HOUSE OF ASSEMBLY

Wednesday 13 April 1988

The DEPUTY SPEAKER (Mr Ferguson) took the Chair at 2 p.m. and read prayers.

PETITION: SEED CERTIFICATION FEES

A petition signed by 18 residents of South Australia praying that the House urge the Government to reduce seed certification fees was presented by Mr Meier.

Petition received.

QUESTION TIME

The DEPUTY SPEAKER: Before calling for questions, I advise that questions that would otherwise be directed to the Deputy Premier will be taken by the Premier, and questions normally directed to the Minister of Lands will be taken by the Minister of Transport.

SUBMARINE PROJECT

Mr OLSEN: My question is addressed to the Premier. In his discussions today with the Federal Industrial Relations Minister about the union bans on the submarine project, did Mr Willis confirm the Federal Defence Minister's endorsement of the three union agreement and, if not, what proposals does the Commonwealth now have for an agreement with unions to allow the project to proceed?

The Hon. J.C. BANNON: Obviously at this stage of the discussions I cannot disclose either their nature or content. Today Mr Willis met for some considerable time with the Australian Submarine Corporation and ascertained its attitude and views. Subsequently the Minister of Labour and I discussed the situation with the Federal Minister from the State Government's perspective. This afternoon he is meeting with the United Trades and Labor Council. I hope that at the end of today's proceedings he will be able to make some sort of statement or announcement about the progress that has been made.

I think it is fair to say that while the situation, as I have said for the past couple of weeks when it has been raised in this place, is of great concern, we are by no means at a breakdown situation or where proper agreement cannot be reached. I hope that Mr Willis's involvement today will aid that process and result in the resumption of the project.

SAGASCO

Ms LENEHAN: Will the Minister of Mines and Energy initiate discussions with the South Australian Gas Company with a view to its adopting a more flexible policy on minimum use charges? Earlier this week I was approached by a constituent who purchased a gas space heater last winter. At the time of purchase my constituent asked the salesperson from the Noarlunga Centre branch office whether there was a minimum gas charge.

He was told that there was no minimum charge. Subsequently, my constituent has received a bill every two months and, for the last two bills, has been charged a minimum of $7.60 despite the fact that he has not used any gas during that period. My constituent has requested that I ask the Minister whether the South Australian Gas Company could send a bill twice yearly to people who are in the same position as him, namely, to people who only have one gas appliance (such as a space heater) which they would use only during the winter months.

The Hon. R.G. PAYNE: The position is that the Gas Company has a minimum charge of $7.60 for a two months billing period. However, I have been assured very strongly, in raising this matter with the General Manager of the Gas Company, that all employees in the company's various sales outlets would be aware of such a charge and would make it known when the query was raised. One would assume that that would include the Noarlunga branch office to which the honourable member referred.

The General Manager pointed out also that the charge does not affect the very vast majority of gas consumers because they use more than enough gas to offset that particular charge. If one has only a single appliance, as this consumer purchased when apparently he made this query, then very likely, as has been pointed out, there would be periods of non-usage. I think that the honourable member would be happy to agree that the minimum charge is based on such things as recovering some of the cost of installing the general distribution system (which makes gas available to customers); the cost of connecting the customer to the system (a cost that is not totally recovered by the connection fee); the cost of the meter and its maintenance; and finally the cost of reading the meter and the billing system.

The honourable member has suggested, in any discussions I might have with the Gas Company, that some greater flexibility might well be instituted with respect to billing customers in that category. I suggest that there could be some difficulty in how one would be able to forecast over a yearly period whether one will only use gas on certain occasions. However, there may be some possibility for flexibility (as sought by the honourable member), so I will have some discussions on that with the General Manager.

If the honourable member will give me privately the name of her constituent, I will also request that the Gas Company send out somebody to have discussions with him and to perhaps achieve a happier resolution in the individual case she has brought to our attention.

CAR INDUSTRY PLAN

The Hon. E.R. GOLDSWORTHY: Can the Premier say what effect on employment levels in the South Australian motor vehicle industry will follow today's announcement by Senator Button of a major acceleration in the introduction of the car industry plan? When the eight year car industry plan was announced in 1984 there were predictions of major job losses in South Australia although these were to be offset by improved efficiency and an acceleration of technological development within the industry.

Today, the Federal Government has announced an accelerated implementation of the plan, with tariff quotas to be abolished immediately, an immediate reduction from 57.5 per cent to 45 per cent in tariffs on passenger cars, with a further reduction to 35 per cent in 1992, and reductions in tariffs on light commercial and four-wheel drive vehicles as well. The Premier has suggested that one of the benefits to come to South Australia from the car industry plan would be the establishment of a Tooling Centre to create up to 700 jobs. However, negotiations with American interests relating to this project collapsed late last year, and there have been no further announcements from the Government.

The Hon. J.C. BANNON: Just picking up that last point, that is not true. The Holden Motor Company has announced its intention to invest in and proceed with the Tooling Centre plan. Indeed, a statement was given to this House by my colleague the Minister of State Development and Technology on that very point. Obviously the Deputy Leader missed it, and I am surprised, because it was a very important announcement. Incidentally, the relationship between Holdens generally in Australia and Toyota has added a new dimension to the possibilities of that Tooling Centre which is being pursued at the moment. We are very optimistic that that will take place.

The questions that the Deputy Leader asked about the changes to the motor vehicle plan stage 2, as it is described by Senator Button, are certainly matters which will have to be looked at very closely by not only this Government but also those involved in the motor vehicle and components industries in South Australia. The important thing is that the changes that have been proposed have in fact been based on the recommendation of the Automotive Industry Authority. That authority in turn, in undertaking a mid-plan review, took part in very extensive consultations with the industry. My most recent discussion with Senator Button on this was one in which he stressed that whatever changes were made—and it was becoming apparent that changes were necessary because of the accelerated pace of the international market and various other factors in the motor vehicle industry—would be ones that the industry would find acceptable, that would not damage the orderly progression of the plan, and in fact would see the industry in the longer term emerge strengthened from it. That is certainly the basis on which the Federal Minister said to me that changes would be made, and no doubt those statements have been made to my colleague, as well.

Having said that, with the announcement just being made, we will have to look at the precise implications for the South Australian segment of the industry, but so far both the motor vehicle industry plan and the changes that have taken place already have in fact worked to the benefit of South Australia's involvement in this industry. We have seen a constant increase, not only in investment, but interestingly enough in the employment as well over the past 12 months or so as the plan develops, and we are very optimistic that whatever changes are made, if they are changes that will benefit the overall industry in Australia, then the South Australian segment of that industry will in fact benefit very profoundly as well because they have restructured and successfully met the challenge of the new plan, and they are in a strong position to meet any changes in it.

If in fact these changes, as is hoped, also stimulate the overall motor vehicle industry and give us greater access to export opportunity, this is to be welcomed. I have no doubt that, in analysing it, we will see that the long term effect will be positive. It is a little too early to ascertain what the immediate effect will be, but if it is adverse, I will certainly take up the question, as will my colleague the Minister of State Development and Technology, and attempt to ensure that the views of our local segment of the industry are represented. I repeat that what has been happening in motor vehicles in this State is extremely encouraging. We have seen ourselves strengthening and consolidating in this very important industry, despite the gloom and doom preached by the Opposition.

The DEPUTY SPEAKER: The honourable member for Briggs.

Members interjecting:

The DEPUTY SPEAKER: Order!

STATE GOVERNMENT INSURANCE COMMISSION

Mr RANN: Can the Premier inform the House whether any investigation has been made of recent allegations concerning the State Government Insurance Commission? In November last year, the Liberal member for Mayo (Mr Alexander Downer) made some serious criticisms—indeed, allegations—against the SGIC. The Adelaide *Advertiser* of 23 November 1987 quoted Mr Downer as saying that the SGIC had used public funds to 'prop up mates and friends who had over-extended themselves in speculative and high risk activities'. It has been put to me that such statements cast serious aspersions on the commercial and financial practices and, indeed, integrity of the SGIC.

The Hon. J.C. BANNON: We have become used to the sort of techniques employed by the Federal member referred to: usually a weekend release of some story involving fairly wild allegations which gets a good run and, ultimately, the truth is discovered or the record is corrected belatedly, nonetheless, the damage has been done. While one feels that this would make the media a little more hesitant about reproducing or repeating some of these extraordinary stories, that was not so in this particular case.

The Hon. TED CHAPMAN: On a point of order, I draw your attention, Mr Deputy Speaker, to the long standing tradition of this Parliament not to cast aspersions on other members of Parliament (in this case, a member of another Parliament), yet the Premier is indulging in that practice today.

The DEPUTY SPEAKER: I do not accept the point of order at this stage. I will listen carefully to what the Premier says from here on.

The Hon. J.C. BANNON: I certainly will not cast aspersions in putting the facts on the record. The question raised by the member for Briggs is about a factual situation. A serious allegation was made. Before me is a press report, which was released by the member, about crony capitalism and propping up mates—the various things that were mentioned by the honourable member in his explanation. The SGIC was named as part of that process in that very serious allegation. Words such as 'conspiracy' and others of that nature were used about the body of which the shareholders are, effectively, the citizens of South Australia. They were serious allegations.

I am the Minister responsible under statute for the SGIC and, hearing of those allegations and the damaging remarks made about it, which could, in turn, affect its reputation and its commercial viability, I asked for a report. At the time, the SGIC said that the allegations were totally baseless and it gave me chapter and verse to indicate it. Meanwhile, the damage was done by the publication of these statements. That is a fact.

Members interjecting:

The Hon. J.C. BANNON: I am sure the member for Alexandra has his own standards of ethics, so I am surprised that he is defending his Federal colleague. He would be doing a better job for his electors to use what influence he has to stop him doing this sort of thing. Last Thursday the Federal member released a statement in Canberra in which he completely retracted the allegations—

Members interjecting:

The Hon. J.C. BANNON: That is right. As the member said, it was a small advertisement in the paper; nowhere near the headlines and radio and television coverage that the original allegation received. It did not receive the same widespread coverage as the original allegation. The member for Hanson is right to draw attention to that fact. It is unreasonable and unfair that the adverse publicity got such

coverage and the retraction did not. It could be attributable to the timing of the issuing of the retraction. The retraction stated that the member regretted any suggestion that he had reflected on the professionalism and ethics of the State Government Insurance Commission in that press release. It further stated:

I never at any time intended to suggest that it has acted with anything but the most professional and honourable of motives.

What an extraordinary statement, in the light of the original release. It continued:

It would be quite wrong to conclude from my press release of 22 November 1987 that I in any way regard the SGIC as unethical. I regard it as a highly ethical organisation and have never at any time had reason to doubt its integrity.

I am sure that even the member for Alexandra, who seems intent on defending his hapless Federal colleague, on reading that press release would have to draw the conclusion that the SGIC was unethical and improper. A charitable explanation of the statement is that it was fairly sloppy research. It represents a kind of hit and run style of politics that we see far too often and in which the State Opposition indulges very frequently, indeed. Serious allegations are launched, usually under the protection of parliamentary privilege, but sometimes, as in this case, without a shred of substance, in the hope that they receive some sort of quick, cheap, easy publicity up front. When it is found that there is no substance in it or it cannot be pursued, no apologies are forthcoming.

We have had crushing examples of that. Even if you are found completely flatfooted, completely inaccurate in the most disgraceful allegations, you do not apologise—you say nothing more. You do not refer to the issue again: it has gone—it is finished. If anyone asks you about it, you pretend that it did not happen. It is a disgraceful way to raise matters of public importance, and I believe that this instance is important to put on the record because, as I say, while the original allegation received all that publicity, the complete retraction did not.

SUBMARINE PROJECT

The Hon. P.B. ARNOLD: In his discussions today with the Federal Industrial Relations Minister, did the Premier inform Mr Willis that the South Australian Government supports the three union agreement negotiated by the Australian Submarine Corporation with the ACTU's endorsement, or did he support the demands of the Trades and Labour Council for the re-negotiation of this agreement?

The Hon. J.C. BANNON: I do not intend to canvass what was said. The position I put to the Federal Minister was on all fours with the position I have put in this Parliament in light of questions on a number of occasions.

Members interjecting:

The DEPUTY SPEAKER: Order!

The Hon. J.C. BANNON: If the honourable member wants to understand the position we are taking in this matter, I simply invite him to refer to the *Hansard* record.

ABORIGINAL EDUCATION

Mr ROBERTSON: Can the Minister of Education say what action has been taken in recent years to enhance participation rates by urban Aboriginal students in South Australia in primary and secondary schools?

The Hon. G.J. CRAFTER: I thank the honourable member for his interest in Aboriginal affairs issues generally since he has been a member of this Parliament. The participation rates of a number of groups in our community are of concern to the Education Department. They include the economically disadvantaged, the disabled, migrant groups, those from minority cultures and, of course, girls, in particular subject areas. A great deal of action has been taken within individual schools and across our system to enhance the educational opportunities these groups have. That has been a major thrust of our education system in recent years.

An important move towards improving the educational experiences of Aboriginal students is the development of a very clear Aboriginal education policy statement. Last month the senior executive of the Education Department fully endorsed a policy statement that has now been made available for further comment to schools in the broader community. The statement provides guidelines for educational action by directors, the Aboriginal Education Section, and principals of schools. The establishment of the reorganised Aboriginal Education Section and the appointment of the Coordinator, Aboriginal Education, in 1986 heralded the provision and coordination of services distinctly for urban Aborigines as a legitimate and important priority in its own right.

In particular, a central schools team was formed, with the focus of the team's collective responsibility being the general education of Aboriginal students in schools other than those specifically designated for Aboriginal students. Recent milestones achieved by the Aboriginal Studies Team include—

Members interjecting:

The DEPUTY SPEAKER: Order! I call the member for Bragg to order.

The Hon. G.J. CRAFTER: —the production of Aboriginal studies R-7 units, the accreditation of the Year 12 Aboriginal Studies syllabus by SSABSA, and the departmental endorsement of the R-12 teaching guidelines for Aboriginal studies. To help improve the attendance of some students—and there has been real concern about irregular attendance of some Aboriginal students and, indeed, amongst those other groups to which I referred earlier—the Coordinator of Aboriginal Education has met with attendance officers of the Education Department, and area coordinators have discussed in detail with their attendance officers possible new measures and strategies.

The establishment of the Warriapendi Alternative School, a small coeducational secondary school serving the needs of Aboriginal and European children who have been at risk in the mainstream secondary system, has increased participation rates, as similarly has the Kaurna Plains school at Elizabeth. The central schools team undertakes research and development and provides associated inservice training to teachers and area teams on such topics as Aboriginal learning styles and teaching methods, and developing and advising on inclusivity programs. This is a range of the initiatives that have been taken in recent years with the intention of improving participation rates of Aboriginal students in our metropolitan schools.

SUBMARINE PROJECT

Mr S.J. BAKER: My question is directed to the Premier. Does he agree that it is vital for South Australia's international reputation that the new Royal Navy submarines are delivered on time, within budget and up to specifications and, if so, will he give his Government's full support to the efforts of the Australian Submarine Corporation aimed at guaranteeing that this happens? In a press statement on 22 December last year, Mr Beazley made clear his view that

the three-union agreement with the Submarine Corporation would be a vital element in guaranteeing the completion of the project without cost blow-outs. I quote from his statement in which he welcomed the agreement:

> A satisfactory union agreement covering the full range of industrial issues including wages, training, skills, quality and health and safety will be important to ensuring that the RAN's new submarines are delivered on time, within budget and up to specifications.

For the sake of South Australia's international reputation, will the Premier endorse Mr Beazley's statement?

The Hon. J.C. BANNON: The answer to the question of how vital this is, is 'Yes, I certainly agree.' In relation to supporting the ASC and others in reaching agreement, yes, we are doing that, too.

PORT ADELAIDE POLICE STATION

Mr De LAINE: Can the Premier, representing the Minister of Emergency Services, inform the House whether there are any plans to relocate the Port Adelaide police station facilities? I understand that the Port Adelaide police station building is considered structurally unsuitable, mainly because of its age, for the necessary alterations required to upgrade the facility for modern policing requirments.

The Hon. J.C. BANNON: Naturally, I am not personally aware of the circumstances raised by the honourable member, but I will certainly refer the matter to my colleague the Deputy Premier to furnish a considered reply.

SUBMARINE PROJECT

The Hon. B.C. EASTICK: Will the Premier initiate urgent discussions with the Chamber of Commerce and Industry to establish which overseas investment decisions affecting South Australia are being delayed by the submarine dispute, so that the Government can assure each investor involved that it does not support these bans, that it condemns the irresponsible behaviour of certain union officials who have imposed them and that it strongly supports the three-union agreement already reached to allow the assembly of the submarines to proceed?

The Chamber of Commerce and Industry has said today that this dispute is making news in business circles overseas and that investment decisions involving millions of dollars have been put on hold because of it. These statements are alarming at a time when the South Australian economy is lagging behind the other States and when our share of investment has dropped significantly in real terms over the past five years. Investors facing this uncertainty could be reassured by a strong Government statement disowning this dispute and endorsing agreements already reached to allow the project to proceed.

The Hon. J.C. BANNON: Apart from the question, there are just so many statements there that I could take up that it would take me all of Question Time. Therefore, I will take up the important one which is the substance of the question. However, in doing that my silence on some of the statements made in the explanation should not be seen in any way as acceptance of those statements. They were wrong, they were misplaced, and badly based.

However, I do not think that I should waste the time of the House in taking them up. In relation to the question itself, as I understand it the Chamber of Commerce and Industry is making a point that I have already made. While the dispute continues, and it attracts this sort of publicity—publicity which is fueled by the Opposition (that is fair enough; it is a matter of public interest and, if the Opposition wants to stir, that is fine)—it is not good for the State or potential investors in the State. The best approach is to ensure that the dispute is settled promptly and that the project proceeds smoothly, and that is the way the Government's endeavours are being directed.

I point out again that so far no work on the site has been affected. I said yesterday, and I have said it on every other day of this dispute, that the impression could easily be gained that because of this argument about the agreement for a forthcoming stage of the work somehow all work has ceased. That is not the case. Throughout that period the contracts that have been let are being implemented. Anyone who visited the site today would see workmen operating. It is important that that continue. It is the next stage of the work about which we are trying to negotiate. I agree with the chamber: we must ensure that the matter is settled. That is the best way to demonstrate to the world that we can get on with the project, that we can do it to cost and do it successfully. I believe that that will happen. However, it certainly will not happen if the Opposition continues to say these sorts of things about it.

TRAVEL AGENTS

Mr DUIGAN: My question is directed to the Minister of Education, representing the Minister of Consumer Affairs in another place. Is the Minister aware of the recommendations of the Australian Federation of Travel Agents to have its members charge a $50 consultation fee for what is now a free service to travellers and intending travellers? Will the Minister immediately discuss the recommendation with the South Australian representative of AFTA with a view to determining what if any benefits would flow to consumers?

In the most recent edition of *Choice* magazine at page 33, under the heading 'Travel Agents on Trial', there is an article about the AFTA recommendation to have its members charge what might be a $50 consultation fee (which is described as a fee that might be about average). It is argued that the fee is necessary because of the time spent on what are termed 'lost sales'. It is argued that members of AFTA should be reimbursed for professional advice freely sought by prospective customers who, once informed, may book elsewhere.

The article goes on to identify the commissions that already apply to travel agents as 5 per cent on existing domestic flights, 9 per cent on international flights and an additional 3 per cent in the off-peak season. The article also gives examples of the fee that would be payable to a travel agent booking a number of trips, and then gives two examples where *Choice* magazine representatives attempted to book trips to Malaysia and New Zealand. It gives their account of the information which they were able to obtain from travel agents and which compares with the information freely available in travel brochures in those agencies.

The Hon. G.J. CRAFTER: I thank the honourable member for bringing this matter to the attention of the House. I will ensure that it receives the attention of my colleague in another place.

SUBMARINE PROJECT

Mr BECKER: Is the Premier's reluctance to condemn the union bans on the submarine project due to the fact that, as national President of the Labour Party, he is afraid to

further antagonise the left wing of the Party which did not want him as President in the first place?

The Hon. J.C. BANNON: My statements on this matter have been made with a view to ensuring that the dispute is settled and that work continues. I have confidence that that will be the case. When that occurs members will realise why I have said and done these things during the course of this dispute.

WOMEN APPRENTICES

Ms GAYLER: My question is directed to the Minister of Employment and Further Education. What steps has the Government taken to improve its performance in increasing the number of women apprentices in Government departments and statutory authorities in line with its equal opportunity policies? In spite of efforts since the 1970s, South Australian women tend to occupy a limited range of occupations and relatively less well paid occupations than men. It is increasingly important for women to have independent financial means and security for a variety of reasons. It is important to break down segregation in the work force and to ensure comparable opportunities particularly in a variety of skilled trades—

Members interjecting:

The DEPUTY SPEAKER: Order!

Ms GAYLER:— and I am advised that in the Government work force recruitment of women in prevocational trade courses was 5.9 per cent of the total recruitment in the period to December 1987. That amounts to nine women compared with 143 men in that period recruited and guaranteed apprenticeships in the public sector work force.

The Hon. LYNN ARNOLD: I thank the honourable member for her question, which is very important and one which the Government has been anxious to address. In September last year a report was given to me by the South Australian working group on women in apprenticeship which was convened in February last year to examine what alternatives could be considered to improve the situation. That report was presented to Cabinet and endorsed by it in late 1987.

As a result of the endorsing of that report we examined the question of setting targets within apprenticeship areas in Government employment—targets we would set for participation by women in those apprenticeship trades. To do that we needed exemptions under the Equal Opportunity Act 1984 from sections 30 and 103. Under section 92 of that Act, I can advise that today we have received from the Equal Opportunity Tribunal exemptions from sections 30 and 103 to enable the Office of Employment and Training to recruit apprentices on behalf of Government departments.

The honourable member has identified that the figure of those going into recruitment or prevocational courses in a situation where they are guaranteed a transfer into an apprenticeship sees only 9.5 per cent of the successful applicants (namely, nine) being women. This decision today will allow us to set targets over the next few years that will see an increase in the number of women who successfully gain admittance to that area. The targets vary from trade to trade: for example, in each of the areas of electrical, carpenter, joiner and cabinet-maker it will be 10 per cent; 20 per cent in the light motor vehicle apprenticeship area; 25 per cent in the radio trades; 50 per cent in the gardener/greenkeeper area; and 40 per cent in each of the painting and printing areas.

Where young women successfully complete an interview for prevocational places leading to apprenticeship positions, if they are successful in Government departments and are able to convince the panel that they will be likely to successfully complete an apprenticeship, then up to the level of those target figures set they will be offered a position. By 1990 or 1992 in the electrical area 90 per cent would therefore still be the non-targeted area and only 10 per cent would be targeted. In other areas, as I say, in the gardener/greenkeeper area, it will be up to 50 per cent. Members may say, 'Surely that is discrimination against young men who will be denied positions in those areas.' The facts are that we have had an ongoing discrimination situation in the work force that has been getting worse and worse over the years while there have been modest increases in the number of women participating in traditional trades. The participation of women in the work force generally has been quite dramatic. It is to be noted that the participation of women in the general work force since 1947 has increased from 25 per cent to 50.1 per cent. Yet that does not reflect itself in these non-traditional trade areas that we are talking about.

Two other points need to be acknowledged. One is the way in which apprenticeship panels have been interviewing the applicants for prevocational places or for apprenticeship places. It is true that there has had to be some work done on talking through some members of the panels about the sorts of different issues that apply for women applicants so that they are not discriminated against in the interview process. The other point is that, if these target figures had applied last year, instead of employing only nine out of the 143, 25 would have been employed. Those extra 16 were deemed, from the basis of going back over the records and going back over the interview panel assessments, to have been those who were considered by the panels to be eligible to have successfully completed an apprenticeship position and who ranked highly in the scores.

In other words, they received scores of 15, 16 or 17 out of a maximum of 20 in those interview situations. At that area, a score of 17 out of 20 is marginal, but what was happening time and again is that male applicants were getting 18 or so and defeating those potential women applicants who could have got those targeted positions. So, it really is very much at the margin, and we think on that basis it is certainly very reasonable that we should endeavour to set these target figures, because the report that was tabled to Cabinet and which we are now acting upon suggested that other strategies clearly were not working fast enough.

It is to be noted that in non-traditional areas the number of women in apprenticeships generally in South Australia in training at the moment is 4.4 per cent. The number of those who commenced in 1986-87 was 5.1 per cent. That is in fact an improvement on 4.4 per cent, but a rate of growth of improvement of 0.7 per cent a year would see us taking a very long time indeed for a reasonable participation in the non-traditional trade areas by women. So, it is felt that, with respect to Government employment over which we can have this degree of control, we should be doing something very positive, and I am very pleased to announce that decision today and am very pleased to have received the exemption from the Equal Opportunity Tribunal.

By way of providing information to members of the House, I have three tables: first, the total South Australian apprentice in training August 1987, gender by trade group; secondly, details of Government centralised recruitment to prevocational courses—December 1987; and, thirdly, the 1990-92 targets for Government apprenticeships (centralised recruitment scheme) as per the report of the South Australian working group on women in apprenticeship. I can attest

that these are purely statistical in nature, and I seek leave to incorporate them in the *Hansard.*

Leave granted.

TOTAL SOUTH AUSTRALIAN APPRENTICE IN TRAINING AUGUST 1987 GENDER BY TRADE GROUP

Trade Group	Female	Male	Total	Female %
Metal*	48	3 579	3 627	1.3
Electrical	40	1 194	1 234	3.4
Building	23	1 503	1 526	1.5
Printing	66	304	370	17.8
Vehicle	8	627	635	1.3
Food	181	847	1 028	17.6
Clothing	2	4	6	33.3
Footwear	0	32	32	0
Furniture	6	547	553	1.1
Ship and Boat Building	1	18	19	5.2
Other (Including Gardening and Farming)	54	609	663	8.1
Sub Total	429	9 264	9 693	4.4
Hairdressing	1 281	262	1 543	83.0
Total	1 710	9 526	11 236	15.2

Source: COSTAC Table 12J—Industrial and Commercial Training Commission.

* Includes Automotive Mechanics

DETAILS OF GOVERNMENT CENTRALISED RECRUITMENT TO PRE-VOCATIONAL COURSES DECEMBER 1987

Trade Area	Applications Received F	Applications Received M	Female % of Total	Applicants Interv'd F	Applicants Interv'd M	Female % of Total	Success Appl'ts F	Success Appl'ts M	Female % of Total
Metal*	34	488	6.5	21	307	6.4	0	72	0
Electrical	5	327	1.5	3	237	1.3	2	45	4.3
Building	3	299	1.0	3	119	2.5	0	21	0
Printing	7	48	12.7	6	18	25.0	2	2	50.0
Vehicle	0	0	0	0	0	0	0	0	0
Food	46	64	41.8	20	23	46.5	4	1	80.0
Clothing	0	0	0	0	0	0	0	0	0
Footwear	0	0	0	0	0	0	0	0	0
Furniture	0	0	0	0	0	0	0	0	0
Ship and Boat Building	0	0	0	0	0	0	0	0	0
Other (Including Gardening)	19	99	16.1	6	19	24.0	1	2	50.0
Hairdressing	0	0	0	0	0	0	0	0	0
Total	114	1 325	7.9	59	723	7.5	9	143	5.9

* Includes Automotive Mechanics

1990-1992 TARGETS FOR GOVERNMENT APPRENTICESHIPS (CENTRALISED RECRUITMENT SCHEME) AS PER THE REPORT OF THE SOUTH AUSTRALIAN WORKING GROUP ON WOMEN IN APPRENTICESHIP (P16)

Trade	Trade Area	Proposed 1990 Targets %
Electrical	Electrical	10
Radio Trades	Electrical	25
Gardener/Greenkeeper	Other	50
Motor Vehicle (Light)	Metal	20
Painting	Building	40
Printing	Printing	40
Carpenter/Joiner	Building	10
Cabinet Maker	Building	10

The Hon. LYNN ARNOLD: I believe that this will indicate the nature of the situation at the moment which we are seeking to improve. A number of members on both sides have suggested that we should be doing something, and you can now hear, Sir, that the Government is in fact doing something very positive.

ADELAIDE CASINO

The Hon. D.C. WOTTON: I direct my question to the Premier. Does the Adelaide Casino have the support of the Government in its move to reduce penalty rates paid to its employees? At a Federal Conciliation and Arbitration Commission hearing in Sydney today, the Adelaide Casino is applying to abolish weekend and late night penalty rates for casual employees, reduce Sunday penalty rates for permanent employees, and make other significant changes to employment conditions, including the introduction of split shifts and the reduction of annual leave and rest breaks.

The Lotteries Commission is the licensee and operator of the casino and is subject to the control and direction of the Premier. In its latest annual report, the commission has said that its major role as licensee is to ensure that the casino operates as a viable enterprise, meaning it has a vested interest in having operating costs reduced through action the Arbitration Commission is being asked to endorse today. It would appear that this application to the Arbitration Commission could not have proceeded without the Premier's knowledge, given his overriding responsibility for the Lotteries Commission, and it therefore suggests a new attitude by the South Australian Government to the issue of penalty rates, given its refusal in the past to endorse any move to reduce costs in the hospitality industry.

The Hon. J.C. BANNON: No, it does not. I am not aware of the circumstances of the application, who is joined in the action, under what conditions and with what arguments. The employment conditions under which the casino operates are not controlled directly by the Government. Operators are hired to run the casino and they are doing it well in the sense that the casino is making a very good return to Government. The Government's position on this application has not been determined, nor has it been asked to determine it. I am interested in following up the matter that the member has put before me. I place on record that the Government is not involved in disturbing the national standards in terms of penalty rates and working conditions.

ETHNIC HOUSING

Mr ROBERTSON: Can the Minister of Housing and Construction say whether the Housing Trust has given any consideration to meeting the specific housing requirements of the various ethnic communities in South Australia? In particular, has any consideration been given to the kind of internal and external design features that would more easily accommodate extended families?

A 1987 trade journal published a paper entitled 'Housing for all people: back to basics in housing for Polish, Turkish and Indo-Chinese people in Melbourne, Australia'. Authors

Burnley and Sarkissian undertook a study funded by the Australian Housing Research Council and conducted for the Victorian Ministry of Housing which set out to establish what specific housing requirements would enable ethnic groups to express their cultural background and accommodate their lifestyles. The study concluded that most ethnic groups had a strong preference for detached housing as opposed to high rise housing and most expressed broad identification with mainstream Australian aspirations. In the light of that study, has the Minister considered tailoring trust housing to meet the needs of ethnic communities?

The Hon. T.H. HEMMINGS: Over the years, the Housing Trust has liaised, as it will continue to do, with a number of ethnic communities on housing matters. In fact, it liaises with all sections of the community. I am sure that members would be well aware that on that basis lies the strength of the Housing Trust to meet the needs of all sections of the community. In his explanation, the honourable member drew attention to a Victorian study funded by an Australian Housing Research Council grant which, I understand, drew heavily on the South Australian experience in its report to the Housing Ministers meeting.

Of late, the most typical request has been for the provision of independent living units for elderly migrants and some successful joint venture projects have been undertaken for this form of housing. However, over the years, on many occasions the trust has faced a problem of providing accommodation for large families and it has found solutions in a variety of ways. Of these, the most common was the four-bedroom house with the largest bedroom capable of being used as a dormitory. Considerable use has also been made of portable sleep-outs, which are relatively easy to place on site and remove when they are no longer needed. On a few occasions the trust has converted an existing pair of double units or a duplex, as it is known, to a single house in order to accommodate a very large family. In all, in recent years the shift in demand for trust accommodation has been towards smaller dwellings.

DIRECT FLIGHTS TO JAPAN

Mr OSWALD: Does the Premier expect his forthcoming visit to Japan to result finally in an announcement of direct flights between Adelaide and Japan? For the past six years, the Government has been making promises about this matter.

I refer for example to the Premier's 1982 election policy speech in which he promised, 'to secure a direct Tokyo-Adelaide air link'. In the *News* on 29 October 1984 he said that Japan Airlines 'have expressed interest in servicing South Australia,' while in the same newspaper on 4 December last year the Minister of Tourism (Hon. Ms Wiese) was quoted as saying that Qantas would consider extending its Tokyo-Perth flights to include Adelaide.

The Hon. J.C. BANNON: The honourable member is quite right to draw attention to the very strenuous efforts we have made over the past few years to try to secure those direct Japan flights. Both the present Minister of Tourism and her predecessor spent a lot of time and effort on it. I have done the same, both in Japan and at the national level, but it has been a very difficult and very elusive area, one in which we have not been able to secure success. The closest we have come is the present Interlink service which goes from Adelaide International Airport via Sydney. We have not secured those direct flights. Yesterday an announcement was made that there would be a large increase in flights to and from Japan to cater for the tourist trade, in particular. As I read it, although all of these flights have not yet been allocated, most of them have been centred on the eastern coast, that is, destinations such as Cairns, Brisbane and Sydney, as has been the pattern so far.

However, I can assure the House that we are still bending all our efforts to try to secure more direct flights. On this trip to Japan both I and the Minister of Tourism will have the opportunity to raise the issue but, in direct answer to the honourable member's question, no, I do not expect us within the next week or so to announce that we have been successful. It is a very difficult matter to convince the international airlines to trade off the Ports of Destination Agreements to ensure that there is a direct flight from Adelaide. It remains a priority, and one which we will pursue.

TRADE WITH SOUTH AFRICA

Mr RANN: Can the Minister in charge of services and supply inform the House whether the South Australian Government has a policy prohibiting the purchase of goods and equipment from the South African apartheid regime?

The Hon. G.F. KENEALLY: I point out to the Premier that I have been addressed in these terms as the Minister of Services and Supply. The Minister of Transport is responsible for the Department of Services and Supply. In any event, the question is directed to the right person. I will not make any statements about the apartheid regime in South Africa that are in any way contrary to the Federal Government's position. We have an excellent Minister of Foreign Affairs (Mr Hayden) who puts very clearly on the world record Australia's abhorrence of this unjust system imposed upon a significant majority of the residents of South Africa.

I think that that is a view that expresses the overwhelming attitude of Australians, whatever their political philosophy. Sad to say, there are some conservative elements that tend to disagree with the present and previous Australian Government's attitude towards South Africa, and these conservative elements seem to support what goes on in that unfortunate country. Some two years or so ago the South Australian Government made a decision to support the Federal Government's sanctions against South Africa. These sanctions included, of course, trade sanctions that were placed with the intention of fostering peaceful change within South Africa.

The Commonwealth Government's policy prohibits Commonwealth Government departments, statutory authorities, and other instrumentalities from contractual relationships with companies in which either individual or corporate South African persons in aggregate have a majority interest, and the purchase of supplies of South African origin. The Federal policy also requires contractors for Commonwealth Government business to agree not to enter subcontracts with any companies having a majority South African ownership, nor to use supplies of South African origin in the performance of Commonwealth contracts. The policy is applied strictly for contracts in excess of $20 000, with a 'best endeavours' approach below that level.

I am aware that Victoria, with South Australia, has adopted the Federal Government's policy and I certainly hope that other States will also adopt this policy. It is likely that recent changes in Queensland will encourage that State to join the Federal Government and other States in this humane and reasonable attitude towards this vexed question.

The Government's position as conveyed to the State Supply Board, which operates under its own Act, is quite clear. We support the Federal Government position and, as Min-

ister, I have told the board that it should have an account of the Federal Government's policy and should apply that policy to contracts, either for services or the purchase of goods in South Australia. There has been very little offered to the South Australian Government through the Supply Board that has any component of South African origin: therefore, we do not have a tremendous problem. The Federal Government's policy is obviously very effective.

There can be difficulties with a piece of equipment that the Government wishes to buy, as there may be components of South African origin that may not be apparent. I believe that every member would understand those difficulties. As far as it is possible to identify components, the policy of sanctions will apply. I believe that the policy is correct and we will play our part in the Federation, as the State of South Australia, in ensuring that our nation's foreign policy in relation to South Africa is as effective as it possibly can be with the intention of fostering this peaceful change within that nation.

CAR INDUSTRY PLAN

Mr S.J. BAKER: Can the Premier say whether he was consulted about the final decisions announced today by Senator Button in relation to the car industry plan and, if so, what representations did he make about the impact on South Australia given the report in this afternoon's *News* that the local car industry will have a desperate fight?

The Hon. J.C. BANNON: First, the *News* report, as I read it, is simply drawing attention to the fact that one of the impacts of this change in the car plan, and one which, of course, the Federal Government is inviting, is that imported goods will be cheaper, and to that extent imports will become more competitive. However, I have every confidence that our local industry, particularly when one sees some of the products being launched, including the new Holden that is due out soon, is more than holding its own. Therefore, I do not believe that we should feel unduly concerned.

With respect to the question of consultation in terms of the detail of the plan, the answer is 'No'. This plan came about as a result of the mid-term review undertaken by the Automotive Industry Council, which then reported to the Minister who, in turn, made his decision. However, as I have already said in answer to an earlier question, both the Minister of State Development and Technology and I have had quite extensive discussions with the Federal Minister on this issue of our attitude to changes in the car plan. In turn, the Minister has assured me and my colleague that in his deliberations there was considerable consultation with the industry. The extent to which the final decision reflects that consultation will probably be revealed over the next couple of days.

EASEMENT DISPUTE

Ms LENEHAN: Will the Premier ask the Minister of Water Resources to initiate an investigation into a dispute between the E&WS Department and one of my constituents with the aim of resolving that dispute? On Monday of this week I was approached by a constituent who purchased a block of land last October for $26 000 in the new Woodcroft area of my electorate. At the time of purchase my constituent was aware of a 3.5 metre E and WS easement. About three weeks after legally purchasing the block he was informed by the E and WS Department that the easement had been extended to 7 metres. Despite the fact that the department has accepted liability for this changed situation, it is prepared to offer only $400 in compensation, while my constituent, after consultation with a real estate agent, believes that he should receive $3 500.

The Hon. J.C. BANNON: I thank the honourable member for her question. I will certainly refer the matter to my colleague the Deputy Premier to provide her with a considered reply.

COMPANY LAW

Mr MEIER: My question is directed to the Premier, representing the Minister of Labour. What action, if any, will the Government take to prevent future appointments of an agent as mortgagee in possession of a business on behalf of a company which has a debenture over stock and plant of the business? Recently an engineering firm, trading as JAWCA Pty Ltd, in my electorate was taken over by an agent acting as mortgagee in possession. By using this method instead of receivership the takeover firm did not have to pay wages or holiday pay to the 15 employees. Among other things, the agent asked for all moneys to be handed over. Consequently, the manager handed over $4 300 in cash which had been set aside for the employees' wages for the previous week.

The following day was pay day, and the agent and the company for which the agent was acting refused to pay out to the workers the wages for the previous week. The next day the workers were sacked. Despite my representations to the Minister of Labour nothing could be done to get back the money owed to the workers for the work done in the previous week, let alone their holiday pay. Almost two weeks ago an article in the business section of the *News* by a Mr Austin Taylor advocated the increasing use of this method of appointing an agent rather than a receiver because it provides a method of escaping tax liabilities and, as I have indicated, places the interests of workers last.

The Hon. J.C. BANNON: I thank the honourable member for his question. I guess in the case of some questions even though an explanation is given none is really needed because the question is self-explanatory. In this case quite clearly the explanation is an integral part of the question and raises a specific problem illustrating the general question asked by the honourable member. I will refer the question to my colleague the Minister of Labour and ask whether he will investigate and provide the honourable member with a report.

LOTTERY AND GAMING ACT AMENDMENT BILL

Returned from the Legislative Council without amendment.

The DEPUTY SPEAKER: Call on the business of the day.

ASSENT TO BILLS

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

Road Traffic Act Amendment (1988),

Strata Titles.

CRIMINAL LAW (SENTENCING) BILL

In Committee.

(Continued from 29 March. Page 3667.)

Clause 2—'Commencement.'

Mr D.S. BAKER: When will the legislation come into operation; in other words, what is the date of proclamation?

The Hon. G.J. CRAFTER: No final date has been decided, but it is expected that it will be 1 July.

Clause passed.

Clause 3—'Interpretation.'

Mr D.S. BAKER: This clause includes prescribed units which, for a term of imprisonment, are fixed at $50 per unit; and where community service is to be worked off it is $100. Why is community service worth double the number of units compared with a prison term?

The Hon. G.J. CRAFTER: Because that is the existing law. I indicate that I have an amendment to this clause. I move:

Page 3, after line 11—Insert new definition as follows:
'sentence of indeterminate duration' means detention in custody until further order:

The amendment inserts a new definition, which relates to a subsequent amendment to clause 20.

Mr D.S. BAKER: I think it really is an insult to this Committee that we had handed to us not 20 minutes ago six pages of amendments, most of which deal with sentences of indeterminate duration. During the second reading debate I said that in the past the Government may have attempted to alter section 77 of the Criminal Law Consolidation Act to remove habitual criminals and people who have sexual problems from the category of sentencing at Her Majesty's pleasure (and therefore away from the Government), allowing the courts to decide. I think it is a cop-out and I think the Government is abdicating its social responsibility by leaving it to the Supreme Court and not to the Governor's pleasure, under the control of the Minister.

I strongly oppose the fact that these amendments have been handed to us at this late stage. I think that, as there has been no chance whatsoever for anyone to have a good look at what is being introduced and to cross-check the amendments against the legislation being amended, the Minister should report progress and give the Committee time to seriously consider their ramifications. I strongly oppose the introduction into this legislation of sentences of indeterminate duration. So that we can look at this Bill as it should be looked at, I ask that the Minister report progress to give us time to look at these eight pages of amendments.

The Hon. G.J. CRAFTER: I will clarify this matter for the honourable member. First, the amendments were on file last evening. Indeed, I gave a copy of them to the honourable member for Mitcham who, under normal circumstances, takes these measures for the Opposition in this place. I apologise that I did not personally give a copy to the honourable member who has the conduct of this measure for the Opposition in this place. However, I also point out that these amendments are not of a surprise nature; they were the subject of discussion in another place, and the Attorney there indicated that he would bring down these measures in this place for our further consideration. So, they are certainly not of any surprise nature and it is appropriate that they come in in this form and that we now debate them.

Mr S.J. BAKER: I must apologise to my colleague because, after receiving from the Attorney the amendments which the Minister gave me last night, and after looking at them and getting a response from my colleague in another place, I unfortunately did not give my colleague a copy—and that remains my responsibility. The Opposition is diametrically opposed to the shifting of these areas away from the criminal law legislation and the associated Acts relating to young offenders and children into a sentencing Bill. We believe that the law should be complete. If we look at the change which is mooted today and which failed in another place, we will find that all we are doing is helping the legal profession because, if we refer to the enabling provisions being used in this amendment (which is consequential on the one we are dealing with), we find that the sentencing Bill will have to contain a number of references back to the Criminal Law Consolidation Act.

What are we trying to achieve if we take the law from one area and put it into another, and make it more difficult for people to interpret? On the basis of the law as it presently operates, we are creating greater confusion by this move. First, there should not be a change of this nature. Secondly, it has no place in the sentencing procedures of the Bill. We are talking almost of a compound offence in each of these cases. We are talking about people who are unable to control themselves sexually and who are required to be kept in secure circumstances until their behavioural patterns are sorted out. We are talking about habitual criminals who have committed a number of serious offences and who continue to commit offences despite the fact that they have suffered penalty in the past.

It indeed is a compound offence. As a compound offence it should remain in the criminal law statutes and in the other areas which deal with these matters. It should not be in the sentencing Bill, and we know that it has been included because the Government wishes to cast aside its responsibility in determining when a person with an indefinite sentence should be released from the prison system. Historically in this State the Governor (on the recommendation of the Minister obviously) has to make a determination, and that must be based on a thorough investigation by the Parole Board with the recommendation to the Governor that that person either remain as is or be referred for release on licence.

It is very neat for the Government to now say, 'We don't like making these decisions because we may have to be accountable. What we are going to do is make it a province of the court. When we believe that someone has a reasonable chance of being set free we are not going to make that decision any more; we are going to leave it up to the courts.' Of course, the courts have not seen these people for the past five, 10 or 15 years; but the Government has. These people have been in the institutions for those periods of time. The Government has the resources to make a decision—the psychologists and parole experts who can determine whether it is possible to free a person with some sort of control so that they do not re-offend. However, the Government does not want to take the responsibility.

The Liberal Party does not believe that this should change. We believe that the Criminal Law Consolidation Act provides quite adequately for this. If one reads the definition of 'habitual criminal' one has to go through this long list of offences that would qualify if that prisoner had committed two or three or more offences and they fit into these different categories. The Government is making an ass of the law and, at the same time, is trying to duck its responsibilities. The Opposition is vehemently opposed to this measure and will divide on it.

The other place made its thoughts known on this subject. Indeed, the Attorney-General tried to do a little bit more than this: he determined that the courts were going to decide on their ultimate disposition irrespective of the necessary reports we have seen in the past. Because of the opposition

to the move that the courts have ultimate disposition irrespective of the state of the prisoner in it, the Attorney has come up with these amendments, which are additional to the existing ones and to the changes he mooted, in an attempt to say, 'It will be all right, because we will have these extra provisions in the Act.' Well, it is not all right.

The Opposition is fundamentally opposed to the proposition. Clause 3 is the beginning of the package of clauses which enable the Minister and the Government of the day to shift responsibility from themselves to the courts and to confuse the law in this State. We certainly have enough confusing law in this State already.

The Hon. G.J. CRAFTER: The debate on this clause has become more all-embracing and concerns, I think, clause 20. So, I will comment on it at this stage and it will save us going over these arguments again when we are dealing with the amendments to clause 20 which, in effect, bring into play the clauses to which members referred. I think that the member for Mitcham, and indeed the member for Victoria, have raised some fundamental issues with respect to the separation of powers under our Constitution, and that is, who in our system is responsible for sentencing and for the function of the judiciary and what is the role of Administration *vis-a-vis* the role of the judiciary.

There seems to be a blurring of these roles in the argument that has been canvassed by Opposition members in this instance. I suggest that the responsibility for making a decision of the type to which we are referring (that is, when is an appropriate time to release from incarceration an offender of the type referred to in this measure) is more truly a role of the judiciary rather than of the Administration.

It needs to be very clearly put into the realm of an objective judicial tribunal, and in this case it has been vested in the Supreme Court, the highest judicial authority in this State, where, sure, all of the matters that are the knowledge of the Administration, of those who are working in our corrective and mental institutions, can be brought before that tribunal, can be heard and argued in an objective forum, and then an appropriate decision can be taken.

The current method of leaving this to the Cabinet and to the Governor in Executive Council does leave open the criticism that there is not fair play at times or, indeed, questions of timing of release etc. are open to suggestions of political influence and the like. It needs to be eliminated totally from the equation in these matters and put fairly and squarely in a judicial and objective forum, indeed, the highest judicial forum that we have in this State. That is why the Government is intending to move in this direction, and that is the sole reason why it is seeking to do so. It is not a matter of avoiding any responsibility. It is a heavy burden that can be placed on any individual Minister and Ministers collectively in Cabinet to make these recommendations. The Government and I believe that it is heavy because it is not the true function of a Cabinet Minister or, indeed, the Cabinet, to make these sorts of judicial decisions. It is for those reasons that we advance the provisions in the form that we do.

Mr D.S. BAKER: It would seem to me that the Minister or the Governor should retain the powers that they have because the community has demands on those of us today and on the Minister to act and react in certain circumstances. It would appear to me that if someone was a habitual criminal—a sex offender or whatever—and was incarcerated at the Governor's pleasure, if some crime was perpetrated against society generally, it would be in the Minister's or the Governor's interests not to release that person at that specific time.

We have seen some quite horrific murders in Victoria as a result of deranged criminals murdering 10 or 12 people. I would have thought that the Minister responsible would not have been wanting to release people who were of a sensitive nature into the community at that time because of the community backlash. I would have thought it was for the person's own protection on many occasions and the change in community attitudes that those people should perhaps in that case remain incarcerated at the Governor's pleasure. If the person went before the Supreme Court, those relative functions would not and could not be dealt with concerning such things as the attitude of society generally at that time.

I would have thought that the Minister really has to explain to us why it is not in the interests of all concerned that the Bill stay as it is, as it has been for many, many years. There are overwhelming reasons, especially the ones I have just explained, why it should not go to the Supreme Court, where they may not be able to act as quickly and as effectively in the interests of all parties, especially when community attitudes are considered.

Mr M.J. EVANS: Perhaps I could start by expressing my very grave concern, like the member for Victoria, that these very substantial amendments were not circulated previously. Unlike the Opposition, I have not had the courtesy of a copy of them before today, so I find it very difficult to contemplate such massive changes to the Bill before us within half an hour of coming here after Question Time. I remind the Minister that there are other people in this Parliament apart from the Opposition, and perhaps when he is distributing amendments in the future he might like to extend that courtesy a little more broadly, as I did with my amendments to this related package of measures, particularly when they are of such substance. It is understandable when the amendments are trivial, but when they are of such substance, all members should be shown that courtesy, particularly at the end of a session.

Having said that, I certainly do not object to the principle which the Minister is seeking to put forward. We seem to be debating the whole question of this transfer of the provision from the Governor's pleasure in effect to the Supreme Court on the basis of this one clause. On that assumption, I ask the Minister to talk about the actual criteria to be applied on this basis. I realise the detail of this will be discussed in the Criminal Law (Sentencing) Bill, but these are a related package of measures and the debate seems to be broadening at this stage. So as not to lose the opportunity, I ask the Minister, given that previously the Governor in fact has undertaken this task and that for very proper reasons, as he has explained, this is to be transferred to the judiciary, on what criteria will those decisions be made?

The Minister may want to tackle this question now or perhaps when we discuss the other Bill later, but I believe that those fundamental criteria must be looked at. Nowhere in these amendments—and I have only had the opportunity to look through them very briefly—do I see the basis or criteria on which the decisions are to be made. As the Minister said, the judiciary is capable of acting in a much different way from the Executive. They take in different questions, and act in a more impartial and clear cut way on behalf of the rules of law, but they must have criteria for that decision. As far as I am aware, this Bill does not contain those criteria.

The Hon. G.J. CRAFTER: First, I do apologise. I was actually walking around last night with copies of the amendments in my hand. As the honourable member gave me a copy of his amendments, I assumed that he had received those being distributed and put on file at that time. There

was certainly no intention not to provide that information to the honourable member, knowing his interest in this measure, and having received a copy of his amendments to it.

The criteria that the honourable member seeks is referred to on page 5 of the volume of amendments that we have before us. Indeed, we are debating these amendments before they are officially before us in the Chamber. I refer the honourable member to subclause (12), which requires the Supreme Court not to discharge an order for detention unless it has first obtained and considered the report of at least two legally qualified medical practitioners, each of whom has independently examined the person, and having taken into account both the interests of the person and of the community, and where the court is then of the opinion that the order for detention should be so discharged. There are there quite specific criteria. As the honourable member acknowledges, a different process takes place prior to there being a decision taken where the court is used rather than administrative processes.

Mr M.J. EVANS: I will certainly take up that matter when we get to the amendments in Committee. I thank the Minister for pointing out the relevant area.

Mr S.J. BAKER: The Minister is getting somewhat confused. If we use the explanation given to my previous question, it would mean that, if the Government is to make a decision, it will have to refer it to the courts all the time. The fact is that prisoners have been in the care and custody of the Department of Correctional Services or the Department for Community Welfare on an indeterminate sentence. That means they have to be continually assessed, as this Bill demands. They have to be looked at on the basis of whether they will be freed into the community.

There is a difference in the court procedures. The courts actually consider offenders on the basis of the evidence available to them. They may come because they have committed an offence within or outside the prison system. So, there is a clear cut case where the law has to make a determination on the basis of the facts, and where a person is guilty and they have to make a determination as to sentence. In this case, the Government institutions have the care and custody of these people. They employ the people to assess the ability of a prisoner to be able to live in the wider community.

It has nothing whatsoever to do with the courts, and the Minister knows that. The courts do not have any basis upon which to make judgment. This is getting to the ridiculous stage at which the time of courts will be tied up reviewing all of this evidence. What a ridiculous waste of time when there are waiting lists for very important cases of six and 12 months. Yet the Government wants to overload the courts with more.

It is not up to the courts, because they will not consider applications on the basis of the facts of the case as they relate to the offence; they will determine whether that person should be let free. When we talk about sentencing, the courts must make a determination, on the basis of the information whether, if that person has committed an offence, he should be let free on a bond, given a community service order, or put in prison. In this situation, the courts have nothing but bits of paper upon which to base a decision as to whether a prisoner has behaved himself to the satisfaction of the institution concerned, and whether the psychiatrists have any reservations and require that certain limits be placed on any freedom, or certain medical attention being given during that freedom, which would often be the case.

This measure will waste everyone's time and remove responsibility. The Government has all the evidence. I assume that the Parole Board would be competent to make such decisions. Amendments to the parole legislation have already been debated, and it is fascinating that the Minister has decided to give the courts something outside their jurisdiction through this Bill. The Opposition is opposed to the measure.

The Hon. G.J. CRAFTER: I will clarify the points that have been reputed to me by the member for Mitcham about what I know and believe. A person serving a sentence under the provisions that are now being debated does so as a result of the judicial process. That person has appeared before a court and has been sentenced to an indeterminate period of imprisonment. The decision that is taken as to whether that sentence is to be discontinued or extended is clearly a continuation of the sentencing process, and to argue otherwise is illogical.

Who should make that decision? The Opposition argues that it should be people other than those performing judicial functions and that it should be a group of politicians, who cannot call witnesses and, in many cases, do not have any formal legal training. The Opposition argues that they should make decisions with respect to the length of sentence of an offender. The member for Victoria used the words 'react to a given situation' and it would be open to criticism that Cabinet did react or respond to a whim or some pressure in the community and did not go through the process of a court in hearing all the relevant information and making an objective decision on those facts. I do not say that there is evidence of that in the past, but the fact that the present process is open to criticism is clearly undesirable.

With respect to the statement that this measure will waste the time of the court because of repeated applications before it, I point out that section 20d (4) provides for some brakes, and gives power to the court to limit repeated applications. Clearly, the court can call before it the evidence of the doctors that are referred to in this Bill—the specialist medical evidence—and any other witnesses, whether they be persons within institutions or from the community or members of the offender's family. In that way, all the relevant evidence can be brought before the court, and the appropriate decision made.

Mr D.S. BAKER: I cited a couple of cases that the Minister did not reply to. With this amendment, an offender who is incapable of controlling sexual instincts may be able to apply to the Supreme Court. If for valid reasons that person is thought to be fit to be released into the community, that decision would be made on the evidence put before those defending him. However, if some very horrific sexual crimes had been committed at that stage, the community would demand, in the interests of the person who is to be released and of the general community, that the person should not be released at that time. That is why, as the Minister said, 'at the Governor's pleasure' means that there is some political say in it. I would have thought that no better person than the Minister would be able to sniff the wind regarding the community's attitude to not wanting a person being released if his life may be at risk by being released.

That is the very important point that the Opposition is making. It cuts both ways. It is most important that the Minister of the day take into consideration habitual criminals, offenders incapable of controlling sexual instincts—those people who are held at Her Majesty's pleasure. By extending this power to the Supreme Court, anomalies will occur where people who the community does not want released at that particular time will be released purely on

academic grounds. No-one but the Minister can make that decision, with Cabinet, and with the support of the general community.

The Hon. G.J. CRAFTER: I acknowledge everything that the member for Victoria said. One approach to this issue is to use a political process. If there is a prevailing attitude in the community of repugnance to sexual offenders, it is the decision of the Government to come down very heavily upon those people and to make an example of them to the broader community, indeed, to carry out those elements of the sentencing process that act as deterrents. That is a style of administration of justice that is attractive to members of the Opposition. It is not an attractive proposition to the Government, and many dangers are associated with it.

At present, the Attorney-General could choose in his period in office not to refer these matters to Cabinet: 'I just don't want to see them. Anyone who is in prison at the Governor's pleasure can stay there. We don't want to further consider these matters because of the heinous nature of the offences.' That is why it is in the public interest for the debate to take place before a judge in a court rather than behind the closed doors of Cabinet.

Amendment carried.

The Committee divided on the clause as amended:

Ayes (23)—Mrs Appleby, Messrs L.M.F. Arnold, Bannon, Crafter (teller), De Laine, Duigan, M.J. Evans and Ferguson, Ms Gayler, Messrs Gregory, Groom, Hemmings, Keneally, and Klunder, Ms Lenehan, Messrs McRae, Mayes, Payne, Peterson, Plunkett, Rann, Robertson, and Slater.

Noes (14)—Messrs Allison, P.B. Arnold, D.S. Baker (teller), S.J. Baker, Becker, Blacker, Chapman, Eastick, S.G. Evans, Goldsworthy, Gunn, Ingerson, Olsen, and Wotton.

Pairs—Ayes—Messrs Abbott, Blevins, Hamilton, and Hopgood. Noes—Ms Cashmore, Messrs Lewis, Meier and Olsen.

Majority of 9 for the Ayes.

Clause as amended thus passed.

Clauses 4 and 5 passed.

Clause 6—'Determination of sentence.'

Mr D.S. BAKER: I believe that clause 6 is quite dangerous, and quite a few legal people have pointed out to me some of the dangers. It is dangerous when sentences may be determined in accordance with evidence which is not bound by the rules of evidence. An example put to me is the case of character evidence, where it is easy for someone defending a person to say, 'Look: I went down to the club and about 90 people down there said he's a really good chap.' That is hearsay evidence which I believe will be admissible because of clause 6 when, in fact, it may not have a bearing on the case.

On the other hand, it is quite easy for the police to say, 'We are really charging this person with one offence but, your Honour, we have been watching him for three years and believe that he committed about 60 other offences during that time, but we didn't ping him on those. So, now he is coming up and we want to give evidence against him under that case.' I think it is very dangerous in character evidence to consider matters that are not bound by the rules of evidence.

The Hon. G.J. CRAFTER: I think that the honourable member is under a misapprehension with respect to the admissibility of character evidence. The example that he gave a moment ago would be admissible because character evidence is indeed an exception to the hearsay rule. Therefore, when character evidence is given in a court, it is in that much broader component. If that is the honourable member's fear, then I can reassure him that that is already the sort of evidence that is admissible in determining issues relating to character.

Clause passed.

Clauses 7 and 8 passed.

Clause 9—'Court to state reasons for sentence.'

Mr M.J. EVANS: This clause raises one of the first questions that I would like to address with regard to the broader principle of this Bill. In August last year I read with some interest statements by the Attorney concerning victims of crime and the UN declaration about the principles of victims' rights. At that time I understood that the Government was interested in implementing those principles as general policy. I found those principles to be very sound and, at the time, felt that they would add greatly to the criminal law of this State and be of great benefit to those who suffer from criminal activity.

I think that one of those principles is that victims should be advised of the consequences for the offender of the matter which has come before the court. I notice here that:

> A court must, upon sentencing a defendant who is present in court—
>
> *(a)* state its reasons for imposing the sentence; and
>
> *(b)* cause an explanation of the legal effects and obligations of the sentence . . . to be provided to the defendant.

However, I notice nothing in the Bill concerning any provision for notifying victims of crime as to what have been the consequences of conviction for the person who perpetrated the injury upon them.

I realise that not every crime has a victim: that is quite clear. Therefore, obviously in many cases in it is not possible to isolate victims and in other cases, quite clearly, the number of victims may be large or very obscure. For example, if one steals from a corporation obviously all the shareholders are victims, but one does not take it to that extreme. Quite clearly there are a number of cases where an individual is the primary, or sole, victim and, particularly where it is some kind of assault or robbery or the like, they would have a considerable interest in the matter.

I was not able to come up with a satisfactory form of words in relation to a legal change, but I believe that it might be a matter that the Attorney could address on an administrative basis for the department to undertake after the fact to advise victims, where such a person is clearly identifiable, of the consequences for the offender after all the processes of appeal and the like have been overcome. I believe that that would serve a useful purpose and it could also complement the Government's commitment to victims' rights which was so ably and eloquently presented to the community late last year by the Attorney. I believe that this Bill is an excellent opportunity to pick up some of those points.

The Hon. G.J. CRAFTER: I thank the honourable member for Elizabeth for raising this issue, because it gives me the opportunity to say that those later comments are indeed pertinent. They are an expression of the existing policy of this Government in this matter and will be dealt with administratively. This issue needs to be dealt with in a way that is sensitive to the needs and the aspirations of each victim depending on their particular circumstances, rather than in an absolute statutory way. Those sentiments are very much the sentiments that form the basis for the policy that will be implemented upon the passage of this Bill.

Clause passed.

Clause 10—'Matters to which a sentencing court should have regard.'

Mr S.J. BAKER: This is a very interesting clause which brings together a number of the matters which have traditionally been taken into account when a person is sentenced

by a court. They are now included in this proposed legislation in all their glory. I think that the courts will have a problem weighing up and considering all the matters in this clause. In many ways the matters laid down conflict with one another and as such it is my opinion that there will be grave difficulties with appeals.

We are all aware that the judiciary of this State has a record of reducing, on appeal, the period of imprisonment to which people have been sentenced for various offences. That occurred in the past because of inconsistencies in relation to sentencing. In more recent years there has been a holding situation and now the judiciary must weigh up all the circumstances before making a decision, and obviously more weight will be given to some factors than to others. I am pleased that a reference to the personal circumstances of the victim of an offence is included in the Bill, but a number of other matters in this clause detract from that provision. For example, paragraph *(l)* provides that a court should have regard to the character, antecedents, age, means and physical or mental condition of a defendant. In fact, a long list of matters are included in the clause, and a court should have regard to them when determining a sentence.

I believe that the law, like water and oil, finds its own level. Over the next two or three years this legislation could lead to much discussion and appeal activity within the courts as people debate whether a judge or magistrate should have considered one of the matters laid down in this clause in preference to another. As it stands today, a judge considers all the circumstances before reaching a decision. However, now that this list is being included in legislation the whole range of the law will be tested again, and I believe that that will lead to huge anomalies.

I raise this issue because the Government includes procedures and common law in statutes for all the wrong reasons. They should be included in a statute only if we believe that the change will result in the better administration of our criminal justice system. I am not convinced that the inclusion of this check list in the legislation will achieve that result, although in five years we may see some changes as the system settles down and appropriate penalties are imposed for the crimes committed.

Mr D.S. BAKER: I share the concerns of the member for Mitcham in relation to this clause, which I believe contains some tremendous conflicts. I refer to a person in the community who is well off and steals a considerable amount of money. I suppose in relation to that type of offender paragraph *(k)* would be considered, that is, 'the need to ensure that the defendant is adequately punished for the offence'. However, if he has children still at school, paragraph *(n)*—'the probable effect any sentence under consideration would have on dependants of the defendant'—would have to be considered. But then paragraph *(i)*—'the need to protect the community from the defendant's criminal acts'—would also have to be considered. And then there is also paragraph *(f)*—'the degree to which the defendant has shown contrition for the offence . . . by taking action to make reparation for any injury, loss or damage resulting from the offence'. With a good lawyer a case can be adjourned long enough to give a person time to make complete restitution, so that paragraph would also be considered. Given that a court would consider all those matters, the defendant would probably be let off. I think that the clause contains many conflicting ideas, which I think will lead to fewer people being sentenced for crimes.

The Hon. G.J. CRAFTER: One cannot generalise in this way. Of course, you can hazard a guess until the cows come home, but that is really not helpful in trying to determine what will happen. Similarly, the member for Mitcham said that one should transfer common law into statute only if it makes an improvement. I am not quite sure about the logic of that if one takes the converse action. Is the common law therefore less relevant and less effective because it is not stated in statute? Indeed, the great bulk of our law is common law based on the law of England, and it is interpreted in our courts each year. We have a handy check list for judicial officers to apply what they have done each time they have sentenced in the past, that is, to apply the common law and the criteria well established in the sentencing process. It is no more than that—a helpful aid. I repeat that it is not a matter of considering every circumstance: the clause provides that relevant circumstances must be taken into account when sentencing.

Mr S.J. BAKER: That is not my understanding of the way the courts operate.

Ms Lenehan interjecting:

Mr S.J. BAKER: Does the member for Mawson have a problem?

The ACTING CHAIRMAN (Mr Tyler): Order! It is out of order for the honourable member for Mawson to interject.

Mr S.J. BAKER: The member for Mawson said that the Minister is a lawyer and I am not. I do not wish to comment on that at all. The honourable member should understand that every member of Parliament has a right to test legislation, which is what I am doing. I do not believe that it is in the best interests of the people of this State or the people who administer justice in this State—

Ms Lenehan interjecting:

Mr S.J. BAKER: The honourable member says that that is what is happening now. Without digressing too much, I believe that that really is at the heart of the matter now before the Committee. Obviously a judge or magistrate makes a decision after considering all the facts. That decision is then subject to appeal. If the Crown thinks the sentence is inadequate, it can appeal; and if the defendant believes that he has been hard done by, he can get a lawyer to appeal. That is how the law works. This Bill tells people that, if they believe that not enough consideration has been given to their family circumstances or their age, etc., they will have grounds for appeal. We know that most appeals are instituted because of the inadequacy or harshness of a sentence. The sentences handed down by various courts are compared—that is the way the system works. This clause provides a list of matters that a court should have regard to in determining sentence. If the Bill passes, lawyers will look at the list and consider whether any matter provides a ground for appeal.

What we are doing is putting in black and white a process that a judge goes through when making up his or her mind, and by doing so we then leave every item open for contest within the courts. That is my concern, and I believe it is a relevant concern. It will take a long time to settle down in the courts, and it may well be that the courts' time will be further taken up in obtaining enough information on paragraphs *(a)* to *(o)*, because each of those 15 criteria will have to be checked so that the magistrate can add or take one year for each of the items to indicate that mercy and justice have gone hand in hand.

What I am saying is that the ability to then appeal will cause further problems to a system which is already overloaded and which is not operating adequately today. I have some concerns about it and I believe that it will take five years to settle down under these criteria.

The Hon. G.J. CRAFTER: All I can add is that these are grounds for appeals that are now used by lawyers each day in the criminal courts. It is not the basis for there being

confusion in the law, escalation of appeals or anything other than as I have said—a stating of the common law. That surely must be an advantage in this important area of the criminal justice system.

Mr S.J. BAKER: Will the Minister ask the Attorney to keep records of the number of appeals that are lodged in the year before and in the year after the enactment of this provision?

The Hon. G.J. CRAFTER: That information will most certainly be available. It is now recorded and is part of the work of the Office of Crime Statistics.

Mr D.S. BAKER: As a lay person I find this most confusing. The member for Mawson evidently thinks that lay people should not have ideas and that only lawyers are allowed to have them. Will a sentencing judge be asked to quantify each of these items or could one appeal on the judge's quantification of each of them? Can a judge be taken to task for allowing too much reparation because a person paid back all the money, or can he be asked to say how much he allowed for the effect on dependants because of the high public profile of a person? Can the judge be asked to quantify each of the decisions in sentencing under clause 10?

The Hon. G.J. CRAFTER: An appeal can be and often is based on the weight that a judge would give to certain aspects of the evidence and to whether he has in fact given too much or too little emphasis to a particular aspect—a key aspect no doubt—of the evidence that has been brought before him in that sentencing process. To that extent, this is a check list of those criteria, and it is helpful for consideration of the merits of the sentence brought down prior to any decision taken. Whether there has been an erring of justice in this area and whether it is a movement away from more traditional and standard approaches in sentencing in cases of a like nature, and so on, are matters that are taken into account by those who give advice to their clients before lodging an appeal.

Clause passed.

Clause 11—'Imprisonment not to be imposed except in certain circumstances.'

Mr S.J. BAKER: Clauses 10 and 11 should be read together because they are linked in their impact. It is interesting to note that this amending Bill provides that the sentence of imprisonment must not be imposed: that is the effect of the opening words to this clause. I would have preferred another set of words that are not priority determined, such as 'a sentence of imprisonment should not be imposed'. As far as I am aware I have never seen the words that are before us in any of the statutes.

I know that the Attorney-General has said that we should avoid prisons like the plague because they do not necessarily assist people to be rehabilitated or to go back into the community better citizens than they were when they went in; and this is quite true. However, we are saying that the failures of our correctional institutions should then impact on the way in which justice is dispensed. My point of view is that this is the wrong way around, but that is another debate and we are not going to talk here about the inadequacies or otherwise of our correctional service institutions.

I believe that the statment 'a sentence of imprisonment must not be imposed for an offence', as contained in this Bill, is wrong. This clause then goes through the reasons why one should impose a sentence. One is saying to the courts, 'Do not impose a sentence of imprisonment unless the following criteria are satisfied.' I do not believe that the courts should operate in that way. They have not in the past and they should not in the future. It predetermines—

Ms Lenehan interjecting:

Mr S.J. BAKER: The member for Mawson continues to have her little say from her little back bench. She says that that is why we have so many problems. If there were some adequate measures that could guarantee the safety of the community and ensure that—

Ms Lenehan interjecting:

Mr S.J. BAKER: The member for Mawson again interrupts. I am saying that there is no satisfactory custodial care outside the prisons. It simply does not work. Both outside and inside the prisons the systems are inadequate. Let us get our priorities right. Let us try to work out a way that will effectively reduce the extent of criminality in our community. As the Minister will appreciate, I am registering my protest to the words in the clause. I think that the Minister's colleague in another place could have chosen a better set of words that would not be setting a principle in place, such as these words do.

Clause passed.

Clause 12 passed.

Clause 13—'Order for payment of pecuniary sum not to be made in certain circumstances.'

Mr M.J. EVANS: I notice that in clause 11 we discourage a sentence of imprisonment where that is not, in effect, mandatory, and that is quite reasonable. I supported that clause. But then when we get to clause 13 we also have a provision which leans strongly against the imposition of a pecuniary sum which is a fine, or an order for compensation where a defendant is not particularly financially able to meet that.

In other words, we have excluded in respect of people of limited means both forms of penalty which courts have traditionally imposed, being imprisonment or a fine. The only alternative left under this Bill is community service order. I notice that this clause does not actually require the court to substitute an alternative penalty. It seems to rule out a penalty. We have already ruled out imprisonment. Is it clearly intended that the court will then opt for the third alternative which we now provide, or is it simply that that person will be discharged without penalty?

The Hon. G.J. CRAFTER: I refer the honourable member to clause 18 of the Bill, which sets out the alternatives and the range of sentencing options. Naturally, one will conclude that community service is the most viable alternative sentencing option in those circumstances, but that is stated a little more clearly in clause 18, and I think that answers the concerns that the honourable member has expressed.

Mr M.J. EVANS: I thank the Minister for that explanation. It certainly does state that. I had been interpreting 'special Act' in a more limited way than is clearly the case, and I now understand 'special Act' to mean any Act but not a special Act. I understand what the Minister is saying and that explains the point I was making.

Although the court is not obliged to inform itself as to the defendant's means, it clearly has the option of considering evidence from the defendant. If the defendant, either through counsel or personally, gives that evidence on oath, should it turn out that his evidence about his means, his expenses and dependants and the like is not true, obviously he would be guilty of perjury and in contempt of court. When the defendant is not giving evidence on oath, but is represented by counsel and is perhaps not present in the court, would there be a requirement for a statutory declaration? What steps will ensure that the defendant can subsequently be penalised if the information is not correct?

The Hon. G.J. CRAFTER: Clearly a person before the court cannot fly in the face of the rules of court. He would be in contempt of court if he tried to mislead the court in

that way. Very little weight would be given to counsel's assertions of that nature. Clearly, if one wanted to argue that there was a lack of ability to pay a fine, there would need to be very clear evidence, presumably evidence by the person under oath, that that was the case.

Mr D.S. BAKER: I share the concerns of the member for Elizabeth in this clause. It would appear that, in the case of some company directors or people who have considerable companies under their care, under clause 13(2), one could put before the court some very good reasons that someone did not have the means to pay a fine. In other words, they could put before it unaudited financial statements or financial statements for a financial year not completed. It may come to pass several months later that that person, through changing circumstances, did put incorrect evidence before the court, especially in unaudited accounts, and we know the trouble that this Government has got into by taking unaudited accounts in relation to the New Zealand timber venture. It would appear to me that a person before the court to be sentenced may be able to show, with some creative accounting, that they did not have the ability to pay a fine, and it may therefore prejudice the welfare of the dependants, but it may become clear on further investigation, which could not be done on that day, that that is not correct. As the member for Elizabeth has said, both clauses 11 and 13 provide very good reasons why no-one will be sentenced under either of those clauses.

The Hon. G.J. CRAFTER: First, with respect to either a body corporate or a natural person, where it is claimed by either of those persons that there is a lack of ability to pay a monetary penalty, clearly the court can cause an inquiry to be conducted into the affairs of that body corporate or the person. That would establish the *bona fides* or otherwise of that claim. If they were unaudited accounts or whatever, that would most certainly be the subject of a further inquiry by the court. So, I do not see the problem that the honourable member raises. Obviously, where a person on behalf of that body corporate has given sworn evidence which is proven at a later stage to be false, that person is in even more trouble than in the first place. They are then guilty of contempt of court, and quite severe penalties flow from that.

Mr D.S. BAKER: I do not want to prolong the debate, but clause 13 (2) states quite clearly:

> The court is not obliged to inform itself as to the defendant's means.

I gather it just takes evidence from the defendant, and the prosecutor may choose to question that evidence. I would have thought that, when there is not an obligation for the court to inform itself of the defendant's means, there will be tremendous problems in recording a sentence under clause 13.

The Hon. G.J. CRAFTER: Just to clarify this point, the fact that there is no obligation does not mean to say it will not. In fact, the circumstances which the honourable member describes lead one to suggest that it would be very prudent of the court to conduct an inquiry where those submissions are placed before it.

Clause passed.

Clauses 14 and 15 passed.

Clause 16—'Imposition of fine without conviction.'

Mr M.J. EVANS: I move:

> Page 7, after line 13—Insert new subclause as follows:
> (2) Where a court exercises its powers under subsection (1), it must state its reasons for doing so.

I believe that we are in this sense extending the provision slightly inasmuch as there is no limit to the number of occasions on which a person can take the benefit of this clause. Quite clearly, if victims are to be adequately advised about the reason as to why a person under these circumstances was allowed from the court without recording a conviction, even though a fine was imposed, I believe that those reasons should be on the record. The normal course of events would be for a convicted person to have that fact recorded. I acknowledge all too readily that there are circumstances—and the reasons are set down here—as to why a person should not have such a conviction recorded, but given that the court will depart from the normal process which a victim of that crime would expect, it is only reasonable that the court should be asked to state those reasons on the record so that they are available for the public to see and, in particular, for the victim to see, if there is such a person in a particular case, so that one can judge the effectiveness of the procedure.

Unfortunately, there are so many reasons why a person might be discharged under these circumstances that one cannot simply draw a single conclusion from the criteria. There are several options before the court and several possible reasons available for consideration. So, I move the amendment in order to ensure that without in any way restricting the power of the court, it is at least able to be accountable for the decision and for people to know just how the law is being administered in their name.

The Hon. G.J. CRAFTER: The Government does not accept this amendment. I accept all of the reasons that the honourable member has given, but I refer him to clause 9 which requires a court to give its reasons for imposing a particular sentence. If the defendant is present in court, it must also explain the effect of its sentence. I would have thought that covers the concerns raised by the honourable member.

Mr M.J. EVANS: I see that as the other side of the coin. Clause 9 deals with why a sentence is imposed on a person. Clause 16 refers to why it is not to be. Under my amendment, the court would have two functions: to explain to the defendant why it was imposing the fine and to explain to the world why it was not recording a conviction. Two separate functions are involved in this. One is to explain to the defendant why a fine, community service order or bond is being imposed; all of those things in which the defendant is interested. I see my amendment as being directed to an explanation of why the conviction is not being recorded. I would not have thought that clause 9 would require a court, when stating its reasons for imposing the sentence, not to state the reasons for not recording the conviction.

The Hon. G.J. CRAFTER: I suggest that the member for Elizabeth reads clause 9 in conjunction with the definition of 'sentence', which includes the provision of the making of any other order or direction affecting penalty. It is all embracing and covers every disposition of the court in that sentencing process, and that covers the concerns expressed by the honourable member.

Mr M.J. EVANS: I am sure that what the Minister said has substance and I accept his explanation. The point that I seek to make is covered if what the Minister said is correct. I would not have thought that the recording of a conviction was part of the penalty of an offender. I would think that the administrative act of recording a conviction was part of the normal judicial process and not of itself a penalty. However, if the Minister assures me that the recording of a conviction is of itself a penalty, we have perhaps moved into a new phase of sentencing. If that is the case, I am willing to accept his explanation because it does address my point.

Amendment negatived; clause passed.

Clause 17—'Reduction of minimum penalty.'

Mr M.J. EVANS: I have an amendment on file for exactly the same reason as my previous amendment. Where a court chooses to set aside the provisions of the Act fixing a minimum penalty, which is a fairly substantial matter, I want to see the reasons recorded. If the Minister assures me that the same arguments apply and that the reasons will be recorded in that context, I will accept that. Otherwise, I will move my amendment.

The Hon. G.J. CRAFTER: It is my view that the concerns of the honourable member are covered by the existing amendments before the Committee.

Mr M.J. EVANS: In that case, I will not proceed with my amendment.

Clause passed.

Clauses 18 to 20 passed.

New clauses 20a to 20i.

The Hon. G.J. CRAFTER: I move:

Page 8, after clause 20—

Insert new heading and clauses as follows:

DIVISION III—SENTENCES OF INDETERMINATE DURATION

Application

20a. (1) Subject to subsection (2), this Division does not apply in relation to a child.

(2) The Supreme Court may exercise its powers under section 20c in relation to a child who is to be sentenced as an adult pursuant to the Children's Protection and Young Offenders Act 1979.

(3) For the purposes of this Division—

'child' means a person who was under the age of 18 years at the time of the commission of the offence in question.

Habitual criminals

20b. (1) This section applies in relation to offences of the following classes, whether committed before or after the commencement of this Act:

Class I	Sections 21 to 25—Wounding
Class II	Sections 26 and 27—Poisoning
Class III	Sections 48, 49, 56, 59 and 72—Sexual Offences
Class IV	Sections 81 and 82—Abortion
Class V	Sections 155 to 158—Robbery
	Sections 159, 160, 161, 162, 164 and 165—Extortion
	Sections 167 to 172—Burglary
	Sections 131, 132 and 173—Larceny
	Sections 176 to 178 and 182 to 192—Embezzlement, etc.
	Sections 195, 196, 197 and 199—False pretences, receiving
Class VI	Section 85 (1)—Arson
Class VII	Part VI—Forgery

(Classes I to VII refer to offences under the Criminal Law Consolidation Act 1935)

Class VIII Part IV of the Crimes Act 1914 of the Commonwealth—Coinage.

(2) Where—

(a) a defendant is convicted of an offence that falls within Class I, II, III or IV and has had two or more previous convictions of an offence of the same class;

or

(b) a defendant is convicted of an offence that falls within Class V, VI, VII or VIII and has had three or more previous convictions of an offence of the same class,

the Supreme Court may, on application by the Crown, in addition to any other sentence imposed in respect of the offence by the court by which the defendant was convicted, declare that the defendant is an habitual criminal and direct that he or she be detained in custody until further order.

(3) A previous conviction for an offence committed outside South Australia will be regarded as a previous conviction for the purposes of subsection (2) if it is substantially similar to an offence of the relevant class of offences.

(4) The detention of a person under this section will commence on the expiration of all terms of imprisonment that the person is liable to serve.

(5) Subject to subsection (6), a person detained under this section will be detained in such prison as the Minister of Correctional Services from time to time directs.

(6) Subject to the Correctional Services Act 1982, that Act applies to a person detained under this section as if that person were serving a sentence of imprisonment.

(7) Subject to this Act, a person will not be released from detention under this section until the Supreme Court, on application by the Crown or the person, discharges the order for detention.

Offenders incapable of controlling sexual instincts

20c. (1) In this section—

'institution' means—

(a) a prison;

(b) a place declared by the Governor by proclamation to be a place in which persons may be detained under this section;

and

(c) in relation to a child, includes a training centre:

'offence to which this section applies' means—

(a) an offence under section 48, 49, 56, 58, 58a, 59, 72 or 255 of the Criminal Law Consolidation Act 1935;

(b) an offence under section 23 of the Summary Offences Act 1953;

(c) any other offence where the evidence indicates that the defendant may be incapable of controlling his or her sexual instincts.

(2) Where a defendant is convicted of an offence to which this section applies by a District Criminal Court or a court of summary jurisdiction, the court may, if of the opinion that the powers under this section should be exercised in relation to the defendant, remand the defendant in custody or on bail to appear for sentence before the Supreme Court.

(3) The Supreme Court may, in relation to—

(a) a defendant convicted of an offence to which this section applies by the Court;

or

(b) a defendant remanded to appear for sentence before the Court pursuant to subsection (2),

before determining sentence, direct that at least two legally qualified medical practitioners, specified by the Court, inquire into the defendant's mental condition and report to the Court as to whether the defendant is incapable of controlling his or her sexual instincts.

(4) For the purposes of an inquiry under subsection (3), each medical practitioner—

(a) must carry out an independent personal examination of the defendant;

(b) may have access to any evidence before the Court by which the defendant was convicted;

and

(c) may obtain the assistance of a psychologist, social worker, probation officer or any other person.

(5) If—

(a) each of the medical practitioners reports to the Supreme Court, on oath, that the defendant is incapable of controlling his or her sexual instincts;

and

(b) the Court, after hearing any evidence or representations adduced or made by the defendant, is satisfied that the defendant is so incapable,

the Court may declare accordingly and direct that the defendant be detained in custody until further order.

(6) The Supreme Court may exercise its powers under subsection (5) in addition to, or instead of, imposing a sentence of imprisonment for the offence.

(7) If the detention is in addition to a sentence of imprisonment, the detention will commence on the expiration of the term of imprisonment, or of all terms of imprisonment that the person is liable to serve.

(8) A person detained in custody under this section will be detained—

(a) if the defendant is under 18 years of age—in such institution (not being a prison) as the Minister of Community Welfare from time to time directs;

(b) in any other case—in such institution as the Minister of Correctional Services from time to time directs.

(9) The progress and circumstances of a person subject to an order under this section (whether in custody or not) must be reviewed at least once in each period of six months by—

(a) in the case of a person detained in, or released on licence from, a training centre—the Training Centre Review Board;

(b) in any other case—the Parole Board.

(10) The results of a review under subsection (9) must be embodied in a written report, a copy of which must be furnished to the person the subject of the report and—

(a) in the case of a report of the Training Centre Review Board—to the Minister of Community Welfare;

(b) in the case of a report of the Parole Board—to the Minister of Correctional Services.

(11) Subject to this Act, a person will not be released from detention under this section until the Supreme Court, on application by the Crown or the person, discharges the order for detention.

(12) The Supreme Court may not discharge an order for detention under this section unless—

(a) it had first obtained and considered the report of at least two legally qualified medical practitioners each of whom has independently examined the person;

and

(b) having taken into account both the interests of the person and the community, it is of the opinion that the order for detention should be discharged.

Release on licence

20d. (1) The Supreme Court may, on application by the Crown or the person, authorise the release on licence of a person detained in custody under this Division.

(2) On the Court authorising the release of a person under subsection (1), the appropriate board must order the release of the person on licence on the day specified by the Court.

(3) The release of a person on licence under this section will be subject to such conditions as the appropriate board thinks fit and specifies in the licence.

(4) Where the Supreme Court has refused a person's application for release on licence, the person may not further apply for release for a period of six months, or such lesser or greater period as the Court may have directed on refusing the application.

(5) The appropriate board may—

(a) on application by the Crown or the person, vary or revoke a condition of a licence or impose further conditions;

or

(b) on application by the Crown, cancel the release of a person on licence, if satisfied that the person has contravened, or is likely to contravene, a condition of the licence.

(6) Where an application has been made to the appropriate board for cancellation of a person's release on licence, a member of the board may—

(a) summon the person to appear before the board;

or

(b) apply to a justice for a warrant for the apprehension and detention of the person pending determination of the application.

(7) Where a person who has been summoned to appear before the appropriate board fails to attend in compliance with the summons, the board may—

(a) determine the application in his or her absence;

or

(b) direct a member of the board to apply to a justice for a warrant for the apprehension and detention of the person for the purpose of bringing him or her before the board.

(8) A member of the appropriate board may apply to a justice for a warrant for the apprehension and return to custody of a person whose release on licence has been cancelled by the board.

(9) The appropriate board may, if it thinks good reason exists for doing so, cancel a warrant issued under this section at any time before its execution.

(10) Where a person who has been released on licence commits an offence while subject to that licence and is sentenced to imprisonment for the offence, the release on licence is, by virtue of this subsection, cancelled.

(11) Where a person has been subject to a licence under this section for a continuous period of three years, the order for his or her detention under this Division will, unless the Supreme Court, on application by the Crown, orders otherwise, be taken to have been discharged on the expiration of that period.

(12) For the purpose of this section—

'the appropriate board', in relation to an application under this section, means—

(a) if the person the subject of the application is being detained in a training centre, or has been released on licence from a training centre—the Training Centre Review Board;

(b) in any other case—the Parole Board.

Court may obtain reports

20e. (1) A court may, for the purpose of obtaining assistance in making a determination under this Division, require the Parole Board, the Training Centre Review Board or any other body or person to furnish the court with a report on any matter.

(2) A copy of any report furnished to the court under subsection (1) must be given to each party to the proceedings or to counsel for those parties.

Parties

20f. Both the Crown and the person to whom an application under this Division relates are the parties to the application.

Service on guardian

20g. Where the person to whom an application under this section relates is a child, a copy of the application must be served on a guardian of the child, unless—

(a) it is not practicable to do so;

or

(b) the whereabouts of all of the guardians of the child cannot, after reasonable inquiries, be ascertained.

Proclamations

20h. The Governor may, by proclamation, vary or revoke a proclamation under this Division.

Regulations

20i. The Governor may make regulations—

(a) providing for the care, treatment, rights and duties of persons detained in custody under this Division in consequence of being found to be incapable of controlling his or her sexual instincts;

(b) providing for the granting of periods of leave for persons so detained;

(c) providing for any other related matter.

As I have explained to the Committee, this is the substance of the debate that was held earlier. I will not go over all of those issues, but I point out to the Committee that the amendment seeks to insert a wholly new Division III into Part II of the Bill. The purport of the amendment was foreshadowed on 22 March in another place by the Attorney-General, and it deals under the broad heading of general sentencing provisions with the powers of the Supreme Court to sentence certain categories of persons in detention in custody until the further order of the court. In other words, in exercising its criminal jurisdiction, the Supreme Court may in certain instances pass a sentence of indeterminate duration on certain categories of offenders in addition to or instead of any other sentences it may lawfully pass.

This amendment picks up modified provisions of section 77a and section 319 of the Criminal Law Consolidation Act 1935 which are to be repealed by the accompanying Bill. Those sections presently deal respectively with persons found to be incapable of controlling their sexual instincts and persons who are declared to be habitual criminals. The present law requires such persons to be detained at Her Majesty's or the Governor's pleasure. This amendment will place such persons more properly at the disposition of the Supreme Court. It rationalises and streamlines the existing substantive and procedural law consistent with modern statutory drafting and provides that the Supreme Court, not the Executive Government of the day, will be the arbiter of the fate of persons who fall within the provisions.

There is also provision for court ordered release from detention on licence. Various ancillary review, machinery and enforcement provisions are also included. There are also provisions to enable release on licence. In short, the amendment seeks to place the disposition of the two categories of persons where they more properly belong, that is, with the Supreme Court, which has had occasion to deal with them. The Government believes that the rights and interests of the persons affected as well as the community are consequently better assured and protected. Most importantly, the question of the time of a person's liberty is removed from the sphere of any suggestion of political influence.

The ACTING CHAIRMAN (Mr Tyler): I inform the Committee that I will put the question with respect to proposed clauses 20a to 20i inclusive.

Mr M.J. EVANS: I refer the Minister to proposed clause 20c (11), which concerns the discharge of the order by the Supreme Court upon the application of the Crown or the person concerned. I take it this would be the final release in the process. Do I understand correctly that, after that discharge order is made, the person who was previously subjected to it is entirely free of the legal system, that is, their penalty is over? Is there another ongoing basis?

I want to know whether the court would have the power to impose conditions on the discharge, for example, such as one might find in a bond order that might require the person to undergo continuing medical treatment, particular psychiatric treatment, and not to reside in a particular suburb, or whatever, for a particular period. I would appreciate the Minister's advice on this point. I realise that conditions can be imposed on release under licence, but will they apply under this provision?

The Hon. G.J. CRAFTER: There are alternatives, one of which is to provide an absolute discharge. That person is then free from restraint to live his or her life in the community. There is also the option for the court to cover the situation to which the honourable member refers, that is, for a person to be released subject to a licence. New section 20d (11) provides:

> Where a person has been subject to a licence under this section for a continuous period of three years, the order for his or her detention under this Division will, on application by the Crown, unless the Supreme Court orders otherwise, be taken to have been discharged on the expiration of that period.

So there is a time span associated with the conditions of the licence. That can be further extended upon the application of the Crown. Both those options, therefore, are available to the court at that time.

Mr M.J. EVANS: I am also a little concerned, and I indicated earlier in the debate that I would raise at the appropriate point the criterion on which the court is to make this judgment. I believe that subclause (12) is that point. Quite clearly, the court has first to obtain the reports of two legally qualified medical practitioners, and then we have the very vague and uncertain phrase of the court 'having taken into account both the interests of the person and of the community, it is of the opinion that the order for detention should be discharged.' I wonder whether that single, unspecified, vague criterion is sufficient.

Unfortunately, I have not had long enough to consider this matter, but I would draw to the Minister's attention the need for a somewhat more defined process where the court, for example, is satisfied that adequate provisions have been made to safeguard previous victims of that person; that there is no likelihood of the person re-offending, and so on. Having looked at the trouble to which we have gone to specify the sentencing criteria under the other Bill (a whole range of issues which the court under clause 10 is to take into account when it fixes a sentence), we have very little about people who are obviously and clearly potentially quite dangerous offenders. I believe that the discrepancy between those criteria set out in clause 10 and what we have here, which is a very open-ended provision, does not give the community a great deal of confidence in that part of the process.

The Hon. G.J. CRAFTER: I am sorry that the honourable member takes that interpretation of this section. The Government took advice before including that section in the form in which it appears in the Bill. That includes representatives of the judiciary, so the matter has been mulled over, and the wording is regarded as important and appropriate.

Mr D.S. BAKER: I still say that it is not in the community's interest to take this matter out of the Minister's control and put it into the care of the Supreme Court. I agree with the member for Elizabeth that the subclause at the bottom of page 5 is very vague and I do not believe that it takes into account the community feeling at the time, although it may take into account general community feelings. I believe that it is a cop out and that the community now demand certain standards of our Ministers to reflect the standards they require, and I think it should not be taken out, for the reasons we have stated.

The Hon. G.J. CRAFTER: I can only say that I disagree with the honourable member and his interpretation of that clause and the thrust of this new section of the Bill, and the policy he states which underlines the opposition he enunciates to the House.

Mr S.J. BAKER: Under the first clause of these amendments before us we have debated the principles of this Bill. It is quite wrong that the Minister should land these amendments on our table as late as last night and expect this House competently to address itself to them. I was fortunate in having had the amendments longer than most people in this House, but if they are going to be properly canvassed throughout the legal profession by those people who are far more expert than I, and by anyone in this House, we should have time to look at them.

The Minister said that this was mooted back on 22 March. We know that the idea and the way in which it is ultimately transcribed into legislation sometimes get a little fouled up. We have often seen ideas expressed in the media which simply have not come in legislative form in a way that can be embraced by this House, even though the original proposition has merit.

I believe that when we have this set of amendments, which have a large number of conditions as to how people on indeterminate sentences should be handled, they should be available for public scrutiny well before the event and not be handed down to this House at this stage. We should not be copping out and leaving the courts to make the final determination. It should be made by the Government of the day. I make the very strong point that there is a person in England who is responsible for the famous Moors killings who, I am sure, would be released under this criterion, yet the public outcry in England has made sure that she remains in gaol because of the horrific nature of the crimes that she committed.

There is a body of medical evidence to suggest that there has been some reformation in her character, but we do not really know and the community has said loudly and clearly that it does not intend to allow the Government to let this person go, because of the nature of her crimes. This amendment does not address questions such as that. The Minister talks about community attitudes and says that they are irrelevant because it is the judges who will make the determinations. I say that community attitudes are very important. It is not the impact of the possible release on the community: it is the way in which people perceive the law to operate.

In England they have said to a person that that woman shall not be released from the prison system because her crimes are so horrific. All we are ensuring in this Bill, if we have repeat offences of a similar nature, is that once the medicos are satisfied, that person is out on the streets, irrespective of the damage it does to the law, to people's perceptions of the law, and the possibility of future offences. There is research evidence available to show that certain people can beat all the tests one can put forward, and can appear quite sane even to the experts. That has been recognised in American and English literature.

For all those reasons, the Opposition rejects this very long and involved amendment because we do not believe that it is in the best interests of this State.

The Hon. G.J. CRAFTER: I can only reiterate that there is a specific clause in the Bill providing that the Supreme Court may not discharge an order for detention under the section unless it has taken into account an examination of the interests of the community. Community interest must be given consideration and due weight, and I disagree with the interpretation the member for Mitcham has placed upon the instance to which he has referred.

Mr D.S. BAKER: Surely there is a difference between the interests of the community, when we consider what could be an ongoing thing if that person was released, and community attitudes or the interests of the person who has been released because the community attitude may say, 'If he comes out we will cut his throat' full stop. Surely there is a difference in those types of community interest. One is an ongoing interest and the other relates to the attitude that prevails at the time, as in the case in England of an horrific murder, referred to by the member for Mitcham. I believe there is a difference in those two cases which the Minister is not prepared to recognise.

New clauses inserted.

Clauses 21 and 22 passed.

Clause 23—'Duty of court to fix or extend non-parole periods.'

The Hon. G.J. CRAFTER: I move:

Page 11, lines 33 and 34—Leave out 'imprisonment at Her Majesty's or the Governor's pleasure' and insert 'indeterminate duration'.

This amendment is consequential upon what has just been said with respect to the new regime of indeterminate sentences.

Amendment carried; clause as amended passed.

Clauses 24 to 32 passed.

Clause 33—'Conditions of bond.'

Mr M.J. EVANS: I move:

Page 14, after line 33—Insert new paragraph as follows:
(da) a condition requiring the defendant to undertake vocational training or educational courses of instruction in accordance with the terms of the bond;.

This clause inserts a further potential bond condition. A number of specific options are placed before the court and there is a catch-all provision at the end of 'any other condition the court thinks appropriate'.

However, given the number of items listed in *(a)* to *(g)*, I feel that one condition which is conspicuous by its absence but which I notice is subsequently in the community service order provision relates to educational or vocational training. I feel that it is probably more relevant under the bond than it is under the community service order. Therefore, I move this amendment to ensure that courts take that option into account when they are assessing potential conditions for a bond, because I believe it would be very useful and productive for an offender to do this in relation to serving out the conditions of the bond itself.

The Hon. G.J. CRAFTER: I thank the honourable member for his interest in this area. I do not think we disagree as a Government with the end result he is seeking to achieve; it is simply the approach that I object to. I find the amendment unacceptable for the reason that the unequivocal experience of the the Department of Correctional Services has been that, where courts seek to compel defendants to undertake educational courses, in a vast majority of cases defendants simply do not obey the order. Therein lies another set of difficulties that must be faced. They subsequently have consequences upon the rehabilitation and the attitude of that offender. It is very much a case of leading a horse to water, but then trying to get that horse to drink is another matter.

That is why clause 38 *(j)* of the Bill was inserted. That is, a voluntary self motivated attempt at self improvement can, in certain circumstances, it is submitted, be credited as part of a defendant's sentence of community service. I think we part company in this area of the method of achievement. On the balance of probability the Government's approach is likely to be more effective than to bring down the mandatory nature of methodology as proposed in the amendment.

Amendment negatived; clause passed.

Clause 34 passed.

Clause 35—'Variation or discharge of bond.'

The Hon. G.J. CRAFTER: I move:

Page 15—
Lines 22 and 23—Leave out all words in these lines and insert 'If the Minister of Correctional Services is satisfied, on the application of a probationer—'.
Line 29—Leave out 'court may, by order' and insert 'Minister may, by instrument in writing'.

The amendment merely seeks to reinstate existing law as contained in section 8 (3) of the Offenders Probation Act 1913. No evidence was given in another place as to why such a provision should be altered in the way that it was. I suggest that it is preferable to retain the *status quo:* that is, in the circumstances, the Minister of Correctional Services should be able to waive the obligation of a probationer to comply any further with the condition of a bond which requires his or her supervision.

Mr D.S. BAKER: As I read the amendment, the Minister will be able to make the decision, whereas in the Minister's previous amendment—which dealt with habitual criminals—the Minister was not able to do so. Why is it proposed to allow the Minister to make the decision in this clause when in clause 23 the Minister cannot make that decision in relation to habitual criminals and sexual offenders?

The Hon. G.J. CRAFTER: It is simply not possible to compare the two situations. This amendment is minor and will not arise in a great number of circumstances. Indeed, the circumstances surrounding it would never involve a determination of the Supreme Court. It is simply a matter of administrative procedure as it has worked in the past.

Amendments carried; clause as amended passed.

Clause 36—'Community service not to be ordered unless there is a placement for the defendant.'

Mr D.S. BAKER: What does the Minister believe is a 'reasonable time' relative to placement of a defendant at a community service centre reasonably accessible to that defendant? The following clause provides that a defendant be under the supervision of a probation officer. Will the availability of staff, such as a probation officer, have a bearing on what is a 'reasonable time'?

The Hon. G.J. CRAFTER: The availability of staff will not be part of the criteria used; the clause refers to the availability of placements. A practical limit must be taken into account. 'Reasonable time' means that all of the relevant circumstances are taken into account when making a determination.

Clause passed.

Clause 37 passed.

Clause 38—'Special provisions relating to community service.'

Mr M.J. EVANS: I move:

Page 16, line 35—Leave out 'educational' and insert 'vocational training'.

I do not believe that a community service order, which is an alternative to imprisonment or a fine, should include recreational courses of instruction. Given that the word

'recreational' is used in the Bill in addition to the word 'educational', the proposal is to take these provisions much further than is reasonable. Given that community service orders have now become the third and indeed principal objective in some areas of sentencing, I do not think that it is entirely suitable to include recreational courses of instruction, which could well include a whole range of quite bizarre activities in this context.

While educational and vocational training can at least have some redeeming value in preparing an offender for the future, I do not think that too many victims of crime would be pleased to know that an offender was receiving a recreational course of instruction. Quite obviously the imagination runs wild as to what 'recreational' constitutes, but I do not intend to proceed down that unproductive path. I believe it is preferable to provide for educational or vocational training instead of recreational training.

The Hon. G.J. CRAFTER: The Government does not accept the amendment. First, the Government's advisers on interpretation believe that the word 'educational' includes vocational training. Secondly, recreational courses can provide a range of skills and other attributes which are important in the rehabilitation process in terms of leadership, acceptance of competition and understanding, how to give and take in one form or another, character building, and so on. If the honourable member is concerned that there is a less than serious aspect about the inclusion of the word 'recreational', I point out that such courses must be approved by the Minister of Correctional Services. I think that that clear safeguard will eliminate a broad range of opportunities for the rehabilitation of an offender to be detrimental.

Mr M.J. EVANS: I certainly take the Minister's point. It seems to me that to use the word 'recreational', and given that the Minister is confident that vocational training is subsumed within educational pursuits, the Minister must be contemplating something quite different if he does not believe that recreational activities come within the definition of 'educational'. If it is necessary to differentiate at that level but not at the level of vocational training, it seems to me to be quite extraordinary to include 'recreational', because that means it will not be educational. The Minister is clearly contemplating a recreational course which is not in itself educational.

I really do not know that football, for example, which might well provide leadership training, constitutes an adequate deterrent to the community in the context of a community service order. This is the only viable alternative in the context of imprisonment and fines, and this is the way we are moving the system, if you like. To retain the definition of 'recreation' (even if the particular courses require the Minister's approval) and even to have the phrase in the Bill, I think exposes the system to ridicule in the community, and I do not believe that that is an appropriate step for this Parliament to take.

I believe that the Government is perhaps not giving adequate weight to the impact that this kind of provision will have in the community, even if at the technical and esoteric level at which debate is sometimes conducted it is legally acceptable. I believe that the community would not see the imposition of attendance at a recreational course of instruction, albeit approved by the Minister, as an appropriate means of punishing the offender. It is for that reason, as much as for any other, and in order to ensure that there is public respect for the system in the context that the Attorney discussed in the victims of crime statement, that I have moved this amendment. I feel particularly strongly about this aspect. One needs only quote from the Attorney's statement of 25 August, as follows:

> There is little doubt that the community concern about crime, victims and criminal justice policy generally will not abate in the near future. Legislators, administrators and the judiciary will need to be responsive to those community concerns and, in particular, will need to ensure that proper treatment is accorded to victims of crime.

I take that whole expression of his view to be very much one of requiring respect for the system, and I do not believe that including recreational courses of instruction in our community service orders will do anything but bring the system into disrepute and ridicule.

The Hon. G.J. CRAFTER: I think that the honourable member has unfortunately got the wrong end of the stick on this matter. I do not think that it relates to playing football. I would be very surprised if any Minister would approve that approach. As I understand the situation, an opportunity could be provided for suitable groups of offenders to go to a camp—maybe a very rigorous camp—for a period, and that would involve a loss of liberty.

A number of courses would most certainly be educational, and 'educational' and 'recreational' are not mutually exclusive terms in this sense at all. There is an overlapping in that, but it would involve some physical exertion, and there are benefits in that. Many people do not find that very enjoyable and frivolous in that sense but, when combined with a series of lectures and with the extrapolation of human relations, and the like, that come out of those exercises, it can be seen that there is a great deal of value in that extension of the community service order scheme.

Amendment negatived.

Mr D.S. BAKER: This clause provides that the number of hours of community service be not less than 40 nor more than 320. However, clause 3, under the definition of 'prescribed unit', provides that each eight-hour day constitutes $100. Can a community service order be only for fines between $500 and $4 000?

The Hon. G.J. CRAFTER: That is true where it is in default of a fine, but a community service order can be brought down in many other circumstances.

Mr D.S. BAKER: If someone is performing a community service order in default of the payment of fines, and the definition of 'working day' meaning any day other than a Saturday, Sunday or a public holiday, with no-one being allowed to serve community service orders on such days, you work that fine off at the rate of $100 per day if the fine is between $500 and $4 000. However, paragraph *(e)* provides:

> the person is required to perform community service for no less than four nor more than 24 hours each week . . .

In such a case it would take a long time to work off a fine of $4 000. Paragraph *(f)* provides:

> the person may not be required to perform community service for a continuous period exceeding eight hours.

It takes a tremendous amount of time to work off a fine if such constrictions are provided.

The Hon. G.J. CRAFTER: The honourable member is right. It is a pretty stiff sentence to receive and it is a substantial loss of one's liberty, of their freedom and of their enjoyment of life generally—but that is what it is. I believe that is quite appropriate. For the more serious offences of this type I think it provides a real alternative to the harshness of either the payment of a fine or of a prison sentence, and it is not something that I think can be minimised in importance by the community. It may, as the honourable member has said, involve a very substantial contribution by an offender in the form of community service work over a long period.

Mr D.S. BAKER: If one only has to do a maximum of 24 hours each week (that is, three days per week), why is a

person not allowed to do that community service order on a Saturday, Sunday or public holiday?

The Hon. G.J. CRAFTER: I think it is a mistake in interpretation by the honourable member. They can in fact do the community service order on weekends and public holidays. In fact, that is when community service orders are, in the main, carried out. I was recently at an inspection of community service orders being served, and that was on the weekend.

Mr M.J. EVANS: Is it intended that, when a community service order is imposed of itself, as an original penalty and not in default of a fine, there be some equivalence calculated at this $100 a day between the traditional fine for that offence and the number of hours of a community service work order? Is there meant to be that degree of equivalence? I have recently experienced a case of a constituent who received a very substantial number of hours as a penalty which, when calculated out at $100 a day, comes to a much higher fine than would traditionally and normally be imposed for that offence. I wonder what the intention of the policy aspect of this is, as to whether or not there is meant to be that equivalence.

The Hon. G.J. CRAFTER: No, that is not a requirement of the court, but obviously where there is a guide in legislation of that type courts may well choose to use that as a rule of thumb in determining sentences in this area.

The Hon. H. ALLISON: Could the Minister explain clause 38 *(g)*? Is it correct that one hour of any period of community service exceeding four hours is to be a meal break? It seems a ridiculous state of affairs.

The Hon. G.J. CRAFTER: I am not sure what interpretation the honourable member is placing on it. After a person has worked for four hours, surely it is reasonable to have a meal break. That is what it is intended that this clause provide. It is only humane. They are required to work for four hours, and then have an hour's meal break. Presumably they would then work for another four hours to provide for their eight hours work for that day.

Clause passed.

Clauses 39 to 42 passed.

Clause 43—'Restitution of property.'

Mr M.J. EVANS: I move:

Page 18, line 38—Leave out 'may' and insert 'must, unless satisfied that proper reason exists for not doing so,'.

I intend to move this amendment also to clause 44 because I feel that the onus should be reversed. We often hear about the right of the victim to compensation and to restitution, but I do not believe that that has been given proper weight in this context. It is important that we make it absolutely clear to the court that reasons must be found as to why property should not be restored rather than reasons why it should be, and that seems to me to entirely reverse the procedure.

I realise that is no doubt not the intention of the Government as such. I am sure that a responsible court would of course order the property to be returned, but I believe that the legislation should reflect the will of the Parliament and of the community. It would be far more appropriate if this clause was expressed the other way, so that the court is required by the legislation itself to order that restitution unless there are extraordinary reasons for not doing so, rather than looking at the process the other way around. So, quite clearly, that will be the normal expectation. I move the amendment to make sure that is the basis on which these matters are decided.

The Hon. G.J. CRAFTER: The Government opposes this amendment. Restitution and compensation should remain wholly at the discretion of the courts and the honourable member wants to fetter that judicial discretion. One of the major considerations pursuant to clause 13, a clause that we have previously debated at some length during the Committee stage, is whether a defendant can or cannot afford to pay. There may be other reasons and the proposed amendment is indeed an unacceptable fetter on judicial discretion.

Mr M.J. EVANS: I would disagree with the Minister most strongly, because my amendment leaves the court unrestrained in the sense that, if it can establish a proper reason as to why that property should not be restored to the person who appears to be entitled to possession of it, in the words of the Bill, then it is of course perfectly able to not order that the property be so restored. All my amendment does is not to fetter the discretion of the court but rather to require it, if it proposes to disadvantage the victim rather than the offender, to establish good reason for so doing and make those reasons known.

I believe that that is a far more satisfactory state of affairs than what exists in the Bill now. Quite clearly, the Bill only contemplates that this person has been found guilty and that someone else appears to be entitled to possession of the property. Those two factors have already been established by the Government's own Bill. All my amendment seeks to do is ensure that if the court, having found both of those matters to be facts, is not proposing to restore it, it must have good and proper reasons for not so doing. I believe that is far more consistent with the Government's own publicly expressed wishes to ensure and safeguard the rights of victims than is the present provision of the Bill. I do not believe that in any way it would fetter discretion of the court; rather it would more properly direct its mind in the way in which I believe the community would want it directed.

Mr S.J. BAKER: The Opposition supports the member for Elizabeth.

The Hon. G.J. CRAFTER: I would argue that it is a matter of balance. Under Division II, clause 10, the court needs to take into account the personal circumstances of any victim of the offence, but it also must take into account the character, antecedents, age, means and physical or mental condition of the defendant. I would argue that what the honourable member wants to do is in fact take that balance out of kilter and the present provisions allow for that to be fairly a decision of the court, given the balance that is provided in the legislation as it is presently framed.

Mr M.J. EVANS: I do not believe that the balance is an equal thing. Someone else is entitled to the possession of this property. That is established in the clause already. The person who is the defendant has already been found guilty. I believe it is quite proper for the balance to be weighted in favour of the victim and I thought that was the purpose of the whole policy in relation to victims. There is no reason under normal circumstances why the victim should not have the property restored. I would have thought it is indeed quite proper to shift the balance in favour of the victim, and that is what the amendment seeks to ensure. I am incredulous that the Minister would in fact suggest that the offender, because they are now convicted, has any right at all to that property, notwithstanding that their personal circumstances may in some way be deficient or unfortunate.

The reality is that this property is someone else's, and I do not see how the court could properly maintain that there is some right of the offender to retain the property which clearly has already been established to be someone else's. When one is looking at the penalty which might be imposed on that offender, one can quite properly look at the offender's circumstances, yes. When penalising that offender on

behalf of the community, one can judge his personal circumstances, his dependants, his antecedents, and the like, and one can show the mercy of the community and the court in that way. However, when one is dealing with property which is taken from some other person by that offender and which is the subject of the crime itself, I do not see that that offender has any rights which must be weighed in the balance in relation to the ownership of the very property which is the subject of the offence itself.

The Hon. G.J. CRAFTER: The honourable member is imputing to me a series of motives that certainly are not in my purview view at all. If I could put it this way, the honourable member is in fact trying to treat what is the exception as the norm, and this is neither a case for the norm or the exception. It is a case for treating each matter on its merits, taking into account all the circumstances provided for in the framework of this Bill. In that way, we will meet the concerns of the honourable member.

The Committee divided on the amendment:

Ayes (16)—Messrs Allison, P.B. Arnold, D.S. Baker, S.J. Baker, Becker, Blacker, Eastick, M.J. Evans (teller), S.G. Evans, Goldsworthy, Gunn, Ingerson, Meier, Oswald, Peterson, and Wotton.

Noes (20)—Mrs Appleby, Messrs L.M.F. Arnold, Crafter (teller), De Laine, Duigan, and Ferguson, Ms Gayler, Messrs Gregory, Groom, Hemmings, Hopgood, Keneally, Klunder, McRae, Mayes, Payne, Plunkett, Rann, Robertson, and Slater.

Pairs—Ayes—Ms Cashmore, Messrs Chapman, Lewis, and Olsen. Noes—Messrs Abbott, Bannon, Blevins, and Hamilton.

Majority of 4 for the Noes.

Amendment thus negatived; clause passed.

Clause 44—'Compensation.'

Mr M.J. EVANS: I move:

Page 18, line 43—Leave out 'section, a court may' and insert 'Act, a court must, unless satisfied that proper reason exists for not doing so,'.

I move this amendment for the same reasons that I moved the amendment to the previous clause.

Amendment negatived.

The Hon. G.J. CRAFTER: I move:

Page 19, line 1—Leave out 'consideration' and insert 'account'.

This is merely a formal drafting amendment to ensure consistency in the use of language.

Amendment carried; clause as amended passed.

Clause 45—'Variation of manner of payment of compensation.'

Mr M.J. EVANS: I move:

Page 19, after line 40—Insert new subclause as follows:

(3) An appropriate officer must not make an order under subsection (2) unless—

(a) the grounds of the defendant's application have been verified by statutory declaration;

and

(b) the officer has had regard to the probable effect of the other on the person in whose favour the order for compensation was made.

In effect, this amendment limits to some extent the discretion of the appropriate officer who, outside the metropolitan area, may be a relatively junior officer. Given that this provision varies the time and manner of the payment of compensation, I have no qualms where the victim is the Government, and it is perfectly acceptable in that case that the revenue and the fine or some other penalty is to be varied. Where payment has been made to a victim of a crime by way of compensation, some limitations should be imposed upon the power of the officer rather than the simple, open-ended process that this measure provides. My amendment imposes a perfectly reasonable limitation given that, in this context, we are dealing not with the court but with an officer of the court. It deals not with a fine but with an order for compensation directly to a victim.

The Hon. G.J. CRAFTER: The Government does not accept this amendment for the same reasons that I advanced in an earlier clause. It is intended that the regulations under the Act will provide for verification by statutory declaration. The officer will be expected to act in a *quasi* judicial manner, that is, he or she may have regard to both interests, and the likelihood, probability, or possibility that the defendant may default in payment and ultimately face imprisonment, is to be balanced against the probable effect of the order on the person so compensated. It is preferable to leave the operation of these provisions to the rules of natural justice instead of entrenching an approach in favour of one interest or another. Obviously, the appropriate officer cannot and will not make an order that will render the original compensation order derisory or *de facto* a nullity.

Mr M.J. EVANS: In view of the Minister's reasonable explanation, I will not press the amendment. However, we part company over this question of whether the legislation should incorporate a slight bias in favour of the victim of crime rather than a balance between the offender and the victim. I unashamedly would like to see the legislation lean just slightly in favour of the victim, and it is for that reason that I have moved the amendment. I feel that the Minister's explanation covers most of the points that I would seek to raise, so I will deal with it on the voices.

Amendment negatived; clause passed.

Clauses 46 to 48 passed.

Clause 49—'Orders that court may make on breach of bond.'

Mr M.J. EVANS: One of the conditions of a bond can be that the defendant restore misappropriated property and pay compensation to the victim. Perhaps the Minister can point out where I have not understood the implications, but if a probationer fails to comply with a condition of a bond—and I am thinking of compensation to the victim rather than another condition—would the funds available from, for example, the guarantor, be available to be then transferred to the victim by way of compensation? Can those kinds of arrangements be made? I feel that the most important aspect is to ensure that those kinds of conditions are met and, if there is a guarantor or some other security, can that fund then be used to pay out the compensation?

The Hon. G.J. CRAFTER: I do not think that I can give the honourable member a definitive reply. It is obviously a matter on which we should obtain more information, and I would not like to hazard an explanation in the Chamber. I undertake to try to explore that matter for the honourable member.

Clause passed.

Remaining clauses (50 to 66), schedule and title passed.

Bill read a third time and passed.

STATUTES AMENDMENT AND REPEAL (SENTENCING) BILL

In Committee.

(Continued from 29 March. Page 3661.)

Clause 2—'Commencement.'

Mr MEIER: Can the Minister say when this Act will commence?

The Hon. G.J. CRAFTER: This Act will be brought into force at the same time as the Act we have just debated. It is anticipated that that will be on 1 July.

Clause passed.

Clauses 3 to 6 passed.

New clauses 6a to 6e.

The Hon. G.J. CRAFTER: I move:

Page 2, after clause 6—Insert new headings and clauses as follows:

PART IIA
AMENDMENT OF CHILDREN'S PROTECTION AND YOUNG OFFENDERS ACT, 1979

Short title

6a. The Children's Protection and Young Offenders Act, 1979, is referred to in this Part as 'the principal Act'.

Substitution of section 55

6b. Section 55 of the principal Act is repealed and the following section is substituted:

Sentence of life imprisonment for murder

55. A child who is convicted of murder shall be imprisoned for life.

Imprisonment of children

6c. Section 58 of the principal Act is amended—

(a) by striking out subsection (1) and substituting the following subsection:

(1) Subject to subsection (2), a child who has been sentenced to imprisonment by an adult court will serve that sentence in prison.;

and

(b) by striking out subsection (3) and substituting the following subsection:

(3) Where an order is made under subsection (2) in respect of a child—

(a) the court must not, at the time of imposing sentence or at any other time while the child is detained in a training centre, fix a non-parole period in respect of the sentence of imprisonment;

and

(b) this Act applies in relation to the child while in a training centre to the exclusion of the Correctional Services Act, 1982, as if the child had been sentenced to detention in a training centre.

Insertion of new section 58a

6d. The following section is inserted after section 58 in Division IV of Part IV of the principal Act:

Release on licence of children convicted of murder

58a. (1) Where a child who has been sentenced to imprisonment for life is being detained in a training centre, the Supreme Court may, on the application of the child, authorize the release of the child from detention on licence.

(2) On the Supreme Court authorizing the release of a child under subsection (1), the Training Centre Review Board must order the release of the child on licence on the day specified by the Court.

(3) The release of a child on licence under this section will be subject to such conditions as the Training Centre Review Board thinks fit and specifies in the licence.

(4) Where the Supreme Court has refused an application by a child for release on licence, the child may not further apply for release for a period of six months, or such lesser or greater period as the Court may have directed on refusing the application.

(5) The Training Centre Review Board may, on the application of the Crown or the child, vary or revoke any condition of a licence under this section.

(6) The Training Centre Review Board may, on the application of the Minister, cancel a release on licence under this section if satisfied that the child has contravened a condition of the licence.

(7) Where an application has been made for the cancellation of a child's release on licence, a member of the Training Centre Review Board may—

(a) summon the child to appear before the Board;

or

(b) issue a warrant for the apprehension and detention of the child pending determination of the application.

(8) Where a child who has been summoned to appear before the Training Centre Review Board fails to attend in compliance with the summons, the Board may—

(a) determine the application in the child's absence;

or

(b) direct a member of the Board to issue a warrant for the apprehension and detention of the child for the purpose of bringing him or her before the Board.

(9) A member of the Training Centre Review Board may issue a warrant for the apprehension and return to custody of a child whose release on licence has been cancelled by the Board.

(10) Where a child who has been released on licence commits an offence while subject to that licence and is sentenced to imprisonment or detention for that offence, the release on licence is, by virtue of this subsection, cancelled.

(11) If a child who is to be returned to custody on cancellation of his or her release on licence has attained the age of 18 years, he or she will be returned to custody in such prison as the Chief Executive Officer of the Department of Correctional Services directs.

(12) A child released on licence pursuant to this section will, unless the release is earlier cancelled, remain subject to that licence until the Supreme Court, on the application of the Crown or the child, discharges the child absolutely from the sentence of life imprisonment.

(13) Both the Crown and the child are parties to any application under this section.

(14) A copy of an application under this section must be served on a guardian of the child, unless—

(a) it is not practicable to do so;

or

(b) the whereabouts of all of the guardians of the child cannot, after reasonable inquiries, be ascertained.

(15) For the purposes of determining an application under this section, the Supreme Court—

(a) may hear, or receive submissions from, any person it thinks fit;

and

(b) may direct the Training Centre Review Board or any other body or person to furnish the Court with such reports as the Court may require.

Conditional release from detention

6e. Section 64 of the principal Act is amended by inserting in subsection (2) '(other than a child serving a sentence of life imprisonment)' after 'a child who has been sentenced to detention in a training centre'.

These amendments seek to make various amendments to the Children's Protection and Young Offenders Act 1979. Consistently with the amendments to the Criminal Law (Sentencing) Bill, the Government is attempting to abolish the indeterminate sentence of the Governor's pleasure where that is part of a sentence for children convicted of murder. Instead, as with adults, the penalty will be mandatory life imprisonment.

There is to be provision for the Supreme Court to release the child from detention on licence and, when a child reaches the age of 18, he or she—as with any other adult—will be able to apply to the Supreme Court for the setting of a non-parole period. This was one of a number of measures referred to in another place, and it was intimated that it would be dealt with in this House when the Bill reached us.

Mr MEIER: The Opposition wants to make it quite clear that we believe that it is an outrage that these very comprehensive amendments, of which this is the first of a series, have come in only today. I know that the Minister said that the amendments were actually in hand late last night. In fact, when I was in the Chair in the early hours of this morning I was aware that they were circulating, but I did not have the opportunity between midnight and 3 a.m. to pick them up and look at them. To my way of thinking, these amendments in themselves virtually constitute the basis for a new Bill.

The Minister says that they were mentioned in the other place. I dispute that in the first instance, because we see here that we are referring in this amendment to a new Act, the amendment of the Children's Protection and Young Offenders Act. It appears to me that the long title of this Bill is no longer to be the title we will be seeking. I do not have on file an amendment to the long title. If that is the case, it means that these amendments have been put together

in a rushed form, and quite clearly indicates that the Minister has left his preparation to the very last minute.

Surely the Minister would appreciate, from his years as shadow Minister, that considerable preparation is needed with any major amendments, so that the appropriate persons are contacted and feedback obtained. I count some 30 amendments, be they consequential or self-contained. What we have here are the beginning of those we find under the Children's Protection and Young Offenders Act. It is a situation which does not lend itself to the end of a session. We are in the second to last day, and if we are to debate these properly we will have another 3 o'clock session. I do not think that that should be the purpose of this Parliament, because we are not in a fit state to debate properly at that time.

Has the Minister on file an amendment, as this has been moved in relation to the Children's Protection and Young Offenders Act and therefore changes the long title of the Bill; it is no longer an Act to amend the Acts Interpretation Act 1915 and all the other Acts then listed. It must also include the Children's Protection and Young Offenders Act, and I foreshadow that it will have to include the Criminal Injuries (Compensation) Act and the Road Traffic Act, because the Minister will be moving those amendments in due course. I ask the Minister whether he has all his amendments on file, and whether he would like to give an explanation as to why we only have these amendments brought on at short notice.

The Hon. G.J. CRAFTER: I would like to clarify the situation when we are dealing with matters that come from one House to another. Where there are amendments intimated in the other place, there is always a limited period of time. We are, at this stage, in the last weeks of session dealing with a number of measures and unfortunately there has been some collapsing of the time that would normally be available. However, all the amendments that were intimated are here before us at the present time to be dealt with. The honourable member's situation last night certainly was unfortunate: he was in the Chair for a very long time during a very important debate. I regret that he did not have that time. However, this measure will go back to the other place and undoubtedly will be the subject of debate there, where the respective Minister and shadow Ministers are situated and, indeed, well placed to debate this measure.

New clause 6a—'Short title.'

Mr MEIER: The Minister did not respond to my question in relation to whether these were the full set of amendments. Therefore, I take it that his non-reply suggests that they are.

The Hon. G.J. Crafter: I said they are.

Mr MEIER: In that case—and I assume we will only find out later—surely if the Children's Protection and Young Offenders Act is being brought into this Bill, that will have to be included in the long title which will come up later. I realise that perhaps I would be out of order to debate it now. I assumed that that would have been on file as well and, likewise, we will find a little later that two other Acts must come in. The Minister seems to have indicated that everything is in order there.

The Minister has indicated that these issues have been discussed in the other place. In that he is wrong. I have read very carefully the *Hansard* transcript of the debate in the other place and I know that there are other amendments mentioned on this sheet that certainly will be brought forward. However, the amendment in relation to the Children's Protection and Young Offenders Act has not, to the best of my knowledge, been discussed in any detail and is a new concept. In fact, in that respect I have checked with some of my colleagues. Certainly whilst I was in the Chair others were able to do some work. Therefore, I refute that. In fact, it upsets me greatly. I believe the only commonsense course for this Committee at present would be to report progress so that we can further consider the amendments and sit some time before we get up late tomorrow. Therefore, Mr Chairman, I move:

That progress be reported.

Motion negatived.

Mr MEIER: Mr Chairman, I will not call for a division on this motion; I realise what the numbers are at present. It simply shows very clearly that the Government is completely unrealistic in the way in which it has put the legislation together at this late stage in the sitting. It shows very clearly that they have not been organised at all. This Bill has been around since last year; it is not as though it is new. Many of these things were discussed in the other place, but not this amendment nor others that have come in. I think it is disgraceful that the Minister has not seen fit to support the reporting of progress so that we can have further time to seek opinions outside this House. He should be well aware that the way in which we operate here dictates that individual parties need to consider a particular course of action.

He would certainly know that time has not been allowed for that to occur. Therefore, the Opposition will oppose most, if not all, of the amendments, partly because we do not agree with them and partly because we have not had a chance to properly consider them before the Bill is returned to the other place. I think it is a poor situation when legislation is rushed through this place on the basis that the other place will deal with it in due course.

The Hon. G.J. CRAFTER: I have also read the *Hansard* debate of 23 March in the other place and the Attorney-General's comment in relation to children involved in murder cases. Referring to the habitual criminals that I have mentioned and the section 77a category of offenders, he said:

We are also examining the question of those offenders found not guilty because of insanity. These matters will come back to the Council.

That is, they will be referred to this Chamber by way of amendment and the broad policy positions that were the subject of debate in the other place as outlined by the Attorney will be dealt with in that way. That was clearly the tenor of the debate in the other place.

Mr S.J. BAKER: I support the comments of my colleague the member for Goyder. It has been pointed out that the concept of the Bill has been around for a long time, but I refer to more recent history. It was only just over a week ago that we reached the second reading stage of this Bill and the previous Bill. The Government simply did not make any effort to make available to this place the amendments that it intended to move. Mention was made in the other place that the Government intended to address certain questions. We were aware that the Attorney was hell bent on having amendments moved in this place to insert back into the legislation indeterminate sentences in their various forms. Those amendments have not been available. We certainly knew about them because the Attorney mentioned them in the other place, but they have not been available.

The Minister and the Attorney-General have had a significant amount of time to put up a package which could stand up to the scrutiny of this place. My colleague the member for Goyder is quite correct when he says that we have been treated rather shabbily. I have addressed this question before. It is not good enough for the Government to say, 'The numbers are more important in the other place.

There is more equal division there so we will not pay any attention to the needs of this place.'

What really galls me is that we have not yet come out of the dark ages in relation to consolidated Acts. I began a process of trying to identify some of the amendments but, quite frankly, I gave up. We did not adjourn until 3 o'clock this morning, and I started on the amendments last night. I was trying to find amendments to amendments of various pieces of the legislation. The Road Traffic Act, which is involved, has at least two sets of amendments per annum. We have to grapple with this situation. There should be a consolidated set of statutes so that members can deal with amendments within an hour or two.

We are dealing with complicated amendments, and we have no hope at all of doing them justice. I went through the previous Bill in depth because it did not involve a large number of amendments: only one piece of legislation was significantly affected, and there was no real problem because I could deal with the amendments on their merits. However, this Bill proposes a range of amendments, not to mention 10 pages of other amendments which affect four other Acts. I simply did not have enough time between 3 o'clock this morning when Parliament adjourned and when we resumed this afternoon to do justice to the legislation. I think the Attorney deserves the utter condemnation of this place. I have asked the Minister to pass on my thoughts on this matter in the past when we have reached the end of a session. The Attorney has really gone over the top this time and is treating both sides of the House extremely shabbily, given that the debate on this Bill was adjourned well over a week ago. I believe that progress should be reported and the legislation not proceeded with.

The Hon. G.J. CRAFTER: I have explained the situation to the best of my ability. I have sought some cooperation from the Opposition in dealing with these matters towards the end of the session. I suppose I could have levelled a similar argument at the member for Elizabeth, who prepared amendments to the previous Bill late last night. It is difficult to obtain responses and perform the preparation work at such short notice. I can only ask for cooperation and understanding so that we can get on with the job. As I said, it is obviously going to be the subject of further detailed debate in another place, where the respective amendments now before us were previously debated and an undertaking was given that they would be further considered by way of introduction in this place.

New clause inserted.

New clause 6b—'Sentence of life imprisonment for murder.'

Mr MEIER: New clause 6b is a very strong clause and statement and is something that will certainly echo through the corridors—that a child convicted of murder shall be imprisoned for life. When I first read it I thought that the laws were certainly being toughened up. I wondered what would happen to adults convicted of murder and whether they would be imprisoned for life plus some other penalty. Of course, I realise, after reading clause 6c, that it is there explained. I wish to make this a test clause because of this blanket statement, and I will comment on the other proposed new clauses later. Mr Chairman, I seek some clarification. As you have agreed to allow members to speak on each new clause, is it in order to divide on them?

The CHAIRMAN (Mr Tyler): It is in order for members to divide on each one.

The Committee divided on new clause 6b:

Ayes (25)—Mrs Appleby, Messrs L.M.F. Arnold, Bannon, Blevins, Crafter (teller), De Laine, Duigan, M.J. Evans, and Ferguson, Ms Gayler, Messrs Gregory, Groom, Hemmings, Hopgood, Keneally, and Klunder, Ms Lenehan, Messrs McRae, Mayes, Payne, Peterson, Plunkett, Rann, Robertson, and Slater.

Noes (15)—Messrs Allison, P.B. Arnold, D.S. Baker, S.J. Baker, Becker, Blacker, Eastick, S.G. Evans, Goldsworthy, Gunn, Ingerson, Lewis, Meier (teller), Oswald, and Wotton.

Majority of 10 for the Ayes.

New clause thus inserted.

New clause 6c—'Imprisonment of children.'

Mr MEIER: I am interested in the Minister's comments about what real penalties will apply to children who commit murder. We have just divided on a new clause which provides that a child who is convicted of murder shall be imprisoned for life. It is interesting that all Government members supported the previous new clause. However, this new clause goes further and deals with the imprisonment of children. I realise that the court must not fix a non-parole period in respect of a sentence of imprisonment.

[*Sitting suspended from 6 to 7.30 p.m.*]

Mr MEIER: Why is the Government introducing this clause to the effect that the court must not fix a non-parole period in respect of a sentence of imprisonment? The Minister's amendment relates back to the provision that a child who is convicted of murder shall be imprisoned for life and it relates forward to a provision that where a child who has been sentenced to imprisonment for life is being detained in a training centre, the Supreme Court may, on the application of the child, authorise the release of the child from detention on licence. I am particularly interested in why the court is not allowed to fix a non-parole period.

The Hon. G.J. CRAFTER: Because these matters are the subject of the review and we are here dealing with children. To set non-parole periods is an inappropriate method of sentencing in these situations.

New clause inserted.

New clause 6d—'Insertion of new section 58a.'

Mr MEIER: It seems to me that the situation we are setting up will be such that the Training Centre Review Board will be able, through application to the appropriate court, to see that the child is released from detention on licence. The concept might sound okay; however, I am well aware of situations that have occurred within my own electorate concerning young child offenders, although not necessarily on such serious charges perhaps as murder—in fact, much lesser charges. Wherever there are these tribunals, eventually a child reaches the stage where he or she virtually pokes their nose at the tribunal, knowing it will really not do anything. If the child is bad, he knows he will be reprimanded and he can keep coming back. This licence system is being introduced, and I notice in subclause (8) that where a child has been summoned to appear and fails to attend the review board can take certain action, but it all seems very minimal.

I acknowledge full well that the clause we divided on earlier, namely, where a child who is convicted of murder shall be imprisoned for life, really should not have been written into this Bill, because it has no meaning. The threat of it might be a deterrent, but once it is explained, it is quite clear that a non-parole period will not be set, and I assume it will be a fairly normal course of events for an application to be made for a licence to be issued for this person. Therefore, the child could perhaps be in and out to some extent, and it might be a very small sentence for a very major crime. Would the Minister explain how these new provisions will lead to a much better system than has applied in the past?

The Hon. G.J. CRAFTER: It certainly builds on the existing situation. As I understand it, the philosophy behind this measure is that every opportunity should be given to a young offender at least to prove to the authorities that there is the possibility of rehabilitation, that that young person can at some stage in the future take their place in society along with all other people living normal, everyday lives. So, there is a design within the sentencing of a young offender for those opportunities to be provided, subject to safeguards.

I refer to the supervisory role, if you like, of the boards, the conditions of a licence granted for the release of a young person, and the sanctions to which the honourable member has referred, including the loss of liberty, the return to incarceration of a child in certain circumstances, and certainly quite severe sanctions. Further, where a child has been released on licence and commits an offence while subject to that licence and is sentenced to a term of imprisonment or detention for that offence, the release on licence is, by virtue of this subclause, automatically cancelled. So, safeguards are built in to the provisions of this new clause which are quite substantial in terms of their deterrent, whilst allowing the maximum opportunities for a display of rehabilitation or a display of an ability to go down the path of rehabilitation. It is recognised that, for many young offenders in offences of this nature, it may be a long path indeed.

New clause inserted.

New clause 6e inserted.

Clauses 7 and 8 passed.

New clause 8a—'Interpretation.'

The Hon. G.J. CRAFTER: I move:

Page 3, after clause 8—Insert new clause as follows:

8a. Section 4 of the principal Act is amended by striking out the definition of 'sentence of indeterminate duration' and substitute the following definition:

'sentence of indeterminate duration' means detention in custody until further order of a court:.

Mr MEIER: Why is there a need for additional clarification on sentences of indeterminate duration?

The Hon. G.J. CRAFTER: This relates to a similar clause in the Correctional Services Act.

New clause inserted.

Clause 9 passed.

Clause 10—'Insertion in Part II of new Divisions IV and V.'

The Hon. G.J. CRAFTER: I move:

Page 3—lines 21 to 23—Leave out subsection (2) and insert subsection as follows:

(2) The advisory committee is comprised of not less than three, nor more than five, members appointed by the Minister, of whom—

(a) one will be appointed after consultation with the United Trades and Labor Council;

and

(b) one will be a person nominated by the Permanent Head.

After line 36—Insert new paragraph as follows:

(ab) one will be appointed after consultation with the United Trades and Labor Council;

These amendments seek to retain the existing position as it appears in sections 5d (1) *(a)* and 5d (5) *(b)* of the Offenders Probation Act 1913 of involvement upon a consultative basis of the United Trades and Labor Council and the establishment of the Community Service Advisory Committee and Community Service Committees for each community service centre. These provisions were inserted in 1981 and there is no good cause for their removal because they have worked satisfactorily in the conduct of this program.

Mr MEIER: During my second reading speech, I mentioned that I was very pleased that these provisions had been deleted from the Bill and that I thought it was a significant improvement. It was a disappointment to me and to other members of the Opposition that the Minister has moved that the United Trades and Labor Council must have an appointee on the advisory committee. The argument from the debate in another place was very clear and, although I cannot refer to it, I can say that any Minister should be able to consult with whomever he or she wishes, be it an employer federation, the Chamber of Commerce and Industry, SACOSS or any other body interested in community service administration. This Government has a strange idea that everyone should be a unionist, and the natural corollary from that is that a UTLC representative must be on the Community Service Advisory Committee. I am disappointed that the Government has not decided to maintain the Bill as it came to this Chamber from another place. Without this restriction, it has a broader perspective. The Opposition cannot support the amendment.

The Hon. G.J. CRAFTER: I will put this matter in its historical context. This measure was agreed to in the legislation that was passed when this Government was in Opposition and the honourable member's Party was in Government. A very important role can be played by the trade union movement in the successful establishment of the community service order scheme because of the work that is done under that scheme and the need to ensure that it does not result in realisation of the fears that were initially held by many workers in the community that it would take away work from tradespeople and others and that well established and legitimate roles played by those persons would be taken away by these means. That has proved not to be the case and, as a result of the very good cooperation that has been evidenced, this scheme has been very successful.

Amendments carried; clause as amended passed.

Clauses 11 to 13 passed.

New clauses 13a and 13b.

The Hon. G.J. CRAFTER: I move:

Page 5, after clause 13—Insert new clauses as follows:

Assignment of prisoners

13a. Section 22 of the principal Act is amended by inserting after subsection (3) the following subsection:

(4) A person may be detained in a particular correctional institution pursuant to this section notwithstanding that the warrant of commitment by virtue of which the person is detained in custody directs that he or she be detained in some other correctional institution.

Reports by the Board

13b. Section 64 of the principal Act is amended by striking out subsection (5).

The further amendment to the Correctional Services Act is designed to revive the old and by this Bill repealed section 93a of the Justices Act, which enables a person named in the warrant of commital to be committed to any gaol in the State, and not the one actually mentioned in the warrant. The revival of the section 93a type provision is more necessary now that Adelaide Gaol is not operational because many outstanding warrants name that as the institution to which the person has been committed. This is an essential transitional measure and seeks to retain the present law on the topic. Its re-inclusion has been sought by the authorities. The amendment to section 64 of the Correctional Services Act is consequential upon the repeal of section 77a of the Criminal Law Consolidation Act.

Mr MEIER: I could go into many aspects of the Criminal Law (Sentencing) Bill that also arise in this Bill, but the earlier debate was fairly extensive and it would not serve any useful purpose to go over some of the arguments that have already been made and voted on, in some cases. I will have to leave to another place the contentious issues that were discussed in the other Bill.

New clauses inserted.

Clauses 14 and 15 passed.

New clauses 15a and 15b.

The Hon. G.J. CRAFTER: I move:

Page 5, after clause 15—Insert new heading and clauses as follows:

PART IVA
AMENDMENT OF CRIMINAL INJURIES COMPENSATION ACT 1978

Short Title

15a. The *Criminal Injuries Compensation Act 1978*, is referred to in this part as 'the principal Act'.

Imposition of levy

15b. Section 13 of the principal Act is amended by inserting after subsection (7) the following subsection:

(8) Notwithstanding any other provision of this section, the Governor may remit a levy, or any part of a levy, payable by a person under this section.

This amendment to the Criminal Injuries Compensation Act confers on the Governor the power to remit the obligation of the defendant to pay the victim's levy. The Governor's prerogative powers to remit a fine do not extend to the remission of a levy which is not a fine or pecuniary sanction imposed by order of the sentencing court but is, in contrast, a sum fixed by law and payable pursuant to statute. There will be some cases—impecuniosity, hardship and unfairness—where the interests of justice can better be served by an act of Executive clemency, that is, the remission of the levy.

Mr MEIER: It is interesting that another new measure has been brought in to amend the Criminal Injuries Compensation Act. I am pleased that, during the dinner adjournment, a further amendment has been put on file concerning the long title; the Minister has acknowledged the point that I made earlier. I will not refer to matters that have been discussed in the Criminal Law (Sentencing) Bill, but I seek some clarification on clause 16a *(b)*. I am somewhat concerned that there does not appear to be any appeal system for a lessening of the possible sentence. People have approached me because the courts have not taken any notice of their request for leniency, perhaps because of hardship caused to the family or to a person's work as a result of a disqualification or fine for a driving offence.

Do I interpret it correctly that the disqualification cannot be reduced or mitigated in any way; that once it is fixed it is fixed and there is nothing that a person can do after the court has made that determination?

The Hon. G.J. CRAFTER: I understand that that is a correct interpretation.

Mr MEIER: Would there be an appeal mechanism through a higher court or would the Minister give consideration to any other appeal mechanism where it could be justly shown that the disqualification was unduly harsh?

The Hon. G.J. CRAFTER: The only avenue available if that judgment is regarded as harsh in the circumstances is to go through the appeal process: that is, within the prescribed time, lodge an appeal and argue before the High Court that the judge or magistrate in the lower court has in some way erred and that the judgment should be set aside and a fresh judgment brought down.

New clauses inserted.

Clause 16 passed.

New clause 16a—'Death and injury arising from reckless driving, etc.'

The Hon. G.J. CRAFTER: I move:

After clause 16—Insert new clause as follows:

Death and injury arising from reckless driving, etc.

16a. Section 19a of the principal Act is amended by striking out paragraph *(b)* of subsection (6) and substituting the following paragraph:

(b) the disqualification may not be reduced or mitigated in any way or be substituted by any other penalty or sentence.

I think that this covers the substance of the honourable member's comments a moment ago. This amendment to section 19a of the Criminal Law Consolidation Act makes it quite clear that the new Criminal Law (Sentencing) Bill cannot be invoked in order to reduce or mitigate any licence disqualification following a conviction for reckless driving resulting in death or injury.

New clause inserted.

Clause 17 passed.

New clauses 17a and 17b.

The Hon. G.J. CRAFTER: I move:

After clause 17—Insert new clauses as follows:

Repeal of s. 77a

17a. Section 77a of the principal Act is repealed.

Repeal of ss. 134 and 135

17b. Section 134 and 135 of the principal Act are repealed.

The thrust of these amendments is that section 77a of the Criminal Law Consolidation Act is repealed in consequence of the amendments to the Criminal Law (Sentencing) Bill; and secondly, that sections 134 and 135 of the Criminal Law Consolidation Act are also repealed. The repeal of sections 134 and 135 was properly, in the Government's opinion, sought by the Director of the Legal Services Commission, and their repeal is supported by the Crown Prosector.

Mr MEIER: I am disappointed that the Minister has seen fit to move the repeal of section 77a because, as was argued in the complementary Bill to this measure, it will take matters out of the arena of the Governor's pleasure and place them with the courts. It seems to me that, at a time when the community is sick and tired of the lack of action in certain cases, this was the opportunity for the Government to hold on to its own power, because I know that at the end of the term of the previous Liberal Government it was well recognised that at least the Government had the power to appeal against sentences and could recommend that the sentence be increased or reassessed.

In this respect, if it all will be in the hands of the courts, it entirely takes it out of the hands of the Government. Of course, that is probably what this Government would like to happen, because then it can easily say, 'It has nothing to do with us; it is in the hands of the courts and we are simply the legislators. We cannot interfere in the decisions made,' and that would be quite correct. But when we have section 77a here, why not leave it here? I would like to go one step further: section 77a allows the courts the right to take extra action. As the Minister would be well aware, under section 77a of the Criminal Law Consolidation Act, if a doctor reports that an offender is incapable of exercising proper control over his sexual instincts, the judge may declare this to be so and direct that he be detained at Her Majesty's pleasure. I bring to the attention of this House a newspaper article of some time ago, headed 'Man "threat" to society, court told', stating:

A man who pleaded guilty to having indecently assaulted a 12-year-old boy was a threat to society and should be detained indefinitely, a psychiatrist told the Central District Criminal Court yesterday . . . While Dr Clayer said the man was not incapable of exercising control over his sexual instincts, he still recommended that he be detained. He had examined many patients over the years and had rarely recommended that anyone be detained under section 77a.

He had spoken with the man for about 45 minutes, had observed his attitudes and answers to questions, and had read several reports about him. He felt strongly that the man represented a danger to society. The man acted impulsively without any thought

to the consequences. 'He doesn't have insight to see, he comes across as a monster, quite honestly,' Dr Clayer said.

Dr Clayer, by the way, is the doctor who gave the advice. When we have such a provision in our statutes, why not retain it? There is no doubt that the provision has been used very sparingly, but it is well recognised that it is available and, at a time when society is more and more concerned about offenders generally and sexual offenders specifically, let us see it retained. I believe very firmly that taking away this provision will not assist our society; it will take away one more provision which perhaps could have been of benefit to society as a whole. I will be interested to hear what the Minister has to argue for the repeal of section 77a.

The Hon. G.J. CRAFTER: Perhaps I can give some background to the representations that have been made to the Government in support of the changes proposed involving section 77a. Concern has been expressed from a number of quarters, particularly from the Legal Services Commission, about the interpretation of sections 134 and 135 of the Criminal Law Consolidation Act, and it is the view of those who made representations that magistrates are applying a correct and valid, albeit strict, interpretation of those sections.

The outcome of that is that, where there is a first offence, for example, of simple larceny, under section 131 of the Criminal Law Consolidation Act, the punishment for that is imprisonment for any term not exceeding five years, the offence thereby being a felony, so the first offence is able to be heard by a summary court as a group 3 minor indictable offence.

Some magistrates are taking the view that where a person commits a simple larceny after a previous conviction for larceny, they have no jurisdiction to hear that matter and they are accordingly committing that person charged in the District Criminal Court for sentence or for trial. The outcome of that in practical terms is that there are serious repercussions for clients of the Legal Services Commission, for solicitors in private practice and for the commission itself in relation to its present budgetary position, indeed, and that of their clients. Where a client wishes to plead not guilty, for example, to a charge of shoplifting and there is a reasonable prospect of success, the commitment required would be the sum of $680 for an oral committal, plus $1 180 for a two day District Court trial. Previously the matter would probably have been capable of disposition by a one day trial in the Magistrates Court.

For second offences shoplifters often are undergoing psychiatric or other medical treatment and the time delay and additional stress associated with an appearance before the District Court are, it is submitted, harsh. The additional cost of the administration of justice is believed to be unwarranted. For those reasons the Government is advancing these amendments, and I think the merit of the case is thereby made out.

Mr MEIER: Perhaps I have got things mixed up. I talked about the repeal of section 77a of the principal Act and I assume that the Minister moved for the repeal of that section and sections 134 and 135 of the Criminal Law Consolidation Act. The Minister's reply related to section 134 and 135, to which I have not referred specifically. I acknowledge that the Minister has provided additional information about sections 134 and 135 and I would be interested to hear his argument about why section 77a should disappear.

The Hon. G.J. CRAFTER: First, I was putting into context why we were amending this section. It is easy to misinterpret the difference between section 77 of the principal Act and section 77a of the Criminal Law Consolidation Act. The matters raised by the honourable member earlier are matters that we debated in respect of the previous Bill, that is, the merits of dealing with these matters either in the administration of Government or within the judiciary. We have debated them carefully this evening.

Mr MEIER: As I said that I would not try to canvass things that were debated extensively in the Criminal Law (Sentencing) Bill, I will not pursue the matter further, although I would have liked a more comprehensive reply from the Minister. I know this matter will be sorted out in another place.

Mr S.J. BAKER: I am pleased that the Minister has actually explained why we are repealing sections 134 and 135. It is like a bolt out of the blue. The Attorney certainly gave no indication upstairs that he was going to delete these sections. They are for second offences, as the Minister understands; they are consequential on the first offence being committed. The Minister has heard the debate about the change of administration, and I am not going to repeat our dislike for the change that is being mooted here tonight, but certainly I am concerned that again we have an amendment which has been slipped in at the last moment and which has suddenly come forward because of Crown law advice.

We have not had an opportunity to canvass it with the legal fraternity, and there are grave doubts about it. I imagine that these provisions have been on the statutes for possibly 100 years. Perhaps someone can explain for how long they have existed. The provision says that, if a person commits a simple larceny offence after having committed a felony or an indictable misdemeanour, the person shall suffer a further penalty of up to 10 years. I take the Minister's point that now, because of the way in which the courts are treating these matters, it is not necessarily the place of the District Criminal Court to handle these cases. I remind the Minister that there seems to be nothing in its place.

The Minister has not said that the principle is wrong, so the principle must still apply that there should be a further penalty. He said that because of the cost of court cases we should think about better jurisdictions. This matter will be argued by greater minds than ours in another place when the Bill returns, but I repeat to the Committee that it is absolautely disgraceful that we have a change which is quite fundamental being slipped through this place in amendments that were put before this Chamber late last night.

If the Minister had canvassed all these areas with the shadow Minister (Hon. Trevor Griffin), we would have been in a better position to canvass our views and discuss them in the Party room, get agreement on the propositions and say whether or not they were a good idea. We are faced with a situation where we are trying to make policy on the run. Fundamental policy changes are taking place here. It is regrettable that the Attorney with so much time at his disposal, could not come up with a better solution.

Returning to the principle, I am unsure whether there should be something further put in place or whether existing statutes are sufficient to handle this principle, which has been around for a phenomenal period on the statutes, whether here or in the United Kingdom. On that basis we reject both amendments.

The Hon. G.J. CRAFTER: I think the arguments that I have advanced this evening on behalf of the Government have considerable substance. Secondly, with the matter of severity of penalties and change in the law, it can be argued cogently that the existing law is still quite draconian and ought to be repealed. For example, for a simple offence of shoplifting, for a second offender the maximum penalty can

be five years imprisonment and, for a person who is a recidivist and who continues to offend, there is always the option for the Attorney to bring in an *ex officio* indictment and have the matter sent to the Supreme Court. Substantial penalties exist in the legislation, and they will remain so in this area. To have the interpretation that has currently been placed on the law—and, as I have said, it is open to argument that that is a valid interpretation with the consequences that it has—it is desirable that the matter be dealt with and dealt with expeditiously.

New clauses inserted.

Clauses 18 to 27 passed.

New clause 27a—'Repeal of sections 319 to 328 and heading.'

The Hon. G.J. CRAFTER: I move:

Page 6, after clause 27—Insert new clause as follows:

Repeal of ss. 319 to 328 and heading

27a. Sections 319 to 328 (inclusive) of the principal Act and the heading preceding section 319 are repealed.

This amendment will be brought about through the repeal of sections 319 to 328 and is consequential on the amendments regarding habitual criminals relating to the Criminal Law (Sentencing) Bill.

Mr MEIER: Certainly, it has some similarities to section 77a, where every offender in respect of that provision could be detained in such institution as directed by the Governor and until the Governor gave a direction in any gaol; or where the detention is ordered through Her Majesty's pleasure should not be released under certain circumstances. The key section being repealed is section 321, which provides:

Subject to this Act every habitual criminal shall at the expiration of his sentence be detained during Her Majesty's pleasure in some place of confinement set apart for that purpose by proclamation. A place of confinement so proclaimed shall be a prison within the meaning of the Prisons Act, and the detention of an habitual criminal therein shall be subject to that Act.

Once again, the provision relates back to the previous Bill. The Opposition has a fundamental disagreement with the Government as to whether it should be up to the courts or at the Governor's pleasure. Once again—and I think I said this during the second reading debate—it is pleasing that this provision was included, but now it is to be repealed.

New clause inserted.

Clauses 28 to 55 passed.

New clauses 55a to 55g.

The Hon. G.J. CRAFTER: I move:

Page 9, after clause 55—Insert new headings and clauses as follows:

PART VIIA
AMENDMENT OF ROAD TRAFFIC ACT 1961

Short title

55a. The Road Traffic Act 1962, is referred to in this Part as 'the principal Act'.

Failure to stop and report in case of accident

55b. Section 43 of the principal Act is amended—

(a) by inserting in paragraph *(a)* of subsection (3b) 'or be substituted by any other penalty or sentence' after 'in any way';

and

(b) by striking out paragraph *(b)* of subsection (3b).

Reckless and dangerous driving

55c. Section 46 of the principal Act is amended—

(a) by inserting in paragraph *(b)* of subsection (3) 'or be substituted by any other penalty or sentence' after 'in any way';

and

(b) by striking out paragraph *(c)* of subsection (3).

Driving under influence

55d. Section 47 of the principal Act is amended—

(a) by inserting in paragraph *(b)* of subsection (3) 'or be substituted by any other penalty or sentence 'after' in any way';

and

(b) by striking out paragraph *(c)* of subsection (3).

Driving whilst having prescribed concentration of alcohol in blood

55c. Section 47b of the principal Act is amended—

(a) by inserting in paragraph *(b)* of subsection (3) 'or be substituted by any other penalty or sentence' after 'in any way';

and

(b) by striking out paragraph *(c)* of subsection (3).

Police may require alcotest or breath analysis

55f. Section 47e of the principal Act is amended—

(a) by inserting in paragraph *(b)* of subsection (6) 'or be substituted by any other penalty or sentence' after 'in any way';

and

(b) by striking out paragraph *(c)* of subsection (6).

Compulsory blood tests

55g. Section 47i of the principal Act is amended—

(a) by inserting in paragraph *(b)* of subsection (14a) 'or be substituted by any other penalty or sentence' after 'in any way';

and

(b) by striking out paragraph *(c)* of subsection (14a).

The new clauses arise from amendments to the Road Traffic Act. that make it clear that the new Criminal Law (Sentencing) Act expressly refers to the relevant drink-driving provisions in lieu of the Offenders Probation Act, which is to be repealed. In effect, they are housekeeping amendments.

Mr MEIER: It is interesting to hear the Minister say that this is simply a housekeeping procedure. It is this type of thing which is most annoying to the Opposition, when it does not receive adequate notice of amendments. This is now the third new Act introduced into this Bill by amendment. The Minister would be well aware that for anyone to prepare adequately there must be reference to the legislation which is to be amended.

We have dealt with, first, the Children's Protection and Young Offenders Act, then the Criminal Injuries Compensation Act and now the Road Traffic Act. In the limited time available to me I could not locate an up-to-date version of the Road Traffic Act pertinent to these amendments. In fact I do not think there is an up-to-date set of statutes in this Parliament. If it was decided some time ago to proceed with these amendments, surely at the very least they should have been given to us last week so that we could consider them carefully and be fully prepared.

As it is, in relation to this amendment to the Road Traffic Act, I can see what the Minister is getting at when he says that they are housekeeping amendments. He may well be right in that respect, but I simply do not know because I do not have the Act before me.

New clause 55c seeks to insert the words 'or be substituted by any other penalty or sentence' after the words 'in any way' (words which I could not locate). Those words are also inserted in new clauses 55b through to 55g.

The Hon. G.J. CRAFTER: The thrust of the amendment will read:

The licence disqualification cannot be reduced, mitigated or substituted by any other penalty or sentence.

So to that extent it is a housekeeping amendment because it ensures that the Bill cannot be used in any way to reduce a sentence for offences under the Road Traffic Act.

New clauses inserted.

Clauses 56 to 58 passed.

Clause 59—'Transitional provisions.'

The Hon. G.J. CRAFTER: I move:

Page 9, lines 34 to 39—Leave out subclause (2).

The deletion of subclause (2) is wholly consequential on proposed new clause 60, with which the Committee will deal in a moment.

Amendment carried; clause as amended passed.

New clause 60—'Sentences of indeterminate duration.'

The Hon. G.J. CRAFTER: I move:

Page 9, after clause 59—Insert new clause as follows:

Sentences of indeterminate duration

60. (1) Subject to this section, nothing in this Act affects—

(a) the validity of a sentence of indeterminate duration (detention at Her Majesty's or the Governor's pleasure) being served, or to be served, by a person pursuant to an order of a court made before the commencement of this Act under a provision repealed by this act;

or

(b) the validity of the release on licence by the Governor of such a person before the commencement of this Act.

(2) On the commencement of this Act—

(a) a sentence of indeterminate duration referred to in subsection (1) will, subject to subsection (3), be taken to be a sentence of indeterminate duration imposed under the Criminal law (Sentencing) Act 1988;

and

(b) a release on licence referred to in subsection (1) will be taken to be a release on licence under that Act by the Parole Board or the Training Centre Review Board, as the case may require, on the authority of the Supreme Court.

(3) Where a child is, at the commencement of this Act, serving a sentence of indeterminate duration imposed on conviction of murder, the following provisions apply:

(a) the sentence will be taken to be a sentence of imprisonment for life imposed by the Supreme Court;

(b) if the child is in custody in a training centre, the child must (unless earlier released on licence) be transferred to a prison on turning 18 years of age;

and

(c) if the child has been released on licence by the Training Centre Review Board prior to the commencement of this Act the child will be taken to have been released on licence by the board under section 58a of the Children's Protection and Young Offenders Act 1979, on the authority of the Supreme Court.

(4) In subsection (3)—

'child' means a person convicted of murder who had not attained the age of 18 years on the day on which he or she committed the offence.

These amendments are transitional provisions. Existing sentences of indeterminate duration, that is, at Her Majesty's or the Governor's pleasure, are deemed to be sentences of indeterminate duration under the Criminal Law (Sentencing) Act 1988, that is, detention until further order of the court.

Any existing release from detention on Governor's licence will also be taken to be release from detention by the relevant court. A child convicted of murder who is presently serving a sentence of detention at the Governor's pleasure will be deemed to have been sentenced to life imprisonment by the Supreme Court. These transitional provisions will therefore in effect transmute the extant current Governor's pleasure sentences into sentences of indeterminate duration within the meaning of that expression in the Criminal Law (Sentencing) Bill.

The new judicial regime of indeterminate sentences will apply forthwith to persons currently detained under sections 77a and 319 of the Criminal Law Consolidation Act 1935.

Mr MEIER: I take it that from July this year all children under the present system will automatically come under the terms and conditions of the new system, assuming it is carried.

The Hon. G.J. CRAFTER: That is my understanding of the provisions.

Mr S.J. BAKER: I was struggling to remember the woman's name who was involved in the Moors murders and it is prophetic that it appears in tonight's *News* on page 28. The article is entitled '25 years on...new Moors murder verdict'. The name of the woman is Myra Hindley. We have some criminal mental defectives in our institutions and, in my opinion, these provisions will make it easier for them to be released—not that I am aware that any have committed the horrific murders that Brady and Hindley committed in their spree of sexual murders when they preyed on little children. However, in our institutions we have some people who, if given the opportunity, could be placed in that category.

I do not believe it is appropriate that we change the rules. Obviously, this legislation will relate to the people who are in the system and will make it easier for the Government to push them out into the community because the courts and not the Government will be making the final decision. I give fair warning to the Government, that if one person currently detained at Her Majesty's pleasure is released under this system because they have been in an institution for a considerable time and the Government deems it appropriate to normalise them in the local community and they re-offend in a vicious and serious fashion, the Opposition will take the opportunity to ensure that the people of South Australia are aware of the consequences of the Bill.

The Hon. G.J. CRAFTER: I simply cannot let that interpretation pass. Obviously, it is only one person's interpretation, and I think it is quite erroneous. Indeed, I suggest that quite the opposite is the situation. For the first time in this State the community is being protected with the establishment of this statutory provision for the community's interest to be taken into account when making these decisions. I have every confidence in the judiciary taking those views into account when dealing with these matters. I am sure that it will not result in the consequences—indeed the only consequences—that are predicted by the member for Mitcham.

The Hon. T.M. McRAE: In general terms I support the Minister but would like to add one other thought in consequence of what the member for Mitcham said. Whatever system one introduces, I hope that in the future both political Parties in this State will avoid playing on consequent offences by people who have been in custody as a means of attacking their political opponents, because I do not think that that helps at all. The plain fact of the matter is that over the past 40 or 50 years courts have become better at imposing reasonable sentences, and Governments have become better at trying to work out reasonable probationary circumstances. I do not think that there is any need to dwell on alarmist possibilities. Those alarmist possibilities are always there, but I do not think that it helps either the general community or the particular offender.

New clause inserted.

Title.

The Hon. G.J. CRAFTER: I move:

Page 1—

Line 6—After 'Acts Interpretation Act 1915,' insert 'The Children's Protection and Young Offenders Act 1979'.

Line 7—After 'Correctional Services Act 1982,' insert 'The Criminal Injuries Compensation Act 1978.'

Line 8—Leave out 'and'.

Line 9—After '1926' insert 'and the Road Traffic Act 1961.'

This amendment is self-explanatory.

Mr MEIER: This amendment indicates what I said at the outset, that these amendments were brought in in a rush and that there was a lack of preparation. It indicates how the Government has not done its homework in time. It is a pity to see how this Bill has in many ways been foisted on the community. We do not know the full significance and effects of the provisions that will shortly pass this House because the Government has the numbers. The Government could not even get the title right and, with this long list of amendments, it clearly shows that it was not

prepared. It realised that it is the last week of this session. The Minister said that the Government wanted this Bill to come into operation in July and that it would have been too late if it had been left until we came back for the next session. However, for the benefit of the people of South Australia I feel that it may have been better for this legislation to be given the appropriate consideration and thought it deserves. At least the Minister has recognised the error in the long title, and that has now been attended to.

Title as amended passed.

Bill read a third time and passed.

SEXUAL REASSIGNMENT BILL

Adjourned debate on second reading.

(Continued from 6 April. Page 3817.)

Mr OSWALD (Morphett): This Bill is substantially different from the Bill that was floated in the public arena when it was before another place in December 1987. I will refer to the original Bill and draw some comparisons with the one before us tonight.

While I am doing that, the Minister might be good enough to have a look at an amendment being circulated at the moment to which I will be speaking in Committee. The Bill originally dealt with two aspects of sexual reassignment: first, namely, infant reassignment where a child is born with or develops ambiguous genitalia, and a decision is made to alter the child's physical appearance and raise the child as a person of the other sex; and, secondly, the reassignment of transsexuals from a person suffering from what was called primary gender dysphoria syndrome.

This was defined in the Bill as a condition from which a person suffers from the following characteristics: first, the person believed that his or her sexual characteristics do not accord with his or her true sex; and, secondly, that person desires to alter his or her sexual characteristics so as to accord with that person's belief that he or she was of a different sex. This Bill deletes the primary gender dysphoria syndrome definition, because the Government now has decided not to include this criterion as a condition for the carrying out of operations in the legislation before us: it will now be left to the Health Commission. The original Bill was quite interesting: it set out to establish the South Australian Sexual Reassignment Board (TSASRB). It was to comprise a presiding officer, being a legal practitioner of at least seven years standing, and a number of other medical practitioners.

The board would sit in two divisions: the Adult Reassignment Division and the Child Reassignment Division. The Adult Reassignment Division was to deal with the question whether or not a reassignment procedure was to be carried out, but only with the approval of a hospital and of the medical practitioner to carry out the procedure. It would also deal with the issue of a recognition certificate, and I will be speaking at length shortly on the question of recognition certificates. The Child Reassignment Division would deal with those matters and also with the granting of approval to undergo a reassignment procedure. This is now deleted from the Bill, and recognition certificates are now to be issued by a magistrate. The Opposition will be supporting that change.

The Government's plan was that a person other than a child would not be eligible to undergo a reassignment procedure which is a medical or surgical procedure to alter the genitals and other sexual characteristics of a person unless the person was suffering from this primary gender dysphoria syndrome; had attained the age of 23 years; was not married; over the period of at least 24 months since attaining the age of 21 years had received counselling of a kind approved by the board; had lived a lifestyle appropriate to the sex for which the person sought to be identified; and had consented to the procedure.

When the recognition certificate was to be produced to the Registrar of Births, Deaths and Marriages, the Registrar would be instructed to register the certificate, make appropriate entries and alterations on any index or register, and issue a new birth certificate recording the sex of that person as the sex to which he or she had been assigned. I have spent a few minutes on the background to this Bill as it was originally presented in the public arena because it was that last point with which the Opposition had a great deal of difficulty. The scheme that was put forward was very clear. A person having undergone a change involving a reassignment procedure would then be registered with the Births, Deaths and Marriages under the new sex and no registration was to be recorded in the records of the State of what was the former sex. As I said, the Opposition had great difficulty with that provision, and we were extremely happy that the Government acceded to the Opposition's request in another place and altered the procedures. I will come to that clause in the Bill shortly.

The question dealt with in the Bill is complex and extremely controversial. Only a very small group in the community is affected by the legislation but, nevertheless, I applaud it and think it is worthwhile that this type of legislation should be on the statute books. I understand that there has not been any consultation with the medical practitioners who work in this area. The Flinders University, which has undertaken four or five cases per year, in fact proposes to stop its program when it reaches 30 cases and it will then evaluate the benefits and detriments of the treatment. That is a fairly responsible attitude on behalf of that clinic and, once again, I shall refer to that very shortly.

In the United States of America, the pioneer of sex change operations has, I understand, stopped the work because of the uncertainty of its value. Therefore, it is very important that the ongoing programs be carefully analysed, and those involved in counselling would-be patients are certainly highly qualified and understand what they are about. There is also the problem of children with a physical abnormality in relation to their sex, and of those who are unequivocally male where the problem is psychiatric. It has been suggested to me that, in the case of a child with ambiguous sexual genitalia, the child's chromosomal patterns should be tested and should be the determinant of sex with some focus on surgery if that test results in a clear conclusion inconsistent with the genitalia. With those who are unequivocally male, the suggestion has been made that appropriate psychiatric counselling should be available, but that an alteration to the birth certificate should not be permitted.

The Bill now before us is certainly a much more acceptable measure than the one that was before another place. The concept of this TSASRB is unnecessary and the responsibility for issuing recognition certificates can quite conveniently be handled through the magistrates courts. Clause 7 (8) on page 4 sets out the role of the magistrate as follows:

> Where an application under this section relates to an adult, the magistrate may issue a recognition certificate if—
>
> *(a)* either—
>
> (i) the reassignment procedure was carried out in this State;
>
> or
>
> (ii) the birth of the person to whom the application relates is registered in this State;
>
> *(b)* the magistrate is satisfied that the person—

(i) believes that his or her true sex is the sex to which the person has been reassigned;
(ii) has adopted the lifestyle and has the sexual characteristics of a person of the sex to which the person has been reassigned;
and
(iii) has received proper counselling in relation to his or her sexual identity.

The magistrate has to ensure all the procedures have been carried out, that the person has been thoroughly counselled beforehand so that he or she totally understands what he or she is about to enter into; and, having done that, the magistrate then issues this recognition certificate. Clause 7 (9) sets out the procedure in relation to a child, as follows:

Where an application under this section relates to a child, the magistrate may issue a recognition certificate if—
(a) either—
(i) the reassignment procedure was carried out in this State;
or
(ii) the birth of the child is registered in this State;
and
(b) the magistrate is satisfied that it is in the best interests of the child that the certificate be issued.

I direct my remarks to the Minister on this occasion. It has been accepted in principle that there is a need to counsel adults but there is no mention of the need for proper counselling for children. The amendment that I will move to this clause acknowledges that children are under the care of a parent or a guardian. If a magistrate must assure himself that an adult has been properly counselled, the principle applies to a child if the child is old enough to be counselled. If the child is not old enough for counselling, the magistrate should inquire whether the parent or guardian of that child has been counselled so that he or she is in a position to help. Such a provision will be accepted as it applies to adults. It has not been included in the Bill regarding children because it may not have been thought through or realised that the parents or guardians of a child may need some counselling and help. It would be eminently sensible if the magistrate was required to seek those assurances before the granting of a recognition certificate.

I see no reason why the South Australian Health Commission should find it necessary to approve specific hospitals and the doctors who are to perform this operation. I refer to clause 6 (3) *(b)* and *(c)*, which provides that the approval of a hospital will be subject to various terms and conditions, as follows:

(b) a condition preventing the carrying out of reassignment procedures at the hospital unless appropriate staff and facilities for the counselling and care of the patient are available;
(c) a condition requiring the hospital to keep specified records in relation to reassignment procedures carried out at the hospital, and in relation to any associated treatment.

I agree with those paragraphs but the provisions do not have to be linked with the need to give approval to specific doctors and hospitals. No-one in this Chamber would say that the clinic, the specialist surgeons, their assistants and the support staff at the Flinders Medical Centre have been derelict in the exercise of their medical duties; yet they were not registered. There was no peer group review of them other than the usual review undertaken within the medical profession of all doctors up to and including senior surgeons in this State. The medical profession, which is very well qualified and responsible, undertakes its own peer group review.

More importantly, operations of the type considered in this Bill would not be performed without sufficient clinical back-up. Doctors understand the necessity for counselling, otherwise why would the Flinders Medical Centre have decided to stop after 30 operations and spend some time evaluating, re-evaluating and checking that the service the unit provided was adequate and useful? I ask the Minister to spend a little time on this clause and to convince the House why it is necessary for the Health Commission to approve the doctor who will perform the surgery and the hospital at which the operation will take place.

On the basis of the definition of 'reassignment procedure', the hospitals and the medical practitioners who carry out the procedures do not need any further supervision. The Bill provides:

'reassignment procedure' means a medical or surgical procedure (or a combination of such procedures) to alter the genitals and other sexual characteristics of a person, identified by birth certificate as male or female, so that the person will be identified as a person of the opposite sex and includes, in relation to a child, any such procedure (or combination of procedures) to correct or eliminate ambiguities in the child's sexual characteristics.

No senior surgeon in this State would carry out such surgical procedures unless they have the right clinical atmosphere, the right back-up and the right administrative staff to cater for the counselling, the servicing, and the keeping of accurate records. It is a nonsense for the Government to suggest that another licensing system must be put in place. The Government is rapt in the idea that people must be licensed just to raise a finger. Hospitals and doctors have peer group reviews and very strict clinical standards. South Australian hospitals are second to none in the world, and I do not believe that it is necessary to impose these restrictions on them. An adequate mechanism is already in place. At times I wonder where the ALP dreams up these schemes. This is an excellent piece of legislation but the Government has taken off on a number of tangents that put unnecessary additional restrictions into the Bill.

The Opposition is pleased that the concept of the TSASRB has been removed in another place. It would have been wasteful to have a board with eight members assessing operations that shortly will not take place anyway. As I have said, as soon as the unit at Flinders Medical Centre has dealt with 30 cases, the program will cease for the time being while evaluations and re-evaluations take place. It is relevant that no other clinic in the State is planning similar operations so it is probably not vital to rush this legislation through. I am pleased that it will go on the statute book and that the re-evaluation phase is about to be entered.

I will dwell for a moment on the registration of recognition certificates and in doing so I refer to clause 9. The Government's original intention was to allow birth certificates to be changed after a successful sex change operation had been performed and a recognition certificate had been issued. As I said in my opening remarks, this is of great concern to the Opposition because, when the certificate was registered, it would have resulted in a new birth certificate. The clause in the amending Bill overcomes the many difficulties foreseen by my colleagues in another place. I register the Opposition's agreement with the Minister on this new concept.

That concludes my remarks on the second reading of the Bill. During the Committee stage I would like the Minister to justify the necessity for the Health Commission to be involved and to address the question of counselling. That is very important because it is acknowledged in clause 7 that adults should have counselling but it does not make provision for the counselling of children. Nor is there a recognition in principle that there should be counselling for children if they are old enough to be counselled, or counselling for the parent or guardian. I will be pleased if members give serious consideration to supporting my amendment in that regard.

Mr MEIER (Goyder): Without going into detail, I will reinforce some of the points made by the member for Morphett.

Reassignment surgery has been carried out in this State for some time, which is a key reason for us as legislators to take such reassignment operations into account and to make sure that, whether we agree or disagree with whatever may have been carried out, the people concerned are suitably looked after and provided for in society. It was distressing to read some time ago of, I assume, a transsexual who was to all intents and purposes a woman and who had been put into a male prison, I think in New South Wales, with the results being anything but positive. However, when the Bill first came to my attention before it reached this House it concerned me, because it provided for the issue of recognition certificates by the board.

Once a recognition certificate had been obtained it could be lodged with the Registrar of Births, Deaths and Marriages in order for a new birth certificate to be obtained. This worried me from the point of view that it meant that birth certificates were not necessarily final and conclusive from the time they were issued. The Bill that comes before us has this point modified, so we now find that the Bill again provides for the issue of recognition certificates by a magistrate. Once a recognition certificate has been obtained it can be produced to the Registrar of Births, Deaths and Marriages in order to obtain registration of the reassignment of sex. That is a significant difference, because it records the new sex of a person—and I think that is necessary—but the original birth certificate has not been destroyed. Hopefully, this provision will help those people who are in that situation.

As the member for Morphett said, there is some question as to the impact this legislation will have in future, because it seems that the Flinders Medical Centre may not be carrying out any more cases until analyses of the cases so far attended to have been looked at further. Nevertheless, whilst there are many other factors which could be debated under this Bill, it is particularly on that point (that at least not a new birth certificate is being issued, but rather that a notification of the reassignment of sex is being put on the birth certificate) that I think that this is probably the best way we as legislators can go.

The Hon. G.J. CRAFTER (Minister of Education): I thank all members who have contributed to this debate for their thorough examination of this measure. The Bill is an important step in adopting a more realistic and sensitive approach to persons who undergo sexual reassignment procedures. It will not necessarily solve all the problems faced by transsexuals—and that is readily admitted by all members. For example, the issue of marriage for transsexuals will still be a matter for the Commonwealth to resolve. However, in this State it will give them a legal recognition which has been lacking till this time. When referring to the role of the Commonwealth in this matter, it is interesting to note that the issue of legal recognition of transsexuals was first raised by the Standing Committee of Attorneys-General in 1979.

That committee spent some time examining the need for reform with regard to post-operative transsexuals, although not all the States of the Commonwealth could agree on what, if anything, should be done in this area with respect to law reform. As a result, the Standing Committee no longer has this matter on its agenda, so it has been left to each State Government and to the Commonwealth Government to decide within their own priorities. South Australia has brought this matter before the House, and this will provide for the regulation of reassignment procedures, so that the legal status of post-operative transsexuals can be recognised in this State.

A number of matters have been raised by members in the second reading debate, on which I will comment briefly. The Government has accepted that the matter could be dealt with without a board, which I think is regarded as an unnecessary degree of bureaucratic regulation in this area. The Government considered that some form of regulation was required and that the amendments passed in the other place provided for the Health Commission to be the responsible authority in this area. The commission will be able to impose conditions regarding the performance of reassignment procedures, such as the eligibility of persons for the procedure. The use of regulation should ensure that adequate counselling etc, is available to transsexuals and, in the case of infant reassignment, to the infant and his or her guardian.

The Opposition proposes that, before a recognition certificate is issued for a child, counselling should be made available to the guardian. The member for Morphett has foreshadowed an amendment there. If possible, the child will be included in that mandatory counselling. The Government does not consider this amendment necessary, as it is considered that the approval process should be sufficient to ensure that proper counselling is available. It is considered that the issue of a certificate for a child should be based solely on the grounds of the best interests of the child.

The Opposition has expressed the view that regulation of hospitals and medical practitioners is unnecessary. The reasons for retaining some degree of regulation have been the subject of debate in another place. Briefly, they include the serious nature of the operation; the need to ensure that proper diagnosis, support and information is available to a person undergoing a reassignment procedure; the need to differentiate symptoms of transsexualism from other diagnoses; the difficulties associated with patients urging practitioners to perform the operation; and the small number of practitioners practising in this area, which makes it difficult to change doctors or get a second opinion.

The Government is aware that the Flinders Medical Centre is no longer involved in performing these types of procedures on transsexuals. However, recent press reports have highlighted that there are still persons in the community seeking the reassignment procedure and, therefore, the inclusion of some form of regulation at this time is seen as appropriate. I might add that there is a need for regulation to ensure that the legal rights and responsibilities that flow from this legislation are followed through. We have established a legal framework and certain rights under this Bill. They need to be administered and monitored. I give notice to members that I shall move some amendments as circulated, which alter the penalties in this Bill and bring them into line with penalties provided in other Acts of this House.

Bill read a second time.

In Committee.

Clauses 1 to 5 passed.

Clause 6—'Approvals.'

The Hon. G.J. CRAFTER: I move:

Page 2, line 25—Leave out '$10 000' and insert '$8 000'.
Page 3, line 13—Leave out '$10 000' and insert '$8 000'.

The original penalty is not consistent with the penalty structure outlined in the Statutes Amendment and Repeal (Sentencing) Bill with which we have just been dealing. The Government considers it desirable that the penalties contained in legislation should conform with the structure in the Bill.

Mr OSWALD: I support the amendments.

Amendments carried.

Mr OSWALD: I again raise with the Minister the Government's need to give approval to the doctor who will perform the surgery, and also to give approval to the hospital. I will not repeat all the points I made in my second reading speech, but I refer members to the provision, which sets out the approval procedure, as follows:

> The commission will not approve a hospital unless satisfied—
> *(a)* that the hospital is a suitable place for the carrying out of reassignment procedures;
> and
> *(b)* that appropriate staff and facilities are available at the hospital to ensure that patients in relation to whom reassignment procedures are carried out receive proper counselling and care.

Again, I ask the Committee to question the necessity for that additional registration. As with the example of Flinders Medical Centre, there is no way that with peer group medical reviews existing within the profession, doctors will carry out these reassignment procedures unless they have their qualified people to support them, unless they have back-up support staff, and unless they have the ability to administer the scheme and give counselling at the appropriate time.

It is an insult to the medical profession to impose these constraints. Additional registration by the medical profession in this State is unnecessary when the profession is perfectly capable of administering itself and providing its own peer group review. I am amazed that the South Australian Government has not the faith in the senior surgeons in major teaching hospitals to be able to organise themselves to implement these programs. Once again, we see this obsession with a socialist Government having to impose controls over everything that is happening in this State.

Members interjecting:

Mr OSWALD: The member for Mawson chortles as if she disagrees with what I am saying, and that disturbs me. South Australia has the most wonderful medical system, with the most highly qualified senior surgeons, and not one of those surgeons would implement such a program unless he or she had adequate back-up. Even if they did proceed, there are always more senior surgeons, professors and medical school professors who can oversee the program. Therefore, I ask the Government to reconsider this step, which is unnecessary. We have peer group reviews in clinics. We have a qualified medical profession whose members would never attempt this type of operation albeit at another clinic. The procedure need not be undertaken at Flinders Medical Centre: it could be at Royal Adelaide Hospital. No-one at Royal Adelaide Hospital would undertake this work unless they were qualified, yet the Government is obsessed with the idea of the need for registration because it does not believe the medical profession will adequately do this work.

We have members sitting around the Chamber legislating tonight to tell the medical profession what its job is. I submit that the medical profession in this State is so highly qualified that it knows its job. It does not need to be told by lay people sitting around this Chamber tonight the procedures it has to follow. The profession is competent. If members of the profession do not believe that they have the competence to undertake these procedures, they will not go down this track.

Mr Klunder: Are you still after the Minister of Health's job?

Mr OSWALD: Yes, one day I would be delighted to be the Minister of Health in this State—I make no bones about that—but that is digressing. If I were Minister of Health I would certainly give due regard to senior surgeons in this State and I would not be imposing constraints and restrictions on them and telling them their job.

Ms Lenehan interjecting:

Mr OSWALD: The member for Mawson says, 'Dear, dear!' The member for Mawson could have some regard to the qualifications of the medical people we have in this State. If she did, she would accept that these people are perfectly capable of undertaking their own peer group review. They do not need another example of the Government imposing restrictions and telling the profession how to do its job. Therefore, I ask the Committee to vote against this clause.

The Hon. G.J. CRAFTER: I can add little more to the comments that I made on this point in the second reading debate, except to say that the need for the degree of regulation, as minimal as it is in this area, is clearly designed to protect the individuals involved in these procedures and to protect the standing of the medical profession in this area as well. As I said in the second reading debate, in the early days of the establishment of these procedures and the legal consequences that flow from them, it is important to have this degree of regulation. Whilst I accept that the Opposition has in this case expressed its desire for deregulation and to remove bureaucracy, on other occasions it has chosen to embrace regulations, for example, the shopping hours legislation that we recently had in this House. There is not a philosophical case to be clearly made out in these matters, as the honourable member might suggest. It is for those reasons that we have this minimum degree of regulation involving this area of the law.

Clause as amended passed.

Clause 7—'Applications for recognition certificates.'

Mr OSWALD: I move:

> Page, 4, lines 27 and 28—Leave out paragraph *(b)* and insert the following paragraph:
> *(b)* the magistrate is satisfied that—
> (i) the guardian of the child has received proper counselling in relation to the sexual identity of the child, and, if the child is capable of understanding the matters involved, the child has also received such counselling;
> and
> (ii) it is in the best interests of the child that the certificate be issued.

We addressed this issue during the second reading debate. The Opposition totally agreed with the matters that a magistrate must address before issuing an adult with a recognition certificate, and we pointed out that it does not apply to a child. I suggest that this is an omission which was not picked up when the Bill was drafted. Clause 7 (8) *(b)* provides:

> the magistrate is satisfied that the person—
> (i) believes that his or her true sex is the sex to which the person has been reassigned;
> (ii) has adopted the lifestyle and has the sexual characteristics of a person of the sex to which the person has been reassigned;
> and
> (iii) has received proper counselling in relation to his or her sexual identity.

The procedure for a child is basically the same, except that the Government has not provided for any counselling for the parent or guardian or the child if the child is old enough to understand about counselling. I believe that this is an important issue. If we strongly believe that counselling should be available to an adult who has undergone a sex change, it should also be available to the parent or guardian of the child and the child itself.

The child must adjust mentally and psychologically to a completely different scenario, and on all occasions the parent or guardian would have to fully understand what is happening, because they must live through for many years what the child is experiencing. I do not think the amendment is unreasonable, and I think it is only right and proper that a magistrate has regard to this.

If a magistrate found that a parent or guardian had not received counselling or did not quite understand what they were about to embark on, he could ensure that counselling took place. I acknowledge that this step would occur after the event when surgery had already taken place or there had been some hormonal treatment. Nevertheless, there is a need for counselling of the parent or guardian and the child, if the child is old enough to understand what is happening. I ask members to give the amendment serious consideration and support it.

The Hon. G.J. CRAFTER: As meritorious as the amendment is, the Government opposes it. First, the honourable member is introducing a mechanism to provide for counselling relating to the procedure after it has already taken place. I believe it is important that the regulations contain procedures to allow for counselling prior to approval being granted, or indeed as a condition of the consent for the procedure to take place. The regulation process for allowing reassignment procedures will ensure that counselling is available for parents or guardians when the child is operated on and, obviously, that is when it is appropriate for the child to receive counselling. The legislation clearly provides that the recognition certificate for a child should be issued solely on the basis of the best interests of the child. Obviously that is paramount, and it is provided. It is for those reasons that I think that the Government's proposal by way of regulation is preferable and all the more embracing than the Opposition's proposal.

Amendment negatived; clause passed.

Clause 8 passed.

Clause 9—'Registration of certificates.'

The Hon. G.J. CRAFTER: I move:

Page 5, after line 22—Insert 'Penalty: $500'.

The amendment seeks to insert a penalty for a breach of subclause (4), which relates to the misuse of a copy of or extract from a register which shows that a person has been reassigned. At the moment the Bill prohibits misuse but no penalty has been provided.

Amendment carried; clause as amended passed.

Clauses 10 and 11 passed.

Clause 12—'Confidentiality.'

The Hon. G.J. CRAFTER: I move:

Page 6, line 12—Leave out '$5 000' and insert '$2 000'.

It proposes a change in the monetary penalty applicable to a breach of this provision, and it will bring the penalty into line with a Division VII penalty provided under the Statutes Amendment and Repeal (Sentencing) Bill, which is $2 000 or imprisonment for six months.

Mr OSWALD: The penalty is reduced from $5 000 to $2 000, and I accept the reasons for this which were given by the Minister earlier tonight. However, I question the correlation between the monetary penalty, $2 000, and the period of imprisonment, six months. I am pleased that the Minister is a lawyer because my question is one on a matter of principle which relates to other penalty aspects and not so much this Bill. It seems to me that a fine of $2 000 is not much compared with six months imprisonment. I believe that someone on a very low income would prefer to pay $2 000 rather than go to gaol for six months. If we are reducing the amount of the fine from $5 000 to $2 000, should we not also be reducing the term of six months imprisonment?

The Hon. G.J. CRAFTER: It requires someone better than I to apply logic to some of the penalties that have existed in the law for a long period. A fundamental principle is that the fine of $2 000 and term of six months imprisonment are uniform with other pieces of legislation. Whether that is appropriate it is difficult to say because it is not $2 000 or six months imprisonment; it could be both. Earlier this evening we debated a provision whereby a second offender for shoplifting could receive a gaol sentence of 10 years. That sentence would apply even if the shoplifter stole only two tubes of toothpaste. That period was reduced to five years imprisonment. There are huge discrepancies in the law in some areas. This evening we are attempting to bring about some degree of uniformity in this area.

Amendment carried; clause as amended passed.

Clause 13—'False or misleading statements.'

The Hon. G.J. CRAFTER: I move:

Page 6, line 16—Leave out '$5 000' and insert '$2 000'.

In similar circumstances to the previous amendment considered by the Committee, this amendment reduces the penalty from $5 000 to $2 000.

Amendment carried; clause as amended passed.

Remaining clauses (14 to 16) and title passed.

The Hon. G.J. CRAFTER (Minister of Education): I move:

That this Bill be now read a third time.

Mr OSWALD (Morphett): This Bill is very different from the original Bill that was floated in the public arena in December 1987. As I indicated previously, I am unhappy about the necessity for the Health Commission to be involved in the approval of doctors and hospitals in relation to operations performed by them. I believe it is perfectly proper for the medical profession, with its own peer group review, to be given a free hand to organise those clinics and administer them free of Government intervention.

I have some long-term concerns about this question of counselling. I do not believe that we have tidied it up in relation to parents, guardians and children (when they are old enough to understand). Apart from that, the Opposition feels far more comfortable with the Bill as it passes the third reading because it now enables those who have undertaken an operation to apply to a court for recognition of the procedure that will be recorded on their birth certificate but will stop short of the removal of their previous sexual identity. On that basis we support the third reading.

Bill read a third time and passed.

SUPERANNUATION BILL

Consideration in Committee of the Legislative Council's amendments:

No. 1. Page 7, lines 4 to 6 (clause 13)—Leave out paragraph *(b)* and insert:

(b) one menber elected by the contributors;

(ba) one member appointed by the Governor on the nomination of the South Australian Government Superannuation Federation;

No. 2. Page 7, line 14 (clause 13)—After 'appointed' insert 'or elected'.

No. 3. Page 7, line 16 (clause 13)—After 'appointed' (twice occurring) insert 'or elected'.

No. 4. Page 7, lines 30 and 31 (clause 13)—Leave out 'the United Trades and Labor Council or'.

No. 5. Page 7, line 32 (clause 13)—Leave out 'Council or'.

No. 6. Page 10 (clause 21)—After line 25 insert '(and the report must be submitted to the Minister within 12 months after the end of the relevant triennium)'.

No. 7. Page 10, line 39 (clause 22)—After 'conditions' insert '(being conditions authorised by the regulations)'.

No. 8. Page 11 (clause 23)—After line 44 insert subparagraph as follows:

(iv) if after the date on which contributions for a particular financial year are fixed there is a reduction in the contributor's salary resulting from a reduction in hours of work (other than a temporary reduction of less than two weeks' duration), there will be a proportionate reduction in the contributor's contributions (but such a contributor may, with the Board's approval, elect to contribute as if there had been no reduction in salary

and in that event benefits payable under this Act will be calculated as if there had been no reduction of salary);

No. 9. Page 14, line 17 (clause 28)—After 'Board' insert ', in accordance with criteria prescribed by the regulations,'.

No. 10. Page 15, lines 20 to 22 (clause 28)—Leave out subclause (6) and insert the following:

(6) The employer component cannot exceed either of the following amounts:

(a) twice the amount that would have constituted the employee component if the contributor had contributed to the Fund at the standard rate of contribution throughout the contributors' contribution period;

(b) 3.86 times the contributor's adjusted salary immediately before resignation (expressed as an annual amount).

No. 11. Page 26, line 42 (clause 38)—Leave out 'the contributor was, immediately before death, a pensioner' and substitute 'the contributor's employment had terminated before the date of death'.

No. 12. Page 27, lines 4 to 18 (clause 38)—Leave out paragraph *(b)* and substitute:

(b) where the contributor's employment terminated on his or her death and the contributor reached the age of retirement on or before the date of death—a reference to the amount of the retirement pension to which the contributor would have been entitled if he or she had retired on the date of death;

(c) where the contributor's employment terminated on his or her death and the contributor had not reached the age of retirement on the date of death—a reference to the amount of the retirement pension to which the contributor would have been entitled if he or she had not died and—

(i) had continued in employment until reaching the age of retirement (but without change to the contributor's actual or attributed salary as at the date of death);

(ii) had contributed to the Fund between the date of death and the date of reaching the age of retirement at the standard contribution rate;

and

(iii) had retired on reaching the age of retirement.

No. 13. Page 28 (clause 39)—After line 22 insert paragraph as follows:

(d) if the contributor dies and is survived by an eligible child, or two or more eligible children, a pension will be paid to each eligible child.

No. 14. Page 31, lines 33 to 42 (clause 46)—Leave out the clause and insert new clause as follows:

Division of benefit where deceased contributor is survived by lawful and putative spouses.

46. (1) If a deceased contributor is survived by a lawful spouse and a putative spouse, any benefit to which a surviving spouse is entitled under this Act will be divided between them in a ratio determined by reference to the relative length of the periods for which each of them cohabited with the deceased as his or her spouse.

(2) Where a number of periods of cohabitation are to be aggregated for the purpose of determining an aggregate period of cohabitation for the purpose of subsection (1), any separate period of cohabitation of less than three months will be disregarded.

(3) A surviving spouse must, at the request of the Board, furnish it with any information that it requires for the purpose of making a division under subsection (1).

No. 15. Page 32, line 27 (clause 48)—After 'pension payments' insert ', and (if relevant) the proportion of any lump sum resulting from commutation of pension,'.

The Hon. G.J. CRAFTER: I move:

That the Legislative Council's amendments be agreed to.

The Hon. FRANK BLEVINS: The amendments are mainly of a technical nature. I am very disappointed that the Legislative Council has inserted an amendment which removes from the trust a nominee of the Trades and Labor Council. However, I have been persuaded by the Legislative Council that it is unlikely to change its mind. In view of that, I do not think that there is any purpose in opposing the amendments and going through the charade of having a conference and coming back some time later this evening or tomorrow with exactly the same result. For those reasons, and not because the principal amendment has any merit at all, I recommend that the Committee support the amendments.

Mr S.J. BAKER: A number of qualifying amendments have been made in the other House, and generally they improve the Bill. The Minister stated that he was not going to fight to have the UTLC representative on the trust. There is adequate opportunity for the Minister to appoint a person from those ranks if they have the proper qualifications. This is the first time I am aware of that the Minister has not fought for the UTLC to have a position on any board, trust or whatever associated with any semi-government authority.

The Hon. B.C. Eastick: Perhaps it has been misbehaving.

Mr S.J. BAKER: It may well be, as my colleague the member for Light suggested; that perhaps the PSA has been misbehaving.

The Hon. E.R. Goldsworthy: The UTLC.

Mr S.J. BAKER: Perhaps the UTLC has been misbehaving, and the Minister does not wish to pursue its presence on the board. I can assure the Committee that this is the first time that the Minister has refused to go to conference on a matter such as this.

Members interjecting:

Mr S.J. BAKER: The Minister does not really want it sent again, because it might get through. If the Minister had to present himself to the PSA's door it would be interesting to see what he would say. The Democrats have a record of backing down on some of these issues and I am interested in the fact that the Minister does not want to send it back there.

As I said, these amendments improve the Bill in a number of areas and require that the Government put in regulations the exact nature of the organisations for which superannuation can be transferred (and we are presumably talking about semi-government authorities).

Members interjecting:

Mr S.J. BAKER: The Minister seems to have lost a few battles today. He has not done very well today, and he is obviously very toey.

Members interjecting:

The CHAIRMAN (Mr Tyler): Order! The honourable member for Mitcham.

Mr S.J. BAKER: I was disappointed that the Minister did not take up, as he promised to do, the question on clause 31 where there was an anomaly between the benefits that could accrue to young and to old people. No changes were made to the Bill and I presume that at some time further down the track we will have to amend this section (which relates to the disparate benefits that will accrue to those people who may get a greater benefit at the age of 23 than they would at the age of 55). I am not sure about some of the amendments because I do not have a clean copy of the Bill. For example, amendment No. 10 does not make sense to me and I will have to assume that it does what I think it does.

The rest of them tidy up some difficulties in relation to deceased contributors and the question of who should benefit when there is a surviving spouse and a wife of a former marriage involved, and there is no nuptial relationship with the surviving spouse. The areas that were not canvassed any further by the Upper House were in relation to preservation of benefit and the extent to which the Government contribution would accrue in the fund. They are questions that will have serious ramifications further down the track. It is not my intention to take up the time of the House to speak about those tonight. There will be further opportunities later when the Bill comes back to debate those issues.

The Hon. FRANK BLEVINS: For the benefit of the member for Mitcham, who has found some difficulty in coping with the fact that I said I supported the amendments—

Members interjecting:

The Hon. FRANK BLEVINS: He is absolutely lost; it completely threw him. Even in such a state of shock, it still took him close to 15 minutes to say absolutely nothing, with the exception of the one point that he thought I was not fighting for the Trades and Labor Council. I can assure the member for Mitcham that I fought very hard for the Trades and Labor Council, and got beaten! The Democrats refused. It is as simple as that. I can count. They have got more than we have. I lost. I fought very hard. It was a very honourable and noble fight. However, on this occasion, on one of the very rare occasions, I lost. A great pity!

Motion carried.

The Hon. G.J. CRAFTER (Minister of Education): I move:

That the sittings of the House be extended beyond 10 p.m.

Motion carried.

HAIRDRESSERS BILL

Adjourned debate on second reading.

(Continued from 7 April. Page 3910.)

Mr S.J. BAKER (Mitcham): This Bill effectively in some ways deregulates the hairdressing industry in this State. Before addressing the Bill itself, I would like to compliment the hairdressing industry for the service it has given to this State. It has, I believe, regulated itself very well. It has certainly had a board to look after it, and a comprehensive Act under which to operate. That may well have led to the very good service that I believe most South Australians have received from this industry.

It is interesting to note that the Attorney-General commented that in the last year there had only been 20 complaints concerning hairdressers in this State and, of those, 12 were related to hair treatment, while the remainder were related to overcharging and other minor matters. The Bill does take a bold step, because we are now going from a situation where the registration board has effectively kept some control and some tabs on the industry in this State. We do have some concerns about where the industry will go from here because there is simply not sufficient ambit within the Bill before us to provide some of the controls that may well be necessary if certain people do not play by the limited number of rules left in this Bill.

Importantly, I suppose, if we look back to 1939 just briefly, the industry was regulated because of technology. That technology was the use of new electrical equipment and the need for cleanliness and health standards. They were the two major reasons why we have a Hairdressers Act in this State. If we look at the quality of the industry that has served us well, we are now taking away a lot of the fabric that was there. It would appear that that reduction is with the general consensus of the industry concerned, and it has agreed with the Government on this measure.

I do not intend to debate this Bill for very long, because many of the aspects of the deregulation have been more than adequately handled in another place. If people wish to look at all the important facets of the change that we have before us tonight, then I refer them to the contribution by the Hon. John Burdett, who gave a very thorough and reasoned debate on this subject. There is just one point that we should remember. If the industry cannot cope—and I will be making one or two points during the Committee stage—obviously there will have to be an urgent need to bring in a code of practice.

I note that the Attorney, under some pressure from another place, admitted that a code of practice would be useful for this industry because there is insufficient means for those who have minor complaints about the industry to receive some form of justice under this new review. People cannot have their qualifications taken away. They could have had their registration refused previously, but they cannot have their qualifications taken away.

The penalties under the Act are fairly minor—such as $1 000 if hairdressers decide to flaunt the rules under which they should be operating or the good practices that should be in place. The fines are really not large. There has been a very strong canvassing of the issue as to how people seek remedy, and whether it should be through the Commercial Tribunal. The Attorney suggested that the Fair Trading Act provides a means of pulling people into line, but he then admitted that it simply did not cope with some of the examples put forward by my honourable colleague.

The Opposition supports the proposition of the Bill, but there is a note of warning. We ask that this change be monitored very carefully. We ask that the Attorney give serious consideration to promulgating a code of practice which the Liberal Party would like to see throughout many industries and many professions, because we believe that the hairdressing industry has performed so well in this State previously as it has had a very cogent and identifiable set of rules under which to operate. Some of those rules have now been taken away, while some will be retained through the regulatory process. The good thing about the hairdressing industry is that it has not tried to decrease the supply in its profession. It has always taken an active part in the training processes. We have seen marvellous changes taking place between male and female hairdressering over a period of time. We are in an evolutionary State. This Bill is in keeping with the changes that have taken place, and the Opposition supports it.

The Hon. G.J. CRAFTER (Minister of Education): I thank the Opposition for its indication of support for this Bill. It has been explained this evening that the report of this measure was debated in some detail in another place. I want also to acknowledge the work of the Hairdressers Registration Board and the profession in this State. It certainly is in a state where it can in large regulate itself. The Hairdressers Registration Act 1939 has served this State for some 50 years. I recall as a junior clerk working in the courthouse at Port Adelaide that an acting magistrate, the late George Ziesing, was quite well-known in almost every hairdressing establishment in this State at that time because he was the Chairman of the Hairdressers Registration Board and signed the certificate which was required under that Act to be displayed in each hairdressing establishment.

Other chairpersons of the board, both preceding and following him, served our State well. As the member for Mitcham said, it is time for change, and this Bill provides for it. However, some appropriate safeguards remain. The Bill makes it an offence for an unqualified person to practise hairdressing. The enforcement of this requirement, which is presently with the board and which has proved to be a problem in recent years, will be undertaken by suitably empowered officers of the Department of Public and Consumer Affairs. The Bill abolishes the distinction that has been made in the past between what has been called men's and ladies' hairdressing. This is consistent with the organ-

isation of the course work conducted by the Department of Technical and Further Education and, as is well-known, reflects the emerging practice of the industry.

The Bill makes it necessary, if possible, to apply some restrictions to those persons whose training and experience may be narrowly based. Apart from the Bill, a wide range of transitional issues, particularly administrative requirements, have been identified by a joint Government/industry working group, and consultation is continuing to resolve these matters in time for the new arrangements to begin in 1989. I commend the measure to the House.

Bill read a second time.

In Committee.

Clauses 1 to 3 passed.

Clause 4—'Interpretation.'

Mr S.J. BAKER: I am concerned about the definition of 'hairdressing', and ask whether the Minister will communicate with the Attorney-General on this subject. I have had more than one request for the washing of hair to be taken out of hairdressing practice. The point has been made on a number of occasions by people in the industry who are concerned at this limitation of employment. The washing of hair could be left off the list of mandatory requirements of hairdressing qualifications in the regulations.

The Hon. G.J. CRAFTER: I note the comments made by the honourable member and I will ensure that they are brought to the attention of the Attorney-General.

Clause passed.

Clause 5 passed.

New clause 5a—'Disciplinary action.'

Mr S.J. BAKER: I move:

Page 2, after clause 5—Insert new clause as follows:

Disciplinary action

5a. (1) The Commercial Tribunal may hold an inquiry for the purposes of determining whether proper cause exists for disciplinary action against a qualified person.

(2) An inquiry may not be held under this section except in relation to—

(a) matters alleged in a complaint lodged pursuant to subsection (3);

or

(b) matters disclosed by investigations conducted pursuant to subsection (4).

(3) Any person (including the Commissioner for Consumer Affairs and the Commissioner of Police) may lodge with the Commercial Tribunal a complaint in the prescribed form setting out the matters that are alleged to constitute grounds for disciplinary action against a qualified person.

(4) Where a complaint has been lodged pursuant to subsection (3), the Commissioner for Consumer Affairs or the Commissioner of Police must, at the request of the Commercial Registrar, investigate or further investigate any matters to which the complaint relates and report to the Commercial Tribunal on the results of the investigation.

(5) Where the Commercial Tribunal decides to hold an inquiry under this section, the Tribunal must give to the person the subject of the inquiry ('the respondent') reasonable notice of the inquiry and of the subject matter to which it relates.

(6) If, after conducting an inquiry under this section, the Commercial Tribunal is satisfied that proper cause exists for disciplinary action against the respondent, the Tribunal may exercise one or more of the following powers:

(a) it may reprimand the respondent;

(b) it may impose a fine not exceeding $1 000 on the respondent;

(c) it may prohibit the respondent from carrying on the practice of hairdressing—

(i) permanently, for a specified period or until further order;

and

(ii) absolutely or except in accordance with specified conditions.

(7) If a person has been convicted of an offence and the circumstances of the offence form, in whole or in part, the subject matter of an inquiry under this section, the person is not liable to a fine under this section in respect of conduct giving rise to the offence.

(8) Proper cause for disciplinary action exists if the respondent—

(a) has contravened section 5 (2);

(b) has failed to comply with a code of conduct prescribed by the regulations in relation to the practice of hairdressing;

or

(c) has, in the course of carrying on the practice of hairdressing, acted negligently or been guilty of gross incompetence.

At the moment, there is a hiatus in the industry. This matter has been canvassed very thoroughly in another place, and I will not take the time of the Committee in debating it further. There must be some mechanism whereby those who are aggrieved by certain actions by hairdressers or their employees can have such actions remedied. Because of the penalties imposed under this legislation and the actions of the Commercial Tribunal, the very good record of this State can be preserved. The Opposition believes that this measure or a code of practice should be in place when the Act comes into force on 1 July 1988. I know that the amendment will not succeed, but it represents an honest attempt by the Opposition to inform the Committee that, as the legislation stands, a vacuum needs to be filled. The Opposition would be happy if the Attorney-General would take up the challenge and produce a code of practice to fill that vacuum. I commend the new clause to the Committee.

The Hon. G.J. CRAFTER: The Government opposes this measure. It is interesting that the Opposition has difficulty in knowing how far to go with regulation or deregulation. This is another example of where it is nibbling away, trying to reintroduce regulation into this area. The Government does not believe that a case can be made out, in the light of experience, for this sort of mechanism. The number of complaints is small and the responses to them generally are sensitive. It is no argument for adding this supposed extra protection to say that the problem is slight and that this window dressing is harmless because it will not be expensive to operate. It would be misleading to suggest that the amendment offers any great advantage to consumers. There is no direct help.

Consumers who suffer loss or injury from the wrongful acts of hairdressers would still have to seek redress in the civil jurisdiction of the court system. As for protecting potential consumers from incompetent practitioners, the foundations of a mechanism already exist in the Fair Trading Act. The Government would prefer to operate, if the need existed, under the Fair Trading Act. Part XI of the Act provides for a code of conduct and flexible powers to deal with violations of it by an informal procedure of enforceable assurances to the Commissioner for Consumer Affairs. The mechanism is already established in the provisions of the Fair Trading Act. It involves, if necessary, recourse to the Commercial Tribunal. Ultimately recourse could be had to the Supreme Court, usually, one would expect, by the Commissioner.

It would even be possible to incorporate in those procedures the elaborate alternative penalties proposed in this amendment for the employment of unqualified persons. This would be done by prescribing the Hairdressers Act as an Act relating to the Fair Trading Act. It is not good government to tack on to the present Bill a different procedure to achieve the same purpose. However, as has been discussed in another place, the Government has agreed to begin work with the industry to develop a code of conduct with a view to having an enforceable code ready when the present Bill comes into force at the beginning of next year.

New clause negatived.

Clause 6 passed.

Clause 7—'Evidentiary provision.'

Mr S.J. BAKER: Can the Minister explain what will happen to those people who have not been registered with the Hairdressers Registration Board, who are operating outside the metropolitan area but wish to practise within the metropolitan area? I understand that a large number of people outside the metropolitan area have found no reason to be brought under the ambit of the Registration Board. Does this provision mean that unless those persons can prove their qualifications or have registered with the board by 30 June they will never have any opportunity to work as hairdressers within the metropolitan area?

The Hon. G.J. CRAFTER: I understand that the provision to which the honourable member refers relates to those persons currently in the metropolitan area, and those requirements will apply. For those persons operating in accordance with the law outside the metropolitan area there will be protection available to continue to practise.

Clause passed.

Clause 8 and title passed.

Bill read a third time and passed.

CREMATION ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 7 April. Page 3911.)

The Hon. H. ALLISON (Mount Gambier): I am pleased that the Attorney-General recently introduced this Bill in another place, as I asked him to do in January of this year. In January this year I was asked by undertakers to approach the Attorney-General. I was also asked by the Mount Gambier City Council whether I could make some representations to the Attorney-General, because the Victorian undertakers have discovered that, because of delays in certifying the deaths of Victorian deceased in Adelaide, there was some concern among bereaved families who felt that the delays in having their loved ones cremated meant that they would probably find it far more convenient to travel 200 or 300 miles to the other side of Victoria, to Ballarat or Melbourne, to the nearest crematorium.

The Western Districts of Victoria and South-East of South Australia are part of the Green Triangle. The crematorium in Mount Gambier was constructed with the intention of serving the whole of the Western Districts and the South-East of South Australia. When it was discovered that crematoria much farther afield were taking Western Districts bereaved this meant that Mount Gambier crematorium would possibly operate at a loss in future.

Unfortunately, the Cremation Act only provided for the Registrar-General of Births, Deaths and Marriages in Adelaide to certify a person who died interstate, therefore we simply asked the Attorney-General whether he would make a very brief amendment to the Cremation Act allowing the local Registrar of Births, Deaths and Marriages in Mount Gambier to perform that function and make the necessary documentation available to bereaved families. This is the purpose of the Bill; all it does is add the local Registrar to the list of those who can provide the necessary certification, and I commend the Bill to the House knowing that this will greatly assist bereaved families in my area by reducing the delays in having loved ones cremated, and also in further strengthening Mount Gambier as a service centre for the South-East and for the Western Districts of Victoria.

The Hon. G.J. CRAFTER (Minister of Education): I thank the Opposition for its support of this measure and, to come to the defence of the Attorney-General, who has been somewhat under attack this evening for rushing matters through Parliament, I think it is pleasing to know that at least one member of the Opposition is supportive of the matter being speeded through the House. I am sure that the provisions of this amendment to the Cremation Act will serve the people of the South-East of this State and those persons who seek to use cremation facilities in this way. I commend the measure to all members.

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

OPTICIANS ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 29 March. Page 3638.)

Mr BECKER (Hanson): Considerable controversy has been caused within the profession over the recommendations of the select committee in another place. I think that it is appropriate that we read into the *Hansard* the summary of those recommendations. It was just over 15 months ago that the Minister of Health announced moves to ban the non-prescriptive glasses commonly referred to as reading glasses. Such a furore followed that the Government and the Legislative Council, on 7 March 1987, appointed a select committee to inquire into and report on the Opticians Act Amendment Bill 1987 and the Opticians Act Amendment Bill 1987 (No. 2). The report, presented to the Legislative Council on 23 February 1988, states:

> More than 80 per cent of South Australians over 45 years of age require spectacles to assist the reading capacity of their eyes and approximately 5 per cent of South Australians regrettably are affected by a range of serious eye diseases, including glaucoma and diabetic-related retinopathy.
>
> Eye health care services in South Australia have been found by the select committee to be of a standard which can be favourably compared with standards of service provided in other States of Australia and overseas countries.

The select committee's first recommendation is as follows:

> That the Board of Optical Registration be restructured to provide for the appointment of a legal practitioner and one other person who is neither a registered optometrist nor a legal practitioner who has been selected by the Minister to represent the interests of persons receiving optical care.

I understand that the majority of the members of the board are optometrists. The recommendations continue:

> That the Act be retitled the 'Optometrists Act'.
>
> That the definition of optometry be revised to permit the prescription of appropriate persons to measure the powers of vision for health screening purposes.
>
> That clause 29 (2) of the Bill be amended to 'a Certified Optometrist shall not treat a disorder of the eye by surgery or a laser or by drugs'.
>
> That the Opticians Act be amended to remove any impediment in that Act to allow optometrists to be classified by the Controlled Substance Act as 'Prescribed Persons' to enable them to use a restricted range of generic topical ocular pharmaceuticals recommended by the Controlled Substances Advisory Council.
>
> That the authorised ocular drugs include topical anaesthetics, myotics and mydriatics but exclude any drugs which have a primarily cycloplegic effect.
>
> That children under eight years of age should not be examined by an optometrist for the purpose of detecting disease or providing an optical appliance including spectacles and contact lenses unless the child's vision problem has been assessed by an ophthalmologist in the 12 months prior to the patient presenting to the optometrist.

I understand that that recommendation has not been carried out. The recommendations continue:

> That the prescribing, dispensing and fitting of contact lenses continue to be only within the role of an ophthalmologist or an optometrist. All other persons, including optical dispensers or optical mechanics, should continue to be prevented from involvement in these activities by the provisions of the Opticians Act.

That provision be made for optical dispensers to be registered under the Opticians Act so that they can operate without the supervision of an optometrist.

That persons to be eligible for registration as optical dispensers should satisfy the conditions for registration proposed in this report.

That a six member Optical Dispensers Registration Committee be established for the purpose of assessing and approving applications for registration and that the compostion of the committee be in accord with the proposals contained in this report.

That for a period of one year the Optical Dispenser Registration Committee consider applications for registration from experienced but unqualifed persons who are resident in South Australia, are currently earning their livelihood from the practice of optical dispensing and can satisfy the other conditions regarding registration of such persons contained in this report.

That optical dispensers not be permitted to dispense contact lenses; such dispensing to be only within the role of the professional prescriber.

That the proposal Optical Dispensers Registration Committee be empowered to enquire into the misconduct of optical dispensers and to take disciplinary action including reprimand, caution, removal of the dispensers name from the Register of Licensed Optical Dispensers or suspension of the dispensers licence for a specified period.

That registered optical dispensers be restrained in their advertising to the same ethical levels which apply to optometrists.

That provision be made for limited registration of optical dispensers in training.

That the sale of ready made single vision spectacles be permitted. Subject to a warning notice being attached to every pair and being made available to the purchaser at the time of sale.

Interestingly, I went to Birks the Chemist today to look at glasses. I have never been able to wear them because of my own peculiar eye problems. I asked for a pamphlet to describe these reading glasses, but they were out of stock, which is interesting, because the recommendation stipulates:

That the sale of ready made single vision spectacles be permitted, subject to a warning notice being attached to every pair and being made available to the purchaser at the time of sale.

There was significant signage on the counter so that anyone buying a pair of glasses would read the warnings suggested in the recommendations. The recommendations continue:

That the warning notice to be attached to every pair of ready made single vision spectacles should be prescribed by regulation and such notice should emphasise:

ready made glasses are not intended to correct any form of vision deficiency;

deterioration of eyesight can be caused by ageing and eye disease which can be symptomless;

it is advisable to have eyes regularly examined by an opthalmologists or optometrist.

That failure to supply such a warning notice should be subject to a $5 000 fine.

That a warning notice need not be provided with hand-held magnifying glasses, including binoculars, opera glasses and other similar appliances which are not primarily intended for use as substitutes for prescription reading spectacles.

That ready made single vision spectacles should not be permitted for sale for use by children under eight years of age.

It is also interesting to note the definition of 'ophthalmologist' and 'optometrist'. An optometrist was previously described as an optician, someone who does a four-year degree course, prescribes spectacles and can detect eye disease and refer patients to an appropriate person such as an ophthalmologist or a general practitioner. The optometrist may use diagnostic drugs and prescribe eye exercises, prescribe contact lenses and dispense spectacles.

Here we see the real conflict between the two sections in the profession. I understand that an ophthalmologist is one who undertakes a general medical course or degree, then has three years practising medicine and surgery, and then does six or seven years specialising in eyes. An ophthalmologist has spent about 13 years studying before calling himself an ophthalmologist and before practising the profession. Over the years I have experienced the work of opticians and I have been referred to an ophthalmologist by my general practitioner in order to have a cataract removed. Regrettably, that was unsuccessful. The implant that normally follows to give one better vision was not successful. The implant could not be put in in my case, and I have to wear contact lens and glasses. That is a fact of life that I accept, but I accept and appreciate the role of ophthalmologists, and I am grateful to my ophthalmologist. I am also grateful to my optometrist, whom I found extremely helpful in prescribing the glasses and contact lenses and testing my eyes on a regular basis. He schooled me well in dealing with certain eye drops, general eye hygiene and the need to be extremely careful in handling contact lenses at all times.

Certainly, I can understand and appreciate the concern of the profession, the role of the ophthalmologist and the contact between them and optometrists. In the 18 years that I have been a member of Parliament I do not believe that I have received so much lobbying by any one profession, and certainly the optometrists have to be given credit. They did not fail to let us know exactly how they thought and felt about the legislation. Certainly, they believe that they have a lot to lose in their own way in their profession. I was quite surprised to learn that an optometrist recently sold his practice in the country for $300 000.

Mr Ingerson interjecting:

Mr BECKER: Yes, anyone who can do better than a pharmacist must be pretty good. However, an ophthalmologist tells me that he would be lucky to get one-tenth of that. Obviously as the debate develops we will find out why that is. I think that optometrists were concerned about children eight years of age more than anything else. Page 32 of the select committee's report states:

The select committee considers that children under eight years of age should only be examined by an ophthalmologist rather than an optometrist when the child previously had not had spectacles prescribed. Submissions to the committee clearly indicate that, with children under eight years of age, what may be initially preceived as eyesight difficulties might be arising from dyslexia, specific learning difficulties or a range of other organic causes. Therefore, the priority for children should be for them to be examined by an ophthalmologist who can have regard to all the other systems of the body which might be impacting on the difficulties.

I agree with that finding. Over the years I have dealt with the disabled and I firmly believe that all young children should have a thorough medical examination before entering preschool and that their medical records should accompany them when they go to primary school, when they should have another thorough medical examination. These are the crucial years in the growth and development of a child.

I believe that in the past, if all children had compulsorily undergone an eye examination on entering primary school, many problems may have been solved and many children would have been saved embarrassment later in life. Dyslexia is a complaint that the Deputy Premier refused to accept as genuine when he was Minister of Education. In reply to a question that I asked several years ago he said that there was no such thing. However, over the years we have proved that he was wrong, and we have proved that many people have suffered unnecessarily. The select committee's report continues:

It is acknowledged that the optometrist can provide a valuable contribution to the provision of suitable optical appliances for children if they are required. However, the committee believes that children under eight years of age should not be examined by an optometrist for the purpose of detecting disease or providing an optical appliance including spectacles and contact lenses unless the child's vision problem has been assessed by an ophthalmologist in the twelve months prior to the patient presenting to the optometrist.

That recommendation was not included in the Bill. It is most unusual for a select committee to come up with a

recommendation and the Government not to proceed with it.

I commend the shadow Minister of Health (Hon. Martin Cameron) in another place because he did a lot of work on behalf of the Opposition in examining this Bill. He met with all sectors of the profession and endeavoured to come up with a solution that was satisfactory to all. I believe that that has been achieved. We have been advised that all the bugs have now been ironed out of the Bill, and that certain drugs have been legalised to the extent that they can be used by optometrists. I hope that my colleague the member for Bragg, who is a pharmacist, will enlarge on that aspect when he speaks in the debate.

The legislation also deregulates optical dispensers and legalises what already occurs, particularly in relation to organisations such as OPSM. We know that optical dispensers such as OPSM, J. Holland Pty Ltd and Laubman and Pank, which are well-known to most South Australians, dispense glasses. Like most people I am somewhat concerned at the cost of a pair of glasses these days. The select committee advises that a pair of glasses can cost anything from $13 to $500, although I have never seen a pair of glasses for $13, especially since there is a mark-up of almost 100 per cent.

As a result of deregulation dispensers such as OPSM will be able to sell glasses to the public, as I understand it, without having to engage an optometrist. That should result in a considerable reduction in the price of glasses. Having just paid $254 for a pair of prescription sunglasses, I am sorry that I did not read the fine print in the Bill earlier. I understand that this will also pave the way for greater competition within the industry and, if that occurs, I think the consumer will benefit.

I understand that in Perth a dispensing company gives its proceeds to the eye hospital. Perhaps the South Australian branch of the Lions Club could look at that area, given the work that it has done over the years to support Professor Coster and the Flinders Medical Centre eye bank, which is absolutely magnificent. Professor Coster and his staff deserve the highest praise. We are very lucky to retain someone of his calibre, because he is held in very high regard throughout the world.

I am worried that companies like OPSM, J. Holland Pty Ltd and Laubman and Pank could be taken over by other companies. This has occurred in the United Kingdom where American-brand cigarettes and Grand Metropole hotels control a large number of optometric practices. I would not like to see that happen in this State in view of the vigorous debate that we had last night on another piece of legislation. I believe that this legislation is a courageous step towards regulating what previously came under the Opticians Act. Of course, it is not the ultimate but I think it is a step in the right direction, and I commend it to the House.

Mr INGERSON (Bragg): I rise to support the Bill and to comment on the select committee and the changes that will occur for the whole profession, and to ask the Minister to look at a few specific areas that I know optometrists in particular are concerned about. First, I think it is important to recognise that the select committee faced a very complicated situation in that it had to deal with four professional groups (and I use that word advisedly). The four groups include the ophthalmologists, who are medical practitioners who specialise in ophthalmology; the optometrists, who specialise in the general preparation of glasses and identify eye conditions requiring referral to an ophthalmologist; the optical dispensers, who purely and simply dispense the prescriptions of either ophthalmologists or opticians; and finally, the mechanics who work on the preparation of lenses.

The select committee had to deal with this very complicated situation of this so-called superior group, the ophthalmologists, putting their arguments as to how they saw the optometrists working under the same framework and in the same field of practice in which they were working. In any group of professionals where two people work in the same area but under different guidelines there will be significant conflict. It is similar to the area I worked in before coming into Parliament. I remember many arguments occurring between the medical profession and the pharmacists in relation to where the professional border began and ended concerning the use of drugs.

Fortunately today there is a good relationship between the medical profession and pharmacy and a recognition that pharmacists have a significant knowledge they can hand on to the public, and can help the medical profession in the dispensing and supply of medicine. The same situation occurs where the ophthalmologists and the optometrists have to work together. One of the tragedies of this select committee was that neither the ophthalmologists nor the optometrists knew what each other was saying and, if there were any conflicts or questions, that discussion did not occur.

That is a pity, and we should learn from that in future when we are dealing with professional groups in which there is more than one grouping with a particular interest. I hope that in future the Government will make available to all groupings the comments made by other sections of that profession, because there is no doubt that some of the criticisms that were made by the opticians in relation to the ophthalmologists arose because they did not know what had been said. They heard only rumour and innuendo.

One of the most important areas of conflict was whether optometrists should, within guidelines under the Act, be able to treat children under the age of eight in the city and in the country. Again, it was clear that, because optometrists were not aware of what had been said by the ophthalmologists, there was a very significant conflict. One area of concern to me is that, if we adopt the practice whereby ophthalmologists must see children under eight years before optometrists can treat them in any way, we have a problem in the country as well as a significant problem in the metropolitan area. I am happy to note that the Government has recognised that South Australia cannot make this sweeping change in isolation and that the Minister will refer the problem, as he and particularly the select committee see it, to a much broader national forum. It is to be hoped that in that forum all the facts, and not just the facts presented by ophthalmologists or opticians, will be clearly laid on the table for all to see and that, when the final decision is made, if one needs to be made, it can be made with all the facts before it.

It is good to see that the Government has accepted that any professional board should involve a majority of people in that profession. When the Bill was first introduced in the other place it concerned me that it contained provision whereby the board could make decisions that would affect the profession yet it did not comprise a majority of professional people. That situation has now been corrected and accepted by the Government, and I think it is an excellent move because it is my opinion that the only way any profession should be regulated is by self-regulation.

The select committee looked at the matter of ready-made spectacles. It is important that I now state that I do not have a pecuniary interest in the sale of ready-mades as we never sold them at any of the pharmacies in which I have an interest. Ready-made spectacles have become a very big issue in the community because one particular group of

pharmacies has spent a considerable amount of money promoting them to the public. After reading the select committee's report I was surprised to find that ophthalmologists said that they could see no problem with the sale of these ready-made spectacles. The community would have to accept the clear advice of that professional group, so there would be no concern about the use of ready-made spectacles.

However, there must be some standards, and it is good to see that the Government has recognised that lenses, in particular, should come under Australian standards and that there should be a certain range of dioptre that can be sold through pharmacies, optometrists or anyone else who wishes to market these ready-made spectacles. The select committee commented that we must watch the sales in this area, and I think that comment was made because it was concerned that, if there was a massive purchase of these ready-made spectacles, without the public recognising that they should have regular check-ups with either an optometrist or ophthalmologist, a major problem could arise in the community. I do not believe that that will occur, and I note that the Bill does not provide for monitoring of this situation. I think we need to look at that in the future. Another area mentioned was advertising guidelines, but again that was not included in the Bill.

I was pleased to see that the penalties for breaching the provisions of the Bill have been increased. I think that professional standards and the penalties that fit them in all professions need to be increased so that it is made clear to those practising in the professions that they have not only professional responsibilities but also strong legal responsibilities.

The deregulation of ready-mades is very important. The deregulation that allows OPSM, in particular, to dispense is long overdue. There is no doubt that the profession of optometry is concerned about this practice, because it sees a market in which it has a vital interest being swamped by significant large companies.

I do not believe that will occur, because one of the things that I found out in practising pharmacy is that if you give an excellent service, if you price your product and your service reasonably, the public will keep on coming back to you. There is no doubt that the small operator can beat the big operator every single time if he offers those services. I am not really concerned about the fact that OPSM has now been recognised officially because, as I said, it is long overdue. The recognition of optical dispensers is a very important development and I support that very strongly.

It was really the area of drug use that initiated this Bill. It is interesting to note that the select committee decided that it would support the use of mydriatics, drugs that dilate the pupil, and myoptics, drugs that contract the pupil, but chose to ban the use of cycloplegics. Again we come across a very difficult decision for members of a select committee such as the one in the other place who did not have a great deal of experience in the use of drugs or in how drugs work. It is a pity that select committees of this type do not call upon other professions; in this case, it is a pity that the professions of pharmacy and medicine (although I accept that the ophthalmologists were involved) were not asked for comment on whether the range of drugs that were requested to be used by the optometrists should or should not be used. It is a pity that we do not expand some of these select committees to make sure they have a much broader opportunity to investigate use.

There was significant criticism by the optometrists of the decision made by the select committee. Having read only sections, although significant sections, of the submissions to the select committee, I can understand why the optometrists as a group were very concerned. Going back to what I said earlier, we have to make sure that select committees of this type really recognise that, when they make and recommend significant changes like this, every single issue is looked at and is not purely and simply seen through the eyes of two competing sections within the same industry.

It is interesting to note that very significant recommendations relating to the use of contact lenses were made. The profession of optometry is very concerned that there seems to be a loophole in the definition whereby optical dispensers may be able to dispense contact lenses. The select committee came out very strongly against that, but the optometrists are questioning whether the wording of the Bill will allow the optical dispensers to become involved. It is my intention during the Committee stage to ask the Minister to clarify that point so that we understand what the words 'fitting of contact lenses' mean. There is some concern, as I said, within the optometrical profession.

One of the more controversial but less mentioned areas is clause 28 (2). I would like to read some comments of an optometrist that the Government ought to consider. I will ask some questions about this clause in the Committee stage. The document states:

> Clause 28 (2) of the Bill would prevent optometrists from carrying out many everyday tasks which they have been performing for decades without complaint from any source. Prohibition on 'surgery' would most likely prevent optometrists from doing such things as:
>
> 1. Removing ingrowing eyelashes. Removal of an ingrowing eyelash simply involves pulling the eyelash out with a pair of tweezers. It takes only a moment and there is no danger involved. An ingrowing eyelash can be quite painful and some people are especially susceptible to them.
>
> 2. Removal of foreign bodies. Specks of dust, metal or other material at times become superficially embedded in the surface of the eye and optometrists have the equipment and skill to remove them. The procedure involved is quick and safe. A patient who has more deeply embedded material is [always] referred to an ophthalmologist.
>
> Clause 28 (2) also prohibits optometrists from treating disorders of the eye using drugs. This would prevent optometrists from administering first aid in their practices, and would stop them from using many non-prescription drugs which they have been using for decades and which any member of the community can buy and administer. Most of these drugs are sold in supermarkets.

I might also add 'in pharmacies'. It continues:

> Amongst the across-the-counter drugs that optometrists could no longer use would be:
>
> (1) Saline. This is a common salt solution and is used as an eyewash and in the treatment of corneal oedema (swelling of one of the layers of the eye). It is also used in compresses used in treatment of mild eye inflammations and treatment of minor injuries caused by blunt objects.
>
> (2) Antihistamines. Inflammation of the eye which is due to allergies to pollen, dust or similar substances is treated with antihistamine eye drops. Well known drops such as antistine privine would be bought and used by anyone other than an optometrist if clause 28 (2) was enacted.

That is a fairly important comment. Pharmacists during the hay fever season sell up to a dozen or 20 bottles of antihistamine solution every day. We sell it to the public and the public can use it, yet the optometrist cannot use it. That is the sort of problem created by this Bill, and the Government needs to consider that carefully. It further states:

> (3) Ocular Decongestants. Ocular decongestant drugs reduce eye redness by constricting blood vessels. The ocular decongestants used by optometrists are freely available across the counter to members of the public. Optometrists use these drugs to treat mild allergic conditions and mild irritations of the eye.

The comment I made earlier also applies in that all those products are available in pharmacies. Further, it states:

> (4) Artificial tears and lubricants. When someone produces insufficient tear fluid or tear fluid which is of poor quality it is often treated with freely available artificial tear fluid and lubricants. If insufficient fluid is produced a person will suffer

from dry eyes, if composition is wrong amongst the problems faced is eyelids stuck together when waking.

I believe that is one clause that the Government ought to have a look at because—

The DEPUTY SPEAKER: Order! The honourable member's time has expired. The honourable member for Davenport.

Mr S.G. EVANS (Davenport): The member for Bragg has said most of the things that I wanted to say. I know that we sat until 3.30 a.m. this morning and, if we are not careful, it will be the same tomorrow, so I will be very brief. I support the concern of the optometrists. Ophthalmologists start to gain the benefits at the one end and the opticians or the people who dispense spectacles or optical aids gain at the other end. I can understand why ophthalmologists want to treat children until they are eight years old.

The old philosophy states that, if you can get customers until they are eight years of age, they become dependent upon you and you are more likely to retain them as a client, regardless of the seriousness of the eye disorder. Clause 28 has been raised with me by optometrists, and they have a very great concern about being able to treat a minor disorder and about the use of drugs that they have used for decades. I would be disappointed if the Parliament ignored the concerns of that professional group. There is no doubt that I cannot change the passage of this Bill or any part of it. It has gone through another place and this Chamber is presented with a *fait accompli*. The Government will have its will at this point, any way.

A number of people have made representations to me, and the member for Bragg has picked up their areas of concern. I ask them to accept that there is no sense in my talking any further on the subject, because I cannot change the Government's attitude. Neither the member for Bragg, the member for Hanson nor I could amend the Bill, because we have a stubborn, pig-headed Government to deal with. Although the Bill contains some benefits, it places me in a difficult position. I am prepared to say that I support it, even if the amendments will not succeed. Some way down the track I hope I am here so I can see how it works in practice. It may be shown that one group in the middle is being robbed for the benefit of others, because more graduates are coming out of the system and are worrying about their livelihood and fall into the same category as other professions which do not have enough clients. In that event, I will try to take action, and I believe that I will be sitting on the other side of the House.

Mr OSWALD (Morphett): Over the past few weeks I have been contacted by many optometrists. In fairness to them I should put on the record a few matters that have been raised with me. I listened carefully to the member for Bragg. He spent quite a deal of time preparing his speech tonight. His professional background is similar to mine: we have spent many years in retail pharmacy and have been associated with optometrists and ophthalmologists. Both sides have a point of view that we, as a Parliament, must consider. It is very difficult to sit in judgment on professional groups when they exert pressure on each other over their area of jurisdiction. Nevertheless, at some time those matters must be addressed.

I will link my thoughts with those of the member for Bragg. He addressed the subject substantially and many of the points that he raised were also raised with me by optometrists. If I were to go through those points, I would only repeat his speech word for word. The Government has the numbers in the Lower House and it does not matter, with all the goodwill in the world, what the Opposition does with amendments. The Government has made up its mind what it will do with this legislation and, although Opposition members could spend some hours criticising parts of it that are not workable and although we could suggest amendments for some future time, there is not much point in that. The die was cast in another place. The Government has the numbers in this Chamber to proceed and I am sure it will use those numbers. I congratulate the member for Bragg on his research. He eloquently presented the case that has been put to members of the Liberal Party over recent weeks.

Bill read a second time.

In Committee.

Clauses 1 to 14 passed.

Clause 15—'Registration of optical dispensers.'

The Hon. G.F. KENEALLY: I move:

Page 7, line 16—Leave out 'except contact lenses' and insert 'but is not entitled to fit contact lenses'.

This amendment has been the subject of a lot of discussion with the industry and within Parliament. The reasons for it are well known to the Committee and I do not believe that they require any elaboration. I ask the Committee to support the amendment.

Mr BECKER: On behalf of the Opposition, I indicate that I have no objection to the Government's amendment. It makes sense to me, and I can only speak from my own experience. My optometrist arranged for and fitted my contact lens and trained me to handle the lens, so the amendment makes sound sense.

Mr INGERSON: I know that, on behalf of the Government, the Minister has attempted to answer all of the questions, but one of the things of concern to the optometrists in particular is the after-care process of the use of contact lenses, which is a very important function. I understand that it is recognised in the national health legislation that after-care is very important. How does that fit within this amendment? Does the fitting or excluding of fitting also mean after care?

The Hon. G.F. KENEALLY: I understand that the optical dispenser can manufacture and dispense but cannot fit the lens to the eye. That has to be done by a professional, so then the appropriate professional would give the required after care. The optical dispenser would not be doing that.

Mr INGERSON: Ophthalmologists and optometrists are the only two groups who would be able not only to fit but to be involved in after care?

The Hon. G.F. KENEALLY: That is correct.

Amendment carried; clause as amended passed.

Clause 16—'Unlawful practice of optometry.'

Mr INGERSON: It is new section 28 (2) on which I would like further clarification. I spent some time reading the comments in this area from the optometrical profession and it seems to me that their case is fairly strong, in that they ought to be able to carry out what seem to me to be simple first-aid procedures. This proposed subsection includes the words 'must not treat'. It seems to me that the definition of 'treat' is what we have to finally get to and, as I said, because most of the matters I mention are first-aid—or, in the case of the use of anti-histamine or decongestant drugs—common practices in everyday use in the community, it seems to me that the professional is being penalised, which I do not believe is the intention of the Minister. It is really a matter of clarification as to what new section 28 (2) means within the law.

The Hon. G.F. KENEALLY: My advice is that this provision does not cause the problem to which the honourable member has referred, although I think it is appropriate that he should bring his concerns before this Committee. My advice is that this provision only applies to those drugs

which come under the Controlled Substances Act 1984, and those drugs that are not under the control of that Act would be available to optometrists for their use.

Mr INGERSON: I assume that what the Minister means is that these groups of drugs, the mydriatics and myoptics which will be specified for use specifically for the optometrists, are those to which he is referring, because I think the anti-histamines and decongestants are within the Controlled Substances Act and available under different scheduling, of course, but I am asking whether the Minister means the specified group of drugs, because that is what I understood he meant.

The Hon. G.F. KENEALLY: Yes, that is what I meant.

Clause passed.

Clauses 17 and 18 passed.

Clause 19—'Sale of glasses.'

Mr INGERSON: One of the questions which has come out of the sale of ready-made glasses is whether advertising of ready-made glasses is to be watched by the Government. No mention of advertising is made within this section, although it was mentioned within the select committee. The actual monitoring of the sale of ready-made glasses was also mentioned by the select committee. As the advertising and sale are so closely connected—and as anyone involved in retail would know, if one does not advertise one does not make any sales, and the more one advertises the more one is likely to increase one's sales—it is important to all that there be some understanding of what the Government sees ought to be done in this area of advertising.

As well, it seems to me that the profession of optometry is also concerned about advertising of the whole range of products it puts up for sale—that is, the making of glasses and whether one can advertise them and so forth—and whether the Government within this section sees any need to control advertising at all.

The Hon. G.F. KENEALLY: The matter that the honourable member addresses has been looked at very closely, first by the select committee and also by the Government. It is true that optometrists, ophthalmologists and licensed optical dispensers are all restricted to an ethical level of advertising, and these professions question the appropriateness of allowing pharmacists to advertise without restriction. It was thought by the professions that that may be seen to be unfair. Consideration was also given by the select committee to whether optometrists should be able to advertise ready-made spectacles.

The select committee took the position that the *status quo* should not be altered. However, it recognised that, should there be significant increases in sales of these appliances to the extent that the economics of the optical industry were seriously affected, this question would need to be reviewed. The select committee expressed its view on this matter in its report by recording that, should there be a significant change in sales volume of these appliances and should that change detrimentally affect the viability of professional practices, restrictions on the sale of these appliances would need to be imposed. That was the recommendation and the advice the Parliament received from the select committee, and that has been accepted.

What the select committee is saying is that this whole area needs to be monitored, and if the worst fears of the optometrists, ophthalmologists and licensed optical dispensers are realised, it would be necessary for the Government to take the appropriate action in relation to the ability of pharmacists to advertise in the way in which they currently do. However, the select committee recommended that the *status quo* remain but that it be monitored very closely.

Mr INGERSON: Does that mean that the Government would be saying to the new Optometrists Board through a letter from the Minister that the Government would expect the Board to monitor the sales as part of its normal functions?

The Hon. G.F. KENEALLY: The answer to that is 'Yes'.

Mr M.J. EVANS: I am perhaps very much alone in my complete opposition to the sale of ready-made spectacles. I find the whole process slightly absurd in a country with the health standards of Australia. We have one of the highest health standards in the world, and I believe that to compromise that high standard by allowing the sale of ready-made spectacles, a sort of choose it yourself selection, choose it yourself glasses for eye care over the counter, with very beguiling television advertising which has already been referred to by the member for Bragg, is a most unfortunate departure.

I was a little disappointed by that aspect of the select committee's recommendation. I cannot really see that we should wait until the problem becomes more widespread before we act on it. I would rather that the Parliament had taken the considered view that it would be easier to act now than to wait until the practice had spread and was, therefore, much harder to prevent.

Unfortunately, these glasses so far have not met any of the available world standards, although of course that aspect is being addressed in the Bill. It was not in the original recommendation and, unfortunately, it encourages old people particularly to select glasses on the assumption that it is only the ageing process that causes their declining standard of vision.

Just as the Government and Parliament have decided to accept that young people should be seen in the context of a more important outlook, although we are not actually legislating any prescription for that, I believe it is important that people should have the advantage of the readily available fully professional care that we have in the community. It is not that there is any reason for them to be denied that care and, given the ready availability of such care at reasonable cost, it is an unfortunate track to take.

However, the select committee looked at all the facts in making its recommendation and Parliament is very much agreed on that course. I do not believe that it is open to me to sway the argument this evening. I hope that the Minister's commitment this evening to keep the matter under review will be followed up carefully and, in fact, the Government will look not only at the numbers involved and the advertising but the trend as to the number of outlets selling them and the type of people who are presenting for this kind of ready-made treatment.

I would like to address a question to the Minister about standards, which are the critical aspect of this process. Can the Minister give the Committee the benefit of his advice on two matters? First, is it proposed immediately to prescribe a standard? Until such a standard is prescribed no standard is applicable and any lens could be sold. I would appreciate the Minister's assurance that it is proposed to implement an immediate prescription as to the standard to be followed.

Also, can he indicate just which standard it is proposed to follow? I have read a report of an analysis of the spectacles currently available which compares them to Australian Standard T41-1969 for spectacle lenses and to several American national standards for Prescription Ophthalmic Lenses and for Dress Frames, which are the ANSIZ80.1-1979 and ANSIZ80.5-1979. In that report the following conclusion was made:

> The lenses and the frames of both pairs of glasses are of very poor quality. They are clearly of a lower standard than is consid-

ered acceptable in the conventional ophthalmic industry in Australia. The various national and international standards for ophthalmic lenses and frames are intended as guides for good industry practice, and so are often fairly general in wording. It is my view however that neither pair of glasses examined would pass Australian Standard AS T41-1969.

Will we see an immediate shift to the implementation of that standard so that, even if these glasses are made available, we can at least be confident that they are of the appropriate standard both with respect to safety and quality. That will go at least some way towards alleviating my concerns about this matter.

The Hon. G.F. KENEALLY: It is the Government's intention in the preparation of the regulations to move to the Australian standards which will be reviewed to make absolutely sure that they are appropriate. That is acknowledged by the honourable member in his contribution. We will be seeking to adhere to the Australian standards. I repeat that in the preparation of the regulations we will be reviewing those standards. I can give the assurance that the honourable member seeks that we will be applying stringent standards, and I am certain that they will be of a quality to meet not only his but the community's concerns in this matter.

Mr BECKER: I cannot let the comments of the member for Elizabeth pass unchallenged, because I have been approached by people associated with non-prescription reading magnifying glasses. They have provided me with the following information:

Reading magnifying glasses make reading and close work easier when vision at the usual reading distance of approximately 33 cm (or 13″) becomes difficult. Magnifyers project an image at a distance the eye can focus on, thus correcting the effects of presbyopia. Presbyopia is a result of the natural ageing process where the eye's ability to focus on nearby objects decreases over time. It is a condition that affects almost everyone with normal vision especially after the age of 40 up to about the age of 65 to 70. People buy non prescription glasses because they cost a lot less than prescription glasses.

I have already advised the Committee that a prescription pair of sunglasses cost about $254 through OPSM. The submission continues:

This allows them to have a spare pair near the telephone, workshop, hobby room. They also come in handy if regular glasses are lost or damaged.

There would not be a member here who wears glasses who would not have at least one spare pair or more.

Mr S.G. Evans: I don't.

Mr BECKER: The member for Davenport has good eyesight. The information continues:

The use of non prescription magnifying glasses cannot harm the eye in any way whatsover and are completely safe for all persons who need a little extra help. Birks Chemists supports the regular testing by opticians of the eyes of persons over 40 especially for the detection and treatment of glaucoma. Non prescription magnifying reading glasses are widely available in pharmacies and other non optical outlets in the USA, UK, Japan, Canada, Hong Kong and many other countries, and have been sold in all States of Australia for the past five years.

If such glasses are sold in all other States, why should South Australians be denied the opportunity to purchase them. The submission continues:

The huge public demand for these magnifying glasses has shown that they wish to be able to purchase the product at a price which is generally up to $100 or more cheaper than similar magnifying glasses sold by opticians. It must be clearly understood that there is no difference in optical quality between the product sold by parmacists and opticians. The opticians see what has been a paricularly lucrative business for them up until now rapidly disappearing with the marketing of comparable glasses from pharmacies at a proper and realistic price of around $20 to $40 depending on styles, etc.

The ability by the public to purchase items freely without unnecessary restrictions is something that must be allowed to continue.

Competition in any industry which fosters better prices for the consumer at large should be encouraged and not stifled to satisfy the greed of a few. In addition, it is also Government policy to outlaw the practice of price fixing or the formation of cartels to continue this practice. It is also interesting to note that some opticians in Victoria are advertising prescription reading glasses for $20 which tends to emphasise how the public have been 'ripped-off' in the past. Maybe they see the writing on the wall.

A short examination of the wide range of goods and services sold by pharmacists, opticians, supermarkets, department stores, physiotherapists, etc. will quickly demonstrate that the public already has free convenient access to a very wide range of products indeed from their own choice of merchant.

Anyone who has been overseas will find these types of glasses put out on display or put out on tables so that people can help themselves. If we can buy these glasses overseas and bring them back to Australia without being stopped, why should people not be able to buy them in South Australia? I support the select committee's recommendations and I support the legislation.

Mr S.G. EVANS: I will be brief. I hope that we can get to one standard. The Minister said that that was the aim. I will be disappointed if that does not occur. The member for Hanson says that there is no difference now and that both types of glasses are of suitable quality. I cannot make that judgment. He has documents to support it, and they may be accurate or otherwise. If we do not have one standard, I point out that we will be playing around with a very delicate part of our body. I would be disappointed if that did not occur. I hope that the Minister goes along the path he suggested in response to the member for Elizabeth because, if we do not, I believe that we would be foolish.

Clause passed.

Clauses 20 to 25 passed.

Clause 26—'Amendment of fourth schedule to principal Act.'

Mr INGERSON: New clause 14a provides:

Authorising the practice of optometry by persons who are not registered under this Act.

What is the intention in relation to this provision?

The Hon. G.F. KENEALLY: It is to allow nurses to be prescribed persons to perform screenings on schoolchildren, and so on.

Mr INGERSON: Will it include nurses who work in schools, health workers and nurses in ophthalmology practices? Will there be a requirement that they are supervised? What standard will be applied to enable them to work in this area? It seems to me that it is dangerous to allow a group of unqualified (and I use that word guardedly) persons to practise optometry, even though there are certain controls in the legislation. Can the Minister explain whether the new clause will be taken literally? The exemption virtually means that anyone can practise optometry. If that is the case, we have wasted our time with this whole Bill.

The Hon. G.F. KENEALLY: I certainly do not believe that we have wasted our time. A prescribed person would be recommended by the board, so there is certainly that control. I cannot comment on the information sought by the honourable member in relation to nurses and the role they will play. That will be a professional decision for those who are properly charged with that responsibility. Nurses will do only screening work and would certainly not be involved in any treatment. It is up to the board to determine what groups will be exempted, whether they be nurses who work for ophthalmologists or optometrists or health workers. I think that the board would jealously guard any decision it made to ensure that it was professionally sustainable. Quite frankly, I am constrained to say that I would accept the board's recommendation in these matters. The Government and the Health Commission do not want the interpretation of 'optometrist' to exclude nurses from performing

screening work. I understand that it is fairly basic work in what is a sensitive area.

Mr INGERSON: While I understand the Minister's comments and the fact that he is representing the Minister of Health, it takes us right back to the definition of 'optometrist', which is:

> . . . a person who is registered on the register of optometrists under this Act and who holds a current certificate to practise as an optometrist.

In other words, an optometrist has a very significant role under the legislation and it is clearly defined. However, the Bill also provides that an unqualified person will be able to practise optometry because new clause 14a specifically mentions the 'practice of optometry'.

I accept that we are attempting to cover health workers in the community, including those in the rooms of ophthalmologists and optometrists. However, it seems to me that the board will have to set down some very important guidelines. At the moment I understand that that is not the case. Does the Government intend to write to the board and say, 'Since we are providing an exemption for this group of people, we expect you to set out some very significant guidelines under this new clause so that there are no possible difficulties in this area'?

The Hon. G.F. KENEALLY: That is the Government's intention and, in any event, I will refer the honourable member's comments to the Minister of Health, so he can be assured that his concerns are directed to the appropriate Minister. However, I point out that the Minister of Health intends to refer this matter to the board.

Mr S.G. EVANS: What we are really saying is that the people who will be considered under this provision will practise in a very restricted area.

The Hon. G.F. KENEALLY: Yes, although I do not think that I would use the word 'practise'.

Mr S.G. Evans: Participate.

The Hon. G.F. KENEALLY: Yes, participate in the procedures; that is preferable. It would be a very limited area.

Clause passed.

Title passed.

Bill read a third time and passed.

MEDICAL PRACTITIONERS ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 12 April. Page 4031.)

Mr BECKER (Hanson): The Bill does three things. First, it provides that members of the board who attain the age of 65 years during their term of appointment may complete that term instead of leaving office immediately. I think that that is only commonsense. Secondly, it deals with the early discovery of documents. The present Act empowers the board to call for documents and require answers under pain of penalty only when sitting formally to determine a complaint or dispute. In other words, every time a complaint comes before the board it must meet and then call for the documents and require answers. A constituent of mine underwent an operation for a hiatus hernia, which is a very difficult and tricky operation. My constituent suffered tremendously and unnecessarily as a result of incompetent surgery and incorrect diagnosis. After years of complaining about this I finally obtained an appointment for her with the Medical Board. The investigation took several years to complete.

I appreciate that anything we can do to speed up or streamline the administration of this Act will be in the interests of the consumer. The insurers, that is, the Medical Defence Association, advise practitioners in institutions not to give up documents or answer questions unless legally required to do so. As a result, a number of matters are laid formally before the board so that it can exercise its powers, for example, to call for case notes.

In many cases, the board has to sit only to call for evidence which shows that it need not have sat either because the matter was trifling, because it could be resolved by conciliation or because it was a serious matter more appropriately to be dealt with by the tribunal. The powers of early discovery would enable the complaints to be sifted more carefully and unblock the system, which is becoming clogged up.

The other part of the legislation deals with the powers of the Registrar. The Office of Registrar is a full-time administrative position. The Registrar is responsible for maintaining the Register of Practitioners, the collection of practising fees and the general office administration. In practice, the Registrar also bears the brunt of complaints that come into the office and generally develops a feel for the nature of various complaints. Having dealt with the Registrar on several occasions, I know how he feels because he is the front-line person.

Clause 3 of the amending Bill appears to give the Registrar powers which include the right to require documents and to interrogate practitioners and witnesses generally, without necessarily having prior consent of the board or without necessarily informing the board or complaints committee before proceedings.

In relation to complaints committees, it is current practice of the board to designate members (usually two members) to act as a complaints committee which sifts the complaints. This committee does not presently have the power to call for documents or witnesses. The complaints committee would be encompassed by the words 'any other person authorised by the board'.

It is submitted that it is inappropriate for the administrative officer of the board to have autonomous statutory powers of discovery and interrogation. It is appropriate for the complaints committee (encompassed by the any other person wording) to have the powers and to delegate them to the Registrar in particular cases. For those reasons we support the Bill.

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

CRIMES (CONFISCATION OF PROFITS) ACT AMENDMENT BILL

Returned from the Legislative Council without amendment.

ADJOURNMENT

At 11.25 p.m. the House adjourned until Thursday 14 April at 11 a.m.