LEGISLATIVE COUNCIL

Thursday 3 March 1988

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

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

QUESTIONS

SPASTIC CENTRES

The Hon. M.B. CAMERON: I seek leave to make a statement before asking the Minister of Health a question on the subject of the Spastic Centres of South Australia.

Leave granted.

The Hon. M.B. CAMERON: The Spastic Centres of South Australia, based at Woodville, is an institution which, for many years, has provided excellent services to the physical and intellectually disabled of this State. It is an organisation that, over the years, has made strong efforts at fundraising. It has not been prepared to just sit back and expect Government handouts to meet operating expenses. In fact, 22 per cent of SCOSA's current income is derived from its very active fund-raising drives.

Earlier this year the board of the centres was forced to implement rises in client charges which have seen day service rates rise by 100 per cent, respite charges on a daily basis increase by 200 per cent with residential charges rising by up to 300 per cent. Parents with children in residence were charged $2 a day for every night they were in residence; that fee has been increased to $6 a day. Children who used respite care up to four nights a week were charged $1.50 a day; that has now been increased to $6 a day. Day service charges, which were $1 a day, have now doubled to $2.

To give an example of the accumulative effects of these rises, parents of one child who receives full-time residential care at the centre this year will have to pay $3 861 compared to $1 312 last year—an increase in fees of almost 200 per cent. These charges were only reluctantly implemented by SCOSA in an effort to address a critical deficit situation, which resulted in a $500 000 deficit last year. The centres' recent annual report says it all, as follows:

> Financial assistance provided by Commonwealth and State Governments is acknowledged; however, increased support from these sources is seen as being essential if Spastic Centres is to continue its current level of service.

The report states further:

> Spastic Centres of South Australia is in a critical financial situation. Deficits in aggregate exceeding $2 million have been absorbed over the past five years.

Clearly, these quotes indicate the dire situation the organisation is in. SCOSA is doing the very best it can through fund-raising but it also needs additional Government assistance urgently. I am told that increased client charges will raise an extra $90 000 if all parents pay, but many parents in low income groups, and those who are single parents, just do not have the money to pay these increases. In fact, I understand that SCOSA has got to the stage of stopping the heating of the swimming pool in order to cut down its running expenses. That indicates a very difficult situation.

I will cite one or two examples of the sort of people we are talking about. It is very easy to talk about the physically and intellectually disabled without understanding what problems these people and their care givers have. One girl, who is now 15½ years of age, has been in full-time care since she was 4½. Her disabilities are such that she cannot sit by herself on the floor, cannot stand or walk, for all intents and purposes is unable to communicate, has been on medication all her life to control her epilepsy, has been unconscious for up to 20 minutes at a time from seizures, and has the intellectual capacity of an 18 month old baby. Her intellectual retardation is of such a degree that she has no fear. As a result she pulled a pot of tea on to herself burning 7 per cent of her body. She is unable to chew food and it has to be cut into small pieces, and she is fed by a spoon. She is unable to relate her likes and dislikes, except by grizzling. She is incontinent and still wears disposable nappies. She is now going through puberty and has started menstruating.

A second child I was informed about still wears nappies. In the last financial year most of the handicapped child allowance was used to pay for disposable nappies. He is totally dependent when it comes to bathing and dressing. He is on medication for his epilepsy and other medical conditions and uses 25 prescriptions (which he is allowed) very quickly. There is little or no communication, except by crying or grizzling. These cases go on and on.

As one parent pointed out to me this week, it is now far cheaper to send such a child to a public school than to send them to the Spastic Centres at Woodville. Many parents of the disabled using SCOSA are just ordinary folk and are struggling to pay existing charges, besides greater than normal pharmaceutical bills and special wheelchairs, while paying off family motor vehicles bought especially to accommodate their disabled child. It is apparent that an agreement between SCOSA and the State Government on the provision of future day activity facilities for adults will also place increasing strain on SCOSA's budget. I quote again from the annual report:

> We have an agreement in principle with the State Government... that Spastic Centres of South Australia will become a major service provider of day activity opportunities for adults with multiple disability. It should be stressed that adequate funding is a prerequisite to Spastic Centres of South Australia undertaking such a new and large program.

In view of the critical financial situation of the Spastic Centres and the large rises in client charges, my questions to the Minister are:

1. Is the Minister aware that many of these people already face far greater daily running costs than an average family?

2. What steps will the Minister take to see that SCOSA is provided with sufficient grants so as to avoid the dramatic increases in client charges which took effect last month and which have further seriously disadvantaged families financially?

The Hon. J.R. CORNWALL: I am acutely aware of the financial difficulties of SCOSA. I met with the Chairman of the board and the Chief Executive Officer as recently as 5.45 p.m. last evening. The Spastic Centre, as it was always known, and the spastic children of Australia were funded for decades by the generosity of the Australian and South Australian population through the Miss Australia quest which has, for a very long time, going back to the halcyon days of Tania Verstak in the 1950s, been a principal and, at least until quite recently, the principal means of funding. Tania Verstak was a white Russian who came via China and was a very lovely woman. I remember her well. I was in my salad days in the mid-1950s when she was Miss Australia.

Fundraising has become increasingly difficult for a number of reasons. One of those is that in the changing mores of the 1980s the Miss South Australia quest and the Miss Australia quest do not receive the broad and high level of support received in the past. Spastic centres have been acutely aware of this. They have changed the nature of the quest to a significant extent so that it could not really in 1988 be described as something which is overtly sexist. They

are certainly diversifying their fund-raising. They are running variety concerts, bringing special guests for concert performances among many other things. I would take the opportunity, since the matter has been put on the public agenda by Mr Cameron, to appeal to the people of South Australia to show their traditional generosity in supporting the Miss South Australia quest this year and any other fund-raising activities which the spastic centres might be conducting.

One of the problems is that a great majority of the income of SCOSA through its charity fund-raising has been used to meet recurrent costs, and a relatively small percentage has been able to be set aside in trust and for capital works programs. That, of course, can be a recipe for disaster with a falling income. Prior to the 1984-85 budget, I think, the South Australian Government through the health budget was not funding spastic centres in any direct way. In terms of Government support, Federal Government funding, unsatisfactory though it might have been, has always been drawn, traditionally and appropriately, from the old Department of Social Services which then became the Department for Community Services which then became the Department for Community Services and Health.

Again, the method in which community services provide that funding for the disabled generally, whether it is intellectual disability, physical disability or several other areas, is to fund at 100 per cent or 80 per cent and then progressively to withdraw that funding down to 50 per cent or less. That imposes an unsolicited burden all too frequently on the States. It is because of that reason, among others, that I established the disability services coordination project in March last year. That is the first major review of the coordination of disability services in this State ever undertaken. It is due to report within the next month.

As I said, prior to the 1984-85 budget, I think, the State Government had not previously directly funded SCOSA through the health budget. In that year, for the first time, funding was made available at around $700 000, from memory. In this current financial year it will be about $850 000 and, of course, that will continue. The Education Department also has an input through the special school, or special education efforts particularly, at Woodville. I am sure that members will recall that the Federal Government last year moved to withdraw funding from a number of special education projects. One of those—from memory, the largest—was the special education project of the spastic centres. Quite properly, there was a great outcry urging the Federal Government to continue that funding, and it relented, at least on a temporary basis, and funding was guaranteed to the end of this calendar year.

However, its future is uncertain. The State Government cannot go on picking up the tab in every area from which the Federal Government decides to withdraw. The time has come—in fact, in some areas the time has passed—when we can no longer pick up the tab to help the Federal Government balance its budget. So, I would serve notice on behalf of myself and particularly my colleague, the Minister of Education, that we will have a great deal to say publicly if there is any move to withdraw that special education funding.

One of the many financial problems that SCOSA has at the moment is the cost of transport—something in excess of $300 000 a year is spent in transporting disabled children to and from school. That, of course, is a lot of money. The Deputy Chairman of the Health Commission and the Executive Director of State-wide Services attended a meeting last night and I asked that they convene a small committee consisting of Treasury, the Health Commission and Education Department senior officers forthwith. I have asked for a review of the situation. I have asked them to examine possible strategies for exploring Federal funding and the reallocation of State funding from other sources and to develop some sort of potentially balanced budget for SCOSA in 1988-89.

In summary, as I am sure the Council would have noticed, I am reasonably well briefed in the area and aware of the financial difficulties. It is a very worthy cause and deserves ongoing and generous community support. We must remember that it is a community problem—a problem for all of us. It certainly deserves ongoing and, I would submit, more substantial Federal funding. To the extent that we will be reviewing our input in the health and education areas, I will be asking, in conjunction with my colleague the Minister of Education and in the context of the 1988-89 budget, that we also bear an appropriate load.

TRADE UNION REPRESENTATIVES

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Minister of Ethnic Affairs a question on the attendance of trade union representatives at meetings of statutory authorities.

Leave granted.

The Hon. L.H. DAVIS: On 22 October 1987 I asked a question of the Minister of Ethnic Affairs about the attendance of trade union representatives at meetings of statutory authorities. I mentioned that the Bannon Labor Government on coming to office in 1982 subsequently had amended the South Australian Ethnic Affairs Commission Act to provide for trade union representatives on the commission. Indeed, it amended other Acts also. The trade union representative, Mr J.K. Lesses, attended only 14 of the 24 commission meetings from 1 July 1985 to 30 June 1987 and his attendance record was poor compared with other members of the commission. I mentioned to the Minister at the time that ethnic community representatives had expressed concern about this poor attendance record. I asked the Attorney-General to obtain details of attendance records of trade union representatives at meetings of the dozens of statutory authorities. He thumbed his nose at the question and refused point blank to answer it, suggesting that I ask individual Ministers the question.

Earlier this year I placed on notice a question to each Minister asking the number of meetings of boards, commissions, committees, councils, trusts or tribunals of each Government agency that have been attended by union representatives nominated by the United Trades and Labor Council or other union bodies as required by legislation. The answer came back on Tuesday—

Members interjecting:

The PRESIDENT: Order!

The Hon. L.H. DAVIS: —and it was a very short, petty answer stating, 'The time and administrative effort required to answer these questions is not warranted.' On more than one occasion the Government has been embarrassed by its sloppy handling of statutory authorities. At least 30 statutory authorities had not reported by the due date for the 1986-87 financial year. Despite earlier suggestions, it would appear that the Government has yet to computerise relevant data on statutory authorities, which would enable the Parliament and the community at large to have easy access to relevant information about statutory authorities.

In fact, on one occasion my asking a question in Parliament on annual reports outstanding from statutory authorities led to a mad scurry of activity by all departments

chasing up statutory authorities. One statutory authority that was harangued by a particular department for its report told the department, 'We gave it to you four months ago.' The department had lost it. That is how effective and efficient the Government is in the matter of statutory authority reports.

The State Labor Government's policy is to place union representatives on statutory authorities. There is a sneaking suspicion—perhaps it is more than a sneaking suspicion—that some union representatives are not attending as many meetings as would be expected, but the Government is deliberately withholding what is basic information and ignoring reasonable requests for it either because its information systems are woefully inadequate or because it knows that the answers could be embarrassing to the Government and the union movement. My question to the Attorney-General is: will the Government immediately review its decision to withhold the information that I have recently requested?

The Hon. C.J. SUMNER: The answer is 'No'.

The Hon. L.H. Davis: It is not 'No'.

The Hon. C.J. SUMNER: That is the answer. Of course, the honourable member could not desist from going through his usual anti-union tirade. There is little doubt that honourable members opposite would not like to see unionists or union officials appointed to statutory boards—

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order! The Hon. Mr Davis has asked his question.

The Hon. C.J. SUMNER: However, the Government does not take the view that union members or officials are pariahs who ought to be ignored and left out of the decision-making processes in appropriate cases. Therefore, the Government has not adopted the approach that unionists or union officials should not be appointed to boards of statutory authorities.

The Hon. L.H. Davis: They should attend.

The Hon. C.J. SUMNER: I will get to that. Clearly it is appropriate that unionists and union officials be appointed to the boards of statutory authorities and other governmental committees. The Government certainly does not want to say to unionists that they are pariahs and not part of the community, which of course is the view taken by honourable members opposite, who at all times seem to want to criticise the union movement and individual unionists. The reality is that unions are an important part of our community and, just like other organisations in the community, are entitled to be consulted, entitled to consideration and, where appropriate, entitled to representation on appropriate Government boards and committees—

The Hon. L.H. Davis: Why don't you develop a massive data base like you said you were going to?

The Hon. C.J. SUMNER: I will get to that—and the Government makes no apology for that decision. As the honourable member knows, the Government Management and Employment Act was passed a couple of years ago. It provided mechanisms for greater public sector accountability. Within the context of that Act, mechanisms are being developed to ensure that greater accountability.

As to the questions that the honourable member has asked, it is not a matter of trying deliberately to hide any information. The reality is that to answer the questions that the honourable member asked would consume hours and hours of time. The Government has indicated, as members opposite like the Hon. Mr Hill and the Hon. Mr Griffin replied on occasions that the time and administrative effort in answering the questions was not warranted.

The Hon. C.M. Hill interjecting:

The Hon. C.J. SUMNER: Yes, you did. I have a recollection—

The Hon. L.H. Davis: It is an arrogant and secretive Government.

The PRESIDENT: Order!

The Hon. C.J. SUMNER: I have a recollection that Ministers in the Tonkin Government used that formula of words, or words to that effect, in not replying to questions when they felt that the end result, namely, the nature of the information that could be obtained, compared with the cost of obtaining that information, was not justified.

The Hon. L.H. Davis interjecting:

The Hon. C.J. SUMNER: Well, the honourable member makes that—

An honourable member interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: Steps are being taken to ensure that there is greater accountability in that respect. But, obviously, as the honourable member knows, all that material is not computerised in any central computer system at this stage, although efforts are being made to improve the information flow from statutory authorities. Therefore, the response is similar to one that was given on occasions by honourable members opposite.

The Hon. K.T. Griffin: That is no excuse.

The Hon. C.J. SUMNER: You had better talk to the people in the Party room—the Hon. Mr Griffin and the Hon. Mr Hill.

The Hon. C.M. Hill: That was the first priority.

The Hon. C.J. SUMNER: What?

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: That is a joke.

The Hon. C.M. Hill: It's not a joke.

The Hon. C.J. SUMNER: It is! The Hon. Mr Cameron is quoted in this House—

Members interjecting:

The PRESIDENT: Order! I call the Council to order. There is far too much interjection from both sides of the Chamber. A question has been asked and there should be no further interjections while the answer is proceeding.

An honourable member interjecting:

The PRESIDENT: Order! The honourable Attorney has the call, not the Hon. Mr Davis.

The Hon. L.H. Davis: I haven't said a word.

The PRESIDENT: You said quite a lot of words.

The Hon. C.J. SUMNER: Only a matter of weeks ago, the Hon. Mr Cameron—

Members interjecting:

The PRESIDENT: When you open your mouth I know what is coming.

The Hon. C.J. SUMNER: Only a matter of weeks ago, the Hon. Mr Cameron asked a question in the Parliament in which he quoted a statement that I had made when I was Leader of the Opposition in the Legislative Council where I indicated that I had not had answers from the Tonkin Government for six months.

Members interjecting:

The Hon. C.J. SUMNER: Those questions were on the budget; that's right.

Members interjecting:

The Hon. C.J. SUMNER: For six months.

An honourable member interjecting:

The Hon. C.J. SUMNER: It was six months. I asked when those answers would be forthcoming, and they were eventually provided. However, the fact is that the Hon. Mr Hill's assertion that members' questions got top priority during the time of the Tonkin Government is not true.

The Hon. C.M. Hill: It is true!

The Hon. C.J. SUMNER: I'm sorry but the fact is—

The Hon. C.M. Hill: We spent hours and hours in Cabinet the first thing before ordinary business.

The Hon. C.J. SUMNER: Hours and hours in Cabinet. My goodness, it must have been a very efficient Cabinet. Heaven forbid!

The Hon. C.M. Hill interjecting:

The Hon. C.J. SUMNER: Heaven forbid! Hours and hours of talking about—

Members interjecting:

The Hon. C.J. SUMNER: I do know that the Tonkin Government had to meet all day; it could not get through its business in any reasonable time. That is the fact of the matter. Now I know why they had to meet: they spent hours and hours of their time on members' questions before Cabinet met. Well, my goodness gracious me!

The Hon. C.M. Hill: What is wrong with that? It shows what respect we had for the Parliament.

The Hon. C.J. SUMNER: There is nothing wrong with it except that I would have expected the honourable member to be able to deal with questions from members in the Parliament without taking up hours and hours of Cabinet's time. However, that was a matter of the administrative procedures of the Tonkin Government that I would not want to go into today.

If the Hon. Mr Hill gave priority to members' questions, it was not always reflected in the results that were obtained in the Chamber. The Hon. Mr Cameron referred to one instance, which I recall, when several letters were sent to the Hon. Mr Griffin asking for answers to questions on the budget which I had asked during the budget debate and which did not arrive for several months.

The Hon. M.B. Cameron: That's not true.

The Hon. C.J. SUMNER: I am sorry, it is true.

The Hon. M.B. Cameron: It was not several months. You should get the exact figures.

The Hon. C.J. SUMNER: I will get the exact figures. The Hon. Mr Griffin knows because he was the one I was asking the questions of. It was not his fault because he had to send them down to Treasury and the Treasurer apparently ignored them. After several months I received the answers.

An honourable member interjecting:

The Hon. C.J. SUMNER: I am saying that top priority was not always given to answering members' questions. Moreover, answers were refused when work in providing answers was unwarranted in terms of the information that one would get, and that is what the Government considers in this case. If the honourable member has a specific authority that he is concerned about—

The Hon. C.M. Hill: He quoted it.

The Hon. C.J. SUMNER: He has the information on ethnic affairs. He knows it. If there is some other authority that he has some concerns about, presumably that information can be obtained. To ask it at large about every statutory authority in government and find out how many meetings particular individuals went to would be a very time-consuming and costly administrative task.

With respect to the Ethnic Affairs Commission, the Secretary of the Trades and Labor Council (Mr Lesses) is a very busy person. He holds a very important job in this State. The Ethnic Affairs Commission is fortunate to have him as a member. I repeat that the Chairman of the Ethnic Affairs Commission values Mr Lesses' advice on issues and considers him to be a very valuable member of the commission. The fact that he cannot attend as many meetings as some other members does not mean that he is not interested in the commission. It does not mean that he does not contribute to issues relating to the Ethnic Affairs Commission. I know that the Chairman of the Ethnic Affairs Commission calls on Mr Lesses on occasions to provide informal advice as well as the advice which he provides through the regular structure of the commission. The fact that he cannot attend as many meetings as others seems to me to miss the point. The question is whether he is a valuable member, and my information from the Chairman and others is that he is a valuable member whose advice is sought after and respected.

OPEN COURT HEARINGS

The Hon. K.T. GRIFFIN: I seek leave to make an explanation before asking the Attorney-General a question about open court hearings.

Leave granted.

The Hon. K.T. GRIFFIN: Yesterday an article appeared in the *Advertiser* under the heading, 'The secret court that can decide appeals'. The article dealt with a High Court case which was an appeal from a decision of the South Australian Court of Criminal Appeal to refuse to grant leave to a person convicted of a criminal offence to appeal against that conviction. In that case, the argument was that the Court of Criminal Appeal had decided in private, which was in accordance with the rules of court, to refuse leave to appeal without having heard the defendant make a submission on the question.

As the argument goes, that is a denial of natural justice and the rule of court which allows the Court of Criminal Appeal to make decisions about questions of leave in private should be declared invalid. When it went to the High Court, three judges of that court refused the appeal, while two said that the court should not sit in private and that the rule of court which allowed that sitting to be in private was contrary to natural justice, and that all hearings of the court must be open. This morning, the Chief Justice entered the discussion with a report in the *Advertiser* defending the rule of court. Because the question is important, I ask the Attorney-General:

1. What is his view on this question?

2. Does he have any intention of taking any action and, if so, what action, with respect to this rule of court?

The Hon. C.J. SUMNER: The Government is not in a position, nor is the Attorney-General, to take any action with respect to a rule of court once it has been—

The Hon. K.T. Griffin: You can introduce legislation.

The Hon. C.J. SUMNER: Maybe—once it has been made by the court and gone through the subordinate legislation process of this Parliament, which is what happened with that rule of court. Furthermore, the rule has been challenged as being *ultra vires* of the legislation and the High Court has upheld the rule as being valid. It must be borne in mind (and this is certainly the view put forward by the Chief Justice) that we are talking about where a person has been refused leave by a single judge and applies to the Full Court of three judges for leave to appeal against that refusal. The litigant has already had an opportunity before a single judge to put full argument on whether leave to appeal should be granted. There is thus an oral hearing on the question of leave. All that argument, together with anything else that the appellant wishes to put to the Full Court in writing, is made available to the Full Court when it assesses whether, when leave is refused, that refusal should be overturned.

As the Chief Justice pointed out, the leave procedure is used extensively in the higher courts to ensure that the higher courts are not cluttered up with cases of no merit or

cases on which no substantial issues are to be determined. The Hon. Mr Griffin would know that the High Court has now adopted much more stringent rules on the question of granting leave to appeal, compared with the situation a few years ago. The need for that is, first, to ensure that the High Court is kept to a reasonable number of people and, secondly, to ensure that, because it only has a limited number of people, it is not overwhelmed by cases it cannot hear properly.

The High Court already has a very strict procedure whereby it deals with applications for leave to appeal, and very strict criteria must be met before the High Court will grant leave to appeal. In the case of the Full Court, the situation is that there has already been an oral hearing before a single judge. That material is made available to the Full Court and the Full Court's role is to determine whether there is anything in the refusal to grant leave which should cause it to overrule that decision and to allow the appeal to proceed in open court to the Full Court. If the decision of the single judge is overruled by the Full Court, the matter goes to the Court of Criminal Appeal and there is full oral argument in open court. The justification for this procedure is that it is designed to filter out unmeritorious appeals and issues about which there can really be no proper dispute. This procedure is adopted, given its limited nature, to ensure that there is not further clogging up of the lists and costs and expense to the Crown and individual appellants who appear before the court.

That is the view of the court and that is why it made this rule. I have indicated that I will take the matter up with the Chief Justice to see whether there is any case for changing the rule, and that is what I intend to do.

FOOD TESTING

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister of Health a question about food testing.

Leave granted.

The Hon. M.J. ELLIOTT: In this place I have often asked questions about the testing of food for a number of substances such as organochlorins and dimethoate, and I put a question on notice on 22 October last year in relation to cadmium. Most questions have been asked without notice, but I have asked questions in relation to the frequency of testing, the methodologies and the results of testing, and no answers have been forthcoming.

In relation to the matter of cadmium, I asked a few simple questions of fact. In particular, I asked what testing for cadmium was being done on meat, what levels were being found and what levels were safe. It seemed a fairly straightforward question. People are now asking me why it has not been answered. An article appeared in the *Bulletin* last year after I had asked the question and it suggested that 28 per cent of beef and sheep kidneys in South Australia were above the prescribed standard for cadmium, and that the Federal Department of Agriculture had approached the NH&MRC to change its standards so that all kidneys would be safe.

Apparently, the NH&MRC dug its heels in. Cadmium apparently had come from the historical use of superphosphate which has cadmium as a trace impurity—cadmium being a metal that cannot break down, it is not heavily soluble (I believe) and so is very residual in the soil. It builds up in kidneys and livers, in particular, and if people eat it it will build up in their kidneys and livers just as easily. I asked some simple questions and did not get answers.

The Hon. Peter Dunn interjecting:

The Hon. M.J. ELLIOTT: In small amounts it does, and it has a half-life in the body of 30 years before the body passes it. It is very slightly soluble. The questions I ask the Minister are: will the Minister let this Council know—and I realise he cannot answer this question now—the frequency of testing for various substances in food, the methodology used for that testing and the results of those tests? I realise that that should be extensive, but I ask the Minister to return with that information. Will he indicate when the questions in relation to cadmium, in particular, will be answered?

The Hon. J.R. CORNWALL: As to the new questions, I will certainly take them on notice and bring back a reply. In looking at the Notice Paper I see that there is a question outstanding from Mr Elliott that was asked on 22 October. The fact that there has not been an answer by this time I regard as being quite unsatisfactory. Whoever is responsible for it in the Public and Environmental Health Division of the Health Commission ought to be admonished, and will be—in private, at least. I just do not think that that is good enough. In terms of my personal staff and senior officers of the commission, I think it is not often appreciated just how hard they work, what extraordinary hours they put in with dedication, and the pressure they are under almost constantly to meet extremely tight deadlines. I guess that the Bill and the second reading that will be introduced into this Chamber in another 16 minutes or so is a classic case in point. We have had to work until very late at night to meet the deadline. We are meeting it, but please in that sense bear with us. As for the staff who should have had a response back to that question—and they had the quite long Christmas break in which to get it done—I will certainly see that they are admonished.

The Hon. M.J. ELLIOTT: I have a supplementary question. Is it possible for those questions to be answered before the end of this session?

The Hon. J.R. CORNWALL: I really do not know. However, if they are not, somebody's butt will be kicked—not in the literal sense, but I will certainly treat the matter most seriously.

WOMEN'S HEALTH

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation before asking the Minister of Health a question about women's health.

Leave granted.

The Hon. DIANA LAIDLAW: Yesterday when releasing the Federal Government's blueprint policy on women's health entitled 'Women's Health: Framework for Change', Dr Blewett, the Federal Minister, highlighted that preventive health, particularly screenings for breast cancer and for cancer of the cervix, were to be one of the four specific areas of attention for the future. Dr Blewett's commitment to launch 'a campaign to dramatically improve by 1992 breast and cervical cancer screening services' is an important initiative, although I add it is long overdue and is, incidentally, a repeat of a similar commitment made last year. The proposed initiative should be put into perspective for, notwithstanding the Federal Government's new found interest in women's health issues—

The Hon. Carolyn Pickles interjecting:

The Hon. DIANA LAIDLAW: Listen before you interject, Ms Pickles. Let me finish.

The Hon. J.R. Cornwall: Don't let your voice quaver.

The Hon. DIANA LAIDLAW: It doesn't quaver, Minister. Don't worry. I am well in command, especially on the

subject of women's health issues. The reality is that last year Dr Blewett removed the treatment of venereal warts as an item attracting the rebate under Medicare. However, as is well known—and I am sure the Minister is well aware of this fact—in 84 per cent of cases of cancer of the cervix amongst Australian women the cancer has been contracted from the wart virus. Venereal warts are a direct cause of cancer of the cervix. Since last year women have not had the benefit of the rebate and must now pay the full cost of the treatment. Does the Minister consider that the removal last year of the Medicare rebate for the treatment of venereal warts was an action contrary to the best interests of women's health?

The Hon. J.R. CORNWALL: I do not think that my colleague, Dr Blewett, has anything to apologise for in the area of women's health. This Federal Government, more than any Federal Government in history, has moved in the area of primary health care and in social health to an extent that has never previously been contemplated. The national release yesterday of the Women's Health Policy for discussion and input from individuals and from women's groups was yet another step in the continuing story of attention to women's health, and particularly preventive health, that has been in train for five years.

One of the specific aspects of the original Medicare agreement was that a substantial amount of money was made available for community health programs. At least partly as a result of that extra funding we were able to quadruple the number of women's health centres in Adelaide. When we came to Government there was one women's health centre in North Adelaide. It was able to be rehoused and have its services substantially upgraded. Of course, we now have had for quite some time functioning and very effective women's health services in Dale Street, Port Adelaide; in Christies Beach; and in Elizabeth. In addition, moves are afoot and well advanced to extend, particularly, women's health services in the Iron Triangle. A very extensive and comprehensive cervical screening program is about to begin, if it has not already begun, in the Iron Triangle.

We as a State Government have established a task force on women's cancers, a very high level task force, which has now met on a number of occasions and is reasonably well advanced towards producing what I believe will be a blueprint for the much better prevention and the development of much better and more sensitive treatment protocols for women's cancers in South Australia. We are also looking at mamography screening. That is a cost, of course. We are looking at how that may be met.

With regard to the Commonwealth medical benefits schedules and items which might be on the CMBS, that is a matter that I am taking up at the Health Ministers' conference next week. There are at the moment, I have discovered through further research, not 3 000 items on that list but 8 600. It is the most bizzare list of items that one could possibly imagine. Of the 8 600, something in excess of 2 000 are still being used. What Dr Blewett did last year in a number of areas was to cut out multiple charging.

Without going into the specifics of those areas, including the warts which were mentioned by Ms Laidlaw, some very preliminary action was taken in order to prevent some procedural doctors using the multiple system, I suppose, to abuse the CMBS. We do need a lot of rationality. Whether or not what might be described as the blunt instrument which was used in this area last year was appropriate is a matter for comment, debate and contention. I frankly would need to take further advice on that, but to suggest that Dr Blewett, as Federal Minister of Health, or the Hawke Government has been remiss in meeting its duties in women's health areas in terms of prevention, the social aspects of health and in treatment services is something that I would reject most strenuously.

WORKCOVER

The Hon. PETER DUNN: I understand that the Attorney-General has an answer to a question I asked on 17 February concerning WorkCover.

The Hon. C.J. SUMNER: The Minister of Labour has informed me that it is widely recognised that employees in the shearing industry are much more exposed to risk of injury at work than are those in the farming industry, in general. Under the former workers compensation scheme, therefore, a lower premium was usually charged for farming employees than for those of shearing contractors. But farmers and contractors commonly colluded to take advantage of this difference. Contractors would recruit and manage a shearing team, but have them 'employed' on the payroll of the farmer, so as to benefit by the lower premium. As a result, claims for injuries incurred by these shearers were recorded against the farmers, not their shearing contractors. WorkCover levy rates are based on the historic claims experience of industries. The above practice reduced the claims experience of shearing contractors and increased that of farmers, which caused their WorkCover levy rates to be 3.8 per cent and 4.5 per cent respectively. The general review of levy rates just concluded has corrected this anomaly by assigning each the same rate. New rates will be gazetted on or around 18 March 1988. Each employer will be advised of their new rates around 22 March.

GOVERNMENT AGENCY REPORTS

The Hon. L.H. DAVIS: I understand that the Attorney-General has an answer to a question I asked on 10 February concerning Government agency reports.

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

1. The Government Management Board is presently updating the list of Government agencies. The list will be published periodically either in one of the central agency annual reports or in the *Government Gazette.*

2. The introduction of the Government Management and Employment Act has led to a significant improvement of the public reporting and accountability of Government agencies. In the first year of application of these provisions most agencies have submitted reports and in the required time. It should be noted that the reports of many smaller statutory authorities are included in those of the major agencies with which they are associated. All agencies are aware of the need to comply with the new reporting provisions for which they are directly responsible.

3. Refer to 2. above.

ASER OFFICE BUILDING

The Hon. L.H. DAVIS: I understand that the Attorney-General has an answer to a question I asked on 11 February concerning the ASER office building.

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

1. The Premier receives periodic progress reports on the ASER project. The colour of the office building was not discussed in those reports. Regulations under the Adelaide Railway Station Development Act 1984 do not cover the question of finishes to the building. In August 1986, ASER

Nominees advised the Minister for Environment and Planning that it had selected an 'aluminium cladding in gun-metal grey finish'. ASER Nominees were simply advising the Minister of this choice since they had previously indicated that the external finish would be precast concrete.

2. A copy of the 11 August 1986 letter is attached, and it states:

Hon. D. Hopgood,
Minister for Environment and Planning,
Department of Environment and Planning,
55 Grenfell Street,
Adelaide 5000.

Dear Sir,

ASER OFFICE BUILDING

On 11 July 1985 a regulation under the Adelaide Railway Station Development Act was promulgated in which the design of the ASER office building was defined in general terms. Since that date detailed design development has been carried out, resulting in considerable refinement to the design. In particular, further consideration has been given to the colour and finish on the building. These matters were not specified in the July 1985 regulation, though in the final submission by ASER there was a brief reference to the facade as being of precast concrete. Earlier submissions had indicated that the finish would be either concrete or grey/bronze aluminium. The facade selected is aluminium cladding in a gun-metal grey finish. The rationale for the choice as explained by the architect John Andrews International is as follows:

The finishing treatment we have selected is a warm grey metallic finish which will maintain the metallic nature of the surface and, at the same time, sit comfortably with the stone-like finish of the rest of the development. On the steelscape it is also seen as an echo of the Parliament House and some other buildings in North Terrace.

The finish will be 'gunmetal' annodising (or possibly a fluorocarbon coating of similar appearance), combining the 'metal' look of the facing with the main background colour of the precast concrete. There are of course other colours and materials included in the external palette of the ASER project; off form concrete which appears in the vertical lift and stair elements in the Hotel Convention Centre and Office Building; bright metal which recurs in the porte cochere and the wrap around toilet walls in both the Convention Centre and the Office Building; and the tinted glass throughout all of the buildings. All of these contribute to the visual unity of the development.

The appearance of the facade is considered to be consistent with the ASER Development Plan, as is the refined design as a whole, and is being brought to your attention to complete the picture presented of the ASER development.

BUSHFIRE CLAIMS

The Hon. K.T. GRIFFIN: I understand that the Attorney-General has an answer to a question I asked on 10 February concerning bushfire claims.

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

1. The principles on which the Narraweena fire will be settled are embodied in the agreement between ETSA and the claimants. This document consists of 62 pages and is confidential between the parties involved. It is expected that claims will be presented at the rate of approximately eight per week from early March. On this basis most claims will be settled by early 1989. However, the final result will depend on the completeness of the claims and the rate at which they are presented to ETSA.

2. No. The principles in the agreement apply only to the Narraweena fire.

3. It is not possible to predict the final settlement date of all claims from the 1983 bushfires. Many factors will influence this date, including the fact that not all claims have been lodged as yet. However, ETSA is doing all it can to ensure that the settlement process is completed as quickly as possible.

MAGISTRATES COURTS DIVORCES

The Hon. K.T. GRIFFIN: I understand that the Attorney-General has an answer to a question I asked on 17 February concerning magistrates courts divorces.

The Hon. C.J. SUMNER: On the basis of information supplied by the Family Court of Australia, an estimation has been made of the number of actions of this type that might reasonably be expected to come before our courts. The Chief Magistrate and officers of my department have investigated the whole situation in that context, and have concluded that the extra workload involved in such a transfer of jurisdiction could be accommodated within our existing resource structures. If and when such a transfer occurs, it is planned that applictions of the sort under discussion would be listed at times, locations, and in a manner that would achieve a high degree of separation from other court users. In so far as the aspect of cost is concerned, agreement has already been reached with other States as to the time and resource levels that would be required to process the various types of applications. Costings have been carried out on the basis of those agreements and particulars of them have been forwarded to the Federal Attorney-General.

VIOLENT MATERIAL ON RECORDS

The Hon. DIANA LAIDLAW: I understand that the Attorney-General has an answer to a question I asked on 11 February concerning violent material on records.

The Hon. C.J. SUMNER: I seek leave to have the answer incorporated in *Hansard* without my reading it.

Leave granted.

I am advised that audio-recordings, either cassette, vinyl record or compact disc, do not come within the ambit of the Classification of Publications Act 1974. This Act is restricted to printed material or film, and tapes from which visual images may be depicted. Nor do they come within section 33 of the Summary Offences Act. This section creates various offences in relation to offensive material. Similar to the Classification of Publications Act, 'material' is defined in terms which are detected by sight rather than sound. For this reason records which contain offensive material do not come within the scope of section 33 of the Summary Offences Act, and thus record shops which sell these records cannot be prosecuted under this provision. However, it may be the case that to play such records in a public place is disorderly or offensive behaviour within the meaning of section 7 of the Summary Offences Act.

Furthermore, if such a record were broadcast by a radio or television station an offence against section 118 of the Broadcasting Act 1942 may also be committed. This section provides that the ABC or a licensee shall not broadcast matter which is blasphemous, indecent or obscene. Finally, as I reiterated in an earlier response to this question, violence is a matter of considerable concern and is being addressed by State and Commonwealth Governments. In view of the advice given to me with regard to violence and obscene material on audio-recordings, I will have this particular matter raised at the next meeting of Ministers responsible for censorship.

SCHOOL CLOSURES

The Hon. R.I. LUCAS: I understand that the Minister of Tourism, representing the Minister of Education, has an answer to a question I asked on 21 October 1987 concerning school closures.

The Hon. BARBARA WIESE: Although it was the original intention of the Minister of Education that a decision be announced by the end of November, the Director-General of Education indicated that it would be in the interests of students who were doing examinations for the announcement of the decision to be delayed until Monday 7 December.

COUNTRY FIRE SERVICE

The Hon. M.J. ELLIOTT: I understand that the Attorney-General has an answer to a question I asked on 1 December 1987 concerning the Country Fire Service.

The Hon. C.J. SUMNER: I seek leave to have the reply incorporated in *Hansard* without my reading it.

Leave granted.

The Minister of Emergency Services has advised me that the CFS Board has been progressively addressing the issue of poorly maintained vehicles. It has necessarily been a lengthy process as it initially had to document the equipment and vehicles per brigade to provide a data base from which to work. Ownership of vehicles then became a matter for clarification. This was subsequently determined to be a responsibility of councils and the Local Government Association was advised of the poor standard of some appliances and where liability lay should such vehicles be involved in accidents causing bodily injury to users or third parties. Subsequently, the CFS Board employed a mechanic on a short-term basis to conduct a survey of a cross-section of appliances, to ascertain the maintenance levels. This survey identified serious shortcomings which were relayed to the Local Government Association.

Councils, as owners, were advised of identified faults and requested to take appropriate action. Some councils requested the LGA to pursue the matter with the Department of Transport. Officers from that department have inspected vehicles and, where necessary for the safety of other road users, have defected certain appliances in accordance with Department of Transport standards.

These actions in ensuring that the CFS appliance fleet is properly maintained had little to do with the standards of fire cover. The standards of fire cover data, based on location, age and distribution of appliances, is being used in terms of recommendations to councils for replacement of vehicles after the Department of Transport inspections have taken place. The CFS Board intends to release a summary of the standards of fire cover as soon as the most recent population census and land valuation data has been entered into the document. The Vehicle and Equipment Subcommittee set the standards prior to the tender process being used for ascertaining market forces and cost benefits. The normal tender process by the Supply and Tender Board was implemented in consultation with CFS Board management prior to acceptance.

HELICOPTERS

The Hon. R.J. RITSON: Has the Attorney-General an answer to a question I asked on 1 December 1987 concerning whether a tender or expression of interest had been called for in relation to helicopters? It is now March. When will the question, which requires a simple Yes/No answer, be answered?

The Hon. C.J. SUMNER: I will obtain a report and bring back a reply.

TOBACCO PRODUCTS CONTROL ACT AMENDMENT BILL

The Hon. J.R. CORNWALL (Minister of Health) obtained leave and introduced a Bill for an Act to amend the Tobacco Products Control Act 1986, the Tobacco Products (Licensing) Act 1986, and the Fair Trading Act 1987. Read a first time.

The Hon. J.R. CORNWALL: I move:

That this Bill be now read a second time.

Illness and death attributable to cigarette smoking constitute the largest man-made epidemic of our time. Every year, 23 000 Australians die prematurely as a result of tobacco-related diseases. Cancer of 13 body sites and nine other diseases are known to be related to smoking according to details published in the Medical Journal of Australia in 1986. Recent Commonwealth Health Department figures indicate that deaths from tobacco-related illness account for more than 80 times the number of deaths from heroin and other narcotic drugs.

In South Australia, most recent figures (in a report prepared by Professor Tony McMichael of the Department of Community Medicine, University of Adelaide) show a death toll of approximately 4 300 in the past two years from smoking-related illnesses, including lung cancer, heart disease, chronic bronchitis and emphysema. The appalling significance of these statistics is that they show an average of six deaths occurring every day of the year. This represents approximately eight times the number of people who die on our roads and it is approximately equal to the number of people dying each year from all other types of cancer combined.

According to Professor McMichael, approximately 21 per cent of deaths among voting age people in South Australia are attributed to smoking-related illnesses. There are currently approximately 324 000 children in South Australia under the age of 16. Looking to the future and adulthood, if the current situation continues, we are looking at some 60 000 of today's young people dying prematurely of preventable diseases.

To put these horrifying figures into another perspective, recent data indicate that by age 15 (that is, younger than the legal sale age) one-third of all South Australian children are regular smokers and, according to information recently released by the Anti Cancer Foundation, over 8 000 South Australian schoolchildren are likely to be recruited by the industry to take up smoking in 1988.

A survey conducted recently by the Royal Australian College of General Practitioners (S.A. Faculty) is further evidence of the chilling spectre which is emerging—50 per cent of female patients and 45 per cent of male patients aged between 16 and 24 seen by general pracitioners are smokers. We are talking about our sons and our daughters—lives too good to waste. The figures speak for themselves. In the face of such a major epidemic, no responsible Government can simply stand on the sidelines as a spectator to a game in which the stakes are so high—our children's lives.

Protecting the health of its children must be one of the highest priorities of any caring society. A survey conducted

in late December 1987 by the Anti Cancer Foundation of the Universities of South Australia, using an independent polling organisation, showed that South Australians are indeed a caring society—95 per cent of parents surveyed said they did not want their children to become smokers. We must act, and we must act now. Research shows that factors involved in young people taking up smoking are predominantly social in nature, with 'role-modelling' playing a big part. They are not related to any inherent attractiveness of the drug tobacco. The image of smoking and the way in which it is promoted to young people is critical.

Tobacco advertising promotes the idea that smoking is the gateway to an adult world, and when aimed at young women in particular it is promoted as glamorous and sophisticated. Since cigarettes are therefore seen as part of adulthood, they become a 'rite of passage' into adult life for the adolescent. Smoking must be stripped of its glamorous image and healthy non-smoking lifestyles must be portrayed as the norm if young people are not to continue to be drawn into hazardous, lifelong smoking habits. We must aim to produce a smoke-free generation—a generation for whom smoking is not part of growing up.

The Bill before honourable members today aims to reduce greatly the recruitment of young smokers. It aims to reduce the association of smoking with images of sophistication, social success, wealth and sporting prowess. Members will recall that in 1986 the Government moved to protect the health of our young people with the introduction of the Tobacco Products Control Act. That Act both consolidated and strengthened the laws in this State relating to tobacco. In particular, penalties for sale to minors were increased; small packets of cigarettes whose advertisements were targetting young people were banned; sale of look-alike confectionary cigarettes was prohibited; and greater controls on smoking in public places were introduced.

This Bill is an amendment to the Tobacco Products Control Act, which within the limits of State powers will extend and strengthen that Act. In brief, the Bill will:

- prohibit tobacco advertising, including cinema advertising, billboards and other external signs (with provision for phasing-in and exclusion of the print media);
- prohibit tobacco sponsorship of sporting and cultural events where there is public promotion of tobacco products or brand names (with provision for phasing-in and exemption of the Grand Prix and other national or international events);
- establish an independent South Australian Sports Promotion, Cultural and Health Advancement Trust to provide replacement funding for sports and cultural groups and to promote good health;
- increase the tobacco licence fee from 25 per cent to 28 per cent to create a fund to be administered by the trust.

Legislation on these issues recently passed in Victoria, and is also in force in a number of overseas jurisdictions. The Bill is consistent with the general thrust of private members' Bills introduced by the Hon. Mike Elliott and Mr Martyn Evans last year.

The issue of responsible tobacco advertising has, of course, been on the public agenda throughout the decade since the banning of television and radio advertising. The industry effort at self-regulation has failed. For this reason, it is necessary for the Government to increase the prohibitions on tobacco promotion concentrating on sports and arts sponsorship and the forms of advertising particularly effective with young people.

Tobacco industry claims that its advertising does not induce young people to commence smoking, or that it is only aimed at swaying smokers from one brand to another, are less than frank. Cigarettes have been marketed on image probably more than any other commodity. Many of these images are undeniably aimed at the recruitment of new smokers and the recruitment of young smokers.

Recruiting people into a life threatening habit on the basis of spurious links to social success and sophistication is objectionable. To do this knowing that a significant part of the target group is below 16 and not legally entitled to be sold cigarettes is simply not on. Before turning to the main features of the Bill, it should be made clear that the Government acknowledges that this measure cannot deal with the whole problem but it is a significant step forward. Under our Federal system there is a limit to the power of the State to legislate comprehensively in this area. There are inevitable anomalies and situations which must be dealt with in a practical and realistic way if the legislation is to work.

While the Bill attempts to anticipate and deal with these problems the Government is prepared to make changes as necessary which will assist the Bill's practical effectiveness without abrogating the principles contained in it. The main features of the Bill are as follows:

Advertising: New section 11a prohibits the display for pecuniary benefit of a tobacco advertisement that may be seen in or from a public place. It also prohibits the sale (which, under the principal Act definition includes to supply or offer gratuitously but with a view to maintaining custom or commercial gain) of objects constituting or containing a tobacco advertisement—for example, free T-shirts, carry bags and sunshades.

This is the section under which advertising on billboards and hoardings, on taxis and in cinemas, on videotapes and on unsolicited leaflets will be prohibited. Current proposals are that the section would come into operation 12 months after the commencement of the Act. Taking, for example, a possible commencement date of 1 July 1988, the section would thus come into operation on 1 July 1989.

Discussions with the Outdoor Advertising Association are proceeding. In South Australia, 47.4 per cent of all outdoor advertising relates to tobacco. Of that amount, 40 per cent represents Neon and illuminated signs, and 60 per cent represents posters and billboards. There is thus a considerable investment in this form of advertising in South Australia. The Government is anxious to avoid a situation that might cause substantial economic disruption to the industry and its employees and also acknowledges the need for phasing arrangements to take account of existing contracts.

After 1 July 1989, a phasing-in period is proposed for contracts made before 3 March 1988. This will be achieved through use of the power of exemption. Exemptions will be specific to each case, but no exemption will go beyond 30 June 1992 unless a case of undue hardship can be shown. Negotiations with the industry are proceeding.

New section 11a (3) makes clear that the print media is excluded. Due to the nature of the printing industry, advertising in newspapers and magazines can only be controlled effectively at a national level. This section will not prohibit advertisement inside a shop or warehouse adjacent to places where tobacco products are sold. Such advertisements will have to display a health warning of reasonable prominence. The Government will be monitoring this area carefully to ensure that it does not provide a loophole that effectively allows shops to be festooned with tobacco advertising on the pretext that it is adjacent to the point of sale.

A tobacconist or cigarette discount shop will be able to have a sign outside indicating that tobacco products are for sale at particular prices and will be permitted to display tobacco products in their shop windows.

Tobacco advertisements which are part of the conduct or promotion of the Australian Formula One Grand Prix will be permitted if they are authorised by the Grand Prix Board. Invoices, letterheads and business cards ordinarily used in business of tobacco companies will be excluded.

Sponsorship: New section 11c prohibits the public promotion of tobacco products, trade names, brand names and manufacturers' names or interests as part of a sponsorship agreement. The Australian Formula One Grand Prix is specifically exempted by name in the legislation. Again, there will be a need to phase the provisions in. Sponsorship agreements made after 3 March 1988 will cease when the provision comes into operation (possibly on 1 July 1988). Agreements made before 3 March 1988 may continue for a period after the Act comes into operation. Current thinking is that this period will be 12 months (that is, until 1 July 1989). However, it is recognised that there may need to be some flexibility. Events that are specifically exempted because of their national or international character may continue after that date.

New clause 14a provides for the Governor to make exemptions. It is proposed that sporting and cultural events which are the subject of national or international television broadcasting or which are genuinely part of a national or international series will be exempted. The reason for such exemptions is related to the extent of the State's powers. To take an example, a ban on sponsorship of a national sporting series could be effective only when a match was played in South Australia. It could not prevent television coverage from being beamed into South Australian living rooms from matches played interstate. The State could not intervene because broadcasting is covered by a Commonwealth legislative power. Tobacco sponsorship of national events is a matter for national control.

Where the event for which an exemption is sought is of a sporting nature, the Minister of Health must consult with the Minister of Recreation and Sport before making a recommendation to the Governor for the issue of a proclamation. Similarly, if the event is of an arts or cultural nature, the Minister of Health must consult with the Minister for the Arts before making a recommendation for the issue of a proclamation.

It should be noted that the Bill does not seek to prevent tobacco companies from giving money to events *per se*, provided that there is no public acknowledgment or support of a tobacco product or promotion of the tobacco manufacturer, in association either directly or indirectly with a tobacco product, as part of the sponsorship requirement. Thus, there is nothing that prevents the continued support of sports and culture by the tobacco industry, provided that this support is not used as a back door method of advertising.

The Government has recognised the need to compensate bodies already in receipt of tobacco sponsorship, at least to the extent of their agreements with tobacco companies and proposes the establishment of a specific trust and a fund to be administered by the Trust.

South Australian Sports Promotion, Cultural and Health Advancement Trust: New section 14b and schedule 2 of the Bill provide for the establishment of the South Australian Sports Promotion, Cultural and Health Advancement Trust.

The trust is to consist of seven persons appointed by the Governor, for a term not exceeding three years a chairperson; one person with expertise in public health nominated by the Minister of Health; three persons with expertise in sport or sports administration nominated by the Minister of Recreation and Sport; one person with expertise in the arts or arts administration nominated by the Minister for the Arts; and one person with expertise in advertising.

The trust will manage the Sports Promotion, Cultural and Health Advancement Fund, make grants to health, sporting or cultural bodies, provide sponsorship, conduct or support public awareness campaigns and generally advance and promote good health and prevention and the early detection of illness and disease. In other words, while the first call on the trust's time and resources will undoubtedly be in relation to replacement of sponsorship, it will have a broader function.

The trust will not be subject to the specific control and direction of the Minister of Health. However, it will exercise its powers subject to any guidelines issued from time to time by the Minister of Health following consultation with the Minister of Recreation and Sport and the Minister for the Arts. The trust will be required to submit annually a budget for the next financial year in a form required by the Minister. The Minister, after consultation with the Treasurer and the Ministers for the Arts and Recreation and Sport, has the power to approve the budget.

The schedule requires the establishment of three advisory committees a Sport and Recreation Advisory Committee, a Cultural Advisory Committee, and a Health Advisory Committee consisting of the Chairperson of the trust, the respective Ministers' nominees on the trust and two other persons nominated by the respective Ministers. This will increase the breadth of knowledge and experience available to the trust in dealing with those areas.

The trust is able to appoint staff or make use of the staff of the Health Commission or Public Service (with the relevant Minister's approval). The trust is able to delegate to a member, employee or committee. However, it is not able to delegate its function of determining to whom or in what amounts financial support may be provided from the fund.

There are the usual procedural provisions (meetings, disclosure of interest, etc.) and, in addition, a provision protecting the confidentiality of information to which a member of the trust, committee member or employee has access (clause 10, schedule 2). The trust is required to report annually to the Minister for tabling in Parliament. At this stage, I am able to provide the Council with a general outline of the way the Government expects the trust to operate. However, because its independence is enshrined in the legislation, its day-to-day decision and direction will be determined by the trust itself.

The trust has a charter to go wider than simply replacing lost tobacco sponsorship. It can fund any sporting, recreational or cultural event that has a nexus with health or that can deliver a health message through sponsorship. It is hoped that the trust will assist those who have refused tobacco sponsorship and the less publicised but popular sports in the community such as netball and little athletics. The trust has the opportunity to assist smaller sporting and cultural events that have never attracted tobacco industry sponsorship. In addition, it is anticipated that clubs or organisations which have previously surrendered tobacco sponsorship on ethical grounds (for example, the East Torrens Cricket Club) will have that sponsorship restored by trust funding.

There is the scope for sponsorship and assistance to be spread widely by the trust, through the community, rather than concentrating on a few high profile events. Young people and young women in particular, who comprise the highest groups of smokers, could be target populations for sporting and cultural assistance from the trust. It is anticipated that the trust will work closely with sports and cultural bodies in developing a sponsorship package that presents a

valuable health message while blending with the event sponsored. The end product will reflect both the aims of the trust and the particular needs of the sponsored event.

The Health Promotion Foundation established under the Victorian Tobacco Act has recently issued for discussion detailed guidelines indicating how it will operate and the conditions on which assistance and sponsorship will be granted. I will be asking the South Australian trust to develop draft funding guidelines relevant to the South Australian scene, as soon as possible after its establishment, for community consultation.

South Australian Sports Promotion, Cultural and Health Advancement Fund:

New section 14e establishes the fund at the Treasury. Money will be paid into the fund pursuant to the Tobacco Products (Licensing) Act. Clause 18 of the Bill amends the Tobacco Products (Licensing) Act to provide for an increase in the licence fee from 25 per cent to 28 per cent (this will produce an estimated $5.2 million per year and raise the price of a packet of cigarettes by approximately 5c); and an amount of not less than 10.7 per cent of the amount collected as fees for tobacco merchants licences to be paid into the fund. It is estimated that this amount will be sufficient to generously cover the existing value of tobacco sponsorship in this State and permit further support of sport and the arts through the trust. In the event that the 28 per cent is varied in any further budget, the 3 per cent will be varied to ensure a constant figure in real dollar terms.

I take the opportunity at this stage to address some of the concerns which are being expressed, in particular in sporting circles. No sport currently in receipt of tobacco sponsorship will be financially worse off as a result of the Bill. The trust will replace the amount of sponsorship obtained from tobacco companies on a dollar for dollar basis on production of a validated claim. Despite making inquiries, the Government has been unable to determine accurately the annual value of this sponsorship, and estimates vary considerably. The upper limit, however, is estimated at about $2.4 million.

There will be money available to meet this demand and enable substantial additional funding for other sporting events and for the promotion of a healthy lifestyle through sport. Indeed, the South Australian sporting community will do far better out of the fund than they ever did from the tobacco industry.

The trust is not intended to replace the existing funding arrangements of the Department of Recreation and Sport. It is not proposed that any sport, including the racing codes, will be excluded from the operation of the fund, except where a sport is exempted from the operation of the Act and continues to take tobacco sponsorship.

The trust will be independent of the Department of Recreation and Sport. There is no question of it absorbing the department. Sport will be well represented on the trust by the three sports nominees and also by the two additional sports advisory committee members nominated by the Minister of Recreation and Sport. The Minister will, under the legislation, be consulted on any guidelines that the Minister of Health may wish to issue to the trust. He will also be consulted before the budget is approved and before any exceptions from the Act are determined.

Sport will not be coerced into accepting sponsorship by the trust. The decision to seek this form of assistance must be made by the sports bodies themselves. Some may wish to pursue other forms of corporate sponsorship. The Government will not seek to withdraw any other form of financial support to a sporting group that did not seek funding from the trust. The same sorts of assurances can also be given in relation to the arts and cultural area.

The Hon. C.M. Hill: Does this include the Adelaide Festival of Arts?

The Hon. J.R. CORNWALL: Indeed—particularly the Adelaide Festival of Arts, which is the principal beneficiary.

The Hon. C.M. Hill: It is good to have that on the record.

The Hon. J.R. CORNWALL: It is on record. The same sorts of assurances can unequivocally be given in relation to the arts and cultural area.

Turning to other matters covered by the Bill, provisions are included to strengthen the law relating to competitions conducted by tobacco companies. In particular, the legislation broadens the prohibition on the use of trading stamps currently provided by the Fair Trading Act 1987 and extends the law relating to competitions to effectively prohibit any prize or competition conducted in association with a tobacco product.

If promotional events designed to promote the sale of tobacco products or to promote smoking generally occur, and fall outside the general prohibitions, the Governor will be empowered to prohibit those events if they are considered undesirable.

At a recent meeting of Australian Transport Ministers, it was resolved to ban smoking on interstate buses. The Tobacco Products Control Act already bans smoking on intrastate buses. The opportunity has been taken in the Bill to extend this ban to interstate buses.

The Bill represents a major development in the community response to the problem of tobacco usage. If the community as a whole can reduce the extent to which children take up smoking, it can make significant inroads into the epidemic of tobacco related disease and mortality. The Bill is designed to do this. Principally, the success of this Bill will be gauged by the extent to which young people are discouraged from commencing smoking. Where prohibitions on smoking and sponsorship have occurred overseas, there is clear evidence that the smoking rate of children declines markedly. For example, this occurred in Norway where the introduction of a ban on tobacco advertising saw sharply reduced sales of cigarettes to young persons.

The legislation is not in any way a step towards prohibition of tobacco. Nor is it a zealot's Bill, as the industry has suggested. It does not infringe on civil liberties, a fact which has been confirmed by the South Australian Council for Civil Liberties, and it does not seek to blame smokers for their habit. What the legislation does attempt to do is to create a climate where the link between smoking and sophistication as presented through advertisements no longer occurs. It seeks to create a climate where smoking is no longer considered a rite of passage between adolescence and adulthood. For the sake of our children, I urge members to support the Bill. I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal.

Clause 2 provides that the measure is to come into operation on a day to be fixed by proclamation. The clause allows specified provisions to be brought into force at later dates.

Clause 3 amends the long title of the Tobacco Products Control Act 1986, so that it refers not only to regulation of tobacco products but also to the proposed new South Australian Sports Promotion, Cultural and Health Advancement Trust.

Clause 4 inserts a new heading.

Clause 5 amends section 2, the commencement section, of the Tobacco Products Control Act. The clause removes subsection (3) which suspends the commencement of section 7 until similar provisions are in force in the Australian Capital Territory and three States other than South Australia. This amendment is consequential to a later clause providing for the repeal of section 7.

Clause 6 inserts a new section 2a setting out objects for the Tobacco Products Control Act as it would be amended by this measure.

Clause 7 amends section 3 by adding new definitions required for other proposed amendments.

Clause 8 inserts a new heading and section 3a. Proposed new section 3a is designed to make it clear that the provisions imposing controls in relation to tobacco products do not apply in relation to anything done by means of radio or television broadcasts.

Clause 9 removes from section 4 a provision empowering the grant of exemptions from the operation of that section. Under the Bill, exemptions may instead be granted under a proposed new general provision (see clause 15).

Clause 10 provides for the repeal of section 7 which requires tobacco advertisements to include health warnings. Under the Bill, health warnings are required to be included in certain tobacco advertisements by proposed new section 11b.

Clause 11 removes another specific exemption provision.

Clause 12 inserts new sections 11a to 11e.

Proposed new section 11a prohibits the display for direct or indirect pecuniary benefit of a tobacco advertisement so that it may be seen in or from a public place. The section also prohibits the distribution of a leaflet, handbill or other document that constitutes a tobacco advertisement or the sale of any object that constitutes or contains a tobacco advertisement. These prohibitions are not to apply in relation to—

(a) a tobacco advertisement in or on—

(i) a newspaper or magazine;

(ii) a book;

(iii) a package containing a tobacco product;

(b) a tobacco advertisement that is an accidental or incidental part of a film or video tape;

(c) a tobacco advertisement that is displayed inside a shop or warehouse adjacent to a place where tobacco products are offered for sale;

(d) a tobacco advertisement that is displayed outside a shop or warehouse where tobacco products are offered for sale but relates only to tobacco products generally or the prices at which particular tobacco products may be purchased;

(e) a tobacco advertisement that is authorised by the Australian Formula One Grand Prix Board as part of the conduct or promotion of a motor racing event within the meaning of the Australian Formula One Grand Prix Act 1984;

or

(f) an invoice, statement, order, letterhead, business card, cheque, manual or other document ordinarily used in the course of business.

Proposed new section 11b provides that a person must not display a tobacco advertisement in a shop or warehouse where tobacco products are offered for sale unless the advertisement incorporates or appears in conjunction with a health warning that either complies with requirements to be prescribed by regulation, or is given reasonable prominence having regard to the nature of the advertisement.

Proposed new section 11c prohibits contracts or arrangements under which sponsorships are provided in exchange for the promotion of tobacco products. The provision is not to apply in relation to any motor racing event within the meaning of the Australian Formula One Grand Prix Act 1984.

Proposed new section 11d prohibits competitions or trading stamps promoting tobacco products.

Proposed new section 11e prohibits the distribution for promotional purposes of free samples of tobacco products.

Clause 13 amends section 12 which prohibits smoking in buses. The clause removes a provision which excludes interstate buses from the operation of the section.

Clause 14 amends section 14 which sets out powers of inspection. The clause amends the section so that the powers may be exercised for the enforcement of the provisions relating to the advertising or promotion of tobacco products. The clause also inserts a new provision that makes it clear that a person is not required to answer questions which would result in or tend towards self-incrimination.

Clause 15 inserts a new section 14a, a new Part III (relating to the South Australian Sports Promotion, Cultural and Health Advancement Trust) and headings.

Proposed new section 14a provides for the granting of exemptions from the operation of any of the provisions imposing controls relating to tobacco products. Under the provision, an exemption may be granted by proclamation made on the recommendation of the Minister. The Minister may recommend that an exemption be granted to facilitate the promotion and conduct of a sporting or cultural event or function, to allow the performance of a contract entered into before 3 March 1988, or to relieve undue hardship. The Minister must, before recommending an exemption to facilitate the promotion and conduct of a sporting or cultural event or function, consult with the Minister of Recreation and Sport or the Minister for the Arts, as appropriate, and have regard to certain factors. These are whether—

(a) there is national or international interest in the event or function;

(b) there are links between the event or function and other events or functions outside the State;

and

(c) reasonable efforts have been made to obtain support for the event or function that would not require the granting of such an exemption.

An exemption granted to allow the performance of a contract may not have effect beyond 30 June 1992.

Proposed new Part III (comprising sections 14b to 14q) relates to the South Australian Sports Promotion, Cultural and Health Advancement Trust.

Proposed new section 14b provides for establishment of the trust as a body corporate.

Proposed new section 14c provides for a membership of seven—

(a) one to be the presiding member;

(b) one to be a nominee of the Minister with knowledge and experience in the area of public health;

(c) three to be nominees of the Minister of Recreation and Sport with knowledge and experience in the area of sports or sports administration;

(d) one to be a nominee of the Minister for the Arts with knowledge and experience in the area of the arts or arts administration;

and

(e) one to have knowledge and experience in the area of advertising.

Proposed new section 14d sets out the functions of the trust. These are to promote and advance sports, culture,

good health and healthy practices and the prevention and early detection of illness and disease, and more particularly for that purpose—

(a) to manage the Sports Promotion, Cultural and Health Advancement Fund and provide financial support from the fund by way of grants, loans or other financial accommodation to sporting and cultural bodies or for any sporting, recreational or cultural activities that contribute to health;

(b) to conduct or support public awareness programs;

(c) to provide sponsorships;

(d) to keep statistics and other records;

(e) to provide advice to the Minister;

(f) to consult regularly with Government departments and agencies and liaise with persons and bodies affected by the measure;

(g) to perform such other functions as are assigned to the trust by the Minister or by this measure or any other Act.

The section provides that the trust has all such powers as are reasonably necessary for the effective performance of its functions. In addition to its other powers, the trust is empowered, after consultation with the Minister, to make a grant from the fund for the relief of loss suffered as a result of the application of the measure to any matter or thing existing at or before the passing of the measure. The section provides that the trust must, in performing its functions and exercising its powers, have regard to any guidelines issued from time to time by the Minister after consultation with the Minister of Recreation and Sport and the Minister for the Arts.

Proposed new section 14e provides for the establishment of the Sports Promotion, Cultural and Health Advancement Fund at the Treasury. The fund is to consist of money paid into the fund pursuant to the Tobacco Products (Licensing) Act 1986, and all other money received by the trust. The section provides that the fund may be applied by the trust in accordance with a budget approved by the Minister—

(a) in paying amounts that the trust determines should be paid by way of grant, loan or other financial accommodation;

(b) in paying costs and expenses incurred by the trust; and

(c) in making other payments required or authorised by law to be made from the fund.

Proposed new section 14f provides for the preparation of annual budgets to govern the trust's financial operations for each financial year.

Proposed new section 14g provides that further provisions relating to the trust are set out in schedule 2.

Clause 16 amends section 15 of the Act which relates to offences under the Act. The clause increases the general penalty for offences from $2 500 to $5 000. The clause also inserts provisions providing that an offence is committed by a person who causes, permits or authorises an act or omission that constitutes an offence, and that, where a body corporate is guilty of an offence, each member of the governing body of the body corporate is also guilty of an offence unless it is proved that the member exercised reasonable diligence to prevent commission of the offence.

Clause 17 inserts a new schedule 2 setting out further provisions relating to the trust. These deal with the following matters:

1. Term and conditions of membership of the trust;
2. Validity of acts of the trust;
3. Meetings and procedure;
4. Disclosure of interest;
5. Delegation by the trust;
6. Committees;
7. Employees of the trust;
8. Superannuation;
9. Immunity from liability;
10. Non-disclosure of information;
11. Accounts and audit;
12. Annual reports by the trust.

Clause 18 amends the Tobacco Products (Licensing) Act 1986, by increasing by 3 per cent the *ad valorem* licence fees payable under that Act. The clause also inserts a new section 24a providing that—

(a) the money collected under that Act as licence fees must be paid into the Consolidated Account;

(b) not less than 10.7 per cent of the amount collected as fees for tobacco merchants' licences (not being restricted licences) must be paid into the Sports Promotion, Cultural and Health Advancement Fund for application in accordance with the provisions of the Tobacco Products Control Act 1986;

(c) payments must be made into the fund for that purpose at times and in amounts determined by the Treasurer after consultation with the Minister of Health.

Clause 19 makes amendments to section 44 of the Fair Trading Act 1987 (prohibited trading stamps) that are consequential to proposed new section lld which prohibits competitions and trading stamps designed to promote tobacco products.

The Hon. M.B. CAMERON secured the adjournment of the debate.

BARLEY MARKETING ACT AMENDMENT BILL (1988)

Adjourned debate on second reading.

(Continued from 2 March. Page 3238.)

The Hon. PETER DUNN: Because of confusion about it, this amending Bill is in a state of flux. I will describe the history of the matter quickly. When farmers sell grain, they usually do so through statutory marketing authorities and different methods of payment apply. In the case of the Wheat Board, after a declaration has been signed, payments are made to farmers in the proportions that are set out in the declaration. The Barley Marketing Act provides that a declaration must be signed. However, rather than the money being paid into the account of the person who signs that declaration, the money is paid to them by cheque. In the days when there were many sharefarmers, they were usually paid by cheque. That tradition has remained. However, it is more difficult with that method of payment to follow where the money goes.

Some farmers have taken out liens or mortgages on their crops. When the mortgagee comes to get his money, he finds that a dishonest farmer has delivered his barley in another name, so the mortgagee claims against the Barley Board to recover the money that was taken out as security against that crop. The crop has been paid for because it was delivered to the board by the farmer using another name. In December last year, the Government introduced a Bill that absolved the board of any responsibility for paying a person other than the person whose name appeared on the declaration or the person who delivered the barley at the point of delivery, which is usually a silo.

This amendment has again been reintroduced by the Government because it appears that a lending institution that lent money on a mortgage or lien in relation to the delivery of barley has no security. Therefore, there needs to be a slight change in the Bill to accommodate this case. I cannot understand why the Barley Board does not adopt the practice of the Wheat Board of registering a bill of sale and paying out that bill of sale when the barley is delivered. One will never stop people delivering in someone else's name and, although that is a criminal act, it has nothing to do with the board. I believe that this amendment is poorly worded. Clause 2 provides:

> Where the board makes a payment in respect of barley or oats to a person who is not entitled to the payment, the person who would otherwise have been entitled to the payment or to recover the barley or oats cannot make a claim against the board in respect of the barley or oats or the payment unless the board acted dishonestly in making the payment.

This means that if the board acts dishonestly there can be a claim against it; and if it acts honestly there can be no claim against it. Take the case of two farmers with the same name but different initials. Payment can be made to the wrong one because the person processing it inadvertently keyed in the wrong initial. It is reasonable to assume that that can occur. That has happened to me in relation to a delivery of wheat. The money was paid to me and not this other person with slightly different initials who was 200 miles away. It was eventually rectified but in the meantime I had the money and dishonestly could have used it, and there could have been no claim for negligence against the board.

I do not believe that this clause is terribly efficient in providing that a farmer or a person with a lien or mortgage cannot claim against the board if it acts honestly but can if it acts dishonestly. That argument is fairly clear. This clause also precludes a farmer from claiming back his barley if he does not receive payment, and I do not believe that that is correct. A farmer should be able to re-claim his delivery of barley or be paid. A letter from a firm of barristers and solicitors clearly sets out what happened in that case. It states:

> In the past, it has been the practice of the board to make direct payment to the lenders. Given the new amendment, we sought an undertaking from Mr Banbury—

this is the new amendment to the barley Act last year—

> the Assistant General Manager of the Australian Barley Board, that the board would continue to take notice of securities over barley or oats when making distributions to growers. He advised us that the present situation would continue. However, some 30 minutes later we were contacted by the board's solicitors, who retracted that statement. They advised us that, as the barley or oats is or are discharged from any security upon delivery to it, the board is obliged by the Act to make payment for such barley or oats delivered to it to the grower.

Last year on 10 December an amendment to section 19 was passed to the Act which provided:

> Upon delivery of barley or oats to the board the barley or oats is or are discharged from any mortgage, bill of sale, lien or other charge to which they were subject.

That clearly provides that the board is not liable after that point. The letter continues:

> In the absence of any agreement to the contrary reached amongst the lender, the grower and the board, to do otherwise would involve the board in contravention of its obligations to make payments to the grower. In any event, such agreements could be unenforceable.
>
> We understand from Mr Banbury that the amendment as enacted was not that forwarded by the board, which was parallel to Victorian provisions aimed only at removing the board as a litigant in matters arising between lenders and growers.

That letter leads me to believe that the Government got it wrong last year when it introduced the amendment to section 19c. The letter continues:

> As the amendment stands, the section is neither in the interests of the grower nor providers of credit.

The amendments now before us do not solve the problem. They are difficult to understand and do not clearly set out what happens. They put the onus back on the growers and do not allow the growers or the lenders of the money to claim what is rightfully theirs. I understand that talks are taking place between the Minister and others to try to solve the problem.

This amendment is not what we are aiming at and is not what the Government is aiming at. I believe it will cause more trouble because it takes away the ability of a grower, if he is incorrectly paid or if someone has been paid for his delivery of barley, to recover the money. He should be able to claim from the board for that payment of money (and this is what occurs in relation to the Wheat Board). In turn, the Barley Board should be able to claim from the person wrongfully paid the money. When I spoke to the Wheat Board I was told that because of the later payments in relation to wheat—and the same applies in relation to barley—it was usually able to recover the money. I wish that the Government had looked more closely at the legislation covering the Wheat Board to see what provision it makes before it went ahead with this legislation. The protection for the Wheat Board in the Wheat Marketing Act provides:

> Payment in good faith by the board of any moneys payable under this Act to the person appearing to the board to be entitled to receive them discharges the board from any further liability in respect of those moneys.

In other words, it is done in good faith and if challenged by a grower or the lender of the money to the grower the board will try to find out where the money has gone and rectify the situation.

I only wish that that clause could have been included in the Barley Marketing Act to cover these people who wish to lend money to growers. The amount of lien and mortgage taken over crops throughout the State is very small. The Wheat Board has informed me that the number taken out is slightly in excess of 200 mortgages and liens in the form of bills of sale which they register with the Wheat Board from the 12 000 registered growers in this State. So, the number is very small and that indicates that it is not a gross problem in any form. It does not cover a great number of growers or lenders to those growers, but the situation needs correction and modifying. I hope that during the Committee stage we will sort it out. For those reasons, I support the Bill and look forward to having the amendments on file and having it corrected in the long term.

Bill read a second time.

TRADE STANDARDS ACT AMENDMENT BILL

In Committee.

Clauses 1 to 7 passed.

Clause 8—'Powers of standards officer.'

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

Page 3, line 29—
Leave out 'three' and insert 'two'.

This clause deals with the powers of standards officers. A number of amendments were made in the other place to ensure that protection against self-incrimination was provided. I commend the Government for having accepted those amendments. However, this amendment deals with the rights of the person from whom goods are seized where proceedings are not instituted for an offence in relation to those goods, or proceedings are in fact instituted within a

particular period but the defendant is not subsequently convicted.

In those circumstances, the goods must be returned but, if they have been destroyed, damaged or have deteriorated, the market value of the goods at the time of seizure can be recovered from the Minister as a debt. The period of three months is stipulated in the Bill. The principal Act provides two months, as I understand it. Notwithstanding the Attorney's comment during his reply in the second reading debate, it seems to me that no good reason has been established why the period ought to be extended to three months. If one cannot get to the point of issuing proceedings within two months after the seizure of the goods, then there ought to be some remedy available for the person from whom the goods have been seized. I think three months is too long, keeping in mind that they have been seized under the provisions of this Act. That is why I have moved that the period be reduced to two months.

The Hon. C.J. SUMNER: The Government opposes this amendment. The two month period is too short a time to be assured that investigations have been properly carried out. There is a six month period for consideration to be given to a permanent ban in the case of a temporary ban having been applied, and given that length of time is provided to investigate and decide whether a permanent ban should be applied, the holding of the goods for three months is not considered to be unreasonable. Two months is considered to be too short.

The Hon. K.T. GRIFFIN: But in the six month period to which the Attorney-General has referred—that is, defect notices—as I understand it, there is no seizure of goods, so there has to be some distinction drawn between those two time periods.

The Hon. C.J. SUMNER: Goods are seized during a temporary ban, so it is not considered unreasonable that there be a three month period within which proceedings can be issued under this section.

The Hon. K.T. GRIFFIN: According to clause 15 which seeks to insert a new section 26a, I cannot see any reference to seizing of the goods. New clause 26a provides:

> (1) Where it appears to the Minister—
> *(a)* that goods of a particular kind may be dangerous;
> or
> *(b)* that services of a particular kind may be dangerous,
> the Minister may . . . by notice in the *Gazette*, place a temporary ban (for a period not exceeding three months . . .) on the manufacture or supply of those goods, . . . while the Minister investigates whether they should be declared to be dangerous.

That can be extended for periods so that the total period of the ban does not exceed six months. No provision exists for the seizure of the goods while that is being investigated.

The Hon. C.J. SUMNER: You get six months to determine whether a temporary ban should be turned into a permanent ban. During that period they may be seized, yet the honourable member suggests—

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: They could be seized in conjunction with an investigation into that. We are saying that we allow six months for that process, but are only prepared to allow two months in which a decision is made on whether to prosecute in relation to those dangerous goods.

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

The Hon. K.T. GRIFFIN: I do not want to prolong the debate, but indicate that if I lose the amendment on the voices I will not divide, in view of the indication by the Australian Democrats of their support for the Government on this issue. As I understand it, there can be a seizure of goods in certain circumstances and it may be that that seizure occurs as a preliminary in determining whether or not there ought to be a permanent ban. It is not because of the temporary ban that the goods are seized. It is under a different provision of the Act which enables the seizure to occur. We have to be careful that we do not link the temporary ban period with the question of the seizure because they really are two different issues and the time periods relate to different questions.

If goods are seized prosecution should be instituted within two months, as the present Act provides. The question of a temporary ban is a different issue because, during the period of the temporary ban, the goods cannot be manufactured or supplied during the period of that temporary ban. If they are manufactured, or have been manufactured, or supplied before that time, obviously if they are manufactured they are held in stock by the supplier and are under the control of the supplier during that period. I am not going to win the argument, obviously, but think that two months is adequate.

Amendment negatived; clause passed.

Clause 9 passed.

Clause 10—'Cost of testing.'

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

Page 4, after line 32—Insert new subsection as follows:

> (6) The Minister must, before proceeding to recover costs from a person under this section, supply to the person a statement setting out details of the examination, analysis or test that was carried out and the costs that were incurred.

New section 18 deals with the cost of testing goods and services and enables the Minister to recover, as a debt from a manufacturer or supplier of the goods or from a supplier of the services, the reasonable cost of any examination, analysis or test that led to the declaration. The proposed subsection (5) is an evidentiary provision and provides that in any proceedings for the recovery of the cost, a certificate apparently signed by the Minister certifying the amount of that cost, will be accepted in the absence of proof to the contrary as proof of the cost.

That suggests to me that, because of that evidentiary provision, a Minister who is met with a request for particulars may be able to rely on subsection (5) and deny those particulars. It would be a foolish Minister who did that but, nevertheless, to put the matter beyond doubt, I would like to see a provision that, before proceeding to recover the costs, the Minister must supply to the relevant person a statement setting out details of the examination, analysis or test carried out and the costs that were incurred. That means that the defendant will have full details of the costs sought to be recovered and the basis upon which they were incurred.

The Hon. C.J. SUMNER: I can understand what the honourable member is suggesting, but it may be that, as this is an absolute precondition to any proceedings for recovery of costs, the Minister would have to show that he had actually supplied to this person a statement setting out details of the examination. The capacity may exist for persons to avoid being supplied with that information if they wanted to avoid the law by, for example, disappearing. If they had disappeared or made themselves hard to come by the court action could not proceed or, if it did, it would fail unless the Minister could show that he had in fact supplied to the person the statement setting out the details of the examination, and so on, and the costs of it. Although I have some sympathy for what the honourable member is suggesting, it seems to me that it could place a barrier in the way of a proceeding when a defendant wanted to try to avoid the consequences of the section.

The Hon. K.T. GRIFFIN: I would not have thought that there was a problem because it is to be recovered by the Minister as a debt. Presumably that then requires proceedings to be issued and the summons served. I would have

thought that the simple way of dealing with that was merely to annex to the relevant demand, or even to the summons, a statement as required by my amendment. I would not have thought that there was a difficulty with it.

If the Attorney-General is sympathetic to the point of view I am putting, he might like to come up with some alternative drafting. I think it is satisfactory as it is and it overcomes the problem that I can foresee—with the evidentiary provision in the proposed subsection (5), which on the face of it could be used to deny those particulars. I think it is fair and reasonable that the particulars be supplied and that they be supplied before the proceedings are issued. If there is a letter of demand to a corporation by the Minister, I would have thought that the sensible thing was to provide the details.

The Hon. C.J. Sumner: You would have to prove that they actually got the details before you could proceed. That is my point.

The Hon. K.T. GRIFFIN: Surely that is a matter of drafting. I understand what the Attorney-General is saying, that there may have to be some formal proof of actual service. Personally, I would not interpret it in that way, but it may be that there is some way in which that can be accommodated, because I think the principle is an appropriate one.

The Hon. C.J. SUMNER: I think we can redraft it. The Parliamentary Counsel has put a proposition that a certificate from the Minister saying that he had posted it by prepaid post would be accepted as evidence of supply in the absence of evidence to the contrary. It is only a technical point. I would not want the whole thing to be bogged down because the defendant in the proceedings alleged that he had not got the material when in fact it was the actions of the defendant that were causing the problem. It is a bit unlikely that that will occur, but one never knows.

The Hon. I. GILFILLAN: There appears to be a consensus of intention and it is really a matter of emerging with the right words. I indicate Democrat support for that intention. I think the Attorney's concern is valid. Without having more detail of the way these proceedings would work, it would seem to me that it is currently in the hands of Parliamentary Counsel to come up with another draft. My only comment is that perhaps the wording could have been 'before or during proceedings to recover' on line one of the amendment, so that in fact the defendant would certainly have had a statment of the details, if not before the proceedings, certainly during them.

The Hon. K.T. GRIFFIN: I think it is important to give the particulars before the proceedings, if only for the sake of the defendant's being properly and adequately informed. However, I am happy to accept what the Attorney-General is proposing. I have no difficulty with that. On the basis that it will be recommitted and to accommodate everybody, I seek leave to withdraw my amendment.

Leave granted; amendment withdrawn.

Clause passed.

Clauses 11 to 14 passed.

Clause 15—'Repeal of s. 26 and substitution of new sections.'

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

Page 6, lines 15 and 16—Leave out 'the use of the goods' and insert 'a dangerous characteristic of the goods, or the failure to comply with an applicable safety standard'.

This clause deals with the right to recover from a supplier compensation for any damage suffered by a person in consequence of the use of the goods and also to recover from a supplier of services compensation for any damage. The basis upon which the right to compensation arises is if goods are dangerous or do not comply with an applicable safety standard. I made the point during the second reading debate that if the goods are declared to be dangerous goods there is no right of review of that declaration. As to whether there might be some argument about whether or not the goods are dangerous, the declaration by the Minister gives rise to a right to compensation where any damage is suffered by a person in consequence of the use of the goods, and that basis cannot be challenged.

Also, it may be that damage is suffered from the use of the goods which may not comply with an applicable safety standard, but it may not be as a result of that failure that the damage occurs. I want to try to make it fairer, recognising that compensation is a right, anyway—I am not challenging that—to ensure that the right to compensation arises from a dangerous characteristic of the goods or the failure to comply with an applicable safety standard. I think this measure will overcome the problem.

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

Amendment carried.

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

Page 6, lines 24 and 25—Leave out 'the supply of the services' and insert 'a dangerous characteristic of the services, or the failure to comply with an applicable safety standard'.

This amendment relates to services, and puts the same argument as in relation to goods applies.

The Hon. C.J. SUMNER: I accept that.

Amendment carried.

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

Page 6, after line 28—Insert new subsection as follows:

(4) If in proceedings for compensation under this section it is established that the person claiming compensation contributed to his or her damage or loss, that fact must be reflected in any award of compensation to that person.

This amendment adds a new subsection to provide, in effect, for contributory negligence to be taken into consideration so that, if there are proceedings for compensation (and let us remember that my amendment applies to the area of compensation and not the other area under new section 26 (1) paragraphs *(b)* and *(c)*) and it is established that a person claiming compensation contributed to his or her damage or loss, that fact must be reflected in any award of compensation to that person. I believe that it is reasonable that, if there was a lack of care or failure to follow instructions, or if there was any other form of contributory negligence, it should be a matter that the court can take into consideration in determining the quantum of compensation which might be paid. There is no argument with the question of compensation. My amendment is an endeavour to achieve some equity.

The Hon. I. GILFILLAN: I would be interested to hear whether, in fact, the intention of this amendment is available through legal action regardless of this clause. That is what I consider would be a reasonable argument to oppose it—that any judgment for compensation could make allowance for a contributory negligence factor. I would be persuaded, if legal argument were put forward, that that is available regardless of this intended clause. However, if it is not available, I believe the clause has merit.

The Hon. C.J. SUMNER: I think we could take it that the question of contribution to damage or loss would be taken into account by the court.

The Hon. K.T. Griffin: I did not think it was included. That is why I thought it was important that it be stated.

The Hon. I. GILFILLAN: The actual wording of new section 26 (1) paragraph *(a)* is 'compensation for any damage'; that could equal the total damage. Lawyers talk in double meanings, therefore I accept that.

The Hon. K.T. Griffin interjecting:

The Hon. I. GILFILLAN: The words 'any damage' mean any damage, regardless. My comments were in relation to new section 26 (2), which provides:

(a) compensation for any damage suffered by the person in consequence of the supply of the services.

The same phrase is used in new subsection (1):

(a) compensation for any damage suffered by the person in consequence of the use of goods.

In my interpretation, the words 'any damage' would mean that they are potentially capable of having the full extent of damage, regardless of whether it was contributory negligence or not.

The Hon. C.J. SUMNER: My advice from Parliamentary Counsel, for what it is worth, is that it says that compensation is for the court to determine, and the court would take into account any contributory negligence on the part of the person who was damaged.

The Hon. K.T. GRIFFIN: There is an element of doubt about it. I would like to put it beyond doubt by urging the Committee to accept my amendment and then no-one would need to employ a lawyer to determine whether or not it means any damage, all damage, or excluding that to which you have contributed. It is beyond doubt so why give lawyers more work by leaving it out?

Amendment carried.

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

Page 7, after line 4—Insert new subclause as follows:

(4) The Minister must take reasonable steps to bring the publication of a notice under subsection (1) or (2) to the attention of manufacturers or suppliers who are known by the Minister to be affected by the notice.

The object of this amendment is to require the Minister to take reasonable steps to bring the publication of a notice to the attention of a manufacturer or supplier who is known by the Minister to be affected by the notice. It does not place an obligation on the Minister to go out and find out who are the manufacturers or suppliers. However, in the course of investigation it could come to the notice of the Minister that certain manufacturers or suppliers are dealing in these goods or services.

The point has been made to me that, if you put a notice in the *Government Gazette* many ordinary people do not read it and many business people do not religiously read it, either. Therefore, it would be good sense to provide that, if there are manufacturers or suppliers who are likely to be affected by the notice in the *Government Gazette* and they are known to the Minister, it is not unreasonable to require the Minister to give them notice concurrently with the giving of notice in the *Government Gazette*. That way those manufacturers and suppliers will not be prejudiced if they go on manufacturing or supplying in ignorance of the notice in the *Government Gazette*; on the other hand, some reasonable service has been provided by the Minister to ensure that notice has been drawn to the attention of those known by the Minister to deal in those goods or services.

The Hon. C.J. SUMNER: The Government rejects the amendment. We are talking about section 26a, which is imported from the Trade Practices Act. We are attempting to have as much uniformity as possible. In fact, I supported the earlier amendment relating to the dangerous characteristic of services, etc, because it fitted in more completely with the Trade Practices Act, which we are attempting to mirror. In any event, as a matter of practice, by the time the Minister issues the notices in the *Government Gazette* at the recommendation of the council all manufacturers and suppliers would be aware of our intentions, anyway.

The Hon. K.T. GRIFFIN: I support the concept of as much uniformity as possible, but I do not think that we should blindly follow it because some other legislature has enacted it. However, if it has merit, we should go along with it. As a Parliament we have a right to make that decision.

Although the Trade Practices Act may not include this particular provision, it is not a burden upon the State Minister, serviced by the State department, to take this additional step. It is a relatively minor step and will not compromise any action that might be taken under a temporary ban or otherwise. After all, this legislation is administered by the State department, which should be alert to the obligations placed upon the Minister and the department. The provision has merit. It does not compromise uniformity to the extent that it will prejudice the administration of the legislation. It is a reasonable proposition to consider.

The Hon. I. GILFILLAN: There are advantages in having reasonable steps to bring the publication of a notice to the attention of manufacturers, if for no other reason than the manufacturers and suppliers are aware of the ban and comply with it, which is the purpose of any legislation, that is, to protect the public. My one concern is that if, as the amendment states, the Minister must take reasonable steps, it could be argued in litigation that the Minister did not take reasonable steps, which could provide an escape for a supplier or manufacturer not complying with the ban. Given the niceties of legal interpretation, this wording could provide suppliers and manufacturers with a defence. Apart from that misgiving, I suggest that the more publicity the ban gets among those who are expected to implement it, the better.

The Hon. K.T. GRIFFIN: I do not think that it would provide a defence. We are seeking to place an obligation upon the Minister to take reasonable steps. The manufacturer or supplier must be known to the Minister, so in those circumstances it is just a matter of sending the notice off. I do not think that it would provide any defence for a breach by that manufacturer.

Amendment carried; clause as amended passed.

Progress reported; Committee to sit again.

BARLEY MARKETING ACT AMENDMENT BILL (1988)

Adjourned debate resumed on motion.

(Continued from page 3281.)

In Committee.

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

A quorum having been formed:

Clause 1 passed.

Clause 2—'Exclusion of claims against the board.'

The Hon. PETER DUNN: I move:

Page 1, lines 15 to 19—Leave out subsection (1) and insert the following subsection:

(1) Where money to which the holder of a mortgage, bill or sale, lien or other charge over barley or oats is entitled is paid by the board to another person, the holder of the mortgage, bill of sale, lien or other charge cannot make a claim against the board in respect of the money or the barley or oats unless the board acted dishonestly in making the payment.

This amendment changes the original clause only slightly in that it takes out the clause encompassing the whole of the farming community. It meant that if the board inadvertently or negligently paid the wrong person, there was no claim against the board by that person who delivered wheat and was not paid. That will now be allowable. A person can claim from the board the money owing to him, and the board would then claim from the person wrongly paid.

It is clearer than it was in the original clause. However, I would have liked it a little clearer than it is. I looked at the Victorian legislation, which is all encompassing. It covers farmers as well as financial institutions. This does not cover financial institutions, which are still left out in the cold a little unless they register a bill of sale with the Barley Board. I cannot see why that should not happen, because it happens with the Wheat Board, and I would have thought it a sensible approach by the Barley Board so that it does not have claims against it or would not have claims of any sort against it in the form of persons registering in the wrong name when delivering barley. However, this amendment is quite clear and I move it for those reasons.

The Hon. J.R. CORNWWALL: The Government intends to accept this amendment. I thank the Hon. Mr Dunn for the attention he has given it. Quite obviously, this is not a matter of Party political positions, but a question of amending the Barley Marketing Act as effectively as we can to plug this problem where it is possible for the board, through no fault of its own, to make payment to the wrong person. The sooner we get on with passing this, the better. We accept the amendment because we believe, on balance, that it achieves what the Hon. Mr Dunn intends.

Amendment carried; clause passed.

Title passed.

Bill read a third time and passed.

[*Sitting suspended from 4.50 to 5.45 p.m.*]

MOTOR VEHICLES ACT AMENDMENT BILL (1988)

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

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

This Bill proposes an amendment to the Motor Vehicles Act 1959 regarding coverage under the Compulsory Third Party Bodily Injury Insurance Scheme. A consequential amendment will also be made to the Wrongs Act 1936. In 1986 the Government amended the Wrongs Act 1936 and the Motor Vehicles Act 1959 in order to reduce the pressure on third party insurance premiums. Prior to the amendments, the Motor Vehicles Act 1959 provided for compulsory third party insurance protection against liability for death or bodily injury caused by, or arising out of the use of a motor vehicle. Such 'use' was not further defined.

The 1986 amendments provided for a more restrictive interpretation of the words 'arising out of the use of a motor vehicle'. The reason for the amendment was that the courts had adopted a very expansive interpretation of the phrase which had placed a significant burden on the compulsory Third Party Fund. As a result of the amendment, injuries sustained by a person, other than in consequence of the driving of the vehicle, the parking of the vehicle or the vehicle running out of control, are no longer covered by third party bodily injury insurance.

At the end of 1987, the Insurance Council of Australia wrote to the Government requesting that consideration be given to extending the cover under the compulsory third party scheme. The insurance council cited an example of a situation which would previously have been covered but which would now fall outside the scheme, namely, a cyclist who is injured by the driver of a car negligently opening the car door into the cyclist's path. A number of representations were received expressing support for the view that such a situation should be covered by the compulsory third party scheme.

In the past two months, the Government has held discussions with the Insurance Council of Australia and the State Government Insurance Commission to discuss the need for further amendments in this area. As a result of these discussions, the Government proposes to amend the Motor Vehicles Act 1959 to provide that injuries caused as a consequence of the opening or closing of a vehicle door are covered under the compulsory third party scheme.

In addition, the Government has been advised that members of the insurance industry will examine reinsurance arrangements for comprehensive and third party property damage motor vehicle insurance policies with a view to providing protection against liability for injuries not covered by the statutory scheme, arising out of the use of a motor vehicle.

The Bill provides for a date of operation of 8 February 1987, that is, the date that the Wrongs Act Amendment Act 1986 and the Motor Vehicles Act Amendment Act (No. 4) 1986 came into operation. As a general rule the Government does not support the use of retrospective provisions unless special circumstances exist. In the present case, the Government considers that there are special circumstances as there is a public expectation that injuries caused as a result of the opening and closing of vehicle doors would be covered under the compulsory third party scheme and because drivers may have had difficulty insuring against this liability during the past year.

I commend this Bill to all members.

Clause 1 is formal.

Clause 2 provides that the Bill will be taken to have come into operation on 8 February 1987.

Clause 3 amends section 99 of the principal Act to provide that for the purposes of Part IV of the Act, death or bodily injury caused by or arising out of the opening or closing of a door of a motor vehicle may be regarded as being caused by or as arising out of the use of a motor vehicle.

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

WRONGS ACT AMENDMENT BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

This Bill proposes an amendment to the Wrongs Act 1936 regarding injuries arising from a motor accident. The amendment is consequential to the amendment to the Motor Vehicles Act 1959 dealing with compulsory third party insurance. The amendment will ensure that the meaning of a motor accident for the purposes of the Act is consistent with the coverage of the compulsory third party insurance scheme under the Motor Vehicles Act 1959.

This Bill provides for a date of operation of 8 February 1987, that is, the date that the Wrongs Act Amendment Act 1986 and the Motor Vehicles Act Amendment Act (No. 4) 1986 came into operation.

I commend this Bill to all members.

Clause 1 is formal.

Clause 2 provides that the Bill will be taken to have come into operation on 8 February 1987.

Clause 3 amends section 35a of the principal Act to provide that for the purposes of that section, injury caused by the opening or closing of a door of a motor vehicle may be regarded as arising from a motor accident.

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

BARLEY MARKETING ACT AMENDMENT BILL (1988)

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

ADJOURNMENT

At 5.49 p.m. the Council adjourned until Tuesday 22 March at 2.15 p.m.