LEGISLATIVE COUNCIL

Tuesday 24 February 1987

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

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

NEW MEMBER

The Hon. Trevor Crothers, who made an Affirmation of Allegiance, took his seat in the Legislative Council in place of the Hon. B.A. Chatterton (resigned).

ASSEMBLY OF MEMBERS

The PRESIDENT laid on the table the minutes of proceedings of the assembly of members of both Houses to fill a vacancy in the Legislative Council caused by the resignation of the Hon. B.A. Chatterton.

Ordered that minutes be printed.

QUESTIONS

STREAKY BAY AREA SCHOOL

The Hon. M.B. CAMERON: I seek leave to make an explanation before asking the Minister of Health a question about the Streaky Bay Area School.

Leave granted.

The Hon. M.B. CAMERON: Before I do that, might I officially welcome the Hon. Mr Crothers to this Chamber. I trust that his stay in this Parliament will be rewarding for him. I am sure that he will find that this Chamber is different from other Houses of Parliament, in that it is a House of gentlemen, ladies and scholars.

The Hon. J.R. Cornwall: Saints and sinners.

The Hon. M.B. CAMERON: Yes, that is probably true on some days. Anyway, I welcome him and trust that he will find it a rewarding experience.

It has been widely reported that several pupils of the Streaky Bay Area School have suffered vomiting, diarrhoea, lethargy, headaches and irritability apparently caused by the use of the insecticide Aldrin. The school was sprayed with Aldrin over a period of several months last year and the method was to mix it with liquid and pump it into the soil through holes drilled in concrete floors.

There is no doubt that Aldrin is a very dangerous substance, and it appears that the children at the school have suffered the typical symptoms of Aldrin poisoning. The World Health Organisation information brochure on the insecticide states:

> 5.1.2 Symptoms and signs—Early symptoms of acute poisoning include headache, nausea, vomiting, general malaise and dizziness. With more severe poisoning, clonic and conic convulsions occur with or without the symptoms just mentioned. Coma may or may not follow the convulsions. Hyperexcitability and hyperirritability are common findings. The clinical syndrome of intoxication is indistinguishable from epilepsy and therefore history of exposure is important.
>
> 5.1.5 Prognosis—If the convulsions are survived, the chances of complete recovery are good. However, in very severe cases, there is a possibility of permanent brain damage secondary to continued anoxia resulting from prolonged convulsions.

Contamination of the school's classrooms is now being investigated. However, it has been queried why the chemical came to be used in the first place.

A further concern (according to information I have received) is that a representative of the Department of Housing and Construction at Ceduna was told of concerns raised by the teachers at the school about the chemical. Apparently these teachers saw Aldrin being sprayed and noticed that there were people, including children, in the room at the time and pools of insecticide on the floor. The regional branch of the Department of Housing and Construction was notified in November.

Was information sought from the Health Commission regarding Aldrin's toxicity, the potential danger of its use at the Streaky Bay Area School or any other school and safety precautions to be followed during spraying? If so, what was that advice? From whom did it come and when? Is it correct that the Health Commission, when this matter was first raised, made a statement that Aldrin was dangerous when wet but safe when dry? Has that advice been altered? Was the Health Commission notified of the teachers' concerns by the Department of Housing and Construction? If it was, why was no action taken at the time?

The Hon. J.R. CORNWALL: As I understand it, the method used at Streaky Bay is the same method that has been used by registered pest controllers in this State for a long time and involves drill holes around the periphery of the building and within the building itself, and literally injecting Aldrin at a concentration of 0.5 per cent into those holes. It is not usual, and it never has been, to spray with Aldrin in the sense of literally spraying it around the place; it is injected into the soil under and around the periphery of the building so that the chemical stops the termites coming to the building from the nest, which is usually at some distance from the building, and it destroys the termites already there.

I speak with some experience because I purchased an old villa at Largs Bay when I first moved to Adelaide. I was very distraught after spending many thousands of dollars on it to find that we had a termite infestation. I was very relieved, following the treatment by a reputable, licensed pest controller, to find that the termite problem was readily and safely overcome. The question of symptoms or alleged symptoms is a matter that is being discussed with the Local Medical Officer of Health. That is the official title under the Health Act and means (if you take away the jargon) that we are talking to the local doctor about it. Whether the vomiting, headaches and other things that have been described can be attributed to Aldrin or to seasonal viral infections or other matters I am unable to say at this time.

Obviously, those matters are under investigation. Senior officers of the Public Health Service have flown to Streaky Bay today to assess the extent of contamination of the school floors following what appears to be the escape of Aldrin during underfloor treatment of termites last year. Their investigation will be additional to the discussions and assessment commenced yesterday at Streaky Bay by the commission's regional head surveyor from Port Lincoln.

Aldrin is a pesticide of the organochlorine group and its use in this State is restricted to underfloor treatment of termites. The method of application is set out in the Australian Standards 2057/1986 and 2178/1986. When applied in accordance with these standards, there is no risk to the health of the occupants of the treated buildings. As I said earlier, it has been used in that way, using that method of application, and in the strength of 0.5 per cent, for a long time. It has been claimed—since this became a matter of public interest and importance—that the use of Aldrin has

been banned in the United States and Canada. The ban applies to the use of Aldrin for general agricultural purposes. However, it has been approved for use in the underfloor treatment of termites. It has been approved in some other States of Australia also for termite treatment. In this State aldrin is a registerd agricultural chemical for underfloor use for termite control. It is also a schedule 6 poison under the poison regulations.

Pest controllers licensed by the Central Board of Health are required to apply pesticides only for the purpose for which they are registered and in accordance with directions for their use. Previously aldrin has been used as a general agricultural pesticide and the Food Standard provides a maximum residue level in specified foods for this compound. The following are maximum recommended acceptable residue levels that will be of interest to the Council expressed in milligrams per kilogram or parts per million:

Aldrin	0.2	fat of meat.
	0.15	milk and milk products (fat basis), goat milk (fat basis).
mg/kg	0.1	asparagus, cole crops, carrots, cucumber, eggs (shell free), eggplant, horse radish, lettuce, onions, parsnips, peppers, pimentos, potatoes, radishes, radish tops.
	0.05	citrus fruits.
	0.02	raw cereals.
	0.001	water.

The underfloor treatment at Streaky Bay Area School was carried out by a private licensed pest controller during August to November 1986 under contract to the Department of Housing and Construction. The Public Health Service first became aware of the matter in December 1986, when general questions were asked by an inquirer about the use of Aldrin and later, in early February this year, when more specific questions were asked about the effects of aldrin.

Initial advice was made that the risk to children in the circumstances was minimal. During the second more specific inquiry, additional comment was made when the inquirers asked further questions. Comment was made that, because Aldrin could be absorbed through the skin, replacement of the affected parts of the carpet could be considered to remove all possible doubt and ensure peace of mind.

The inquirer appeared to be happy with this advice and therefore no further action was taken. The next contact with the Public Health Service was made on 21 February 1987. In other words, if my arithmetic is right it was on Saturday, as reported this morning. The Chief Medical Adviser of the Shell Company of Australia and the President of the United Pest Control Association of South Australia jointly advised the Principal of the Streaky Bay Area School:

> If for some reason the carpet has become heavily impregnated and there are concerns about it, as a matter of prudence it may be advisable to replace it, as this will probably be quicker and more effective than attempting to determine scientifically whether it presents a real risk.

Due to the extensive area of carpet involved and the application of Aldrin to the underfloor at the perimeter of the room, the extent of contamination needs to be assessed before determining the extent of carpet replacement that may be warranted. The procedures followed by the pest controller will be reviewed to ensure there was compliance with the Australian standards. The Parents and Friends Association has privately submitted samples of carpet to the Chemistry Division of the Department of Services and Supply and, though the association is aware of the results of the analysis, it has not advised the Public Health Service of these results. The Public Health Service has contacted the Department of Chemistry for the results but they have not been released to us because of client confidentiality.

References are made to the possible carcinogenic effects of Aldrin. The International Agency for Research on Cancer, which evaluates the carcinogenic risk of chemicals to humans, reports that the evidence for carcinogenicity to humans is inadequate and most of the information is limited to animals. The evidence for carcinogenic activity from the use of short-term tests of using organisms such as *escherichia coli* and salmonella is also inadequate. The Chairman, Central Board of Health, proposes to institute a review of the practices used by licensed pest controllers for the underfloor treatment of termites to determine whether they are proper and whether any modification of the practices is needed during treatment of existing buildings.

NATIONAL YEAR OF PRODUCTIVITY

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Attorney-General a question about the National Year of Productivity.

Leave granted.

The Hon. L.H. DAVIS: On Tuesday 23 September 1986 I wrote a letter to the Premier, Mr Bannon, suggesting that the bicentenary year of 1988 be designated the National Year of Productivity. It will provide an excellent opportunity for schools, employers, employees, Governments and the community at large to focus on the vital linkage between productivity, profitability and prosperity. I pointed out that, notwithstanding the many activities and events associated with South Australia's sesquicentenary celebrations, the International Year of Peace attracted good support and publicity in this State.

I included a press release on the subject indicating that I was writing to the Prime Minister and State Premiers asking for their support. My letter to the Premier, in conclusion, stated:

> I would be pleased to have an early and positive response to this proposal.

I handed the letter to an executive assistant of the Premier at his office in Parliament House. That was five months ago (154 days ago) and I am still waiting not very patiently for a reply. The Premier of South Australia is the only person who has not seen fit to respond to a very positive and constructive proposal.

The suggestion of making 1988 the National Year of Productivity has been supported by the Premier of Tasmania (Mr Robin Gray), the Chief Minister of the Northern Territory (Mr Hatton), and the Labor Premier of Western Australia (Mr Brian Burke). The New South Wales Premier was not unsympathetic to the proposal. Queensland, in staging Expo 1988, will be emphasising the development of Australian manufacturing and technology and the need for productivity. Mr Barry Cohen, responding on behalf of the Commonwealth Government, said that recognising the theme for the bicentenary 'living together involves working together' in itself would provide sufficient focus on the need for productivity growth. I do not particularly agree with that. Finally, the National Executive Director of the Australian Productivity Council (Mr Bert Holly) has warmly endorsed the suggestion, as have a number of leaders in the private sector. It seems that the Premier's Department would be one of the first beneficiaries of a national year of productivity.

My questions to the Attorney-General are as follows:

1. Will the Attorney-General make immediate inquiries as to why the Premier is unable to respond to a letter within five months?

2. Is it common for the Premier's Department not to respond to letters within a five month period?

3. Will the South Australian Government—like the Western Australian Labor Government—support a national year of productivity in 1988?

The Hon. C.J. SUMNER: Some of the honourable member's questions verge on the inane.

The Hon. Barbara Wiese: Incentivation!

The Hon. C.J. SUMNER: Yes, incentivation; that is right. I am sure that, had the Premier realised the importance that the honourable member attaches to receiving a response to this matter, he would have dealt with it more expeditiously than he has. I will refer the honourable member's question to the Premier and bring down a reply.

TOBACCO CONSUMPTION LEGISLATION

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

Leave granted.

The Hon. K.T. GRIFFIN: Up to last week I understand that some 720 people purchasing cigarettes from Mr Bryan Stokes have received $200 on-the-spot fines regardless of whether or not they have consumed tobacco products purchased from his shop. Many of these people are pensioners and have expressed to me real concern about what is going to happen to them because they cannot afford to pay the $200 nor the cost of a lawyer to defend them in court. Frankly, they indicate that they are bewildered by the Government's heavy handedness against pensioners and other citizens trying to make ends meet by seeking cheaper cigarettes. Some persons have purchased cigarettes, been spoken to by inspectors, returned to the shop, cashed in the cigarettes, received a refund and a receipt, shown it to the inspectors and still received an on-the-spot fine. Others have said they were sending them interstate by way of gift, and they, too, have received on-the-spot fines.

There are other aspects of this whole saga which require answers. I understand that when the Act came into effect at the end of last year there were two Stamp Duty Office inspectors out the front of Mr Stokes' shop apprehending persons going into and out of the shop. The inspectors were subject to some verbal abuse but no threats of physical violence. Initially two police officers were at the shop at the Government's request, but after about the first week they left because the expense could not be justified. Then the Stamp Duty Office inspectors were increased to three, who were outside the shop on weekdays and some Saturdays.

I understand that recently there was a request by the Government for police to return to the shop on a permanent basis, but that has been rejected because the cost could not be justified. I understand also that the Stamp Duty inspectors are changed every hour or two and that up to 17 different inspectors have been at the shop on that rotational basis on any one day. Now, according to this morning's *Advertiser*, the stock of Mr Stokes has been seized by the Stamp Duty Office even though a High Court challenge to the legislation is under way and (I understand) is likely to be heard in May 1987, with a statement of facts having been agreed between Mr Stokes' lawyers and the Crown Solicitor. The whole saga suggests a very expensive exercise for the Government.

My questions to the Attorney-General are as follows:

1. What does the Government intend to do to the hundreds of people who have received on-the-spot fines and cannot afford to pay them?

2. What have been the total costs so far in policing the Act against Mr Stokes?

3. In view of the confiscation of his stock, what charges are to be laid against Mr Stokes?

The Hon. C.J. SUMNER: As the honourable member knows, this matter is currently the subject of litigation in the High Court, and he has already mentioned that in the explanation to the question that he has asked. Therefore, I am not in a position to comment in detail on all the matters that the honourable member has raised. Suffice it to say that Mr Stokes has challenged the legislation and the matter will be dealt with in the High Court. When the matter is dealt with there, obviously the community will be in a better position to know whether or not the legislation is to stand in its existing form, and the consequences that flow from that with respect to breaches of the law.

It is interesting to note the Liberal Party's approach to this matter. Being the champions of small business, it seems to want to do whatever it can to deprive hundreds of small business people in this State of the capacity to earn their living in the normal way, unfettered by the advantages which Mr Stokes has obtained previously in the manner in which he sold his cigarettes. Honourable members know as well as I do the concerns that were expressed by small businesses in this State that were abiding by the State laws. What honourable members are doing (and did) by their opposition to the legislation is facilitating the avoidance of State revenue in an area which I would have thought there ought to have been—

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: —some degree of unanimity in this Parliament as to its importance. If you are going to have taxation and fees, at least a tax on what has been proved to be a terrible detriment to people's health was a tax that ought to be supported. Honourable members have come into this Parliament seeking to have it both ways. That is the fact of the matter. On the one hand, they want to be seen to be supportive of small business, and on the other hand they want to be seen to be supportive of health initiatives that discourage smoking, but when there is an opportunity for them to put their money where their mouth is with respect to those matters, of course they scoot for cover, which is exactly what they did when this Bill came before Parliament last year.

So, Madam President, the Government felt that it had to introduce the legislation which it did last year, legislation supported by the Parliament, in order to deal with a situation that was having an effect on the revenue from the franchise fee on cigarettes. Surely there ought to be some unanimity in this Parliament that, if we are to have taxation, at least a tax on cigarettes is something that is socially more desirable than perhaps some other taxes and from the point of view of the health of the community is the sort of tax that is more justifiable than others. However, not to be put off by that, the Opposition is continuing to support—

The Hon. K.T. Griffin: We are not.

The Hon. C.J. SUMNER: The Opposition is continuing to support the situation where someone is able to not pay a franchise fee on a product when all the other retailers in the industry in South Australia are paying that fee. If that is the way the Opposition wishes to take—

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: The matter is being disputed in the High Court. Our legal advice was that, if it was to be taken to the High Court, it was better to have the legislation that passed this Parliament disputed than the previous legislation. If the honourable member wants to argue—lawyer that he is, former Attorney-General that he is—with the opinions that the Government was provided with, then let him do it, but I am telling him that that is

the advice from two Queens Counsel and the Crown Solicitor. If there is to be a High Court challenge, as there is now, it is better that there be a High Court challenge on the legislation that is now in place in this State.

If he likes, the honourable member can ignore that for his own political purposes because he thinks that he sees some kind of issue to raise here. However, in doing that, he is ignoring the interests of hundreds of other small business people in the South Australian community. In addition, he is ignoring the interests of a policy that is designed to stop people smoking or, at least, to reduce consumption of a product which is known to be deleterious to health and which imposes enormous costs on the community.

The Hon. K.T. Griffin: I don't disagree with that.

The Hon. C.J. SUMNER: He does not disagree with that, but when we want to impose a tax on it he scuttles for cover, and that is typical of the Opposition in this State. It wants to have it all ways. This matter is before the High Court and, when the High Court makes its determination, the Government will know further what the situation is with respect to the matters that the honourable member raised. He raised some specific issues, and I will seek the information and see whether a response can be provided.

The Hon. K.T. GRIFFIN: I have a supplementary question. Does the Attorney-General suggest that more than 700 people who have received on-the-spot fines should seek an extension of time until the matter is resolved in the High Court?

The Hon. C.J. SUMNER: That is a matter that I will have examined in consultation with the Premier. The fact is that the matter is before the High Court and it is not unreasonable that the question of those people who have received expiation notices await determination of the High Court, but I will discuss that matter with the Premier.

HEALTH INSURANCE

The Hon. CAROLYN PICKLES: I seek leave to make a brief statement before asking a question of the Minister of Health on the introduction of new health insurance arrangements.

Leave granted.

The Hon. CAROLYN PICKLES: I note that the new health insurance arrangements are to be introduced on 1 March 1987, and the headline from today's Adelaide *Advertiser* stated, 'Hospital bills shock follows medi move'. The article states that many South Australians could face heavy bills for hospital services. As this article may have caused some disquiet in the community about the introduction of these new health insurance arrangements, can the Minister say what effect the new arrangements will have on persons paying the basic table insurance?

The Hon. J.R. CORNWALL: I read the article this morning with a little concern. I am sure that members will recall that the Hon. John Burdett raised this matter last week. I responded, but, unfortunately, to the best of my knowledge, it was not reported anywhere.

This morning's story seems to have been based significantly on what we could perhaps call a tactical response from the Private Hospitals Association. I am not critical of that. It has a duty to ensure that, to the greatest extent possible, as many people as it can reasonably persuade have top table cover with the health insurance funds. That is a legitimate aim for it to have; it means that private hospitals, which it represents as an association, can be assured that most of the patients seeking admission will be insured at a level that will cover all of the cost, or certainly very close to all of the cost.

It is quite right that new health insurance arrangements are to be introduced on 1 March. As I said the other day, under these arrangements, the basis for the payment of hospital benefits will change from hospital classification to patient classification. For the past two years or more, there have been three categories of hospitals: category 1, category 2 and category 3. In some respects, that was not satisfactory. There was almost irresistible political pressure, for example, to upgrade many of the hospitals which, by all of the initial criteria, were really category 2 hospitals. Lobbying was done in a number of ways right around the country so that in every State a number of hospitals were given a number 1 category, which, as I said, in other respects would have been given a category 2. That meant a difference of $40 a day, so it was very much in the interests of the proprietors, whether they were non-profit church and charitable community hospitals or private profit-making hospitals, to ensure that they received the highest categorisation possible. As in any situation, there were winners and there were losers, and those who did not get a category 1, or those category 3 hospitals that did not get a category 2, were the losers.

From 1 March hospital classification will no longer be with us. Instead, we will have patient classification and, under that scheme, the hospitals and the private funds will more closely align costs and benefits. The categorisation of patients will be based on the sophistication of the procedure and the degree of nursing and other support that is required because of that procedure or particular illness. It should be pointed out, and it cannot be stressed too strongly, that the new arrangements are the result of a very strong case mounted by the private health and hospital industry. It is not something that will be imposed upon them; quite the reverse. They have sought it and have pursued it very strongly.

At the same time, the health insurance funds will take the opportunity to increase the level of benefits to reflect increases in hospital operating costs. It is obvious to everybody that the new nursing clinical career structures and the new salary rates, to name just one significant area, will have impacted upon the day bed cost in the private hospital sector just as they have in the public hospital sector. In setting the new day bed charges, the private hospitals will, quite rightly and legitimately, take those factors into account.

Under the old arrangements, persons with basic table insurance were paid benefits as follows: for public hospitals, the relevant fee as a private patient in a public hospital, which is currently $120 a day; for private hospitals, the minimum benefit set by the Commonwealth. This resulted in private hospital patients having to pay an additional amount of up to $50 a day to meet some hospital fees, plus any theatre fees levied by the hospital. A gap of up to $50 is nothing new. Patients who were insured for basic benefits on the old tables had to meet a gap of anything up to $50 a day, anyway. Patients who were insured on the highest table usually did not have to meet any gap and, if there was a gap, it was very small. That was the old situation and it could be said perhaps that it is the new situation in a slightly different costume.

Under the new arrangements, persons with basic table insurance will be paid benefits as follows: for public hospitals, the relevant fee; for private hospitals, the minimum benefit level. As I said, this is with basic insurance and, in a sense, very little will change. This will result in private hospital patients having to pay an additional amount if they are simply insured for the minimum benefit. However, the exact amount will not be known until the hospitals announce

their new fee levels, and they have not yet done that. It is expected that the maximum gap between the basic insurance level and the highest rate, according to the dependency of the patient, could be up to $60 a day.

In addition, the patient will be responsible for theatre fees. I cannot stress too strongly—and I hope that this message can be conveyed at large—that we have been talking about patients with basic table insurance. For persons with top table insurance it is anticipated that the benefit levels will be similar to the fees charged. There may be no gap or there may be a gap of perhaps $5 or $10. It is quite possible and indeed probable that for those with top table insurance, who had top table insurance prior to 1 March and will continue with top table insurance past 1 March, there will be no gap at all.

In summary, while the new arrangements change the basis on which hospital charges and fund benefits are determined, they should not make any significant difference to the amount outlayed by individual patients. The extent of any outlay and whether there will be any gap at all, as I said, cannot be assessed until the private hospitals actually declare their new fee levels. Of course, Medibank Private has already announced increased contribution rates. Its basic table is going up by 70c to $8.20 per week and its top table is going up by $1.60 to $10.70 per week. Medibank Private last increased its fees, as I am sure members will recall, in October 1986.

Mutual Community is yet to announce its rates. However, it also increased its rates in October 1986. In summary, I repeat that, if people are insured on the top table, the new arrangements should have little, if any, effect on them at all. If people are insured on the basic table they will continue to be covered as private patients in the major public hospitals; however, as was the case prior to 1 March, there will be a significant gap if they seek private hospitalisation in the top range of charges. Therefore, South Australians should not be perturbed. I would anticipate that under the new and improved scheme the percentage of persons covered in South Australia will probably continue at or around the present rate, and that we will continue with the rather good balance that we have between the public and private hospital sectors at the moment.

MOTOR VEHICLE DEFECTS

The Hon. I. GILFILLAN: I seek leave to make a brief explanation before asking the Attorney-General, the Leader of the Government in this place, a question about faults in Valiant motor cars.

Leave granted.

The Hon. I. GILFILLAN: The television program *60 Minutes* aired an alarming segment the other night which identified a faulty retaining mechanism for seats in Valiant cars manufactured between the years 1971 and 1981. This program conveyed beyond any doubt that official testing procedures on the seats showed that they were not only faulty but also downright dangerous, and in several instances it is alleged that the defect had caused a serious increase in injury during an accident. As alarming to me was the fact that this fault was known some time ago and that the Federal Government, in consultation with State Governments, had been aware of it and had communicated its concern about lack of safety in the installation of the seats to Mitsubishi and had asked it to recall and repair vehicles so that the seats could be safe and conform to the regulation requirements of the Australian car industry.

Mitsubishi refused to do this, and for a time the matter rested. In this morning's *Advertiser* the Chairman of the Federal Government's consumer affairs committee called on the General Manager of Mitsubishi (Mr Graham Spurling) to meet with the committee and continue discussing this matter. What concerns me most (and this is my reason for asking the question) is, first, that this defect was allowed to continue for some 10 years; secondly, that it had been shown to the Federal and State Governments and to Mitsubishi that this defect existed; and, thirdly, that there was this complete blanket of secrecy over the whole matter. I consider that there is a possibility of culpable negligence on the part of those members of the Federal and State Governments—

The PRESIDENT: Order! No opinions may be expressed when asking a question, Mr Gilfillan; I remind you of that Standing Order.

The Hon. I. GILFILLAN: Thank you for that advice, Ms President. My questions concern the continuing safety of those people who drive these cars and the reliance that the motoring public of Australia have on safety regulations being conformed with. This leads me to ask the questions which express our concern. Was the State Government involved in the discussions which I was assured by Anthony McLellan of *60 Minutes* took place between the Federal and State Governments on the issue of the Valiant seat defect? If so, why and on what basis does the Government justify no publicity being given to this defect? Does the State Government believe that Mitsubishi should recall the cars and modify the seat equipment? Finally, does the Government believe that the decisions made to date by the Federal Minister (Mr Peter Morris) and by Mitsubishi in refusing to repair or modify are in the best interests of the safety of the travelling public in Australia?

The Hon. C.J. SUMNER: It is very easy for the Hon. Mr Gilfillan to come into this place and make all sorts of allegations about what may or may not have occurred with respect to Federal Government/State Government involvement in this matter. He has already indicated that the Federal Minister (Mr Morris) decided that no action was warranted.

The Hon. I. Gilfillan: He asked Mitsubishi to rectify it, and Mitsubishi said 'No.'

The Hon. C.J. SUMNER: In your opinionated question you said that Mr Morris took no action in relation to this matter. I do not know whether that is the case.

The Hon. R.J. Ritson: The program *60 Minutes* would be about the least accurate of current affairs programs.

The Hon. C.J. SUMNER: The Hon. Dr Ritson interjects and says that *60 Minutes* would be about the most inaccurate of present current affairs programs. I would not wish to comment on that. There are provisions relating to recall which have now been introduced through federal legislation and which it is proposed will be introduced into this Parliament in the near future. With respect to the specific questions that the honourable member raised, I do not personally recall any discussion to which the honourable member referred between State and Federal Governments. If it did occur and if Mr Morris was responsible at the federal level, and if it was at State level at all (and I do not know that it was), it may have been dealt with at the State level by the Department of Transport. I am not in a position to indicate whether or not the State Government was aware of the situation. I am certainly not aware of it from my own personal point of view. However, I will have the matter raised by the honourable member investigated and bring back a reply.

HEALTH INSURANCE

The Hon. J.C. BURDETT: I seek leave to made a brief explanation before asking the Minister of Health a question about the private hospital classification system.

Leave granted.

The Hon. J.C. BURDETT: Before asking the question, I will briefly seek your indulgence, Madam President, and that of the Chamber, to refer to the Hon. Trevor Crothers. I first met him when I was Minister of Consumer Affairs and had the responsibility for liquor laws, and when he became Secretary of his union. In our two respective capacities we had a number of meetings, and I came to admire his ability. The friendship that we developed then has persisted. I trust that these two things will continue to persist, namely, our friendship and my admiration for his ability. I do wish the Hon. Trevor Crothers all the best in his career in this place.

Madam President, on Wednesday last week I asked the Minister of Health a short series of questions on this same subject—the private hospital classification system, I mean, and not that of the Hon. Trevor Crothers—and these questions that I have to ask now and the explanation that I have to give certainly are on the same sort of issue as the issue raised in the question of the Hon. Carolyn Pickles and the answer given by the Minister. The answer has not been given to my satisfaction, and the answers to the question which I propose to ask have not been given. The questions that I asked on Wednesday of last week included these three questions:

1. Will the system mean a greater strain on private insurance schemes?
2. Will this lead to a greater gap to be paid by insured patients?
3. Will this lead to greater pressure on the public hospital system?

The Minister's answers to those three questions were as follows:

My information, advice and personal belief is that it will not in the medium to long term mean a greater strain on the private funds.

It will not mean a greater gap.

At least in South Australia it will not create greater pressure on our public hospital system.

Madam President, when the answers were given I expected that before long the answers would be proven wrong. Here we have it suggested less than a week after the Minister gave his answers that the answers were wrong. I refer now to page 1 of today's *Advertiser*, as follows:

About 30 per cent of South Australians who contribute to private health insurance could face crippling hospital bills after 1 March when the Commonwealth Government introduces a big new change to the health scheme.

These people, who have taken out the basic or lowest private health insurance table offered by the funds, will have to meet charges of up to $60 a day beyond what they receive in fund benefits for care in a private hospital.

They also face having to pay operating theatre fees ranging from $160 to $535 for operations.

The article further states:

From 1 March, Medibank Private will increase its family rate for the top table hospital cover by $1.60 a week to $10.70 and its basic cover by 70c a week to $8.20. The fund's Supercover Extras table will rise by 40c to $5.80.

Mutual Community, South Australia's biggest fund, is expected to announce changes to its benifits towards the end of this week.

The Minister said it will not mean a greater gap. My questions are:

1. Does the Minister agree that at least for people who have taken out the basic or lowest private health insurance table offered by the funds (that is, according to the article, 30 per cent of the people) the new scheme will in some instances mean a greater gap? I thought the Minister partly admitted that in his previous answer, but I ask him to address that question now.

2. Does the Minister now agree that the new system will impose greater pressure on the health funds which will be passed on to their members in the form of higher contribution rates?

The Hon. J.R. CORNWALL: The Hon. Mr Burdett is acting dishonourably again: he is trying to cause quite unnecessary concern and fear about the changes that are being introduced at the express request, and with the concurrence of the private hospital industry.

The Hon. J.C. Burdett: But what about the—

The Hon. J.R. CORNWALL: He is not contesting that. Let me explain why and how he has acted dishonourably. He refers consistently to the basic table and then claims that patients who are insured for basic table benefits will have to fund a gap if they go to a private hospital where they are categorised as a high dependency patient. Of course they will, just as they had to pay a substantial gap when they were insured on the basic table during the categorisation of hospitals.

There has been a gap between the basic table benefit and the highest table benefit of some $50, on the Hon. Mr Burdett's own admission. I cannot say exactly, or with great accuracy, what the new gap will be, but obviously there will be a substantial gap if one is insured for the basic hospital cover only. I would have thought that that was self-evident even to the Hon. Mr Burdett: if one is insured at the basic rate, the benefits are paid at the basic rate. If one is insured on the top table, one gets paid the top table rates. In other words, if one is happy to have cover which enables a person to go as a private patient to a public hospital where one has the doctor and consultant of one's choice as a private patient, that is all one needs to have.

If that is what people have at this moment—prior to 1 March—the advice would be that, if they are happy with it, that is what they should continue with. If you wish to have the top cover so that under almost any conceivable circumstance at one of our most sophisticated private hospitals, if one is a private patient requiring or in need of sophisticated surgical procedure, or have some illness requiring a sophisticated level of care, obviously one ought to continue to insure on the highest table.

In that sense nothing will change. There will be some increase in the cost, as I said in my previous answer. Medibank Private has already announced increases of 70c a week for the basic table and up to $1.60 for the top table.

The Hon. Mr Burdett went through all that and reiterated that yet again in a fairly boring sort of way. In that sense nothing will change. What is changing is that we are going from categorising hospitals—

The Hon. J.C. Burdett: The contribution will change.

The Hon. J.R. CORNWALL: Of course, the contribution will change. Contributions would have changed regardless of whether or not the old system of categorisation of hospitals had changed. The contributions are changing (the Hon. Mr Burdett should try and use whatever grey cells are left to him) because costs have increased. The most significant reason why costs have increased is because nurses—with the full concurrence and at the urging of the Opposition, particularly the Hon. Mr Cameron with the full support of the Opposition—were able to register in the Industrial Commission new clinical career guidelines and very substantial salary increases based on the concept of equal pay.

That has been the biggest significant increase in the hospital sector in a long time. The cost for the public hospital sector in South Australia alone is in excess of $37 million recurrent estimated additional expenditure in a financial

year. Obviously, that impacts significantly also on the private hospital sector, which is adjusting its charges accordingly. It is adjusting its charges at the same time as we are going from a categorisation of hospitals to a categorisation of patients. Indeed, we are doing it at the request—when I say 'we', I mean of course the Commonwealth Government and my colleague and friend, Neil Blewett—and with the concurrence of the private sector, particularly the private insurance people of the health industry generally: not only with their concurrence but in most cases at their urging.

PAPERS TABLED

The following papers were laid on the table:

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

Pursuant to Statute—

South Australian Superannuation Board and South Australian Superannuation Fund Investment Trust—Reports, 1985-86.

Second-hand Motor Vehicles Act 1983—Regulations—Contract for Sale of Second-hand Vehicles.

Rule of Court—Industrial Court—Workers Compensation Act 1971—Practitioners Fees and Courts.

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

Pursuant to Statute—

Fisheries Act 1982—Regulations—Gulf St Vincent/Investigator Strait Prawn Fisheries—Amalgamation.

Planning Act 1982—Crown Development Report—proposed extension to Sludge Lagoons at Onkaparinga Estuary.

South Australian Planning Commission—Report on the Administration of the Planning Act 1985-86.

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

Pursuant to Statute—

Flinders University of South Australia—Amendments to By-laws.

QUESTIONS ON NOTICE

Dr M. HEMMERLING

The Hon. R.I. LUCAS (on notice) asked the Attorney-General: On 21 October 1986, the Attorney-General indicated Dr M. Hemmerling's resignation from the Public Service took effect as from 1 March 1986. However, on 21 March 1986, the *Advertiser* carried a report from the Director of the Premier's Department that Dr Hemmerling had 'signalled his intention' to resign. Will the Attorney-General confirm whether Dr M. Hemmerling's resignation took effect as from 1 March 1986?

The Hon. C.J. SUMNER: Yes.

EDUCATION DEPARTMENT

The Hon. R.I. LUCAS (on notice) asked the Minister of Tourism: Will the Minister provide a comprehensive update in the areas of the Education Department of various proposals to share resources in clusters of schools, particularly in the senior secondary years?

The Hon. BARBARA WIESE: I do have a reply and seek leave to have it incorporated in *Hansard* without my reading it.

Leave granted.

Adelaide Area—

(1) For several years students of the Port Adelaide High School have used technical studies facilities at Thebarton High School.

(2) In 1987 a cooperative senior school program will continue for out-of-hours courses at seven eastern suburbs high schools. This allows students to have access to courses which may not be provided at their regular school.

(3) Other proposals for collaboration are being examined but none are well advanced.

Eastern Area—

(1) *Mount Gambier*—Mount Gambier High School and Grant High School timetable Year 12 in such a way to allow some subjects where there is relatively small student demand to be offered in only one school.

(2) *Eastern Mallee*—A proposal from the school councils of Pinnaroo, Lameroo and Geranium Area Schools for the amalgamation of senior classes (Years 11 and 12) at Lameroo has been adopted.

Southern Area—

(1) *South-West Corner High Schools*—A study has been made of future educational needs for secondary students in the south-west corner of the Adelaide Plains. These students are currently served by eight high schools: Brighton, Dover, Glengowrie, Marion, Mawson, Mitchell Park, Vermont and Seacombe. Consideration is being given to ways in which some consolidation and sharing of resources could occur.

(2) *South Coast Schools*—Consideration is being given to ways in which future secondary provision, particularly at senior secondary level, could be provided for students living in the Mount Compass, Goolwa, Victor Harbor area.

Northern Area—

Elizabeth Network—

Six secondary schools in the Elizabeth/Smithfield Plains area are planning to use DUCT (Diverse Use Communi cation Technology) and FAX to combine classes in senior secondary years in the following subjects:

Australian History
Biology
Music
French
Retail Sales.

Plans to share resources are being discussed for the following areas:

Sporting teams
Work Experience
Science equipment
Other specialist areas.

Paralowie/Salisbury High Year 12 Cooperative—

These two schools have organised their Year 12 program together to broaden the range of subjects available to their students and to share resources for a number of subjects, such as technical studies, computing and home economics.

Strathmont/Gilles Plains High—

Linked by DUCT, FAX and video equipment to rationalise the use of resources for four subjects at senior secondary level, to be run as a pilot scheme for 1987.

Modbury/The Heights/Banksia Park High—

Will share a number of subjects at Year 12 level, such as stenography, geology, drama, media studies and music, plus a 'stand alone' class for communications technology, depending on student numbers.

Gawler/Nuriootpa/Birdwood High—

Gained a technology grant to link schools by computers; this will enable small groups of students to study subjects such as agricultural science using compatible equipment, plus material from the correspondence school.

Western Area—

Port Augusta High and Augusta Park High—

Combined timetable at Year 12 with total sharing of all public examination subjects and school assessment subjects. Other internal Year 12 courses are offered in each school.

Caritas (Catholic College) use Port Augusta High School facilities for commerce, home economics and technical studies.

Port Pirie High, Risdon Park High and St Mark 's College are doing preliminary planning with a view to introducing integrated courses in 1988.

Miltaburra/Lock/Karcultaby/Ceduna/Streaky Bay Area Schools—

Small classes will connect with each other through the DUCT telephone system within the above schools in 1987. Lock uses the DUCT system with Adelaide High School German language classes. This will probably be extended to include Karcultaby and Ceduna language classes in 1988.

Wudinna Area School used the DUCT connection with Karcultaby Area School in 1986 for continuation of a business education course. A buddy system operates at Leigh Creek Area School whereby Nepabunna and Marree students come in one day per week to attend classes at the Leigh Creek School.

COMMITTEE APPOINTMENTS

The Hon. R.I. LUCAS (on notice) asked the Minister of Tourism: Will the Minister provide for all advisory, consultative and standing committees, formed under the Education Act, the following:

1. Names and occupations (or organisation represented) of all members;
2. Date of appointment and date of expiry of appointment;
3. Amount of fee or allowance payable to members;
4. Number of meetings conducted in last financial year; and
5. Terms of reference for operation of each committee?

The Hon. BARBARA WIESE: Following discussions with the honourable member, with his concurrence I will not be replying to the question in this Chamber.

FAIR TRADING BILL

In Committee.

(Continued from 17 February. Page 2908.)

Clause 2 passed.

Clause 3—'Interpretation.'

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

Page 2, line 4—After 'business' insert 'or in the course of setting up a business'.

In the Bill the definition of 'consumer' is as follows:

'consumer' means a person who—

(a) acquires, or proposes to acquire, goods or services; or

(b) purchases or leases, or proposes to purchase or lease, premises,

not being a person acting in the course of a business:

In the course of the second reading I raised the question of whether that exclusion extended to a person who was in the course of setting up a business. The response that the Attorney-General gave was that it did. I remain unconvinced and my amendment is merely to put the matter beyond doubt by excluding a person acting in the course of the business of the setting up of a business. It is drawing a long bow to suggest that someone acquiring office equipment, leasing premises, arranging letterheads and stationery and doing a variety of other things preliminary to commencing a business is in fact doing those things in the course of a business. They should certainly fall into the same category as things done in the course of a business. However, my amendment will ensure that the exclusion from the definition of 'consumer' extends to those persons.

The Hon. C.J. SUMNER: I do not oppose the amendment.

Amendment carried; clause as amended passed.

Clauses 4 to 7 passed.

Clause 8—'Functions of the Commissioner.'

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

Page 3, line 39—Leave out 'affecting' and insert '(to which this Act and the related Acts apply) that affect'.

This clause relates to the functions of the Commissioner and, among other things, they include the monitoring of business activities affecting consumers. During the second reading debate, I said that it seemed to me that that was very wide and that it was not necessarily limited to those activities which are subject to some legislative control but, when read in conjunction with the power to enter premises and the other powers given to the Commissioner, it seemed to me that it quite substantially widened the Commissioner's legislative power. I have no difficulty with the power extending to the Commissioner to monitor those business activities which are subject to legislative control. In fact, I would see that as an integral part of the Commissioner's functions.

However, to ensure that it is not as wide as I believe it to be—which would then allow the powers of the Commissioner to be triggered by a whole range of activities which are not presently subject to legislative control—some limitation needs to be placed on subclause (1) *(e)*. My amendment will provide that among the functions of the Commissioner he will:

. . . monitor business activities (to which this Act and the related Acts apply) that affect consumers and investigate practices that may adversely affect the interests of consumers generally or a particular class of consumers.

If my amendment is carried in that form, it will meet the difficulty to which the Attorney-General referred in his second reading reply, and also ensure that there is some comprehensible limitation on the powers of the Commissioner to monitor those business activities which are presently covered by some legislative enactment.

The Hon. C.J. SUMNER: No objection.

Amendment carried; clause as amended passed.

Clause 9 passed.

Clause 10—'Delegations.'

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

Page 4, line 23—After 'delegate' insert 'to a person employed in the Public Service of the State or, with the Minister's consent, to a person not so employed'.

This clause deals with the power of the Commissioner to delegate any of his powers under this legislation or under a related Act. I am concerned that there should be some limitation on the power to delegate. In his second reading reply, the Attorney-General suggested that, for example, under the Weights and Measures Act, some contracting assistance may be sought in checking trade measurements or weights.

I recognise that there may be circumstances in which it is appropriate to have the power delegated outside the Public Service. While I generally agree with as much work being done outside the public sector as possible, when it comes

to exercising particular powers, including those which relate to entry of premises and the requirement to answer questions, it is important that any delegation be to persons inside the Public Service who are subject to disciplinary proceedings under the Government Employment and Management Act (and previously under the Public Service Act) and that there is accountability by the Government of the day for any abuse of those powers.

An effective way of overcoming the difficulty that I see with the broad power of delegation is to move an amendment which limits the power of the Commissioner to delegate and replace it with delegation to a person employed in the Public Service of the State or, with the Minister's consent, to a person not so employed. That means that, if the Commissioner is to delegate his or her power to some person outside the Public Service, the Minister should at least approve it so then there is a measure of accountability for the way in which both that decision is taken and the way in which the powers are exercised by the delegate.

The Hon. C.J. SUMNER: That is acceptable.

Amendment carried; clause as amended passed.

Clauses 11 to 14 passed.

Clause 15—'Prohibition of certain contractual terms.'

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

Page 7—

After line 21—Insert 'or'.

Lines 24 and 25—Leave out all words in these lines.

This clause deals with the prohibition of certain contractual terms. Subclause (1) *(a)*, *(b)* and *(c)* specifically exclude certain provisions from a contract: for example, in paragraph *(a)* any provision which purports to provide that the contract is governed by the law of a place other than South Australia; in paragraph *(b)*, a provision purporting to provide that legal proceedings arising out of the contract are justiciable only by the courts of a place other than South Australia; and in paragraph *(c)*, a provision purporting to exclude, restrict or modify any right conferred on a consumer.

Those three provisions seem quite appropriate. Paragraph *(d)*, on the other hand, provides that a contract must not contain a provision of a kind prohibited by the regulations. I have a concern, and I have expressed it on a number of occasions, about the law being made by regulations in such a way that it does not on the face of the statute itself contain express provisions indicating what is lawful and what is not. If paragraph *(d)* is deleted, as I hope it will be, if there are specific provisions which ought to be excluded from contracts and which may be offensive in the contracts to which this part applies, then amendments to the legislation can be brought in to Parliament and dealt with by both Houses and be given careful scrutiny. I prefer that course to the sort of provision which is in paragraph *(d)* allowing this to be done by regulations.

The Hon. I. GILFILLAN: I support the amendment. This involves a practice that I can imagine Parties in Government would like to see enshrined in legislation. One can leave the open-ended option to add on the bits that happen to be more comfortable from time to time. As an ordinary member of the public and as an ordinary member of the Parliament, I resent that. If something is not clear enough to be introduced to this Parliament for us to look at, debate and analyse, then it does not deserve to be binding on people in South Australia.

The Hon. C.J. Sumner: It has to come to Parliament.

The Hon. I. GILFILLAN: If it comes in the form of regulation, as the Minister well knows all we can do is accept it or reject it. We do not have the normally intelligent, rational and calm forum to discuss it in a Committee stage. As Democrats usually do, I am prepared to listen to the argument. It has been traditional that we have always supported the Opposition when it has followed this pattern, and I hope when in Government (if we get to that stage while I am here) they will honour this indication and not leave these options for regulations to modify and change legislation after it has been debated in its full state in the Parliament. I support the amendment.

The Hon. C.J. SUMNER: I oppose the amendment. The problem with it, apart from anything else, is that this particular part of the Fair Trading Bill is dealing with door-to-door trading and is part of an exercise developed by the Commonwealth and States for uniformity among the States. That has been pressed for by industry for many, many years. The industry involved throughout Australia, and those firms represented through the Direct Selling Association, have been concerned about the plethora of different laws regulating door-to-door sales throughout Australia.

As a result of that concern, the issue was raised through the Standing Committee of Attorneys-General to try to get a uniform Bill. It was referred to the Parliamentary Counsels Committee and what is now in part III of the Fair Trading Bill is the uniform legislation relating to door-to-door trading. The Parliament has to make up its mind. It either wants to support the legitimate concerns of business, which I support, about the hotchpotch of laws around this country and perhaps give up on something of this kind, or throw the notion of uniformity out the window. I believe that we ought to stick with uniformity.

One of the things I have tried to do as Minister of Consumer Affairs, since being elected four years ago, is to try to get agreement with other States and the Commonwealth on laws dealing with trading and consumers throughout Australia so that business, commerce and consumers know where they stand with respect to the laws dealing with trading. It is a horrendous cost on business having the different legislation around the States dealing with particular aspects of consumer law and trading.

The Fair Trading Bill is not so much a uniformity exercise, although some parts such as door-to-door trading are, but the Trade Practices (State Provisions) Bill is the fruit of the exercise that was started shortly after the election of this State Labor Government in 1982 and shortly after the election of the Federal Labor Government in March 1983 to try to bring some rationality and uniformity into laws dealing with trading and consumers. The problem with the clause to which the honourable member is referring is that it is in a part of this Bill which is uniform with the other States that are participating, and most States have agreed to participate.

As I understand it, this part has the strong support of the Direct Selling Association which has pressed for this legislation to be uniform throughout Australia. The deletion of this provision will remove an important benefit of the uniform legislation—the ability to profit from interstate enforcement and administration of identical legislation. Unfair trading practices often begin interstate and spread to this State. Occasionally, the reverse happens. Problem traders are also often flushed out of one State only to continue their unfair practices in another. Problem practices can be identified in one State and their spread anticipated and forestalled in all others by having uniform provisions allowing for quick prohibition.

The example I gave in reply to the second reading debate is one of the types of practice whose spread can be anticipated and acted upon quickly. Such action is an excellent way of pooling resources to assist all consumers throughout Australia. As to the principle of changing existing obligations and rights by way of regulation rather than legislation,

I do not want to repeat myself, but the honourable member says that he is denied parliamentary debate—he is not. He is a member of Parliament, and on any regulation brought down he can move for the matter to be introduced into the Parliament.

The Hon. I. Gilfillan: It comes into effect before it is debated.

The Hon. C.J. SUMNER: It does not have to stand. The honourable member can come in here and debate it and, if he gets the numbers, it is deleted. That is the fact of the matter. The Retail Traders Association apparently has no difficulty with this provision, as I said, and I do not believe that the Direct Selling Association has any difficulty, either, because it has been a strong supporter of uniform door-to-door sales legislation. In relation to this particular clause, the Retail Traders Association has stated:

> The association supports such a provision and further submits that it should be extended to enable the Commissioner for Consumer Affairs to also exclude, in the exercise of his discretion, a transaction without the need for formal regulations to be created.

So, the industry on which this is supposed to be a burden is prepared to go beyond its being added by regulation, saying that the Commissioner for Consumer Affairs should be entitled to do it. The Retail Traders Association recognises the need for quick, flexible action in some circumstances as, I believe, does the Direct Selling Association. The reality is that the decent, fair traders in the market place have no fear of a clause such as this.

Consumers have no fear of a clause such as this because it would be used to deal with bad, unfair practices that come to the attention of the various States from time to time. All it does is give the Government, through regulation, the capacity to act quickly where it sees an unfair practice developing and to exclude it. The industry is not bothered about it. It is not anti-competitive. It is supported by consumers and it is part of a uniformity exercise. That being the case, I would have thought that that was sufficient to overwhelm the honourable member's concerns about it. If he wants to put it in, and if he succeeds, I suppose we will not proclaim the legislation but take it back to the requisite committee that dealt with it. In the meantime, I will be quite happy to tell consumers in South Australia that the reason the Bill has not been proclaimed is that the Hon. Mr Gilfillan has decided that the exercise that is being done on a cooperative State/Federal basis for uniformity with respect to door-to-door sales is no longer uniform because the Hon. Mr Gilfillan does not support it.

The Hon. I. GILFILLAN: What the Attorney-General said is unexceptionable and I support it, but it was peppered with a few other innuendos that I did not find quite so palatable. There is no reason why we should not be completely uniform here in attempting to get fair trading practices, but arguing that subclause 3 *(d)* allows for uniformity State by State seems to me to be illogical nonsense. For example, if it starts in South Australia and we put a regulation into effect here, that will not be uniform throughout Australia until the other States catch up, so I do not see that deleting the capacity for making regulations will interfere, other than on a time basis. Certainly it will take a little longer, but my opinion is that legislation of good intent to address a problem that has arisen would have very quick passage through this place. It is the proper forum for it to be debated. Despite the best intentions in the world, these could very quickly be ad hoc responses to a situation which, in hindsight, might prove to be quite unfair intrusions into trade and the establishment of contracts.

I ask the Attorney-General whether he has a list of the sort of matters that could be covered by regulation that would make paragraph *(d)* so important. If it is just for uniformity, as if we are going to worship uniformity as the goal, I am not persuaded. There may be variations State by State and there may be a time delay of even a couple of months but that does not seem to me to be a horrendous price to pay in order that we can deal with these matters in a proper parliamentary way in which there can be amendments and discussions.

The Hon. C.J. Sumner interjecting:

The Hon. I. GILFILLAN: It is a long time since the Attorney-General tried to deal with regulations and the frustration involved, because regulations are already in effect the day the Minister brings them down. There is no chance of amendment. The Attorney-General's argument that regulations offer the same parliamentary involvement indicates the shortness of his memory of what it was like when he was a backbencher, if he ever was.

The Hon. C.J. Sumner: I didn't need all the assistance you get: secretaries, computers and researchers.

The Hon. I. GILFILLAN: There seems to be a sort of flexibility in the subject matter of the interjection but you, Ms Chairperson, have accepted it as being relevant to the debate.

The Attorney-General may have a list and I ask him to indicate those areas where he can specifically say that they are the sorts of measures for which we ought to have the capacity to have an instant response through regulations. I would very happily listen to that but, at the moment, I am not persuaded by the argument that we have to have these provisions as spelt out in paragraph *(d)* just to have uniformity Australia-wide.

The Hon. C.J. SUMNER: I do not get involved in unfair trading practices. I gave an example in my reply at the second reading stage, but the honourable member may have a more creative mind than I do with respect to rorts that will disadvantage consumers, although he does not seem to be very concerned if people engage in them. From time to time, practices develop and we need to be able to deal with them quickly. The process would be that, if a practice developed that a particular State was concerned about, the State would discuss it with the other States that were involved in the uniformity exercise, reach an agreement, and bring in a regulation to enable that practice to be dealt with expeditiously. That would save people leapfrogging around Australia and would not disadvantage consumers in one State after another because of loopholes in the different clauses.

That is the basis for it. If members do not want that, I suppose that that is their problem, and we will not have uniformity; the South Australian Government will not have the capacity to act. All I can say is that if as a result of that there is action in the other States to prohibit a practice which is clearly undesirable and disadvantageous to consumers and which has become apparent, and we cannot prohibit it in South Australia, I will be quite happy to tell the public and the consumers of this State that the reason our hands are tied, even though every other State has acted against what is agreed throughout Australia is an unfair practice, is that the Hon. Mr Gilfillan would not agree with it. If over a period of two or three months when the Parliament is not sitting (for example, over Christmas) consumers are ripped off I will have to say to them, 'I am sorry; you go and see Mr Gilfillan or his research officer.'

The Hon. K.T. GRIFFIN: There is always a dilemma with uniformity across Australia and with respect to the States the dilemma is, on the one hand, to endeavour to try to obtain uniformity and the mechanisms by which that should be achieved but, on the other hand, to ensure that

the law is not made by councils of Ministers meeting in some other part of Australia in which—

The Hon. C.J. Sumner: I am not suggesting that the law is made there.

The Hon. K.T. GRIFFIN: But that is what you are saying.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: You are saying that the Ministers have made a decision that this is to be uniform and therefore we have to accept it. That is what the Attorney-General is saying. There is a real problem in that. It happens in a whole range of legislation that the Parliament considers from time to time as to whether it is to be uniform precisely with other States or whether there is to be some variation. I agree with the general principle of uniformity but I do not believe that we ought to aim for uniformity rather blindly without being cognisant of the way in which that is to be achieved.

What the Attorney-General is saying is that, unless we have this clause in the Bill which just says 'a provision of a kind prohibited by the regulations', we are not going to be uniform and we will prejudice the whole object of uniformity. What I say to the Attorney-General is this: it does not prejudice the object of uniformity. What it does is to vary the mechanism by which each State or the Commonwealth achieves that uniformity. It is much more appropriate to make the law in the parliamentary arena than to leave it to regulations. We ought to have an opportunity to consider what is being proposed by way of a uniform measure around Australia. The Attorney-General cannot tell me that the Ministers will meet, make a decision about a particular practice and have it in by way of regulation within a matter of weeks. That just does not happen, whether it is by way of regulation or by statute. My experience, looking at what has been happening in the past few years, is that it may take six to eight months to get something into law, whether by regulation or by statute, on a uniform basis around Australia. We have seen the travel agents legislation that was passed last year come into effect some six months after it was passed, partly because there was a lot of work to be done with regulations but also some amendments—

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: It does not matter. The principle is the same. What I am saying is that it does not prejudice uniformity for us to decide that we will consider any provisions that must not be included in contracts by way of legislation or statute, rather than regulation.

It is petulant of the Attorney-General to suggest that the Bill will not be proclaimed if this particular paragraph is not in it. This particular paragraph does not prejudice the sorts of clauses which are not to be allowed in contracts, and they are specifically referred to in paragraphs *(a)*, *(b)* and *(c)*.

The Hon. C.J. SUMNER: That remains to be seen as to whether this is an insuperable obstacle to proclamation of the Bill; but even if it is possible to proclaim it, if an unfair practice in door-to-door sales occurs and the other States are able to act but South Australia is not, then I will know where to direct the blame and where to direct the consumers who are disadvantaged by it. I oppose the amendment.

Amendment carried; clause as amended passed.

Clause 16—'Prescribed contract.'

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

Page 8, lines 10 to 12—Leave out subclause (4).

This clause deals with what is a prescribed contract and subclause (4) provides:

> 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.

That is a reverse onus clause which seems to be unnecessary. To me it seems that, if there is a contract which it is alleged is a prescribed contract, in any prosecution or other action the contract will be tendered to the court by way of evidence, that contract will stand or fall on its terms and conditions. It is quite wrong to provide that, if it is alleged in proceedings that such a contract is a prescribed contract, the onus should then be put on the defendant to show that it is not a prescribed contract.

One of the essential ingredients of a prosecution, under this sort of provision, is to show that the contract presented to the court is in fact a prescribed contract, and that has to be proved beyond reasonable doubt. It is there in black and white for the court to consider and decide on. I cannot understand why there should be a reverse onus provision in this clause which provides that, for the purposes of these proceedings, the prosecutor is of the view that this is a prescribed contract; we are going to say that it is, regardless of whether or not there is any doubt about it and let the defendant show that it is not, in fact, such a contract. That is reverse onus and I think it is a very dubious way of proceeding in these sorts of circumstances.

In certain evidentiary matters I support the point that certain matters should be deemed to be proved in the absence of proof to the contrary; that is, if a certificate has been given by the Attorney-General and a certificate purporting to be a certificate by the Attorney-General has in fact been produced to the court. There is no reason at all why that should not be reverse onus, but that is a totally different concept from what is being provided in subclause (4). If subclause (4) passes into law, it has the potential for causing quite considerable injustice and I think it goes far beyond any sort of reverse onus provision which ought to be contemplated by the legislature.

The Hon. C.J. SUMNER: I have indicated the Government's view on this amendment during my second reading reply, namely, that a clause such as this is necessary to prevent loopholes developing in the legislation. In the early days of the operation of the 1971 Act, at least one door-to-door seller purported to sell a number of items separately under separate contracts, each just under the limit of operation of the Act. This loophole had to be closed when that occurred. Because there were difficulties in proving the connection between split contracts, a deeming provision was inserted in the old Act—it is already in the old Act. The onus shifting to the seller to prove that two or more contracts amounting to substantially the same transaction were not split to avoid the operation of the Act is dealt with by the provision that the honourable member seeks to delete. Again, I can only repeat that a similar clause was deemed necessary in the 1971 legislation. This clause is in the uniform Bill and I ask members to be careful about removing it. I think it is more essential to the question of uniformity than even the previous amendment that the Committee carried.

The Hon. K.T. GRIFFIN: If it is mainly to deal with this question of splitting contracts, then we ought to have a specific provision in the Bill which deals with it. If it is in the 1971 Door to Door Sales Act, as the Attorney-General indicated, there is no reason why it should not be in this Bill. However, to put in a blanket clause like this to cover that one set of circumstances is, to me, quite an abuse of the way in which the Parliament ought to legislate, because what it is trying to do is to provide an all-embracing clause which throws the onus back on to an accused person. Let us remember that there are prosecutions involved and there are penalties imposed by the courts if a person is found guilty beyond reasonable doubt.

If it is only this question of split contracts, let us not put this sort of dubious provision in the Bill; put in a specific provision which deals with it, and I will be happy to support that. However, let us not reverse the onus of proof and put in an all-embracing provision such as this which, in my view, could result in some very serious injustice. With respect, I do not accept the argument that the Attorney-General has put, because I think it ignores the impact of this particular provision in the Bill.

The Hon. I. GILFILLAN: Failing any further words from the Attorney-General, I indicate that we will oppose the amendment. I do not profess to have adequate knowledge about this matter to make a judgment about points that the Hon. Trevor Griffin was raising, but the Attorney-General has obviously deliberated on it and I respect his view. It seems important that consumers are protected from what could be very distressful contracts and it allows for proof to the contrary. If it is clear enough to be proven that it is not a prescribed contract, I assume that that will absolve the vendor of any further offence. Unless there are any further misgivings from the Attorney-General, it is our intention to oppose the amendment.

The Hon. K.T. GRIFFIN: I am disappointed in that. I certainly want to ensure that consumers are protected. On the other hand, I also want to see that there is justice done under the provisions of this legislation. I would have thought that, regardless of whatever else one might think, reversing the onus in the way that this Bill does is likely to lead to injustice and certainly will not create any injustice so far as consumers are concerned.

A prescribed contract is one that meets or falls within the provisions of clause 16. It is a prescribed contract if the total consideration payable by the consumer is not ascertainable at the time of the making of the contract or is ascertainable at the time of making the contract and exceeds the prescribed amount, which is $50. Subclause (2) provides:

> Where—
> *(a)* two or more contracts relate to substantially the same transaction;
> and
> *(b)* the transaction could have been effected by a single contract which would, in that case, have constituted a prescribed contract,
> then each of the contracts that would not, if it stood alone, constitute a prescribed contract becomes a prescribed contract and, for the purpose of ascertaining the cooling-off period in relation to such a contract, it shall be deemed to have been made when the last of the contracts was made.

There are certain exclusions such as a contract of insurance, a contract solely for the provision of credit, but the question of splitting contracts is irrelevant. To put in this sort of general provision to say that something is a prescribed contract when it may not be—by looking at the document itself—and which ought to be a responsibility of the court seems to me to be an abuse of the power of reversing the onus of proof, and I certainly cannot support it.

Amendment negatived; clause passed.

Clauses 17 to 26 passed.

Clause 27—'Prohibition of certain actions.'

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

> Page 13, after line 3—Insert new subclause as follows:
> (2) Subsection (1) *(a)* does not prohibit—
> *(a)* the bringing of, or the asserting of an intention to bring, legal proceedings to determine whether or not a contract to which this Part applies has been, or is capable of being, rescinded under this Division;
> or
> *(b)* the continuation of such proceedings (for the purpose of recovering an amount alleged to be payable by the consumer under the contract or a related contract or instrument) where it is determined that the contract has not been, or is not capable of being, so rescinded.

This clause deals with the prohibition of certain actions. I made the point on second reading that, as it is drafted, it suggests to me that where a contract has been rescinded or is capable of being rescinded no person shall, for the purpose of recovering an amount to be alleged to be repayable by the consumer under the contract bring, or assert an intention to bring, legal proceedings against the consumer or to take certain other action against the consumer.

To me, that seems to deny the right of a party to a contract to take legal action to determine whether or not the contract is rescinded or is capable of being rescinded. What I am seeking to do is clarify the matter to ensure that subclause (1) does not prohibit the bringing of, or the asserting of, an intention to bring legal proceedings to determine whether or not a contract to which this part applies has been or is capable of being rescinded, or the continuation of the proceedings for the purpose of recovering an amount where it is determined that the contract has not been or is not capable of being so rescinded. It seems to me that that ensures that a party's rights are protected. Otherwise we have a legislative provision which says that one cannot bring legal proceedings even if you think you are right and the authorities are wrong.

The Hon. C.J. SUMNER: The Government does not oppose this amendment. In fact, it believes that it has considerable merit but again we run up against the problem of uniformity. The more such amendments that are passed, the more we move away from what was the original and desirable objective of this legislation. Having been through a few of these uniformity exercises, I know that once one admits that you can depart from it, we usually end up back in the position from which we started in the first place: namely, a complete dog's breakfast which satisfies no-one and which particularly does not satisfy the industry and business which has been looking for uniformity and consistency in the area.

From a philosophical point of view one hears a lot these days about Australia's needing to compete on international markets and needing to look at itself as a nation for that purpose. Yet, with different State laws we have a significant impediment to business activity and trading within Australia. Every step that we can take to do away with those inhibitions and differences to trading within Australia must assist our internal economy and it also must assist in that area about which everyone is talking these days, that is, Australia's international competitiveness. That is a general point that I wish to make with respect to uniformity. The amendment detracts from it. It is not an unreasonable proposition in the Government's view, but I would prefer that it not be passed and that I take it up with a view to getting it inserted as a uniform provision in the Bills that are being considered by the other State Parliaments.

The Hon. K.T. GRIFFIN: I appreciate the difficulty to which the Attorney-General refers, but I would have preferred to see the amendment accepted, which is why I will proceed with it. I know the difficulty about amendments which might ultimately make the Bill not as uniform (if I can use that description) as some would like. Conversely, I do not believe that this really detracts from the operation of the legislation. The amendment does recognise a defect in clause 27 as it presently is and ensures that a citizen who is to be prosecuted, where the penalty is a maximum of $5 000, has some measure of protection against ill-considered or inappropriate legislative requirements. I would have thought that it does not in that respect therefore prejudice the rights of citizens in South Australia.

It provides some better balance for those who are likely to be the subject of litigation, only in so far as their rights

are respected and that they do have an opportunity to pursue certain matters in court, rather than to be prevented by legislative enactment from exercising rights that traditionally every citizen has to take disagreement on issues such as this to the properly constituted courts of the State or country. So, I prefer to see the amendment carried in the knowledge that I do not believe it will affect the general concept of uniformity, but in the hope that it can be recognised as an important safeguard for parties to certain contracts.

The Hon. I. GILFILLAN: The position should be to support the amendment because the Attorney has indicated that it has merit and that seems to be a fair enough seal of approval that it is a worthwhile increment to the legislation as it stands. He may once again be over-emphasising uniformity. Somebody has to be the pacemaker. Someone somewhere will need to introduce this if it is to be followed by other States. This seems to be the perfect situation to do it right here and now. I indicate our intention to support the amendment.

Amendment carried; clause as amended passed.

Clause 28 passed.

Clause 29—'Interpretation.'

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

Page 14, after line 22—Insert the following subclause:

(2) For the purposes of this Part, where a prescribed report consists of a communication by electronic or mechanical means and is neither written nor oral, the report shall be regarded as being oral.

My amendment is to accommodate the comments made by the Hon. Mr Griffin in speaking to clauses 32 and 33 of the Bill. The honourable member pointed out that uncertainty currently exists as to whether data communicated by an on-line computer is an oral or written report for the purposes of those clauses. The proposed amendment addresses this issue and should remove that uncertainty. It will, however, be rendered useless by the honourable member's proposed amendments to clauses 32 and 33. These amendments say that it is only written reports that need to be disclosed. I will be opposing those amendments later, but the Committee should note the effect on new clause 29 (2) if my amendment is inserted.

The Hon. K.T. GRIFFIN: I support the amendment as it picks up an issue to which I referred in the second reading.

Amendment carried; clause as amended passed.

Clause 30 passed.

Clause 31—'Procedures in respect of prescribed reports.'

The Hon. K.T. GRIFFIN: This clause deals with certain procedures that must be followed by a reporting agency or trader with respect to prescribed reports. Prescribed reports are communications made to a trader by a reporting agency or another trader of information relating to a person not being a communication made with the knowledge of and information known to that person. Those communications can be written or oral. Subclause (4) provides that a trader who receives a written prescribed report has to keep it for not less than six months after receipt. Subclause (5) provides that:

A trader who receives an oral prescribed report shall—

(a) at the time of receipt make a written record of the contents of the report;

and

(b) retain that record for 6 months after that receipt.

I expressed some concern during the second reading stage about the requirement to keep a written record of the contents of an oral report received by a trader. My amendment is to delete subclause (5).

I note what the Attorney-General said in his reply at the second reading stage that some difficulties may be created if oral reports are to be relied on by traders, but I make the point in response that in a large organisation where a number of people might be making telephone calls to obtain information as to whether or not credit might be made available, a sale made or services provided to a customer, it will not be easy for written records of that report to be retained. It certainly will require a considerable amount of internal restructuring in many retail organisations. It will also require training of employees.

At the moment amounts over $100 in some instances sought to be charged to a credit card can only be authorised if a check is made with the Bankcard, Mastercard or Visa agencies. That is done by telephone and it is usually a 'yes' or 'no' answer. There is nothing so formal as information as to why a person might be denied the purchase through the credit card agency. To place a requirement upon a sales assistant to keep a record of that is a fairly difficult burden. It may be that if there are some difficulties with it we ought to look at some other mechanism, but let us not place the sort of burden on retailers and other business people that this subclause seems to impose. I therefore move to delete it.

The Hon. C.J. SUMNER: I do not want to be unreasonable about the honourable member's amendments, but unless we have such a provision such as this one we are faced with the difficulty of the legislation being avoided. The fair reporting provisions substantially reproduce provisions in the Fair Credit Reports Act which have existed for over 12 years, although this subclause in the Bill before us is an addition to the requirements in the present Fair Credit Reports Act. The principles of the legislation are that where a person is refused a benefit and the person refusing a benefit is in possession of a credit report, the person refused the benefit ought to know that the information exists, be able to review it and have it changed if it is wrong. To enable this review to take place people who rely on such reports in making business decisions must keep proper records of those reports. If any oral report can be used but then forgotten, effective review becomes impossible.

The problem is that telephone calls may then become the common currency of credit checks and the possibility of review will disappear. It seems perfectly proper and reasonable that if any trader takes action on the basis of a report from a reporting agency or another trader he should make a note of that information so that its accuracy may be checked and, if necessary, challenged. I suppose one way of dealing with it might be to say that in the circumstances where credit is refused a note should be made of the circumstances, including any oral report.

That is the problem that could exist if the honourable member's amendment is accepted. For example, a person could go to John Martin's, ask to open an account and tell that store in the application that they already have an account with David Jones. A staff member at John Martin's could then telephone David Jones to check on the status of that account. If David Jones telephoned through that information and it was incorrect (for example, making a mistake with the person's name or giving wrong information about a defaulter's account), there is not much that that person can do about it under the honourable member's proposed amendment. If the person asks John Martin's about the problem, the store will say that it received a report from David Jones (on a certain date) about that person. When the individual then goes to David Jones, it does not have to tell him anything and he will have no grounds to dispute the accuracy or completeness of the information.

More importantly, after a time nobody will really know what was said about the individual so that, even if the individual can show that it must have been a wrong report,

there is still no way of knowing how it should be amended. That is the problem that exists unless some provision of this kind is placed in the legislation. The honourable member may say that so far it has not been a problem, but there is the capacity for injustice and that is why the Bill was prepared in this way.

The Hon. K.T. Griffin: Is there evidence of any such injustice?

The Hon. C.J. SUMNER: I will check that in a minute. I suppose the negative side is that it perhaps imposes a significant drain on the resources of a business if it must note down any oral reports that it receives. It seems to me that, if it is valid for a written report to be made available to a consumer, surely in principle the position is the same for an oral report. Perhaps a compromise can be considered.

The Hon. I. GILFILLAN: If the Attorney has indicated that it should be restricted to cases where credit has been refused, that would be a very sensible amendment to the Hon. Mr Griffin's amendment. Our position will be that, if the Attorney wishes to take that course, we will support him. If he chooses not to do that, we will oppose the amendment.

The Hon. K.T. GRIFFIN: This provision will impose quite a considerable burden without really establishing any advantage to either the consumer or the retailer. I gave the instance of a credit card. I do not know whether the Attorney has tried to purchase something over a certain amount and has then been made to wait while the shop assistant telephoned the credit card authorising agency. Generally, the assistant returns and says that the transaction has been authorised. However, if the credit card agency refuses the transaction, I understand that that simply means that the credit card central agency has said 'No', and that may be simply because the authorised limit on the credit card has been exceeded.

The Hon. I. Gilfillan: You want to know why?

The Hon. K.T. GRIFFIN: I do not want to know why. If the agency says 'No', no report has been given other than the agency saying 'No'. That happens many hundreds of times each day. I would have thought that to require every service station, small business and large business to keep a record of each occasion they telephone the credit card authorising agency—whether or not credit is approved or refused—would create a mammoth task. I do not believe that it has been a problem so far. I am surprised that this matter comes up in the context of no great difficulties being experienced with the law as it is at the moment.

The Hon. R.J. Ritson: Perhaps it will have unintended consequences.

The Hon. K.T. GRIFFIN: That may be. If the Attorney is happy to talk about a compromise, I prefer that option rather than leaving the clause as it is because that would create a tremendous burden, and is unnecessary.

The other difficulty with the clause is in determining what is a written record of the contents of the report. Putting aside the credit card authorisation, if there is to be a purchase and there is a discussion between the sales assistant and some other trader, what record will be kept? Will the *verbatim* discussion or certain aspects of the information be imparted? There are many problems with this subclause and it should be closely examined. If the Attorney is prepared to look at it in the light of the debate, I suggest that we postpone consideration of the clause. The Attorney could then look at it overnight and perhaps consider some reasonable alternative.

The Hon. I. GILFILLAN: I support postponement of consideration of the clause.

Consideration of clauses 31, 32 and 33 deferred.

Clause 34—'Correction of errors.'

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

Page 16, lines 24 to 33—Leave out subclause (4) and insert new subclause as follows:

(4) Where a reporting agency or trader amends, supplements or deletes information, the agency or trader shall give written notice of that amendment, supplementation or deletion to every person provided by the agency or trader with a prescribed report based on the information within 60 days before the making of the amendment, supplementation or deletion.

I had a concern that, when a reporting agency or trader amended, supplemented or deleted information, the agency or trader was to give notice in writing of that amendment, supplementation or deletion to every person nominated by the person to whom the information relates and, in the case of a reporting agency, to certain other persons. That seemed to me to place the control of the dissemination of the information with the person in respect of whom that report related. The better course is to require that, where there is an alteration by a trader, notice is to be given to every person who has previously been supplied with details of the report, rather than leaving it in the hands of the customer. I notice that the Attorney-General has an amendment on file, but for the moment I would prefer my amendment.

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

Page 16, lines 24 to 33—Leave out subclause (4) and insert new subclause as follows:

(4) Where information is altered under this section by amendment, supplementation or deletion, the following provisions apply:

(a) where a reporting agency makes such an alteration, the agency shall give notice in writing of the alteration to—

(i) every person provided by the agency with a prescribed report based on the information within the period of 60 days before the making of the alteration;

and

(ii) every person provided by the agency with such a prescribed report before the commencement of that period and nominated by the person to whom the information relates;

(b) where a trader makes such an alteration, the trader shall give notice in writing of the alteration to every person provided by the trader with a prescribed report based on the information and nominated by the person to whom the information relates.

When I replied to the Hon. Mr Griffin's comments in the second reading debate, I indicated that this clause was really just a reworking of the provisions in the existing Act dealing with the requirement to advise persons of corrections to false information given out by a reporting agency or trader. On a closer examination, it does seem that this Bill deals with the matter more extensively than does the existing Fair Credit Reports Act. On reflection, therefore, I believe that the limitation on the obligation to advise, which exists in the present legislation, should be carried over into this legislation, and that is the effect of my amendment, which reinserts the proviso that only in respect of persons who have received a prescribed report that is subsequently corrected may a consumer demand that they receive details of the correction.

The Hon. I. GILFILLAN: I do not understand the meaning of the words, 'within the period of 60 days before the making of the alteration' or 'the amendment, supplementation or deletion'. Could either the Attorney-General or the Hon. Mr Griffin explain what they mean?

The Hon. K.T. GRIFFIN: I do not have any difficulty with the period of 60 days before the making of the alteration because that really relates to the date at which the credit information has been provided and has subsequently been amended. As I understand it, the procedure is that you get a credit report on yourself and seek an opportunity to amend it if it is wrong, and 60 days before that date of

the amendment, if the report has gone out to any person, the amendment also goes out to those people. So, the people who have replied on an incorrect report are provided with information as to what the inaccuracy was. I have no difficulty with that.

However, I have a concern about the Attorney-General's amendment, because paragraph *(a)* (ii) relates to every person provided by the agency with such a prescribed report before the commencement of the period of 60 days before the making of the alteration and nominated by the person to whom the information relates. That does not seem to reflect the existing provisions of the Fair Credit Reports Act in section 9 (4). All we are really trying to do is ensure that when somebody has relied on a credit report, and that credit report is inaccurate, within 60 days before the date of making the correction, the people who have been supplied with a report get it. The amendment of the Attorney-General suggests that that can be for some period even before that period of 60 days, so it is really at large.

The Hon. C.J. SUMNER: The instructions were to replace the existing provisions.

The Hon. K.T. Griffin: With identical words?

The Hon. C.J. SUMNER: I do not know about identical words, but in a manner which made the effect the same. If that has not occurred, again perhaps we can defer it and sort it out. If the honourable member is happy with the existing legislation, that is what we want also.

Consideration of clause 34 deferred.

Clause 35 passed.

Clause 36—'Offences.'

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

Page 17, line 11—After 'so' insert 'or except for the purposes of legal proceedings'.

Clause 36 relates to offences and paragraph *(d)* provides that it is an offence if a person 'divulges information relating to another person from the files of a reporting agency without proper authority to do so'. I raised the question of legal proceedings. The Attorney-General's reply was that legal proceedings were probably within the concept of 'proper authority'. My amendment puts that beyond doubt by adding the words 'or except for the purposes of legal proceedings'.

The Hon. C.J. SUMNER: We do not oppose the amendment. We do not think that it is necessary.

Amendment carried; clause as amended passed.

Clauses 37 to 39 passed.

Clause 40—'Price tickets.'

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

Page 18, line 34—After 'sale' insert '(relating to the availability of discounts or trade-in or other allowances)'.

This amendment does not prejudice the object of the clause but makes it clearer. Clause 40 provides that, where any statement of price or conditions of sale imprinted on, attached to or exhibited with any goods offered for sale by retail does not set out in a prominent position the price at which the goods can be bought for cash, there is an offence. There is some difficulty just referring to conditions of sale. I understand the technical problem but I would like to relate the conditions of sale to the availability of discounts or trade-in or other allowances, and that relates to price.

The Hon. C.J. SUMNER: The amendment is accepted.

Amendment carried; clause as amended passed.

Clause 41 passed.

Clause 42—'Substantiation of claims.'

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

Page 19, line 13—Leave out 'as required by the notice' and substitute 'sufficient to support the claim or representation'.

Clause 42 provides that the Commissioner may, by notice in writing, require a person to provide proof of any claim or representation made in a statement which is published. The offence is created if a person fails to provide proof as required by the notice. The maximum penalty is $5 000. The point that I raised during the second reading debate is that there could well be a difficulty with subclause (2) in that it may be that, if the notice is given by the Commissioner to produce certain proof and the Commissioner is not satisfied, that in itself is an offence, regardless of whether or not the proof was appropriate. What I seek to do is to delete the words 'as required by the notice' and to substitute 'sufficient to support the claim or representation' so that it can be assessed by the court objectively, rather than relying on the opinion of the Commissioner.

The Hon. C.J. SUMNER: That is a sensible amendment which is accepted by the Government.

Amendment carried; clause as amended passed.

Clause 43—'Unlawful actions and representations.'

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

Page 19, lines 31 to 35—Leave out paragraph *(d)* and insert 'or'.

I raised questions generally about clause 43 and, when the Attorney-General replied, I think that he misunderstood the content of what I had to say during the second reading stage. I said that there were some reservations about the reference to a trading debt. I certainly did not intend that that should be construed as some sort of approval for the misrepresentations or actions that could be taken under clauses *(a)*, *(b)* or *(c)* within small business as opposed to consumers, because there ought to be honesty and integrity in dealing, whether it is with consumers or with traders. The major concern about this clause comes in two respects, the first being subclause (1) *(d)* and the second being subclause (1) *(e)*.

I will move my amendments separately, so at this stage I will deal only with paragraph *(d)*. Paragraph *(d)* prevents a creditor who is seeking to recover a trading debt from communicating with a debtor where the debtor has notified the creditor or his or her agent in writing that all communications are to be made to a specified legal practitioner and where the debtor has in fact appointed the legal practitioner to so act. I have a concern about this paragraph because what it really means is that, where a person seeks to avoid an obligation to meet a debt entered into in good faith by a creditor, that debtor can engage a lawyer and put the whole thing into a stalling mode rather than into a mode of resolution of the outstanding liability. Even though there may be contact between the debtor and the creditor with respect to the outstanding liability when a lawyer is acting, I do not believe that that is detrimental to the resolution of an outstanding liability. I guess the other difficulty is that, if that person is a retail store dealing with a particular debtor in relation to other matters, it then becomes somewhat confused as to when a communication may be made by the creditor and when it may not. Bearing in mind that there is a maximum penalty of $2 000 involved in a breach of this paragraph, I think it is better out of the legislation. There has not been any significant difficulty at the present time and the *status quo* ought to be retained.

The Hon. I. GILFILLAN: I support this amendment. The protection with which a debtor can provide himself or herself through a legal practitioner is not conducive to getting some sort of reasonable justice for creditors seeking payment for debts. It appears to me that, in most cases, those people who would be engaging legal practitioners are not the most impecunious. The people who are most defenceless in society would not be protected by legal practi-

tioners and it seems to me that it is an unnecessary barrier between those seeking settlement of a debt from the debtor.

The Hon. C.J. SUMNER: The Government opposes this amendment for the reasons I outlined in my second reading reply. Suffice to say that a similar prohibition has operated effectively as part of the federal law of the United States since 1978 and is also in force in parts of Canada. The experience of people involved with debtors is that such a prohibition assists the orderly payment of debts and does not detract from it. Where a creditor is dealing simultaneously with a solicitor and the debtor, difficulties of communication arise. I think it is reasonable that, once a debtor has appointed a solicitor, that creditor ought to deal with that solicitor.

Amendment carried.

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

Page 19, lines 36 to 41—Leave qut paragraph *(e)*.

This paragraph deals with the making of—

> . . . any personal calls or telephone calls for the purpose of demanding payment—
>
> (i) on a public holiday;
>
> or
>
> (ii) between the hours of 9.00 p.m. of one day and 8.00 a.m. of the next;.

If that occurs a maximum penalty of $2 000 can be imposed on the creditor or the agent making such calls. I have made the point during the second reading debate that this paragraph takes no account of the people who might be on shift work or away from their home during the week or for weeks on end working on the oilfields, undertaking exploration activities, fruit picking, and so on. I believe that it will place an unnecessary hurdle in the way of creditors making contact with their debtors, will enable those who desire to avoid any contact with a creditor and any pressure to pay debts incurred for goods and services provided in good faith, and will militate against early resolution of particular problems.

Frequently it is in the interests of debtors that they are brought face to face with their liabilities at the earliest possible stage so that assistance can be offered to them to get out of it as best they can on a structured basis. I believe that the interests of all creditors and some debtors will be best served by deleting paragraph *(e)*.

The Hon. I. GILFILLAN: I oppose the amendment but bring to the attention of members the proposed amendment I have on file, to which I will briefly speak. I believe that the interests of creditors would be well enough served with the option that my proposed amendment offers, that is, that creditors would be able to approach by a personal call or telephone call debtors on any of six days of the week between the hours of 6 a.m. and 11 p.m., except Sunday.

I have discussed these times with Mr Forbes of the Central Mission, and I will seek leave to change the time from 6 a.m. to 7 a.m. However, I will wait until I move my amendment to address that problem.

In relation to the amendment before us, to have open season for gunning for debts is a rather callous reaction to the human stress and trauma that can be caused to people by having knocks on their door or telephone calls at all hours of the day or night. There should be a set period each day, and one day a week, in which the debtor can feel free from the anxiety of being harassed—being the quarry of the chase. That does not mean that I am defending those who are not fulfilling their obligations to pay debts. I accept that the hours defined in the Bill are too restrictive, and I will be seeking to extend them.

It is appropriate for members to consider that, although the motive is to protect a debtor from distress and unfair harassment, the fact is that the debtor who does not pay debts off-loads that obligation on to other people in the community who are often less able to afford that extra cost. Unpaid debts are eventually paid for: they are amortised throughout the purchasing public. It is important to realise that the eventual settlement of debt is to everyone's advantage; it is not just the hunting down of a quarry to extract a pound of flesh. I oppose the amendment and intend to move the amendment on file standing in my name.

The Hon. C.J. SUMNER: The Government opposes both amendments. The Hon. Mr Gilfillan in typical style is trying to have it both ways—curry favour with one group by precluding Sundays and curry favour with another group by extending the time during which debt collection agencies can attend at a debtor's premises. In fact, it is a quintessential example of the Democrats' approach to Government. The Hon. Mr Gilfillan has managed to incorporate both approaches in the one amendment which, to my way of thinking, is quite astonishing. It seems to me that there is an inherent inconsistency in the amendment to be moved by the Hon. Mr Gilfillan.

On the other hand, the Hon. Mr Griffin wishes not to have any constraints at all placed on people pursuing their debts. I do not want to rehash what I said in the second reading reply. I rest the Government's case on what I said on that occasion and again emphasise that what we are proposing with respect to times is the same as the law in the United States, which is known, I would have thought, throughout the world as the centre of activity of the free enterprise or capitalist system, and is apparently reasonable enough there for consumers who become debtors to be protected from harassment by creditors by some restriction. If it is reasonable for the United States of America, it would seem to me to be reasonable for South Australia to have what is a fairly limited restriction on the times when a creditor can pursue a debtor.

I oppose the Hon. Mr Griffin's amendment, which removes any restrictions at all, and I would oppose the Hon. Mr Gilfillan's amendment because it is a compromise between two conflicting points of view which does not advance the matter at all.

The Hon. K.T. GRIFFIN: In the Trade Practices (State Provisions) Bill there is the provision against harassment of debtors so, to a large extent, that is proposed to be covered. I am disappointed that the Hon. Mr Gilfillan will not support my amendment. His amendment to line 38 makes the position worse as I see it, that is, to change the prohibition against calls from public holidays to Sundays. If anything, and if my amendment is not carried, I will not support his change from public holidays to Sundays but, because his time frame in his amendment to line 40 is more open than the Bill at the present time and whilst it does not go as far as mine, it is better to support that than have nothing at all. So, that is the position I will adopt in respect of those two amendments of his if mine is not carried.

The Hon. I. GILFILLAN: I will be opposing the Hon. Mr Griffin's amendment.

Amendment negatived.

The Hon. I. GILFILLAN: I move:

Page 19, line 38—Leave out 'public holiday' and insert 'Sunday'.

To pick public holidays which are fairly sporadic days occurring through the year as being days of protection against harassment is fairly arbitrary. It either reflects reverence for the Adelaide Cup or some other reason for picking up public holidays which eludes me. For the Attorney-General to be critical of my exclusion of Sunday seems to me to be incomprehensible. The argument for Sunday is that it is the one day of the seven in a week when it is reasonable for a

person to feel free from the concern of having someone knocking on the door or calling on the telephone.

Amendment negatived.

The Hon. I. GILFILLAN: I move:

Page 19, line 40—Leave out '9.00 p.m. of one day and 8.00 a.m.' and insert '11.00 p.m. of one day and 7.00 a.m.'.

I have changed the time 6 a.m. to 7 a.m. in my amendment as distinct from what is set out in the circulated amendment. I have discussed the actual period of time with Graham Forbes, Director, Central Mission, the person who has much contact with people who are in economic disarray and being hounded by debt collectors. I admire the mission's attitude and care for such people. Therefore, I am particularly sorry that other honourable members choose to ignore the telegram that he certainly sent to me.

The Hon. C.J. Sumner: You are ignoring it now.

The Hon. I. GILFILLAN: It is obvious that the Government has ignored completely the pleas from the voice of the Central Mission crying out for a respite on Sunday. Therefore, the Government stands hoist on its own petard. It pretends to be the defender of the underdog, yet those who work with the underdog and who know far more than the Attorney—

The Hon. C.J. Sumner interjecting:

The Hon. I. GILFILLAN: As far as I know the Attorney-General has had no—

The Hon. C.J. Sumner interjecting:

The Hon. I. GILFILLAN: It is obvious that the Government, which parades itself as being the defender of the underdog in this situation, has chosen to ignore completely one of the quite specific requests from one of the State's most sensitive and involved people—Graham Forbes—a person who in certain circumstances has often been as I understand it the representative of the Minister of Health, who is probably one of the most astute selectors of people with care and understanding, yet the Government has turned this plea down.

The other point is that the hours that are chosen in my amendment to line 40 do cater, as much as I believe is reasonable, for people who work outside of ordinary hours. The Government has chosen to not accept the flexibility that ought to be allowed so that people who are home at certain times can be approached. The Government seems to be more intent on loudly interjecting when I am pointing out what is a rational and sensible amendment. The first part of my amendment has been defeated, but the second part reflects the belief that the hours 9 p.m. to 8 a.m. makes it very difficult for contact with people who work odd hours to be approached by debt collectors. I have referred to 11 p.m. which is a reasonable hour when most people are still up watching the later stages of television. Most people, including the Attorney, have one eye open by 7 a.m. If he owes money, it is only fair that his door should be knocked on at 7 a.m. so that a creditor can achieve some sort of justice. I recommend the amendment to the Committee. It is a practical and humane balance of the two forces represented: the creditor and the debtor.

The Hon. C.J. SUMNER: What we have heard has been a quintessential Democrat explanation for a monstrous backslide. The reality is that the Democrats got a telegram from Mr Graham Forbes just as everyone else did. As I said before, on the one hand they decide to curry favour with Mr Forbes' suggestion that Sunday should be included as a day when no debt collecting can be done and, on the other hand, they decide to go along with the bankers who want extended times during the week to collect.

It is a quintessential Democrat exercise trying to be all things to all people but really having no idea of what they are doing and having no consistent view of the position and misrepresenting what Mr Forbes has said. As he has now invoked his name in support of the second part of his shabby amendment, I should quote from what Mr Forbes has said on behalf of the Adelaide Central Mission, as follows:

The mission wishes to express its serious concern that section 43 of the Fair Trading Bill may be weakened. We believe section 43 is an essential element of the proposed Act which has our full support. The idea of debt collectors pursuing creditors' rights late at night or early in the morning should be repugnant to all Australians. While these practices may be limited, all consumers have a right to be protected from an action that is intentionally aimed at catching them while they are most vulnerable and have least access to legal and other professional advice and support. Section 43 *inter alia* specifies reasonable hours for creditor access to debtors.

I repeat that it states that section 43 specifies reasonable hours for creditor access to debtors. It continues:

We believe outside these hours every citizen has the right to privacy. We strongly urge you to give section 43 your support. We have previously argued that Sunday access for debt collectors should not be included, and you may wish to consider strengthening the Bill in this respect.

The principal point made by Mr Forbes is that an extension of the hours as proposed by the Hon. Mr Gilfillan, originally from 6 in the morning but still until 11 p.m. was the principal cause of Mr Forbes' objections.

The Hon. I. Gilfillan: Nonsense. It was his amendment. Be honest about it. I did not have an amendment on file.

The Hon. C.J. SUMNER: The honourable member has not listened to what I have said: the idea of debt collectors pursuing creditors' rights late at night or early in the morning—

The Hon. K.T. Griffin: It's not late.

The Hon. C.J. SUMNER: Eleven o'clock is late at night. It is too late to have people being harassed. Mr Forbes is objecting to what is now picked up in the Hon. Mr Gilfillan's amendment. However, to curry favour with him and to say that really they supported him, he typically decides to exclude Sunday as a day on which people can attempt to collect their debts. It is a typical Democrat exercise. The honourable member's explanation to his amendment was a typical Democrat explanation of an amendment which has in it an inherent inconsistency. I ask honourable members to reconsider the position. The Government views this matter seriously. The Bill will not be acceptable to the Government whilst allowing people to be approached in respect of their debts up to 11 p.m.

The Committee divided on the amendment:

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

Noes (8)—The Hons J.R. Cornwall, T. Crothers, M.S. Feleppa, Carolyn Pickles, T.G. Roberts, C.J. Sumner (teller), G. Weatherill, and Barbara Wiese.

Pair—Aye—The Hon. C.M. Hill. No—The Hon. G.L. Bruce.

Majority of 3 for the Ayes.

Amendment thus carried.

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

Page 20, lines 4 to 6—Leave out all words in these lines.

The last paragraph of subclause (1) of this clause proscribes any action that is declared by the regulations to be unlawful. We have already argued about the concept of making things unlawful by regulation, and I want to delete it.

My argument is that, if other action is to be unlawful, it can easily be dealt with by amending statute. The arguments have been already canvassed. I believe that the Australian Democrats would be persuaded that my amendment should

be supported in view of the fact that they have already supported the deletion of a similar clause earlier in the Bill.

The Hon. I. GILFILLAN: To be consistent with previous reaction to the regulations, we support the amendment.

The Hon. C.J. SUMNER: I am impressed with the Democrats' new found commitment to consistency. It seems that this is a change of heart by the Democrats. To be consistent within the space of five or six clauses of a Bill is quite an effort for the Democrats and I compliment them on their new found approach to legislating with consistency in Parliament. However, the Government opposes the amendment. As the Hon. Mr Griffin pointed out, we have already had a similar debate in relation to an earlier clause. In view of what the Hon. Mr Gilfillan said, I will not divide.

Amendment carried; clause as amended passed.

Clauses 44 and 45 passed.

Clause 46—'Conduct of legal proceedings on behalf of consumers.'

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

Page 21, line 38—After 'Commissioner' insert 'or the Minister'.

This clause deals with the conduct of legal proceedings by the Commissioner on behalf of consumers. During the second reading debate I raised difficulties with this clause, particularly where a consumer may wish to mitigate his or her potential loss by settling a case (that is a question which only the Commissioner can resolve under this clause), and also to take into consideration the fact that, if the matter is resolved by a court, any amount excluding costs awarded against the consumer is recoverable from the consumer even though the consumer has no control over the conduct of the proceedings once that conduct is assumed by the Commissioner. My amendments relate to those issues. My first amendment is to subclause (3) which provides:

The consent of a consumer is irrevocable except with the agreement of the Commissioner.

My amendment adds the words 'or the Minister'. It seems to me that there should be some discretion there within the Minister as much as the Commissioner even though the suggestion is that the Commissioner is subject to the general control and direction of the Minister. I am not sure whether that really applies to this clause, which refers specifically to the Commissioner.

The Hon. C.J. SUMNER: I do not want it to be assumed that by accepting this amendment somehow the Commissioner is not subject to the control and direction of the Minister—because I think it is clear that he is.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: I suppose the only problem in putting it in is that you may then create a doubt. I will not oppose the amendment. However, I have no doubt that the structure of the Bill is such that the Commissioner is subject to the control and direction of the Minister. The Bill says specifically that the Commissioner is subject to direction by the Minister. It is my view that that relates to all aspects of the Commissioner's functions, including those in this clause.

The Hon. K.T. GRIFFIN: I appreciate the Attorney's concern. I certainly would not want to see the inclusion of these additional words as in any way prejudicing the power of the Minister to override the Commissioner. In view of the Attorney's indication that he will not oppose the amendment, I indicate that if the amendment is passed further consideration should be given to the issue before the Bill passes both Houses.

Amendment carried.

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

Page 22, line 25—After 'consumer' insert, ' except if the consumer had, before that judgment was given, given written notice to the Commissioner of the consumer's desire to settle the matter, in which case the amount is recoverable from the Commissioner'.

The amendment provides a mechanism by which a consumer who does not have control of an action, the responsibility for which has been assumed by the Commissioner, may be able, through the courts, to alleviate the consequences of a loss even though the consumer may have been urging the Commissioner to withdraw or find some satisfactory basis for settlement. My amendment provides that an amount awarded against a consumer is recoverable from the consumer (except costs) except if the consumer had, before the judgment was given, given written notice to the Commissioner of the consumer's desire to settle the matter, in which case the amount is recoverable from the Commissioner. I want to find a mechanism by which the consumer—as opposed to the all-powerful Commissioner—has some mechanism for avoiding liability.

The Hon. C.J. SUMNER: The amendment is not opposed.

Amendment carried; clause as amended passed.

Clause 47—'Obtaining of information.'

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

Page 22, line 32—After 'of' insert 'ascertaining whether this Act or any related Act is being, or has been, complied with, or for any other purpose related to the enforcement of'.

This is one of the more critical clauses of the Bill, along with succeeding clauses which relate to the powers of the Commissioner for Consumer Affairs. I suspect that some of my proposed amendments will not be opposed by the Government and that others may be. Clause 47 provides:

For the purposes of this Act or any related Act, an authorised officer may require any person to answer any questions . . .

I believe that some qualification should be included to limit it to the purpose of ascertaining whether this Act or any related Act is being, or has been, complied with, or for any other purpose related to the enforcement of this Act or any related Act; then certain consequences may follow.

That tends to clarify the ambit of the power of the Commissioner without prejudicing his or her power to require answers to questions in certain circumstances. It is in some respects related to an earlier amendment which ensures that the authority of the Commissioner is more clearly defined to relate to his or her responsibilities under this Act or related Acts. The amendments which I am now proposing will help to clarify the scope of that authority.

The Hon. C.J. SUMNER: The Government opposes this amendment because I think it concentrates the role of the Commissioner far too much on the enforcement of the legislation and overlooks the role of the Commissioner in negotiating and conciliating disputes between traders. The role of the Commissioner in this respect, which is a very important role of the Commissioner for Consumer Affairs, was explained by Mr Noblet, the then Commissioner, in his report to Parliament in 1980 in the following terms:

The majority of traders are honest and fair and are jealous of their reputations and goodwill. They are usually ready to accept any reasonable suggestions as to the manner in which a dispute should be resolved, suggestions that may well involve some degree of compromise on both sides.

Experience over a number of years shows that most complaints are in fact resolved by conciliation without resort to formal court proceedings. In many cases the intervention of an impartial conciliator is sufficient in itself to resolve the dispute, particularly in cases where the dispute has become so aggravated by lost tempers and personal differences that the parties have lost sight of the real issues.

In those cases where the trader is not prepared to be reasonable and to co-operate for the purposes of the conciliation process, the Commissioner and his authorised officers have powers of investigation under section 8 of the Prices Act which at least enable them to gather the facts. The information so gained can be made available, by appropriate evidentiary processes, to any court, board or tribunal that may later be called on to resolve the dispute by arbitration.

So, the then Commissioner has pointed out that the powers in investigation, which are there now, enable the gathering of facts and establishing of rights and obligations of the parties to a dispute. This is an essential first step in the process of conciliation.

The problem with the honourable member's amendment is that it does not permit authorised officers' powers to be used for this purpose, and therefore it cannot be accepted. I make the general comment that, with respect to the powers to which the honourable member will be referring in some of his other amendments, there is no evidence that these powers have been abused. They have been used by Prices Commissioners since 1948. They have been used by the Commissioner for Consumer Affairs since, I think, 1972 when the enforcement provisions were grafted on to the Prices Act. I do not believe that there has been any major complaint about the operations of the Commissioner or the Commissioner's officers in this respect. Therefore, the honourable member's amendments generally in this area of enforcement should not be supported.

If there was identified over a period of time a major problem with the actions of the Commissioner for Consumer Affairs or the Prices Commissioner, the matter could be examined, but I do not get any complaints about the actions of the Commissioner in this respect. Traders may not necessarily like a particular decision that the Commissioner might make, but that applies to consumers as well. They may not like some particular aspects of the conciliation process, but I have not heard complaints about the powers which the Commissioner for Consumer Affairs has at present.

The Hon. K.T. GRIFFIN: With respect to the Attorney-General, what he has just said has nothing to do with clause 47. Clause 47 requires the answering of any questions orally or in writing, to verify the answer, and to produce books, and it goes on to provide:

> A person shall not refuse or fail to comply with a reasonable requirement made under this section or give in response to a question put under this section an answer that is false in a material particular.

That does not relate to conciliation. The Commissioner can still conciliate, even with all my amendments. The Commissioner can continue to go on to premises notwithstanding my amendments. One of the responses that the Attorney-General gave during the second reading debate suggested that a lot of matters are resolved by agreement between the parties. The Commissioner goes on to premises to talk to proprietors of business. None of my amendments prevent that at all. My amendments deal with clauses which are in the Bill to deal with situations where there cannot be consent or agreement, where consent is not given or agreement cannot be reached. In no way do the amendments which I have moved, or even these clauses which are already in the Bill, impinge upon the opportunity for the Commissioner or authorised officers to conciliate, to discuss or to enter—

The Hon. C.J. Sumner: You do say 'related to the enforcement'.

The Hon. K.T. GRIFFIN: It is ascertaining whether this Act or any related Act is being or has been complied with, or for any other purpose is related to the enforcement of this Act or a related Act. Surely the authority of the Commissioner and his or her authorised agents to compel persons to answer questions or to require access to premises or to books or papers ought to be related to the legislative authority which is granted by statute and not to some airy fairy external interest which the Commissioner might have which is not substantiated by statute as something which is improper, illegal, unreasonable, unconscionable, or whatever. There has to be a statutory warrant for the Commissioner forcing entry to premises and forcing people to answer questions.

I would suggest to the Attorney-General that these clauses have nothing to do with that. They deal with the circumstances where a person says, 'I am not obliged to answer your questions', or 'I am not required to produce books and papers', or 'I am going to cover this up even though it is a breach of the law'. In those circumstances these powers are needed. In that case, whatever the complaint against a citizen might be, there ought to be a specific statutory power within which the right to gain access to books and information or to enter premises is established. If we are to depart from that principle, which is a long established principle of the law, heaven help us, and where will it all end? The year of 1984 has not only passed but has well passed into history.

The Hon. C.J. Sumner: What about 1948?

The Hon. K.T. GRIFFIN: What about 1948? The Attorney-General might not have heard about complaints of the Commissioner for Consumer Affairs or the Prices Commissioner. I have heard them and I believe that there is some justifiable complaint, but the people who make the complaints are afraid to make them on a formal basis because they are afraid that they will be picked up.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: I am not worried about that. What I am saying is we are giving powers to the Commissioner by statute. They may be similar to those powers which have been in existence but, which in the light of a whole range of other legislative provisions, we now need to contain. There is no problem with the amendments which I am moving. They are already in the Uniform Companies Code and the Securities Code. The Commissioner for Corporate Affairs is able to comply with them without any prejudice to law enforcement, and it seems to me that the Commissioner for Prices or the Commissioner for Consumer Affairs are in no different position. If there is a statute which says that this is illegal or unreasonable, the Commissioner ought to have power to enter and ask questions and so on.

There must be a statutory basis for that to occur. What this Bill does and what has happened in the past is that there is almost an unlimited power to the Commissioner for Consumer Affairs to enter premises, to require answers and to do a whole range of other things. What I want to see is in the context of modern thinking, namely, that we provide by statute what the limits of that power might be.

At the end of last year I referred to negotiations that had occurred between the Law Council of Australia and the Federal Commissioner of Taxation in relation to the way in which the Commissioner would exercise his powers in relation to legal professional privilege. The Attorney-General said in reply that legal professional privilege is recognised in the common law, I suspect. That did not stop the Law Council from negotiating some agreed positions with the Federal Commissioner of Taxation which clarified for everybody what the law really is and what the practice should be. All I am saying is that the constraints which I put in the amendments which are now before us will not hamper the Commissioner for Consumer Affairs from ensuring that the law is enforced, but provide an adequate safeguard against the abuse of those powers, not by the Commissioner but by the Commissioner's agents. It must be remembered that it is not just the Commissioner who will do this but all of the Commissioner's inspectors and people who may be out in the field investigating whether or not breaches of the law have occurred or, at least, acting on the suspicion that they may have occurred. My amend-

ments do not in any way stifle the authority of the Commissioner. They provide reasonable constraints that are consistent with modern recognition of the limits to which a person's individual liberties may be impinged upon by a bureaucrat.

The Hon. C.J. SUMNER: I do not agree with the honourable member.

The Committee divided on the amendment:

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

Noes (10)—The Hons G.L. Bruce, J.R. Cornwall, T. Crothers, M.J. Elliott, M.S. Feleppa, I. Gilfillan, Carolyn Pickles, T.G. Roberts, C.J. Sumner (teller), and G. Weatherill.

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

Majority of 1 for the Noes.

Amendment thus negatived.

[*Sitting suspended from 5.52 to 7.45 p.m.*]

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

Page 22, line 35—Leave out 'an oath, affirmation or'.

My amendment is a matter of drafting and deletes the words 'an oath, affirmation or', so that the authorised officer may require any person to verify the answer to a question by a statutory declaration. In the sort of context in which this is required, a statutory declaration is the appropriate means by which the verification should occur.

Amendment carried.

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

Page 23, lines 1 to 2—Leave out subclause (3).

This subclause provides for protection against self-incrimination. My amendment removes the reference to that, not because we do not support it but because (as has been raised in Parliament on previous occasions) the privilege against self-incrimination exists unless specifically excluded by legislation. This was debated in this Parliament with respect to the Stamp Duties Act Amendment Bill (No. 2) last year. Subclause (3) was added out of an abundance of caution. To preserve uniformity with the Stamp Duties Act and the Prices Act, it will be removed by the amendment I am moving. However, I make it clear that that does not affect the principle; the privilege against self-incrimination still exists.

The Hon. K.T. GRIFFIN: I do not support the amendment. It is something of a vexed question as to whether or not the protection applies at common law. All I can say is that the sort of debate which we have had in the past and the debate which has occurred at the Federal level between the Law Council and the Federal Commissioner of Taxation suggests that the abundance of caution was wise and that we ought to have some provision in the Bill which at least recognises that question of privilege. I have a recollection that it was deleted from some legislation and included in other legislation last year. Therefore, we have two approaches to the whole question. I would personally prefer to see it go in, together with the other amendment which I have and which also relates to that particular question. My amendment is to retain that subclause and to expand it so that it deals with the broader question of legal professional privilege and protects against self-incrimination. I think it is desirable to leave it in the Bill and I will vote against the Attorney-General's amendment and seek to add my proposed amendment to line 3.

The Hon. I. GILFILLAN: We support the Attorney-General's amendment.

Amendment carried.

The Hon. K.T. GRIFFIN: The proposed amendment I have on file to page 23, line 3, is irrelevant as subclause (3) has been deleted. Also, my proposed amendment to page 23, after line 3 is irrelevant in light of the deletion of subclause (3). My amendment was dependent on it in the sense that if a legal practitioner refused to comply with the requirement on the ground of legal professional privilege then the practitioner should give to the authorised officer the name and address of the person entitled to waive the privilege. However, it seems to me that that now has nothing to hang on to and it is not appropriate that I move it.

I might say in passing that that provision is taken from the Companies (South Australia) Code in relation to the powers of the Commissioner for Corporate Affairs where, of course, a protection against self-incrimination and the recognition of legal professional privilege do apply.

Clause as amended passed.

Clause 48—'Entry of inspection.'

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

Page 23, lines 4 to 9—Leave out subclause (1) and insert new subclause as follows:

(1) If a magistrate is satisfied, on the application of the Commissioner supported by an affidavit or other sworn evidence, that there are reasonable grounds for suspecting that there may be found on certain premises a book or document required to be produced pursuant to section 47, but not so produced, or any evidence tending to establish a contravention of this Act or a related Act, the magistrate may issue a warrant authorising an authorised officer (together with any other person named in the warrant) at any reasonable time—

(a) to enter and search the premises;

(b) to make any inspection, conduct any test and take any samples;

and

(c) to take any books or documents.

This amendment is particularly important and I intend to call for a division on it. It is related to the power of an authorised officer to enter and search premises. Prior to the dinner break I made the point that I did not see this as in any way weakening the power of the Commissioner but merely building into it some protections against abuse of power, and to define more clearly the ambit of the authority of the Commissioner. I see no good reason why the Commissioner for Consumer Affairs should have wider powers than police officers, and that is what this Bill presently provides.

The Commissioner is a public servant not subject to any of the constraints of the Police Regulation Act, and it seems to me to be quite inappropriate that the Commissioner should be enabled to enter premises, whether they be domestic or commercial, and to search those premises, make any inspection and seize books or documents unless a magistrate has approved the issue of a warrant to the Commissioner for that purpose.

I would see no difficulty in getting a warrant in circumstances where there are reasonable grounds for suspecting that there may be books or documents on certain premises and they may relate to evidence which might establish contravention of the Act or a related Act. Therefore, I urge the Committee to support my amendment which does import some reasonable protections against abuse of these very wide powers to citizens who might be subject to the intrusive investigations of the Commissioner without proper justification.

The Hon. C.J. SUMNER: The Government opposes the amendment for the reasons which I outlined in the second reading and which I can amplify now. The honourable member's comments about the powers of entry of authorised officers and the need to show certificates of authority demonstrate again a misunderstanding of the role of the

Commissioner for Consumer Affairs and the main tasks his officers undertake.

In the area of enforcement, and reflecting the move to emphasise 'fair trading' rather than 'consumer protection', passive monitoring of business premises is extensively undertaken. As I explained when speaking earlier of this monitoring role, it involves the checking of car yards, building sites and retail premises, but in a very passive, non-interventionist manner. Members of the associations who have made representations to the honourable member will be able to testify to the educational value of these visits, the traders' obligations being explained personally and questions answered on the spot.

This is the unspectacular, uncontroversial, day-to-day enforcement activity undertaken by the Commissioner's officers. Entry is always effected with consent. The role of the Prices Commissioner and his officers in checking prices is the same.

The other main role of the Commissioner for Consumer Affairs (undertaken by authorised officers and sometimes requiring attendance at traders' premises) is in negotiating consumer complaints. The negotiation of complaints requires tact, subtlety, and an ability to listen, understand and communicate effectively. Authorised officers must balance sometimes sensitive competing interests (for example, a car dealer's narrow profit margin as against a consumer's desperate need to have a car in working order). Officers often have to visit premises in the course of negotiations to view items and to talk to traders face-to-face. Once again, were entry to be effected otherwise than with the consent of the trader, the whole process of negotion would flounder, for effective negotion it cannot happen in practice.

I point out that successive Prices Commissioners have exercised these powers for almost 40 years without complaint. Commissioners for Consumer Affairs have exercised them, under Liberal and Labor Governments, for almost 20 years without complaint—including the period of the Hon. Mr Burdett as Minister. The amendment proposed by the honourable member will completely destroy effective monitoring and the enforcement of provisions regarding unfair trading practices. The power to enter premises for normal enforcement purposes must be retained. In offices of credit providers, door-to-door sellers and second-hand vehicle dealers, it may be necessary to check that copies of contracts are retained as required, and that they are properly filled out to provide information to consumers. For instance, they may visit car yards. That is an important area, as I am sure the Hon. Mr Burdett would agree, to check that information notices are in place on cars offered for sale, and contain accurate details. Again, that is all for the guidance of prospective consumers. If the honourable member's amendment is passed—

The Hon. K.T. Griffin: It will not stop any of that.

The Hon. C.J. SUMNER: Yes it will. In general retail premises they will check that prices are properly displayed and that all of the terms of credit offers are being advertised. With respect to building sites, they would ensure that builders and tradesmen are licensed, which is something members opposite have complained about from time to time. Under the Builders Licensing Act they will also be able to check the contracts of builders' rights to ensure that full information is given to owners about their rights and obligations.

The question of unreasonable powers—these powers exist in the Builders Licensing Act with respect to entry—was not raised in the course of the debate on that Bill. The proposed provisions as to entry extend greater protection than the old Act by requiring that powers be exercised so as to avoid any unnecessary disruption of or interference with the conduct of business or performance of work. This merely codifies existing practice as explained earlier, but it is an important protection now given legislative force.

The proposed limitation will make a mockery of the newly codified power to monitor business premises when it is considered that all a trader has to do to prevent normal checking is place a sign on his door saying 'public welcome, consumer affairs officers expressly prohibited.' Normal rights of entry with consent will then be lost. It will also be impossible to obtain a warrant in such circumstances unless loss or harm is suffered by consumers.

The problem with the amendment is that it will undermine what I consider is generally conceded to be the useful work of the Commissioner for Consumer Affairs since the powers of the Commissioner were grafted on to the Prices Act in 1972 in carrying out a monitoring role to ensure compliance with legislation. If the honourable member's amendment is passed, it seems to me that before the Commissioner for Consumer Affairs can go to a car yard and carry out even an inspection of the premises to see whether the legislation is being complied with, he will have to have some kind of complaint, some basis that he will have to put before a magistrate.

The Hon. Mr Burdett has been in the business of being Minister for Consumer Affairs for a while and he knows that a trader who does not want Consumer Affairs around (and there are a good number of them) will just not cooperate—it is as simple as that—and the effective protection of consumers will be undermined. I believe that the important factor in considering this amendment involves examples of where the problem has occurred in the past. What has been the problem with the Prices Commissioner acting under the Prices Act since 1948, since Sir Thomas Playford introduced it? Where have been the problems with the Commissioner for Consumer Affairs since 1972? That legislation has been administered by successive Liberal and Labor Governments.

The other protection simply is that the Commissioner is subject to the direction of the Minister. Clearly, if the Commissioner and his officers are behaving in some high handed dictatorial manner I am sure, as the Hon. Mr Burdett would know, that that behaviour would be brought to the attention of the Minister very smartly. I just do not see how there can be the capacity for abuse of these provisions, given the checks and balances that exist in our democratic system. Can the Hon. Mr Griffin indicate where the powers that have existed since 1948 in respect of prices, and since 1972 in respect of consumer matters, have been abused? If he can, one might wish to do something about it, but there is no evidence that that has occurred and the disadvantages of what the honourable member wants to do are patent for all to see in terms of trying to get some decent monitoring and education of traders in their dealings with consumers.

The Hon. I. GILFILLAN: I oppose the amendment. It would be an unhelpful obstruction to the authorised officers doing the most efficient job.

The Committee divided on the amendment:

Ayes (9)—The Hons J.C. Burdett, M.B. Cameron, Peter Dunn, K.T. Griffin (teller), C.M. Hill, J.C. Irwin, Diana Laidlaw, R.I. Lucas, and R.J. Ritson.

Noes (10)—The Hons G.L. Bruce, J.R. Cornwall, T. Crothers, M.J. Elliott, M.S. Feleppa, I. Gilfillan, Carolyn Pickles, T.G. Roberts, C.J. Sumner (teller), and G. Weatherill.

Pair—Aye—The Hon. L.H. Davis. No—The Hon. Barbara Wiese.

Majority of 1 for the Noes.

Amendment thus negatived.

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

Page 23, lines 25-27—

Leave out ', at the request of the occupier or an agent of the occupier of premises entered or about to be entered under this section, produce' and insert 'produce to the person (if any) affording the officer entry to premises under this section'.

At present in the Bill the authorised officer must, at the request of the occupier or an agent of the occupier of premises entered, or about to be entered produce a certificate of authority issued to the officer by the Commissioner. It seems that we ought to provide that rather than the authorised officer waiting for the request to produce the certificate of authority he ought to produce the authority at the point of seeking entry. That seems much more appropriate than leaving it to the person whose premises are being entered. That person may not know what his or her rights are and may be somewhat bemused about the whole process and in any event may be reluctant to request the certificate of authority. So, it is appropriate in my view that the requirement be placed upon the authorised officer to produce the certificate of authority at the point of entry.

The Hon. I. GILFILLAN: I would have thought that that was a reasonable and courteous amendment to facilitate entry to authorised officers and reduce ill will and suspicion. Certainly it sounds a supportable amendment.

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

Amendment carried.

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

Page 23, after line 28—Insert new subclauses as follows:

(5) A person is not required to produce a book or document pursuant to this section if the production of the book or document would result in or tend towards self-incrimination or if the information that would be so furnished is privileged on the ground of legal professional privilege.

(6) Where a legal practitioner refuses to produce a book or document on the ground of legal professional privilege, the legal practitioner shall give to the authorised officer the name and address (if known to the legal practitioner) of the person entitled to waive the privilege.

This amendment relates to some extent to the question of legal privilege. Notwithstanding that earlier decision, this relates to documents or books. I believe that it is a little different from the earlier part to which we referred and I still propose to move new subclauses (5) and (6) together.

The Hon. C.J. SUMNER: I oppose the amendment for the same reasons as before.

The Hon. I. GILFILLAN: It is a remarkable coincidence, but we came to the same conclusion as the Attorney-General and oppose the amendment.

Amendment negatived; clause as amended passed.

Clauses 49 to 51 passed.

Clause 52—'Prohibition orders.'

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

Page 24, line 16—Leave out 'on its own initiative or'.

It is to remove the power of the Commercial Tribunal to vary or discharge a prohibition order on its own initative. Obviously it is appropriate that such action only be taken on application of the parties involved in the original application.

The Hon. K.T. GRIFFIN: We support the amendment.

Amendment carried; clause as amended passed.

Clause 53 passed.

New clause 53a—'Defences.'

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

Page 24, after line 31—Insert new clause as follows:

53a. (1) Subject to subsection (3), in a prosecution for a contravention of a provision of this Act, it is a defence if the defendant establishes—

(a) that the contravention was due to reasonable mistake;

(b) that the contravention was due to reasonable reliance on information supplied by another person;

or

(c) that—

(i) that the contravention was due to the act or default of another person, to an accident or to some other cause beyond the defendant's control;

and

(ii) the defendant took reasonable precautions and exercised due diligence to avoid the contravention.

(2) In subsection (1) *(b)* and *(c)*—

'another person' does not include a person who was—

(a) a servant or agent of the defendant;

or

(b) in the case of a defendant that is a body corporate, a director, servant or agent of the defendant,

at the time when the contravention occurred.

(3) If a defence provided by subsection (1) involves an allegation that a contravention was due to reliance on information supplied by another person or to the act or default of another person, the defendant is not, without leave, entitled to rely on that defence unless the defendant has, not later than seven days before the day on which the hearing of the proceeding commences, served on the person by whom the proceeding was instituted a notice in writing giving such information that would identify or assist in the identification of the other person as was then in the defendant's possession.

(4) In a prosecution for a contravention of a provision of this Act committed by the publication of an advertisement, it is a defence if the defendant establishes that the defendant is a person whose business it is to publish or arrange for the publication of advertisements and that the defendant received the advertisement for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to a contravention of a provision of this Act.

It is to pick up the Hon. Mr Griffin's point that the defences contained in clause 42 of the Trade Practices (State Provisions) Bill which we will deal with next should also apply to the Fair Trading Act.

The Hon. K.T GRIFFIN: I support the new clause. I am pleased that the Attorney-General has picked up the comment I made on this issue during the second reading debate. The new clause goes some of the way towards alleviating my concern, particularly in relation to clause 55.

New clause inserted.

Clauses 54 and 55 passed.

Clause 56—'Evidentiary provisions.'

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

Page 26, lines 5 to 8—Leave out subclause (3).

This clause deals with evidentiary provisions and provides that certain matters are presumed to be fact unless the contrary is established. Subclause (3) is a reverse onus provision, and I do not see any need for it because earlier the Attorney-General persuaded the Committee to include a provision in clause 16 which does very much the same as subclause (3). In fact, clause 16 provides:

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.

I propose two arguments in relation to the amendment: first, that subclause (3) is redundant in the light of the earlier provision, to which I have just referred, in clause 16; and, secondly, the onus ought to be on the Crown to establish that a contract which is a door-to-door contract is in fact so, and that should be obvious from the facts. Accordingly, for those two reasons, it is appropriate to delete subclause (3).

The Hon. C.J. SUMNER: We debated this principle earlier in the Bill in relation to the part dealing with door-to-door sales and the prescribed contracts (so called) referred to in that part. I would have thought that the issue and the

principles had been resolved there, and I ask the Committee to oppose the amendment.

The Hon. I. GILFILLAN: We oppose the amendment.

Amendment negatived.

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

Page 26, line 16—After 'book' insert 'or document, taken by an authorised officer pursuant to this Act,'.

Amendment carried; clause as amended passed.

Remaining clauses (57 to 62) passed.

The Hon. C.J. SUMNER: To enable further consideration of the postponed clauses, I suggest progress be reported.

Progress reported; Committee to sit again.

TRADE PRACTICES (STATE PROVISIONS) BILL

In Committee.

(Continued from 17 February. Page 2909).

Clauses 2 to 28 passed.

Clause 29—'Unsolicited credit and debit cards.'

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

Page 15—After line two insert the following subclause:

(3) A person 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 that person.

It reflects amendments to the Commonwealth Trade Practices Act which came into effect in December and results from a matter raised by the Hon. Mr Griffin.

The Hon. K.T. GRIFFIN: It was raised by me, but I did not raise it in the context of wishing it to be inserted in the Bill; I raised it in the context of the difficulties that may be created. Clause 29 deals with unsolicited credit and debit cards. The clause is appropriate as it stands because it provides that a person is not to send a prescribed card to another person except in certain circumstances, which largely relate to being sent in pursuance of a request in writing, in renewal or replacement or in substitution for a card in certain circumstances.

This new subclause provides that a person is not to take any action that enables someone who has a credit card or debit card to use the card as a debit card or credit card except in accordance with a request in writing by that person. The real concern I have about that is that it seems to be fairly wide open. I made the point on second reading that a debit card may become a credit card through no action of the person or company which issues the debit card but merely because a shopkeeper, without noting that it was a debit card, actually debited to the debit card an amount in excess of what was standing to the credit of the account to which it relates. Debit cards are really cards which enable a person to draw on a bank account, credit union account or building society account which is in credit, and do not provide for the issuing of credit or a loan to finance a purchase.

A building society, for example, may issue a debit card on the basis that it will be used only in relation to amounts which are in credit in an account with the building society, and may find itself faced with a set of circumstances in which the person who holds the debit card seeks to purchase goods for a value which is greater than the amount held to the credit of the account with the building society. The same can apply to a credit union. I do not think banks worry too much about debit cards; they principally deal in credit cards. The problem is that, without the bank, credit union or building society doing anything, but rather the shopkeeper, or the person who holds the debit card doing it, the debit card can in fact become a credit card, and that would be in breach of the terms and conditions of the issue of the card which would have been issued as a debit card to merely debit the prices of goods against a particular bank account. That means that there is an offence created.

I am not sure whether it is an offence created by the shopkeeper or the building society or credit union. I just cannot believe that it would be the building society or the credit union, but the way it is drafted would suggest that that option is at least open for argument. I do not see any need at all for a new subclause (3) to be added. The clause is perfectly satisfactory as it is and the enactment of a new subclause (3) will create greater problems. I understand that representations have been made interstate to try to change this, but so far I understand that there has been no response. It is an important issue and can have some fairly significant ramifications for those bodies which issue debit cards as opposed to credit cards. I will oppose the amendment.

The Hon. C.J. SUMNER: The honourable member has raised some points on this matter which apparently were not raised in the Commonwealth Parliament when this provision was inserted. Dealing with the trade practices aspects of this package of legislation, we really must insist on uniformity. With respect to the fair trading aspects of it there is obviously some capacity for difference, because some States may take slightly different approaches. Hopefully, over time we can get to very similar provisions under the Fair Trading Act. This Bill, however, has been designed to mirror completely the Commonwealth Trade Practices Act. What members have to realise with respect to that is that these provisions already apply to corporations operating in South Australia. All we are doing is making the same provisions apply to unincorporated businesses.

The Hon. I. Gilfillan interjecting:

The Hon. C.J. SUMNER: Yes. The honourable member raised it but he was not necessarily supporting it. He wondered why we had not.

The Hon. I. Gilfillan: How does that comply with the Federal legislation?

The Hon. C.J. SUMNER: The Hon. Mr Griffin, with his usual diligence, found that the subclause we are now debating was inserted in the Commonwealth legislation but was left out of our legislation. So, in effect it is a technical matter about which he has raised some doubts. I do not want to get into the substance of that debate at the moment. What I am concerned to point out is that while the fair trading issue—door-to-door sales, mock auctions and those sorts of things—may give some scope for differences between the States, the critical factor with the trade practices provisions is that they be virtually exactly the same and indeed have exactly the same wording so that the body of case law which develops through the Federal Court, and perhaps with cross-vesting in the State courts as well, will be the same and be related to provisions that have virtually the same wording. This legislation, including new subclause (3), already applies to corporations in South Australia, so it is critical if we are to make sense of this exercise that we do stick to uniformity absolutely.

If there are problems, and the honourable member has raised them, I am certainly happy to take them to the Consumer Affairs Ministers' meeting and raise them with the Federal Government to see whether or not there is a difficulty that needs to be overcome. I would really be very reluctant for us to withdraw in terms of uniformity from this exercise. I am reluctant to do it with respect to fair trading and door-to-door sales. It is even more imperative that we maintain uniformity here because the Trade Practices Act already applies. It is already the law applicable to South Australia—albeit Federal law—because of the Federal

Trade Practices Act applying to corporations. What we are doing is in effect covering the field with respect to consumer rights and fair trade.

The Hon. I. GILFILLAN: It does seem a little quaint that the point raised by the Hon. Mr Griffin has been taken up now as an essential ingredient of legislation which was missing in the original draft.

The Hon. C.J. Sumner: It was an oversight; it was not deliberately left out. It was passed in December in the Commonwealth Parliament. This legislation was introduced in October, you might recall.

The Hon. I GILFILLAN: I do not. There is very little point in our entering into the debate in any depth. It seems to me on the surface to be a provision which is not a desperately profound disturbance in the use of debit or credit cards. I take the Attorney-General's point. Because it is recorded in *Hansard* that the comments made by the Hon. Trevor Griffin will be taken further. I indicate that we will support the Attorney-General's amendment.

The Hon. K.T. GRIFFIN: In the light of that, I will not call for a division on an issue such as this, but I ask the Attorney-General to pursue at the Ministers meeting and with the Federal Government the problems that that particular clause, in my view, is likely to create and, according to the representations that have been made to me, will create at some time in the future.

The Hon. C.J. SUMNER: I undertake to do that.

Amendment carried; clause as amended passed.

Clauses 30 to 36 passed.

Clause 37—'Injunctions generally.'

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

Page 21, line 8—Leave out 'a district court' and insert 'the Supreme Court'.

Both clauses 37 and 38 refer to the district court, which, being satisfied that certain conduct has occurred, may make orders that include injunctions. In his reply at the second reading stage, the Attorney-General suggested that it would create a problem if, under clause 36, a district court hearing a prosecution for an offence against the legislation could hear the prosecution but not in fact make orders in relation to an injunction, and my amendment would allow only the Supreme Court to make those orders.

What I propose is that, where there are proceedings for breaches of the Act in the district court, the district court should have powers to grant injunctions and make certain orders but, where there is an application not related to an alleged breach of the Act, it seems to me that the Supreme Court is the appropriate body to grant a remedy in the nature of an injunction. What I seek to do in clauses 37 and 38 is to provide that, in those circumstances unrelated to proceedings for a breach of the Act, it is the Supreme Court that ought to have the power to make the various orders and grant an injunction. That does not create problems of jurisdiction where proceedings have been commenced for a breach of the Act. It merely means that, in the circumstances of injunctions being sought independently of a prosecution, it is the Supreme Court that exercises the power, and that is appropriate. The Supreme Court is the body that ought to have the jurisdiction. It is of a status equivalent to the Federal Court, which has the jurisdiction under the Federal Trade Practices Act. I do not see any good reason for that to be vested only in the district court. Let us remember the sorts of orders that can have quite a dramatic effect on a business and it could end up costing a particular business hundreds of thousands of dollars if an order is made in circumstances that may not be justified. For that reason, the Supreme Court, with a superior status to that of a district court, is the more appropriate body to exercise that fairly significant jurisdiction.

The Hon. C.J. SUMNER: In dealing with the enforcement provisions of the Trade Practices (State Provisions) Bill we differ from the Federal legislation because it is enforced through the Federal Court. In that respect, it is not possible to copy Federal provisions or simply to copy interstate legislation. Each enforcement power must be examined in detail to determine which is the most appropriate equivalent South Australian jurisdiction. I understand that, in New South Wales and Victoria, the county court or the district court has similar powers with respect to similar matters.

The Hon. K.T. Griffin: They are superior courts in the Eastern States.

The Hon. C.J. SUMNER: Certainly in New South Wales, the court has jurisdiction in the criminal area and, I suppose, in the civil area which exceeds that of our district court, but I can see over time that the district court here will develop more into the court of first instance, particularly if the workload of the court increases. It is not desirable to increase the size of the Supreme Court. I really do not think that it is inappropriate that the district court have this power. The court has jurisdiction under other clauses in the Bill to grant injunctions, for example, under clause 36, which the honourable member mentioned, in conjunction with prosecution proceedings.

Although it is not of major import, given that the capacity to grant injunctions does exist in the district court, it seems to me that it is not unreasonable for it to have procedures to grant injunctions apart from circumstances relating to prosecution proceedings. There is always the capacity to appeal to the Supreme Court, and I do not see anything wrong in principle with the district court having that power. Over time, I see a role for the district court to expand its activity and jurisdiction.

The Hon. K.T. GRIFFIN: I am very nervous about the district court being given this sort of jurisdiction, particularly if it is likely that there will be some cross-vesting of jurisdiction. I cannot imagine the Federal Government being interested in giving the district court any jurisdiction under the Federal Trade Practices Act. It must surely be either the Federal Court or the Supreme Court, and I am very nervous about the district court having the power to grant injunctions where hundreds of thousands of dollars worth of damages could occur as a result of, perhaps, a wrong order. Some judges of the district court are experienced in commercial areas but a large proportion of them are not, and that is no reflection on those members of the district court. We have to face the facts that a lot of judges do not have that experience, whereas in the Supreme Court there is a depth of experience which would more appropriately exercise this jurisdiction, particularly where potentially there are such large amounts at stake.

I can accept the desirability, where a prosecution has been issued and certain orders made as a result of that prosecution, of that prosecution taking place in the district court. However, where there is no dependence on or relationship to a prosecution and where an application is being made for quite wide ranging orders, I have very grave concerns about giving that jurisdiction to the district court.

The Hon. I. GILFILLAN: I have listened to the debate and am persuaded that the Hon. Mr Griffin has analysed the significance of the determination by this court. It could have quite dramatic ramifications and I certainly hope that there will not be such a proliferation of numbers that it will overburden the Supreme Court. The fact that there is a ground of appeal to the Supreme Court is one safeguard as

far as leaving it to the district court, and maybe judges with appropriate expertise could be appointed to the district court. However, that may not be the case at this stage. On balance, it is our intention to support the amendment.

Amendment carried; clause as amended passed.

Clause 38—'Order to disclose information or publish advertisement.'

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

Page 22, line 23—Leave out 'a district court' and insert 'the Supreme Court'.

Amendment carried; clause as amended passed.

Clauses 39 to 41 passed.

Clause 42—'Defences.'

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

Page 24, line 19—Leave out 'of a body corporate' and insert 'of a defendant'.

This is purely a drafting amendment.

Amendment carried; clause as amended passed.

Clause 43—'Other orders.'

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

Page 24, line 41—Leave out 'the court' and insert 'the Supreme Court or a district court'.

This amendment makes clear that it is only the district court or the Supreme Court that should have the power to make the sort of remedial orders compensating a person for losses contemplated by this clause in the course of other proceedings. It is not appropriate that this power be given to courts of summary jurisdiction or local courts of limited jurisdiction.

Amendment carried.

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

Page 25, line 4—Leave out 'the court' and substitute 'the Supreme Court'.

This amendment is consequential on an earlier amendment.

Amendment carried.

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

Page 25, lines 26 to 28—Leave out subclause (4) and insert new subclauses as follows:

(4) An application may be made under subsection (2) in relation to a contravention of Part II notwithstanding that a proceeding has not been instituted under another provision of this Part in relation to that contravention.

(5) An application under subsection (2) may be commenced—

(a) in the case of conduct in contravention of section 15—at any time within two years after the day on which the cause of action accrued;

or

(b) in any other case—at any time within three years after the day on which the cause of action accrued.

This amendment reflects recent amendments to the Commonwealth Act and was explained during earlier debate on the Bill.

The Hon. K.T. GRIFFIN: Will the Attorney-General indicate which provision of the Commonwealth Act has effected this change? I was concerned about the three year period within which proceedings can be issued in all cases other than breaches of clause 15. I think that three years is an inordinately long period of time and that no more than two years would be appropriate. Before that matter is resolved, will the Attorney indicate in which provision of the Commonwealth Act that time limit has recently been enacted.

The Hon. C.J. SUMNER: Section 87.

The Hon. K.T. GRIFFIN: That is not right. My copy of the amendments to section 87 of the Trade Practices (Revision) Act 1986—and I draw the Committee's attention to the fact that I am looking at this very hurriedly—provides that an application under the section in relation to a contravention of section 52a may be made at any time within two years after the alleged contravention occurs. I do not see immediately any reference to three years for any other case. It may be that there is something in the Commonwealth Act that deals with that, but I would like to be reassured that that is the position. If it is, I cannot maintain my opposition to the three year period, I would have thought.

The Hon. C.J. SUMNER: There is a Statute Law (Miscellaneous Provisions) Act (No. 2), 1986, assented to on 18 December 1986. It is the same Bill that amended the credit debit card matter which we debated earlier.

The Hon. K.T. GRIFFIN: For practical purposes I cannot sustain continued opposition to the provision. As a matter of principle, I must say that three years is too long but, if it is in the Commonwealth legislation, it is proper that it be reflected in the State legislation as well.

Amendment carried; clause as amended passed.

Clause 44—'Power to prohibit payment or transfer of moneys or other property.'

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

Page 26, line 39—After 'commenced' insert 'in a district court or the Supreme Court'.

This amendment makes clear that it is only the district court or the Supreme Court which should have the power to prohibit the payment or transfer of money or property as permitted by this Bill.

Amendment carried; clause as amended passed.

Clause 45 and title passed.

Bill reported with amendments. Committee's report adopted.

STATUTES AMENDMENT (TRADE PRACTICES AND FAIR TRADING) BILL

In Committee.

(Continued from 17 February. Page 2909.)

Clauses 2 to 5 passed.

Clause 6—'Repeal of sections 4, 5, 7, 8, 9 and 10 and substitution of new section.'

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

Page 2, line 27—After 'delegate' insert 'to a person employed in the Public Service of the State or, with the Minister's consent, to a person not so employed'.

This first amendment is similar to an amendment I moved to the immediately preceding Bill, that is, the power of delegation, and it limits it to a person employed in the Public Service of the State, or with the Minister's consent it may be a delegation to a person not so employed.

The Hon. C.J. SUMNER: The amendment is supported.

Amendment carried.

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

Page 3, line 22—After 'of' insert 'ascertaining whether this Act is being, or has been, complied with, or for any other purpose related to the enforcement of'.

This amendment also is identical to the amendment moved in relation to the powers of the Commissioner for Consumer Affairs. It was previously not successful, but I move it now in regard to the Commissioner for Prices. The amendment more clearly seeks to define the ambit of the authority of the Commissioner.

The Hon. C.J. SUMNER: The amendment is unnecessary. With respect to the Prices Act, these powers have existed since 1948—as I previously pointed out—without apparently being of any concern to anyone.

The Hon. I. GILFILLAN: We oppose the amendment.

Amendment negatived.

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

Page 3, lines 25 and 26—Leave out 'an oath, affirmation or'.

This amendment is also identical to the amendment moved to the immediately preceding Bill.

The Hon. C.J. SUMNER: We accept the amendment.

Amendment carried.

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

Page 3, after line 35—Insert new subsections as follows:

(3) A person is not required to answer a question or to produce a book or document if the answer or the production of the book or document would result in or tend towards self-incrimination or if any information that would be so furnished is privileged on the ground of legal professional privilege.

(4) Where a legal practitioner refuses to comply with a requirement made under this section on the ground of legal professional privilege, the legal practitioner shall give to the authorised officer the name and address (if known to the legal practitioner) of the person entitled to waive the privilege.

I appreciate that the numbers were not with me last time and are unlikely to be with me this time, but the amendment recognises the protection against self-incrimination and it recognises legal professional privilege.

The Hon. C.J. SUMNER: I oppose it for the reason stated previously.

The Hon. I. GILFILLAN: That is our attitude as well.

Amendment negatived.

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

Page 3, lines 36 to 42—Leave out subsection (1) and insert new subsection as follows:

(1) If a magistrate is satisfied, on the application of the Commissioner supported by an affidavit or other sworn evidence, that there are reasonable grounds for suspecting that there may be found on certain premises or land a book or document required to be produced pursuant to section 9, but not so produced, or any evidence tending to establish a contravention of this Act, the magistrate may issue a warrant authorising an authorised officer (together with any other person named in the warrant) at any reasonable time—

(a) to enter and search the premises or land;

(b) to make any inspection, conduct any test and take any samples;

and

(c) to take any books or documents.

I do not expect the numbers to be with me in the light of my experience on the Fair Trading Bill. The amendment merely seeks to require a warrant to be issued by a magistrate before entry is forced.

The Hon. C.J. SUMNER: I oppose it for the same reason. Entry is not forced—that is an exaggeration. The honourable member is using emotive terms to support his argument, which is quite unjustified in the circumstances and I oppose the amendment for the reasons stated previously.

Amendment negatived.

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

Page 4, lines 16 to 18—Leave out ', at the request of the occupier or an agent of the occupier of the premises or land entered or about to be entered under this section, produce' and insert 'produce to the person (if any) affording the officer entry to premises or land under this section'.

This amendment relates to the certificate of authority to be produced by an authorised officer and is identical with the amendment carried with respect to the powers of the Commissioner for Consumer Affairs or his or her authorised officer.

The Hon. C.J. SUMNER: I support the amendment.

Amendment carried.

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

Page 4, after line 19—Insert new subsections as follows:

(5) A person is not required to produce a book or document pursuant to this section if the production of the book or document would result in or tend towards self-incrimination or if the information that would be so furnished is privileged on the ground of legal professional privilege.

(6) Where a legal practitioner refuses to produce a book or document on the ground of legal professional privilege, the legal practitioner shall give to the authorised officer the name and address (if known to the legal practitioner) of the person entitled to waive the privilege.

On the last occasion a similar amendment was defeated.

The Hon. I. GILFILLAN: If the Hon. Trevor Griffin's lugubrious forecast is to be proved correct, we oppose the amendment.

Amendment negatived; clause as amended passed.

Remaining clauses (7 to 28), schedule and title passed.

Bill reported with amendments; Committee's report adopted.

RETIREMENT VILLAGES BILL

Adjourned debate on second reading.

(Continued from 19 February. Page 2972.)

The Hon. DIANA LAIDLAW: Like the Hon. Trevor Griffin and the Hon. John Burdett who have spoken in this debate, I too support the principle of this legislation which seeks to provide a legal framework in which retirement accommodation is managed. I do not intend to cover all the points that both those speakers canvassed in their analysis of this Bill, although I share most of the concerns that they outlined. While it is uncertain at this stage whether the Bill that we are debating will be considered in depth at the Committee stages or whether the Government will introduce a new Bill, I believe that both my colleagues have provided the Attorney-General with legitimate reservations about a whole range of matters.

It is my view that this Bill is important for a number of reasons, but I will highlight just three. The first is that in a large number of instances the conditions applying to retirement village accommodation schemes have proved to be most unsatisfactory. A need exists for residents of such schemes to be protected with a security of tenure and also with a full disclosure of conditions when they enter into a contract and to develop mechanisms for residents and developers in resolving disputes. In the past year I have received many complaints from residents on a whole range of matters and I have been particularly alarmed in a number of instances at the very evident level of distress encountered by quite a number of elderly men and women who found, in the course of their living in this accommodation, that the conditions were not made particularly clear to them at the time of purchase. Most of those matters to which I have just referred have usually involved price rises for maintenance.

A further concern that has been raised with me from time to time is the apparent ease with which residents have been able to be moved out of the unit to another unit and regularly they appear to have been forced to make such moves notwithstanding the fact that they may be incurring some considerable monetary loss. A further important reason for this Bill is that from 1 July this year retirement village schemes must be regulated under State legislation. Currently they are regulated under the prescribed interest provisions of the National Companies and Securities Commission.

In May 1985 the Ministerial Council for Companies and Securities deemed this legislation was inappropriate for the purpose of regulating retirement villages and the Opposition certainly agrees with that decision. Since that council meeting I understand that an interdepartmental committee responsible to the Minister of Corporate Affairs has been considering the issue of regulation of such schemes in South Australia. As a consequence of those considerations we have this Bill before us although, as I indicated earlier, the Government is prepared to consider major amendment to this Bill or the introduction of a further Bill.

The third important reason in my view for this measure is the fact that the very rapid growth in recent years in the

development of resident funded units will unquestionably escalate in the future. Currently such units represent a small proportion only—approximately 2 per cent—of all accommodation for elderly people. Today in South Australia about 1 per cent of people aged 65 years and over live in resident funded units with a further 4.5 per cent in nursing homes, 2.5 per cent in hostels, 2.5 per cent in South Australian Housing Trust cottage flats and about 10 per cent with their adult children. The remainder, and by far the majority of our older population, live independently.

I refer to this independent living and its preference as a form of accommodation for elderly people. In so doing I refer to report No. 6 of the Advisory Council for Intergovernment Relations and the relationships reference was the provision of services for the aged. At page 35 it states:

> Whilst there is evidence to show that the elderly are reluctant to leave their own homes to enter nursing homes or hostels, there is also evidence to show that the aged prefer individual purpose built accommodation. This holds true for all age-groups and is at variance with the trend to provide more nursing home and hostel accommodation. It would appear that the aged desire to be as independent as possible and to enter institutions only when absolutely necessary and for as short a time as possible. What an increasing number of aged people wish to do is move to accommodation that has the facilities they require. This sort of accommodation is in short supply and is a largely untapped 'last home' market.

That reference to the desire of older people to live in independent accommodation for as long as possible is particularly relevant to this Bill in relation to retirement village accommodation.

I highlighted the figures earlier about the proportions of older people in accommodation types and the findings of that Local Government Inter-government Relations report because accommodation for our older citizens looms as a formidable and unprecedented challenge in the immediate future. According to work undertaken by the Australian Bureau of Statistics, South Australia is projected to have notably higher proportions of older people than every other State in every age bracket and on every projection series in 1991, 2001 and 2021.

Not only will South Australia lead other States in the proportion of persons aged 65 years and over, 75 years and over and 85 years and over (with the one minor exception of Tasmania in respect of the projection for people 85 years and over in the year 2021) but South Australia's proportion in each of the older age brackets will be significantly above the six State averages. These projections pose long term planning challenges as we endeavour to develop a comprehensive set of accommodation policies and options for older people in South Australia.

I stress this point because I believe the challenge underlines my concern in relation to this Bill. Throughout the Bill there appears to be a lack of clarity about what is sought to be controlled and the scope of that control. I believe this lack of clarity stems from a dilemma on the part of the Government whether resident funded retirement villages are aged care ventures or real estate ventures. Having considered the Bill for some time now, I am convinced that the Government is not yet clear on this point and therefore has opted for a bit of both approaches and come up with a proposition that is not clear in terms of direction or intentions.

My view is that it would be very limited to address retirement village schemes purely as real estate activities. Certainly, any concentration of older people places an obligation on a developer to consider the immediate and longer-term needs of those residents. It is important that the accommodation provides recreation facilities and access to home and community support facilities. This is an important point for local government in particular to consider when assessing applications for these schemes for approval.

It is very important and in the Government's interest to ensure that local government in approving these schemes in the future makes sure that these matters relating to services are considered by local government. Certainly this obligation to include services is required in the current legislation under which resident funded retirement villages are considered. I mentioned earlier that the Hon. Trevor Griffin and the Hon. John Burdett spoke before me and raised a number of specific reservations about this Bill. I share most of those reservations and therefore will not repeat them.

In particular, however, I highlight a concern about the definition of 'retirement village schemes' and my belief that it is too all encompassing. Not only does it include resident funded schemes but all schemes to which persons are admitted. This includes resident funded schemes, non-resident funded schemes, independent living units, hostel units and possibly nursing homes. I believe consideration should be given to confining the definition to schemes where a participant has made or is required to make a substantial lump sum payment, whether in one amount, by instalments or by way of a loan. I understand that this interpretation has applied to the present time in the companies and securities legislation.

I also take particular exception in relation to clause 9 and the contractual rights of residents, which provides:

> If there is a divergence between an oral understanding, and a written agreement, between the administering authority and a resident as to the refund of a premium or part of a premium, the resident is entitled to rely on whichever is the more favourable to the resident.

I contend that this is not only a remarkable departure from accepted practice but it also paves the way for considerable abuse. It is hardly necessary because the Bill itself aims to insist that all contractual provisions are spelt out clearly to the prospective resident.

If the Government does not believe that the Bill is satisfactory in ensuring that prospective occupants are supplied with full information, it should tighten up these disclosure of information clauses or, alternatively, raise the level of penalty if a developer commits an offence in this regard. In my view, these steps are far more preferable to the reference in clause 9 to instances where there is a divergence of views with the benefit of the doubt going to the resident.

As I indicated earlier when highlighting my concerns about clause 9, I believe that, if this Bill aims to eliminate contractual differences and situations that currently give rise to confusion, misunderstanding and often considerable distress and disadvantage to the resident, the Bill should be tightened up and should not be left as open-ended as is the case with clause 9.

As I indicated, I have other concerns. However, I do not intend to raise all of them tonight. Most of them have been incorporated in the approach by the Hon. Trevor Griffin, and I consider that he handled the case well on my behalf and certainly covered most of my concerns. Therefore, I indicate that I support the principle of the Bill but with reservations. I look forward to the passage of constructive legislation which will certainly solve many of the problems currently experienced by residents in resident funded retirement villages.

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

ROAD TRAFFIC ACT AMENDMENT BILL (No. 6)

Adjourned debate on second reading.
(Continued from 18 February. Page 2937.)

The Hon. J.R. CORNWALL (Minister of Health): I will summarise the general drift that has come across from the contributions of the Opposition. There are two major issues in relation to owner onus: first, in the case of Government agencies, it will be or may be unenforceable and, secondly, when it is enforceable in the case of private businesses it will be a penalty on the business owner (that is, the employer) and not the employee. With regard to Government agencies, it is anticipated that, after an offending vehicle has been identified as being owned by a Government agency, the head of the agency will receive a letter from the police asking that the driver be identified. The driver will then be proceeded against.

In the case of State agencies, in the unlikely event of reluctance to cooperate, it is anticipated that ministerial directives will be given. In the case of Federal Government agencies, it is considered most unlikely that they will not cooperate. The Commonwealth Government has a high profile and commitment to road safety matters, and we believe it would be unthinkable of it not to cooperate. We expect its full and enthusiastic cooperation.

With regard to the question of the private employers, when the traffic infringement notice is served on the registered owner—that is the business—it will be accompanied by a notice which will in part invite the owner to nominate the actual driver. Business proprietors should at all times know who was driving their vehicle or vehicles. If a business proprietor decides to pay the expiation fee on behalf of a non-employee, it is his decision. Whether or not it is a wise decision, of course, is quite another matter. When the actual driver is nominated, the police will follow that up and, where it is appropriate, proceed against the driver under the appropriate section of the Act.

Some specific points were raised during the course of the debate. The Hon. Mr Cameron said that the Opposition supported the basic proposition of introducing red light cameras but hoped that this did not lead to an increase in the number of rear end collisions. Based on the experience gained from Victoria, where there was an increase in rear end collisions, suitable publicity will be given to the public prior to the introduction of the photographic detection devices.

Mr Cameron also expressed some concern that it was quite possible that, in the interval between a person selling a car and the sale being established with the authorities—and he pointed to a rather spectacular case that the member for Mawson produced in the Assembly quite recently—people will be up for an offence they have not committed. With respect to that, Mr Acting President, the registered owner can, within 60 days, provide a statement to the Commissioner of Police in the form of a statutory declaration that the registered owner was not the driver at the time of the offence. Alternatively, the owner can go to court and present his or her case. There will be those two opportunities, so in fact that concern is not well founded.

The Hon. M.B. Cameron: The member for Mawson might not agree with that.

The Hon. J.R. CORNWALL: The position there is that the Attorney has said that they were the two avenues open to the former owner.

The Hon. M.B. Cameron: It was very difficult—

The ACTING PRESIDENT (Hon. C. M. Hill): Order!

The Hon. J.R. CORNWALL: It was a position where clearly the former owner, the one who was convicted quite unfairly, obviously did not know her rights, and that is why I am making them very clear in this place tonight.

The Hon. Mr Cameron also expressed concern that companies, or in the case of public servants the Commonwealth and State Governments, would be charged with the offence and it would be up to them to get reimbursement of the fine from the individual. Again, in this situation such bodies or authorities can provide details of the offending driver to the Commissioner of Police by means of a statutory declaration. A further notice will then be sent to the driver. Alternatively, the body corporate may provide a statement that no officer or employee of the registered owner was driving the vehicle at the time.

Mr Cameron said that he would be moving amendments to ensure that the introduction of new cameras or new offences would be done by regulation because it is essential that Parliament has some part to play. That is an argument that we know very well. The perspective in Opposition is different from that in Government. It is an argument that has been put forward by Oppositions for longer than even Mr Cameron and I can remember, despite both of us having now been around this Parliament for—

The Hon. M.B. Cameron: Too long!

The Hon. J.R. CORNWALL: Perhaps into the second half at least of our careers. Let me reply to that. It is considered to be in line with the concept of deregulation and simplifying procedures to give approval to the application or administration of principles of law agreed to by Parliament. The principles are already well established. Let me give four simple examples: section 53a, where the Governor by notice in the *Gazette* may approve a type of traffic speed analyser; secondly, parts IVA and IVB, where the Minister has power to approve of the control of the central inspection authority and the licensing of passenger vehicles; thirdly—and this is all without moving outside of this Act—regulation 902, which states that vehicle defect notices shall be in a form approved by the Minister, and fourthly, in the Motor Vehicles Act, section 75—and one of the amendments which the Hon. Mr Cameron has on file refers to section 75 (1), so presumably he is well conversant with section 75—which states that drivers licences are issued in the form determined by the Minister. So, there are four examples that come to mind readily and with very little prompting.

The Hon. Mr Griffin made three major points about the Bill. First, although the obligation to pay an expiation fee or, in default of payment of the expiation fee, to pay any fine which may result from a prosecution and conviction, rests upon the owner; there is no requirement on the driver to meet the obligation. To that, of course, the obvious response is that the onus is placed on the owner to prove that no such offence was committed or that the registered owner was not the driver at the time. The owner can, by statutory declaration, name the driver, in which case a further notice will be sent to that person. Alternatively, the registered owner can opt to present the case to the court. So, in some ways that is a reiteration of the concern expressed by the Hon. Mr Cameron and answered in this second reading reply.

Secondly, the Hon. Mr Griffin had concerns in relation to those who may be driving vehicles owned by State and Federal Governments. I have largely covered that. The third point related to a photographic detection device approved by the Governor as a photoraphic detection device. I have already covered that in dealing with the point raised by the Hon. Mr Cameron.

The Hon. Bob Ritson said that he wanted to deal principally with the question of owner onus. What that really

means is that, where the photographic evidence is relied upon as a matter of legal fact, the owner has committed the offence and he cannot defend on the grounds that one of his employees was driving, even if he provides the name and address of that employee. That was the contention of Dr Ritson. Again, I think I have covered that adequately in my earlier comments. Dr Ritson also said:

I would like the Leader of the Government in this place—

and I thought that was quite complimentary since I was handling the Bill, or maybe he was just a trifle confused—

to assure us that the Government will as a matter of policy exact a penalty from the drivers in its employment who may be detected by the new methods as being in breach of the law.

The response to that is that employees of the Government will not be exempted from these provisions, as I made clear earlier. It will be up to each Government department to supply details to the Commissioner of Police concerning the offending drivers, so the State Government does not expect any difficulties of any consequence, and we look forward to the enthusiastic cooperation of the Federal Government.

In summary, Mr Acting President, we believe that this is a valuable tool now available to us to cut down the number of vehicle accidents, which in many cases are quite severe and sometimes fatal, that are being induced by red light runners. As we move into the Committee stage, I look forward to the support of all of the members of this Chamber.

Bill read a second time.

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Insertion of new heading and ss. 79a and 79b.'

The Hon. M.B. CAMERON: I move:

Page 1, line 18—Leave out 'by notice published in the *Gazette*' and insert 'by regulation'.

The first amendment that I have on file relates directly to a matter that the Minister referred to in his reply at the second reading stage and that is the subject of whether a matter can be decided by notice published in the *Gazette* by the Governor or whether it should be done by regulation. As the Minister said, that argument has been around in this Chamber since the year dot and it is one on which he is quite right. Oppositions tend to take it up more enthusiastically than Governments, but that does not mean that it is not correct to ensure that Parliament plays a part wherever possible. There is a very great danger in Acts of Parliament of more and more power being given in Bills that become enabling Acts and then matters being decided by proclamation rather than Parliament having an oversight. It is not a great burden to have matters decided by regulation so that the Parliament can observe the way in which an Act is administered and the tools with which it is administered. It is one thing to give the framework of an Act: it is another for the detail to be left to the Government. I do not always trust Governments. Many times regulations have been brought into Parliament and, in the end, the Government itself has agreed that there should be changes and that the regulation is not correct.

I have a number of amendments on file in relation to regulations and I shall take any vote on this first amendment as an indication that the Council will either agree or disagree to the other amendments relating to the change to ensure that all of these matters are decided by regulation. I will be putting this one argument on this matter and I will accept it as a test vote. If it is lost, I will not proceed with the other amendments. If this amendment is passed, I will formally move the amendments as we go through and take an acceptance of them.

The Hon. J.R. CORNWALL: In my second reading reply I outlined the Government's position in this particular matter and I gave four examples where this is already done under the Road Traffic Act. It is simpler and easier and, with regard to the sorts of matters that we are dealing with, the procedures as laid down in the Bill are adequate and consistent with current procedures and practices. In the circumstances, I do not believe that it is necessary to do these things by regulation. It is a timeworn argument, and I will be interested to hear what the Democrats have to say.

The Hon. I. GILFILLAN: The actual method of acceptance or otherwise of the photographic detection devices is probably not the most significant part of the legislation, but there are other side effects of the way in which it is introduced, and one of them is publicity and awareness. There is an advantage in having this brought in by regulation, apart from the fact that it does give Parliament this much closer contact with what is a pretty significant decision to be made. Nobody in South Australia can be indifferent to our road toll and the means accepted by the Government with the support of the Opposition and the Democrats to diminish this is viewed with some interest and optimism by the public. If for no other purpose, the extra emphasis that would be put on the introduction of this equipment by having it brought in by regulation added to the fact that we prefer the decision to be made by Parliament means that the Democrats support the amendment moved by the Hon. Martin Cameron.

Amendment carried.

The Hon. M.B. CAMERON: I move:

Page 1, lines 21 and 22—Leave out subsection (2).

The Hon. I. GILFILLAN: We support that amendment.

Amendment carried.

The Hon. M.B. CAMERON: I move:

Page 1, lines 27 to 32 and page 2, lines 1 to 5—Leave out the definition of 'prescribed offence' and insert new definition as follows:

'"prescribed offence" means an offence against section 75 (1):'.

This relates to a subject that I raised briefly during my second reading speech but was perhaps not fully explained there. I indicated that I had some concern that this particular Bill was to be used as enabling legislation on a much wider variety of offences than just red light running. In his second reading reply, the Minister indicated quite clearly that he hoped that this legislation would lead to a stop to the practice of running red lights, and I agree with him. That is clearly what all the argument has been about prior to the introduction of these cameras. We all know about the campaigns in the initial stages and I am pleased that at last there seems to be a general acceptance that, although there are some faults (and some of those faults we hope will be cured by this legislation), nevertheless, the concept of changing people's attitudes is important.

I do see a problem if we step into other as yet unproven and untried areas, particularly in relation to speeding. I would be the first to say, 'Yes, let's do anything we can to do that.' However, the fear that I have is that it would be all too easy (and I expect at some stage in the future that we will have devices that will photograph vehicles and indicate their speed) for that to be taken as the easy way out and to move right away from the present system of manually stopping people on the road, having detected their speeds, and making them go through the embarrassment of having to get out of their vehicle and going through the forms of indicating their guilt or innocence for an offence. That is one of the greatest deterrents—that you actually have to go through the process of having a blue light flashing at you and a siren screaming at you, and it is quite a deterrent. It does stop people.

First of all, I want the devices to be tested in South Australia as these other cameras have been. I would like the Parliament to be able to debate the merits of shifting to that system and I would like the Parliament to debate the extent to which we may in the future shift to that system. I am quite willing to give absolute and full support to the provision in section 75 (1) which would confine the matter at the moment to red light running. That is the proper way to go and it is quite a simple matter if the new devices are brought into force for the Government of the day to then bring back any other changes to the Parliament and move them as amendments to this legislation. The principal Act will be there but we will be able to debate the issue fully. The problem is that, if you do bring them in by regulation, the Parliament does not necessarily have the ability to debate and perhaps change the issue. One of the great problems with regulations is that Parliament can never amend regulations: we can only throw them all out.

It is far better for these matters to be brought in as Acts of Parliament so that we can go through them piece by piece and decide the merits, and perhaps move amendments if they are required. I have moved this amendment not for any mischievous purpose, let me assure the Minister—

The Hon. J.R. Cornwall interjecting:

The Hon. M.B. CAMERON: No, that is not correct; it is a matter that I raised. It was certainly discussed. Everybody knows the way in which these things happen. It was certainly with my support and, to some extent, at the instigation of members on this side of the Chamber.

The Hon. J.R. Cornwall interjecting:

The Hon. M.B. CAMERON: No, that is not correct. Let me assure the Minister that I have moved this amendment with the very good purpose of ensuring that the Parliament does have the opportunity to debate fully any fresh changes to various offences so that we can study, and perhaps even obtain evidence on, the potential effect, because I am not certain that cameras, for instance, will have that effect, and it may be very difficult to prove an offence. That is something I would certainly like to debate fully at the time and not in relation to this matter, which has been fully tested publicly, which I am sure has public support and certainly the support of this side of the Council, as it has the support of the Government.

The Hon. J.R. CORNWALL: Let me say—and I think the Hon. Mr Gilfillan should listen to this before he makes his final decision in this matter—that I find the Hon. Mr Cameron's position, on behalf of the Opposition, quite extraordinary both in its inconsistency and in its illogicality. What it would do would be to restrict the Bill to offences at traffic signals only.

The Hon. M.B. Cameron: That is the whole idea of the Act.

The Hon. J.R. CORNWALL: No, that is the whole idea of the amendment—to restrict offences to the so-called red light cameras. The Bill before this Chamber (the proposed Act) deals with photographic detection devices which has significantly wider application. It is a fact—not fiction or conjecture—that a radar device with camera will be available within 12 months. It would certainly be the present intention of road traffic authorities to acquire that apparatus and to use it at the earliest reasonable moment. Anything we can do to reduce road trauma and road deaths within that sort of ambit we should pursue with substantial vigour.

I know, as Minister of Health, that if we could reduce the burden from road trauma even by 10 per cent we would immediately—and I mean immediately—take the pressure off our major hospitals. The great problem that faces the metropolitan public hospital system in 1987 is the extraordinary burden of road trauma. If anyone doubts that, let them spend a Saturday night in the Accident and Emergency Department at the Royal Adelaide Hospital. Anything we can do to get a significant reduction in the incidence of road trauma—

The Hon. M.B. Cameron: You would support.

The Hon. J.R. CORNWALL: I would support, yes.

The Hon. J.C. Irwin: Knock off the Grand Prix then.

The Hon. J.R. CORNWALL: That remark is about as inane as the amendment that is currently before us. The Hon. Mr Cameron, to be consistent in this matter, ought to be enthusiastically supporting the clause and the Bill. The Hon. Mr Cameron is the one who said, when we increased random breath testing by a factor of some 150 per cent, that we were not doing anywhere near enough. No matter what we have done in areas like that, the Hon. Mr Cameron has been the most constant and vocal critic. As against that, I have to say that the Hon. Mr Gilfillan, by and large, while he has been a constant and vocal critic, has been much more constructive, at least intermittently so. I hope that he does not ruin that record tonight by restricting the ambit of this proposed legislation simply to red light cameras.

As I said, there will be another major advance available to us in radar with a combined camera device within 12 months and the Hon. Mr Cameron has already ensured, with the support of the Hon. Mr Gilfillan and his friend, that we will have to do these things by regulation, anyway; they will come under the scrutiny of the Parliament. I believe that that is sufficient scrutiny. It would be a great shame, it seems to me, if we had to involve ourselves in lengthy debate before we could introduce other well proven devices in this fight against road crashes, road trauma and road deaths. I earnestly implore the Democrats to use their balance of reason on this occasion to support the Government's proposal.

The Hon. I. GILFILLAN: Regardless of the Minister's pleading, we feel that the Bill as amended is a reasonably safe piece of legislation. It is pleasant to see, now that we have the regulations being required for the introduction of photographic detection, unlike so much other legislation concerning the definition of 'prescribed offence', that the Government has specifically identified those offences. There are no loose edges and no leaving extra ones to regulation. We know exactly what offences are to be scrutinised. They are: speeding past signs, roadworks, etc.; driving a vehicle recklessly at a speed or manner dangerous to the public; exceeding the open speed limit; exceeding 60 km/h in that zone; exceeding 25 km/h at school crossings; exceeding speed in speed zones; exceeding 90 km/h for heavy vehicles; and not complying with traffic lights or signs. I do not see any reason why we should not take all measures to get as many drivers as possible to comply with these prescribed offences. On that score the Government has our full support.

However, it is important that there be no anomalies or injustices left in the system. That is an obligation on the people who are designing the use of these photographic detection devices—that the public can trust their integrity and accuracy. It has been brought to my notice that there is a problem with red light cameras on intersections. With a three second amber light, a vehicle travelling at 60 km/h would cover, I am advised, 48 metres (and I have not checked this figure that was given to me). That would not allow normal reaction and braking time. It may well mean that either some drivers are inadvertently caught offending with no intention and certainly no malpractice on their part, or they will be thrown into some sort of panic reaction

which could result in a series of back-end accidents or some other misadventure.

Apparently in Melbourne at the intersections where red light cameras have been installed, they have increased the amber light duration to four seconds with this specific problem in mind. That causes some problems because it is only at the camera intersections that they have extended the amber light duration from three seconds to four seconds. It appears to me—and this is why I am bringing it forward now—that if the Minister is not able to give some sort of analysis of the problem I am raising it will be put in the record and I ask that he ensure that this is looked at and our fears are allayed at some later date. That specific concern of red lights working on intersections has been brought to my notice, but as a general caution the public are entitled to and should get the very best accuracy in the equipment, and there must be a fair system inculcated in any formula which identifies an offence.

Once there is an area of doubt and a feeling of injustice, the goodwill which many of the public would have for the introduction of these devices will be seriously eroded. We oppose the Hon. Mr Cameron's amendment.

The Hon. M.B. CAMERON: The debate has just been broadened considerably, because it appears that, despite what the Minister referred to in his second reading reply, there is another device already under active consideration in regard to speeding offences. That is exactly what I was referring to in saying that it is a matter that I would like debated.

Certainly, I resent the Minister's slighting remarks about my attitude to random breath testing. Let me tell the Minister that I had waited since 1984, at the end of a select committee, for this Government to take some action on this matter. We have been watching death and destruction on our roads while the Government has sat back and let it happen and did not bring in the necessary recommendations of the select committee. The Minister should never stand up in this Council and indicate some slighting reaction to my concerns expressed as a member of that committee and as a person concerned with the road toll in this State. You sat back and let your hospitals be filled without taking any action whatsoever since 1984.

The Hon. J.R. Cornwall interjecting:

The Hon. M.B. CAMERON: I am not a disgrace. You are a disgrace for making that rather sneering and slighting remark about me. You sit back and listen for a change. You spend too much time talking and not enough time listening. I will go back to the subject. You raised that again. If you are satisfied with the way random breath testing is working in this State, then you have rocks in your head. The Minister knows it is not working properly and I will guarantee that before long the Government brings in other changes—you will have to. It will not work until you do it properly—but you would not know how. I hope you find out eventually. I will leave that subject but, if you want a debate on it, anywhere, any place, any time—outside or inside this place—meet me and I will have a debate with you and we will have a look at what has happened concerning the road toll over the Christmas period this year while you sat on your hands—all of you.

The Hon. I. Gilfillan interjecting:

The Hon. M.B. CAMERON: Are you making some reference to me?

The Hon. I. Gilfillan: No, it just would be a useful exercise.

The Hon. M.B. CAMERON: Yes, that probably would be right. I am not quite sure what you are saying.

The Hon. I. Gilfillan: A truly random breath test is all that I am advocating.

The Hon. M.B. CAMERON: Right. I am extremely concerned about the situation that has occurred over the past two years. I get very angry when people like the Minister stand up and make those remarks. I am sure that the Hon. Mr Gilfillan would agree with me in that matter.

As to the extension of this provision to other offences, it concerns me that we now have a much broader concept of how this legislation will operate. I would now like the Minister to indicate how he will identify in which zone an offence took place. If an offence occurs in an 80 km/h zone, how will that be identified—whether it is 60, 80 or 110 km/h?

The Hon. R.J. Ritson: Surely Parliament would have to look at that?

The Hon. M.B. CAMERON: I would have thought so. One thing is for certain: if a person is pulled up, the person knows exactly where the offence took place, because both the driver and the policemen are standing there in the speed zone. That is one of the greatest deterrents. Perhaps the Minister can start the program by answering that question, along with the other questions that will be raised.

The Hon. PETER DUNN: In supporting the Hon. Mr Cameron's amendment I do have some problems with expanding the red light camera or the electronic device to what the Minister is talking about, that is, radar devices on the open road to catch speeding motorists. Ultimately the devices will finish up on their own—not being manned. Indeed, all they become is revenue raisers, and nothing more than that. If a policeman pulls a driver up for speeding there is the siren, the blue lights, the red lights, and the driver is pulled over and humiliated while giving name, number and the details that are required—and rightly so. That is the most effective method of stopping a young person from speeding.

However, if a person has to pay $60 to expiate the offence, and if he has adequate means, it will not mean much to the driver at all. The fact that drivers are humiliated when they are pulled over and other drivers are passing is effective. I suggest that the installation of a device similar to those in Germany on the Autobahn (which they subsequently took away, as the Hon. Mr Cameron said, because they were very difficult devices to operate) is not the way to go. True, those devices were placed on specific crossovers where they did know the road speeds, and there were problems with identification of the driver, with provisions similar to those in this Bill.

The onus of proof was on the owner and not on the driver. There was total confusion. I understand that the radar cameras in Germany have been removed because they were unsuccessful. If the Minister wants to introduce them because they have now become more sophisticated, he should do so through this Parliament. Parliament should look at the detail. Such technology should not be introduced by regulation and merely saying that this or that will work. Parliament should look at it. I cannot see any beneficial effect resulting from a radar camera sitting on a post halfway to Snowtown just outside the 80 km/h zone, catching everyone because they are still slowing down from the 110 km/h. That does not need to be included at this stage. The measure should be reintroduced. It is not hard or difficult to do that, but Parliament should examine the situation before the Minister goes that far.

The Hon. J.R. CORNWALL: With regard to the Hon. Mr Cameron's extraordinarily offensive remarks that it was the inaction of this Government that was responsible in some way directly, as he implied, for a number of tragic

deaths in the pre-Christmas period, he has a very loose mouth and is a very irresponsible person. He really ought to be ashamed of himself for carrying on like that. The point that I made was that, when we increased our effort for random breath testing in this State by 150 per cent and introduced measures such as block testing, the Hon. Mr Cameron, who has spent almost all of his political life in Opposition or on the back bench in the brief period in which he was a Government supporter from 1979 to 1982, still cavilled about the matter. If he is serious about supporting road safety, as the Hon. Mr Gilfillan obviously is—he has established his *bone fides* in this matter—let the Hon. Mr Cameron adopt more of a bipartisan approach and let us not have the emotional sort of carry-on that we have just witnessed.

In the second reading explanation when this Bill was introduced into both Chambers, it was made quite clear in the second sentence that it was the Government's intention that it should apply to devices other than the red light cameras as they became available. The second sentence of that second reading explanation states:

> 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.

If or (as I say, inevitably) when these radar/camera devices become available, naturally they will be examined. If they are considered by road safety authorities to be appropriate devices they will be tested, just as the red light cameras have been tested. Following those tests, if they were proved to be satisfactory, they would be introduced by regulation.

There would not be the necessity to wait until Parliament sat again, until additional legislation was drawn up. If they were proved through suitable trials to be safe and desirable they could be introduced by regulation. That is a sensible way to go. We should not be involving ourselves in a protracted Party political debate while there is a device available to us which may, or many would contend will, reduce road trauma, death and carnage on our roads. That is the sensible way to go and it should not be a matter for bear pit or jugular politics or one involving emotional and irrational debate in this Chamber or elsewhere. I am very pleased that the Hon. Mr Gilfillan has indicated that in this matter the Democrats intend to support the Government.

The Hon. M.B. CAMERON: It is interesting to hear the Minister attempting to imply that I in some way introduced the matter of random breath testing into this debate. I did not do so at all, but the Minister made some slighting remark about my attitude in this matter and I resent that. For nearly 18 months I had raised continually the matter of the number of random breath tests being conducted in this State. That was a matter of real concern not only to me but also to the Hon. Mr Bruce sitting behind the Minister. The Hon. Mr Sumner should also have been concerned as he sat with us on various occasions on that matter. Anyone else who went to New South Wales and saw what happened should be concerned. It was an utter waste of time, given the way it was being carried on and anyone with an ounce of humanity would know that. The Minister should not refer to my attitude or say that I have introduced bear pit politics.

I will certainly do that if the Minister makes slighting remarks about my attitude to random breath testing. At any time he wants to raise it here or anywhere else I shall debate the matter with him at length and he will come out second best because his Government has not done the right thing in this matter. I am happy to accept that in the early days of random breath testing our Government did not do the right thing, but we went through that whole process, got to the end and thought that at last we had some bipartisan attitude to it, yet nothing happened. Many people who spent a lot of time in the matter of random breath testing were angry about this, and the people that did not take action must accept some responsibility for the end result, namely, a very high death toll on our roads. I do not care what the Minister says—that is the end result and he cannot get away from that.

I maintain that this is a matter of bipartisan politics. People who do not take action must accept responsibility. They have to accept it on their conscience. If they do not do so, they do not have an ounce of humanity in them. I am concerned that I have not been able to persuade the Government to spend the necessary money to make the thing work. I certainly worry about it and hope that the Minister does. If he worries about his hospitals he will be worried. That is getting right away from the Bill. I will leave the matter to the Minister's conscience as he is Minister of Health and knows what should happen.

We will go back to the Bill where we started out with a bipartisan attitude and, hopefully, we will end up with it. I understand the Hon. Mr Gilfillan's attitude. He is perhaps not understanding the problems that might well arise. I fear that in the end, because it will be cheaper to put a camera on a post, we will not have police out doing the job of detecting speeding offences. The biggest deterrent will be gone as people will not see police on the roads. If this is taken to its end resources will become scarcer and scarcer and in the end they will say, 'Let's buy another camera.'

I warn the Minister that that may well be the result. The Minister says that it is not a matter for concern. I do not intend to go to the absolute wall on this matter. It is the Minister's decision, but I warn him that in the end he may find that he has introduced a problem which will result in our not having the greatest deterrent of all, that is, the effective presence of police enforcing the laws of this State in relation to road traffic.

Amendment negatived.

The Hon. I. GILFILLAN: I move:

Page 2, lines 32 to 34—Leave out subparagraph (ii) and insert new subparagraph as follows:

(ii) where the registered owner is a body corporate—

(A) that no officer or employee of the registered owner was driving the vehicle at the time;

or

(B) although an officer or employee of the registered owner was, according to information in the possession of the registered owner, driving at the time—that the registered owner has furnished to the Commissioner of Police, by statutory declaration made by an officer of the registered owner, the name of the officer or employee.

I move this amendment in an attempt to correct what I see as a deficiency in the Bill, that is, where a body corporate is the registered owner of a vehicle, the offence will lie with the body corporate unless it can show that no officer or employee of the registered owner was driving the vehicle at the time of the offence. My interpretation of the Bill is that a body corporate has no opportunity to identify the driver and therefore transfer the offence to the person who I believe should carry the responsibility for the offence, that is, the driver of the vehicle. That should be the case for every offence of this nature that the Bill is attempting to cover.

The owner onus provision is certainly a commendable initiative because, as was outlined in the second reading explanation, there is a very good reason for diminishing the excessive workload and extraordinary difficulty that the police would experience in trying to identify and pin down the driver involved in each alleged offence. I understand

from the Minister's second reading explanation, particularly his concluding remarks, that the Government does not see a problem in this area. If there is an explanation, I would like to hear it spelt out. It is quite clear to me that a body corporate will remain the guilty party where this equipment shows that an offence has occurred.

There is another track and the Hon. Mr Griffin has suggested an amendment whereby a body corporate could collect any fine imposed from the identified driver. I do not accept that. I think that is an unfortunate method of operation. I repeat: the best operation of the legislation is for the offender—regardless of who owns the vehicle—to be the prime target for the offence and the penalty. I feel so sttrongly about this that I have some misgivings about the exemption from further consequences of an offence so that there would be no demerit points or risk of loss of licence (but that is an aside).

I believe that we will achieve the best results from this legislation if drivers of vehicles—whether or not they are the owners—feel quite conscious hesitancy of offending in these areas because they may very well be picked up and eventually found to be the guilty party and have to bear the penalty. So the amendment aims at not exempting a body corporate from the owner onus if it cannot identify the driver of an offending vehicle. Any driver who cannot prove satisfactorily that he or she was not the driver or any body corporate that is unable to identify a driver should be held responsible. In such cases they are responsible for the vehicle unless, of course, it has been stolen (and that is covered by a separate area of the Bill).

If my amendment is passed, the registered owner, being a body corporate, would receive from the police the first notice of the offence and would be able to give, by way of statutory declaration, the name of the driver at the time of the offence, and from then on communication would be between the Commissioner of Police and the driver, with no further role for the body corporate to play. I therefore recommend my amendment to the Committee.

The Hon. R.J. RITSON: I would like to add some words of support for the Hon. Mr Gilfillan's amendment. The legislation adds to the present offence of passing through a red light by creating a new offence. It does not replace any of the old offences. Obviously, if there is enough evidence from police witnesses, the person who committed the offence will be proceeded against. In the case where the only evidence is a photograph, and where it is not practical or possible to identify the actual offender from the photograph, it is certainly very reasonable to begin by placing the onus upon the owner of the vehicle.

The owner onus, of course, is not absolute: a number of defences to that liability are listed in the Bill. My problem is with the way in which the defences available to a corporate owner are drawn. I am not particularly seeking to monitor the profits of owners of vehicles: I am concerned with the road toll and the deterrent effect. The whole purpose of this legislation is to create a sense or the impression—a feeling in the mind of the person holding the wheel—that there is a new and added risk of detection and punishment.

This Bill states that, where the only evidence is the photograph, the owner has committed an offence unless he can prove, in the case of a corporation, that the driver was not an officer or employee—in other words, perhaps a trespasser, a thief or some other unauthorised user. There is no opportunity at all for the employer to pass on the legal responsibility for that offence to a known offender. In many cases these vehicles will carry log books as a matter of law or regulation. In many cases there will be absolutely no doubt as to the identity of the offender, yet that offender will not have sheeted home to him or her the legal responsibility for the offence.

The question of recovering money has its difficulties: it involves confrontation and the possibility that individuals or unions may say to employers, 'Look, here is the Bill; it says quite clearly that you are the offender, that I am not the offender, and that if you are proceeded against clause 7 prevents me from being proceeded against. Why on earth should I pay you money for your offence?'

It seems to me that, unless there is a clear legal statement that, where the offender is identifiable, the person holding the wheel is the person who is legally responsible and the person who, if the case goes to court, has a legally recorded record of offence. Unless that happens, then those many thousands of persons who drive many hours a day for their salary will know quite securely that no added risk is posed to them by this regulation.

That is a very important principle. One cannot go past it by saying things such as Mr Keneally said in the House when the difficulties of binding the Crown were raised. Obviously there are constitutional obstacles in our attempting to bind the Crown in its Commonwealth manifestation and there are some absurdities in the Crown, in its State manifestation, attempting to prosecute and keep itself from paying a fine unto itself. So, the reasons why the Act does not bind the Crown as the owner of vehicles are obvious.

Nevertheless, I would have thought that the bland assurance from Mr Keneally that as a matter of administrative policy the Government would try to recover the cost equivalent of the fines from its drivers has a long way to run before it becomes reality. I do not know how the unions involved will react when that starts to happen. Of course, it would be possible to apply an amendment such as the Hon. Mr Gilfillan's to Government drivers, because the drivers themselves are not the Crown but are individuals.

I think that the matter might even be further improved if the Hon. Mr Gilfillan's amendment were to include Government drivers if there was some way of making clear that, where the Crown forwarded the identity of an offender to the Commissioner of Police, the Government drivers would then be proceeded against for breach of this law. That would make a lot more sense then relying on Mr Keneally's assurance in another place.

Second best would be for the Government at this stage to give this Council the assurance that it will by administrative fiat, if not as a matter of statute law, extract from offending Government drivers the cost equivalent of the expiation fee. It is hard to know what the Government intends. I guess that we will get some further answers, but it is generally noised around the corridors that the Government is saying that this amendment is not necessary because the drivers can perhaps be proceeded against, anyway, should the employer choose to forward the identity of the driver to the police. I do not believe that. It is not in the Bill.

I do not believe that the sorts of things that we are hearing in the corridors or the sorts of things that members opposite might say are necessarily a correct interpretation of the statute. It sounds to me like an emotional reflex offence of the present drafting of the Bill. I think many members on this side will have things to say about this, so, having started the ball rolling, I will wait and see. At the moment, I am highly persuaded to vote for the Hon. Mr Gilfillan's amendment.

The Hon. M.B. CAMERON: I wish to indicate that, on behalf of the Opposition, I will support this amendment. Members will note that there is on file from an earlier time another amendment from the Hon. Mr Griffin, who

attempted to grapple with this problem. However, we do have a preference for the amendment that is now being moved by the Hon. Mr Gilfillan, because it does relate the offence back to the offender: it takes it straight back to the person who has committed the offence by a very simple procedure. It is just a matter of the registered owner, if it is a body corporate, identifying the owner.

I do not know whether the Hon. Mr Ritson heard the Minister in the second reading debate state that the moneys would be recovered from people who were driving as servants of the Crown. That assurance, as I understand it, was given by the Minister on behalf of the Minister of Transport and, quite frankly, I think we must accept that assurance, because I believe that it is difficult to insert any provision that would do other than that.

I indicate to the Minister that I accept that assurance. Also, I indicate that any future Government of our persuasion would certainly take a similar attitude in such matters, because it would be quite improper if people working as servants of the Crown were able to offend and then not receive the penalty for that offence. The Opposition supports the amendment.

The Hon. J.R. CORNWALL: We oppose the amendment to the extent that I think it will be necessary to call for a division on it. First, in the second reading reply I gave an undertaking, as the Hon. Mr Cameron pointed out, that the Government would extract the fine from the driver of any State Government vehicle. Secondly, with regard to the debate on this question, I refer members to clause 3 (5), which provides:

> Where an offence against this section is alleged, a traffic infringement notice or summons in respect of that offence 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;.

Paragraph *(b)* is the nub of the matter, and it provides:

> 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;.

Under the Bill as introduced, the Commissioner of Police, in relation to the question of withdrawal of the TIN or complaint, will give due consideration to any exculpatory evidence which is verified by statutory declaration and furnished to the Commissioner within a period specified by the notice.

The Hon. R.J. Ritson: That doesn't sheet it home to the driver; you're twisting it.

The Hon. J.R. CORNWALL: Bob, settle down! This amendment takes away the discretion from the Commissioner by including the proviso 'that the registered owner has furnished to the Commissioner of Police, by statutory declaration, made by an officer of the registered owner the name of the officer or employee'. Rather than the Commissioner having some discretion in the matter, that is being taken away.

The Hon. R.J. Ritson: That's the dregs in specious arguments, really.

The CHAIRPERSON: Order! There is no need to interject.

The Hon. J.R. CORNWALL: The amendment is removing any discretion from the Commissioner of Police in the matter of exculpatory evidence. The Hon. Mr Cameron said that Mr Griffin attempted to deal with this by an amendment that he has on file. To the extent that any action is necessary, I must say on behalf of the Government that we find Mr Griffin's amendment very significantly more acceptable, and I would certainly be prepared to accept that in a spirit of compromise, but I am not at all impressed by this amendment. I hope that Mr Gilfillan knows what he is doing.

As I said earlier (and I have no reason to retract it), Mr Gilfillan's record as a member of Parliament on the matter of road safety has been a good one. I cannot work out why he wants to take away the discretion of the Commissioner of Police to be able to consider the evidence that is submitted by statutory declaration, and, where appropriate, to have some discretion as to whether he withdraws or enforces a traffic infringement notice. I would like Mr Gilfillan to explain to me why he does not believe that, whoever the incumbent of the office of Commissioner of Police might be, he thinks that he would have neither the nous nor the ability to weigh up the evidence that was presented by way of statutory declaration. I would have thought that once the statutory declaration was before the Commissioner, it would be a relatively simple matter indeed, and we are not talking about matters that go before the courts.

The Hon. Peter Dunn: Yes, you are.

The Hon. J.R. CORNWALL: You are the man who said that you wouldn't want a device on a country road because it might actually find somebody speeding. I do not think that your contribution to this debate needs to be taken into consideration.

The Hon. I. GILFILLAN: I ask the Minister to ponder more profoundly the significance of clause 3 (5) *(b)*, in particular, where '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'. Without looking up a dictionary, my understanding of exculpatory evidence is evidence which relieves blame. In this case we are talking about a body corporate. This evidence releases the body corporate from carrying the burden of being guilty of the offence. It does not, on the other hand, oblige the Commissioner to use that culpatory evidence to regard automatically the driver of the vehicle as guilty of an offence. There should be no due consideration at all. Once the driver is identified, there should be an absolutely irrefutable recognition that the offence goes to the driver. The driver then begins afresh as another person and, if that person then wants to conduct his or her own defence and can prove that the vehicle had been stolen for half an hour while he was having a milkshake in a deli, fair enough, but it is nothing to do with the body corporate.

The Hon. R.J. Ritson: He or she has the same defences as the private person.

The Hon. I. GILFILLAN: Of course he or she has. The mention of the Hon. Trevor Griffin's amendment is an unfortunate one because, apart from the fact that it makes it a much more cumbersome and unfair method of collecting the fine, it also stirs ill will that should not necessarily exist between the employer and the employee. I ask the Minister, in proper deliberation, to have a look again at this clause which he has used as an example to prove the irrelevance of my amendment and see that my amendment goes a long way to making it quite clear and indisputable that the driver is the offender in these incidents.

The Hon. J.R. CORNWALL: I am in sympathy with what the Hon. Mr Gilfillan is trying to achieve but I do not believe that he has got there. Perhaps he could explain it to me again slowly. Maybe I am a little dense at this hour of the night, but it seems to me that what he is trying to achieve is to ensure that, if the employer furnishes a statutory declaration to the Commissioner of Police, he is off the hook. I cannot for the life of me see that the honourable

member is tying the thing up. Is he trying to enforce a situation where the employer, in making a statutory declaration, says that employee X was driving a vehicle at that particular time and, therefore, the employer is automatically off the hook? As I understand it, that does not ensure that the employee, whoever he or she may be, would be liable for the penalty. I would have thought that the legislation as proposed is better in that respect and, if we combine it with the statements that I made in the second reading reply, I believe that we are a lot closer to the mark than the honourable member is with his proposed amendment.

The Hon. I. GILFILLAN: I do not believe that that is the case. I must admit that I am relying on the fact (because I do not think that it is spelt out in the Bill) that, if an actual individual driver has not been the owner of the vehicle and has been shown to have committed the offence, automatic action will be taken on it.

I have assumed, maybe unwisely that, when there is clear and statutory evidence that a certain person has been shown to be driving a vehicle and that they have offended, the Commissioner of Police would then take action. The Minister earlier lent on the fact that after due consideration the Commissioner would take action. I would assume that the Commissioner, with the evidence that would have been in his hands of a statutory declaration that a certain person was the driver of vehicle registration number so-and-so at the time of the offence, and it is not contested, would then take action. We there have the name of the offending driver who has virtually accepted the fact that there was an offence and will accept the penalty.

If it is contested, then obviously the matter goes further. If the body corporate has been shown to have perjured itself in the statutory declaration or has erroneously given a name, then the body corporate remains the culpable entity and should be prosecuted. In answer to the Minister's question—and this is where I feel he was perhaps leading down a productive track—if we have established who the driver is in a body corporate, will there then automatically be some penalty imposed on that driver? I am assuming that there will be.

Maybe there is a deficiency in the legislation and maybe that will not occur. However, it is my assumption that it will occur because the offence has been proven and we know the name of the offender. If any Commissioner of Police does not act on that, the Government should be looking for another Commissioner of Police.

The Hon. M.B. CAMERON: Mr Chairman, I do not believe that there is a deficiency—

The CHAIRPERSON: Order! I am not Mr Chairman!

The Hon. M.B. CAMERON: Madam Chair—

The CHAIRPERSON: I am not Madam Chairman.

The Hon. M.B. CAMERON: What are you then?

The CHAIRPERSON: I am a Chairperson or a Chairwoman. I am not a Chairman.

The Hon. M.B. CAMERON: You are picky tonight, Madam Chair. I will practise that tonight in front of the mirror.

The CHAIRPERSON: Order! Ms is my preference.

The Hon. M.B. CAMERON: Yes, Madam Chair, I am always going to be in trouble, I am afraid. I think that I might be almost too old—

The Hon. J.R. Cornwall: You are exceptionally obnoxious tonight—even more obnoxious than usual.

The Hon. M.B. CAMERON: Really? I am sorry that I have upset the Minister.

Members interjecting:

The Hon. I. Gilfillan: That is a minority point of view.

The Hon. M.B. CAMERON: It is decent of the Hon. Mr Gilfillan to offset that rather obnoxious remark by the obnoxious Minister. We will get back to the Bill, Madam Chair, after all that which obviously roused the Minister to his usual vile little comments that he cannot help. Madam Chair, as I understand it, what will happen—

The Hon. J.R. CORNWALL: Madam Chair, I must take exception. Is the expression 'vile little comments that he cannot help' unparliamentary?

The CHAIRPERSON: Order! If the Minister wishes to take a point of order on this I will have to entertain it. In view of the time it seems to me that it would be better to forget this episode and get on with this Bill. If the Minister insists I will request an apology.

The Hon. M.B. CAMERON: I will withdraw the comment to make the Minister feel better so that he can go home and sleep tonight, and I will just say 'his obnoxious comments'. How is that? That will make the Minister feel better.

Returning to the Bill, as I understand it, under the Hon. Mr Gilfillan's amendment, what will occur is that when the Commissioner receives the statutory declaration indicating the name of the employee he will then issue a fresh infringement notice under the Summary Offences Act. Of course, the photographic evidence will be available to be used to then proceed to capture the offender. I do not see that there is a problem. I think that the Minister is seeing problems where there are none. Perhaps one could be pedantic and put a paragraph (C) at the end of the amendment to ensure that all that is spelt out, but I think that is unnecessary and it is already covered.

The Hon. R.J. RITSON: There is a slight problem because the camera provisions create a new offence which will be based on less evidence than is necessary to proceed under existing law. That new offence is created in relation only to the owner and not the employee or officer. The mere notification of the person's identity to the police, where the evidence is based only on the camera evidence, will not create an offence for which that driver can be proceeded against. Really, for the Hon. Mr Gilfillan's well-intentioned and good amendment to be put into effect there would need to be another clause to provide that when a person is thus reported to the Commissioner of Police he or she shall be guilty of an offence, subject to the same defences available to the private individual, as already in the Bill. That would round out the whole thing: indeed such an amendment may be moved shortly.

The CHAIRPERSON: Is that an intimation of a foreshadowed amendment?

The Hon. R.J. RITSON: There may be—at this stage it is just a crystal ball feeling, Madam Chair.

The Hon. J.R. CORNWALL: I think the debate is deteriorating to levels which demean this Chamber. I think the sooner we vote on this clause the better. I believe that I have the logic, but I do not have the numbers. Therefore, I do not intend to divide. I think that we should press on with the business and start behaving ourselves—and I apply those remarks especially to two members opposite.

Amendment carried.

The Hon. M.B. CAMERON: I move:

Page 3, line 8—Leave out 'in a form approved by the Minister' and insert 'in the prescribed form'.

This amendment is consequential on a previous amendment that was moved at the beginning in relation to regulation.

Amendment carried.

The Hon. M.B. CAMERON: I move:

Page 3—

Lines 20 and 21—Leave out 'as the Minister thinks fit' and insert 'as is prescribed'.

Lines 25 and 26—Leave out 'in a form approved by the Minister' and insert 'in the prescribed form'.

These all relate to the same matter and are consequential.

Amendments carried.

The CHAIRPERSON: Does the Hon. Mr Griffin wish to proceed with the amendment that he has on file in the light of earlier debate?

The Hon. K.T. GRIFFIN: In the light of the decision taken earlier I think that my amendment is no longer relevant to the clause.

Clause as amended passed.

Title passed.

Bill read a third time and passed.

ADJOURNMENT

At 10.45 p.m. the Council adjourned until Wednesday 25 February at 2.15 p.m.