilty of, or to expiate, a registered owner offence or a prescribed offence in relation to the same incident.

Proposed new subsection (8) provides that a person convicted of a registered owner offence is not, by reason of that conviction, to be liable to be disqualified from holding or obtaining a driver's licence.

Proposed new subsection (9) provides evidentiary assistance in connection with the requirement for the issue of a traffic infringement notice prior to the commencement of a prosecution for a registered owner offence.

Proposed new subsection (10) provides appropriate evidentiary assistance in relation to the use of photographic detection devices for the purposes of a prosecution for a registered owner offence or a prescribed offence.

The Hon. L.H. DAVIS secured the adjournment of the debate.

PETROLEUM (SUBMERGED LANDS) ACT AMENDMENT 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.

In light of the fact that this Bill has been dealt with in another place, I seek leave to have the explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

Petroleum exploration in South Australia is administered under three separate Acts—

1. The Petroleum Act 1940 applies to all onshore areas and the waters of a number of bays and gulfs including those of St Vincent and Spencer;
2. The Petroleum (Submerged Lands) Act 1982 applies to a narrow strip of offshore waters (the Territorial Sea) extending three miles seaward of the Territorial Sea Baseline;

and

3. The Petroleum (Submerged Lands) Act 1967 (Commonwealth) applies to all waters outside of the three mile Territorial Sea to the limit of the Continental Shelf.

The arrangements made between the Commonwealth and the State for the administration of petroleum exploration in offshore South Australia provide that—

'The Commonwealth, the States and the Northern Territory should endeavour to maintain, as far as practicable, common principles, rules and practices in the regulation and control of the exploration for and the exploitation of the petroleum resources of all the submerged lands that are on the seaward side of the inner limits of the territorial sea of Australia'. (Refer Introduction to S.A. Petroleum (Submerged Lands) Act).

This Bill proposes one combined batch of complementary amendments to the S.A. Petroleum (Submerged Lands) Act, 1982, following two separate sets of amendments made to the Commonwealth Petroleum (Submerged Lands) Act during 1984 and 1985. Similar complementary amendments have also passed through the Victoria, N.T. and N.S.W. Parliaments. Although a considerable number of amendments are involved all are relatively inconsequential, and are mainly aimed at the more efficient administration of the Act. The amendments proposed are complementary to the Commonwealth Act and are designed to—

1. establish retention lease provisions, which provide for security of title on a discovery which is not immediately economic, i.e. similar provisions to onshore mining legislation (sections 37a-37k).
2. provide the power for the Joint Authority (that is, the Federal Minister and the State Minister) to exercise control over rates of petroleum production (section 57).
3. refine the registration provisions to take account of the recommendations of the Royal Commission into the Activities of the Ships Painters and Dockers Union and other suggestions aimed at clarifying and streamlining the process of registering transfers and other dealings affecting petroleum tenements (sections 74-86a).
4. amend the Directions and Regulations provisions to enable codes of practice and standards to be adopted and to facilitate general administration of the Act (sections 100-101).
5. revise the provisions relating to Special Prospecting and Access Authorities in order to encourage and facilitate offshore seismic surveys (sections 110 and 111).
6. provide for the earlier release of basic and interpretative data subject to the consideration of objections by titleholders (section 117).
7. establish the provision to declare certain areas as areas to be avoided by unauthorized shipping (section 137b-137e).

In addition, there is a host of minor drafting amendments which are a necessary consequence of the above amendments. Some of these were highlighted following recommendations of the Costigan Royal Commission into the Ships Painters and Dockers Union.

Clauses 1 and 2 are formal.

Clause 3 makes consequential amendments to the arrangement provision.

Clause 4 makes consequential and drafting changes to the definition section of the principal Act.

Clause 5 makes a consequential change to section 6 of the principal Act.

Clause 6 inserts a new section that is the equivalent of section 149 of the Commonwealth Petroleum (Submerged Lands) Act 1967. When the State Act was enacted in 1982 it was considered that this provision was unnecessary. However, on reflection, it is considered desirable to include it.

Clauses 7 and 8 make consequential amendments.

Clause 9 will allow a permit to come into force on a day specified in the permit.

Clause 10 corrects an error in section 34.

Clause 11 makes a consequential change.

Clause 12 is a drafting amendment.

Clause 13 introduces new Division IIA into the Act. This Division deals with retention leases. The rationale for the inclusion of retention lease provisions is to provide security of tenure over discoveries which are not immediately economic. Retention leases will allow explorers to retain tenure over discoveries until they become commercial and are aimed at providing an additional measure of encouragement for companies to explore in offshore waters. Similar provisions already exist in relation to the onshore Mining Act, and have been found to work well.

Clause 14 inserts new subsection (5) into section 39 of the principal Act. This provision is consequential on the introduction of retention leases.

Clause 15 enacts section 39a which provides for application by a lessee for a production licence.

Clauses 16 to 19 make consequential and drafting changes.

Clause 20 makes consequential amendments and replaces subsection (3) of section 45 with more elaborate provisions comprehending both permits and leases and the situation where part only of the blocks constituting a location cease to be subject to a permit or lease.

Clause 21 makes a consequential change.

Clauses 22 to 24 make drafting changes.

Clause 25 replaces subsections (3) and (4) of section 57 with three new subsections. New subsections (3) and (4) apply to petroleum pools. New subsection (5) enables the Minister to have regard to the effect of production on State revenue.

Clause 26 makes drafting and consequential changes.

Clause 27 allows a pipeline licence to come into force after the day on which it is granted.

Clause 28 makes a consequential change.

Clause 29 makes a drafting change.

Clauses 30 and 31 make consequential changes and include Special Prospecting Authorities in sections 74 and 75. Special Prospecting Authorities, as granted under section 110 of the principal Act, enable geophysical surveys to be carried out in an area over which an application has been invited. However, in this Bill, section 110 is amended so that Special Prospecting Authorities may be granted over any vacant area irrespective of whether applications for the award of a permit or licence have been invited. Special Prospecting Authorities are included in these clauses so that the Act requires a register of Special Prospecting Authorities to be maintained and specifies what particulars must be kept in the register.

Clause 32 makes a consequential change to section 76 of the principal Act.

Clause 33 replaces section 77 of the principal Act. The amended arrangements for approval and registration of transfers of title broadly follow those set out in the principal Act but remove deficiencies identified in the light of experience in the administration of the Commonwealth and State Acts since 1967. The new provisions are aimed at streamlining the administrative arrangements for approving and registering transfers of interests in tenements.

Clause 34 makes consequential amendments to section 78 of the principal Act and includes a provision for the change of name of a company on the register.

Clause 35 removes section 79 of the principal Act and replaces section 80. The clause also inserts a new section 80a that makes provisions in relation to future interests. The amended arrangements for registration of specified dealings affecting title remove deficiencies in the existing arrangements, particularly the uncertainty surrounding which dealings might be able to be registered and the effect in law of instruments evidencing dealings which have not been approved and registered. Once again, the new provisions are aimed at streamlining the administrative arrangements for approving and registering transfers of interests in both existing and future titles.

Clauses 36 and 37 make consequential changes.

Clause 38 inserts three new subsections into section 83 that give the Minister the right to certain information.

Clauses 39 and 40 make consequential amendments.

Clause 41 inserts new section 86a into the principal Act which details provisions whereby the Minister may make necessary corrections to the register and setting out the procedures which must be followed before any corrections can be made.

Clause 42 replaces section 91 of the principal Act. Section 91 of the principal Act is the equivalent of section 4 of the Commonwealth Petroleum (Submerged Lands) (Registration Fees) Act which was amended substantially in 1985. The amendment does not increase the fees. It simply elaborates on the previous provisions.

Clauses 43 to 49 make consequential changes to various sections.

Clauses 50 and 51 amend section 100 and 101 respectively of the principal Act. The new section 100 will allow the Minister, in giving a direction to a titleholder, the opportunity to specify that the direction also applies to servants and agents of, or persons acting on behalf of, or persons performing work or services either directly or indirectly for the registered titleholder. Directions may also be applied to persons not having any contractual relationship with the titleholder. Consequential amendments are then made to section 101.

Clauses 52 to 58 make consequential amendments to various sections.

Clause 59 amends section 111 of the principal Act. New subsection (1a) allows the Minister to grant an access authority to the holder of a title in the Commonwealth adjacent area or under the Victorian or Western Australian Acts.

Clauses 60 and 61 make consequential changes.

Clause 62 inserts more detailed provisions in relation to the release of information.

Clauses 63 to 69 make consequential changes.

Clause 70 corrects a cross-reference.

Clause 71 inserts a new provision relating to the service of documents where two or more persons are registered as the holders of a title.

Clause 72 inserts new Division VIA into Part III of the principal Act. This Division provides for the policing of safety zones created under section 118.

Clause 73 provides for fees in relation to retention leases.

Clauses 74 to 81 make consequential changes.

Clause 82 expands the regulation making power to allow the regulations to incorporate codes of practice or standards to be adopted from time to time.

The Hon. L.H. DAVIS secured the adjournment of the debate.

ADJOURNMENT

At 5.20 p.m. the Council adjourned until Tuesday 17 February at 2.15 p.m.