LEGISLATIVE COUNCIL

Tuesday 1 December 1981

The PRESIDENT (Hon. A. M. Whyte) took the Chair at 2.15 p.m. and read prayers.

ASSENT TO BILLS

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

Coober Pedy (Local Government Extension),
Cremation Act Amendment,
Essential Services,
Historic Shipwrecks,
Industrial Safety, Health and Welfare Act Amendment,
Prices Act Amendment,
River Torrens (Linear Park),
State Transport Authority Act Amendment (No. 2).

RACING ACT AMENDMENT BILL

At 2.18 p.m. the following recommendations of the conference were reported to the Council:

As to Amendments Nos. 1 to 6:

That the Legislative Council do not further insist on these amendments but make the following amendments in lieu thereof:

No. 1. Page 2 (clause 5), after line 45—insert the following subsection:

(1a) Notwithstanding the provisions of subsection (1), the Minister shall, before making a nomination under that subsection from a panel of nominees, consult with the body or persons that nominated that panel.

No. 2. Page 3 (clause 12), after line 40—insert the following subsection:

(1a) Notwithstanding the provisions of subsection (1), the Minister shall, before making a nomination under that subsection from a panel of nominees, consult with the body or persons that nominated that panel.

and that the House of Assembly agree thereto.

As to Amendment No. 8:

That the House of Assembly do not further insist on its disagreement thereto.

Consideration in Committee of the recommendations of the conference.

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

That the recommendations of the conference be agreed to.

The two principal amendments related to a nomination to the Greyhound Racing Board from a panel of nominees. The Council removed the insistence on a panel and provided for a nominee of various bodies to that board to be accepted by the Minister and appointed by the Governor. The second amendment related to the ability of bookmakers and the T.A.B. to sue for betting debts.

Regarding the first amendment, the managers negotiated for the amendments that now appear in the report to ensure that, although a panel of nominees is presented to the Minister from which he makes a nomination to the Governor-in-Council, there is a requirement on the Minister to consult with the body that nominated the panel before selecting one of the nominees for appointment by the Governor-in-Council. The conference took the view that the concept of consultation with the nominating body was important and should be embodied in the Act. That is the reason for the two new subsections, on which the conference was able to agree. That consultation will largely eliminate the difficulties that some members of the Council believed could occur if a panel of nominees was presented to the Minister and the Minister then selected a nominee of his choice to be recommended to the Governor for appointment.

The point was made to the conference that some bodies were concerned that the Minister, in selecting a nominee from the panel, would not have regard to the order of priority in which the nominating body placed the three members of the panel and might not take into account particular concerns of the nominating bodies. The Government recognised that there was some merit in the concern that was expressed and was prepared to accommodate that.

The Hon. J. R. Cornwall: You mean the House of Assembly.

The Hon. K. T. GRIFFIN: Yes, the House of Assembly was prepared to accommodate that by accepting the requirement for consultation. There will probably be some additional advantages, since this action will bring closer the consultative process between the Minister, his officers, and the nominating bodies, not only in respect of the person who is to serve on the board but also in respect of other matters that may concern that body in the conduct of either the greyhound racing industry or the trotting industry, as the case may be. There is some merit in imposing a consultative process for the purposes that I have outlined. Therefore, the managers from the Council and the House of Assembly were prepared to accept this compromise on amendments 1 to 6.

In relation to amendment No. 8, the House of Assembly managers accepted the Council's view that there could be difficulties in making enforceable betting debts incurred with bookmakers, the T.A.B. and authorised racing clubs. There was a great deal of discussion about that particular concept. Views were expressed as to the position in other States that to some extent allowed enforceability, while other States did not, and pointing particularly to the fact that in South Australia the prohibition against enforceability of such debts had been in operation for well over a century.

As a result of the conference, the House of Assembly managers resolved not to further insist on disagreement to amendment No. 8. The conference was successful in reaching a compromise on the disagreement between the two Houses. It was conducted with cordiality and a necessary desire to find some solution to the disagreement. That has been done, and I am pleased to be able to move my motion.

The Hon. J. R. CORNWALL: I have quite some pleasure in supporting this motion. I do not have a great deal to add to the Attorney's remarks. I think that the conference was quite productive and fruitful. I believe that the Council has improved this legislation. We have removed the clause which would have given bookmakers the ability to sue and be sued. That matter was, of course, canvassed at great length during the debate and I do not intend to go over it again but, clearly, from the Council's point of view it was undesirable. In relation to the question of panels, the Minister can no longer simply give an undertaking, but is required through this legislation to consult with the body or persons that nominated the panel before making an appointment. We consider that to be a far more satisfactory situation than that which was envisaged in the original legislation.

I would like to make three further points. I do not believe that we have seen the last of the Racing Act during the life of this Parliament, or indeed during the life of subsequent Parliaments. I have several reasons for saying that. First, I believe that ultimately there will have to be some sort of restructuring of the South Australian Jockey Club, as I said during the debate. I repeat that I say that with no malice whatsoever. The question arises whether the principal body, the S.A.J.C., is at this time or will in the future be sufficiently professional, full-time and competent

to control the destiny of what is a very large, multi-million dollar industry in this State. I believe before long, regardless of which Party is in power, we may well see amendments in relation to the S.A.J.C.

The second matter concerns Port Pirie bookmakers. I was about to say that they will not go away, but it is quite possible that they will if this legislation stands as it is. Representations have been made and are continuing to be made not only by the people who run the betting shops at Port Pirie but also by a very large number of citizens and voters in that area. When the Bill was before us, I briefly questioned the wisdom of the requirement that these people go out of business in the near future. I repeat that at this time I really cannot see that anything terribly useful will be achieved by the industry generally in ensuring that the betting shops at Port Pirie disappear. I think that they give some local colour. I do not think that there is any demand in any other part of the State for betting shops, and I cannot see any real reason why they should not continue. In saying that, I make perfectly clear that I am expressing a personal opinion.

The Hon. R. C. DeGaris: Did it come up at the conference?

The Hon. J. R. CORNWALL: No, I refer to it only in passing. The other matter to which I refer and which is close to the Hon. Mr DeGaris's heart is the manner in which these conferences are conducted. During the 6½ years that I have been a member of the Council, I have spent some time sitting on the back bench, in the place that the Hon. Mr DeGaris now occupies, while the Party of which I am a member was in Government. I spent a brief time on the front bench, in the place that the Hon. Mr Burdett now occupies, when the Labor Party was in Government, and I have also spent some time, in Opposition, on the front bench. I think that, of all three roles, the one that I am currently in causes me least joy.

Whenever a conference has occurred (and I remember this clearly from when I was a Government supporter on the back bench), the question of how these conferences should be conducted was always a matter of great interest for the then Opposition, which was prepared to punch, kick and gouge very vigorously for the rights of the Legislative Council when it went to war with the House of Assembly.

At one stage at this conference Government members in this Council were locked in meaningful discussions with Government members from another place. I should have thought that that was very much against the spirit and intent that those members used to express when in Opposition. I am not for one moment suggesting that this is other than productive. However, it is a farce and a charade to suggest that we can reach these compromises unless there is consultation among Opposition members, of both Houses, just as there must be consultation amongst Government members of both Houses. I am not lodging any sort of formal complaint at all. I was not involved in these discussions. Indeed, it is fair to say that at one stage I was locked out.

The Hon. M. B. Cameron interjecting:

The CHAIRMAN: Order! I think that the matter to which the Hon. Mr Cornwall is now referring might better be discussed in a different form rather than his continuing to comment at this stage.

The Hon. J. R. CORNWALL: I was referring, Sir, to the way in which the conference was conducted. I think that that is of great interest to members and is germane to the matter that the Council is discussing. However, I do not disagree with your comment, Sir. Rather, I simply make the point (and I do not want to take up any further time of the Council) that we should get away from the nonsense and pretence that when we go to these conferences we are strictly limited to sitting down together as members of one House or the other.

I think that the conference was very productive and that it came up with what is a triumph for common sense. However, for goodness sake let us not carry on with the charade that members of this Council cannot speak to members of the House of Assembly in private discussion, when the conference managers break up from time to time for a cup of tea or a cup of coffee, in order to try to hammer out a sensible compromise. Let us dispense with that charade. If we do that, I believe that these conferences will continue to be conducted in a reasonable spirit and that they will produce the sort of quite good results that were achieved on this occasion.

The Hon. J. E. DUNFORD: Unlike the Hon. Dr Cornwall, I have not attended many conferences. I was not impressed by a previous conference I attended. At this particular conference, there was a very strong win to the Council, against the tremendous odds of the Minister, Mr Wilson. When the conference began, he made quite clear that it was, to use Dr Cornwall's term, a charade, and that we were there to make a quick decision. Actually, it was not a quick decision. We adjourned after 1½ hours in deadlock.

The Minister seemed to be affected and became very dishevelled and excited when, in relation to amendment No. 8, I said that one could easily believe that a bookmaker had been pulling a senior Minister's coat and that he was reflecting that Minister's support. Mr Wilson thought that that was a dastardly allegation. Since then I have found out that what I suggested could be true, because this certainly upset Mr Wilson. When we resumed after the adjournment, the Legislative Council made clear that amendment No. 8, which related to the right of a bookmaker to sue, was not negotiable. This upset the Minister, Mr Wilson, because he was prepared to throw in amendment 8 if the Legislative Council would agree that amendments 1 to 6 stay as they were. I am pleased to say that the Legislative Council stood its ground in relation to amendment 8; we were not going to sell out and negotiate on that.

After a lot of humming and hawing by Mr Wilson, he conceded that no condition would be placed on the Council's opposition to the provision in amendment 8, and that we would consider amendments 1 to 6 without any threat of losing our position on amendment 8 hanging over our heads. Once again, that was a win for the negotiators on behalf of the Council. The three main negotiators were myself, Mr DeGaris, and Dr Cornwall.

The Hon. J. R. Cornwall: The heavy ones.

The Hon. J. E. DUNFORD: The heavy ones, as the Hon. Dr Cornwall says. The Attorney-General was very polite for once, but did not say anything. He seemed to be assisting the Minister as much as he could. However, he played a part in having the Minister agree that amendments 1 to 6 be amended, whereby the Minister must consult with the bodies concerned when they nominate a panel of three persons.

This alteration gets away from what I believe has occurred in the past, with the nepotism, favouritism and the appearance that the Government makes decisions contrary to the wishes of the people that want to be represented on the board by the person that they choose. Now, a code will put three persons up for nomination. If the Minister does not like the person that the code chooses, he cannot then say, 'I will nominate Joe Bloggs', or whatever the bloke's name may be. The Minister must consult with that body and give it a good hearing as to why its choice shall not be represented on the board. This is a step in the right direction.

I hope that when we are shortly in Government, we will follow the same procedure. It is important that the public and the codes see that the Government and the Minister give consideration to the rank and file of those clubs—trotting, racing and greyhounds. The codes know the industry better than the Minister knows it, and now, under this provision, the Minister must consult with the codes and have a very good reason for refusing the nomination or choice of the person who would be the number one choice of either the racing, trotting, or greyhound codes.

Last Wednesday it did not suit me to attend a conference. Most of my colleagues were taking a period of rest from the arduous session that we have had.

The Hon. Anne Levy: Speak for yourself.

The Hon. J. E. DUNFORD: Miss Levy was working, I suppose, but I do not know what she was doing. I am not talking about Miss Levy; I am talking about myself. I had to cancel a holiday, and was rewarded by being a part of that decision making at that conference, in the interests of the codes. However, I believe that the Minister's coat will continue to be pulled by a certain Minister and that we have not yet heard the end of the matter.

I concur with the comments of the Hon. Dr Cornwall concerning the Port Pirie betting shops. I have already said how sad it is that they have to go. They are part of Port Pirie's heritage and the Minister, if he has any wisdom at all, should go to Port Pirie and meet the people who are affected and take a lead from the decision that the conference made in regard to amendments 1 to 6.

The Hon. J. A. Carnie interjecting:

The Hon. J. E. DUNFORD: I know about the first agreement, but the people do not want the agreement that was made. That is understandable. People do change their minds. An agreement was made in regard to six years ahead, but opinions and needs can change, and more consultation should take place. We would never have done what the Government has done; I assure the Minister about that. I learnt much at the conference, and the Minister learnt much about consultation. What happened was perhaps a start to his looking at the Port Pirie betting shops again.

Motion carried.

PAPERS TABLED

The following papers were laid on the table:

By the Attorney-General (Hon K. T. Griffin)—

By Command—

Report of the Hon. David Stirling Hogarth, Q.C., made pursuant to Order-in-Council intituled 'Police Regulation Act, 1952-1978—Directions to the Commissioner of Police', made on 20 November 1980.

Pursuant to Statute—

Classification of Publications Board—Report, 1980-81.
Rules of Court—Supreme Court—Criminal Law Consolidation Act, 1935-1980—Appeals.
Metropolitan Taxi-Cab Act, 1956-1978—Regulations—Fares.
State Clothing Corporation—Report, 1980-81.
Department of Mines and Energy—Report, 1980-81.
Public Service Board of South Australia—Report, 1980-81.

By the Minister of Local Government (Hon. C. M. Hill)—

Pursuant to Statute—

Department of Lands—Report, 1980-81.
Police Offences Act, 1953-1981—Regulations—On the Spot Fines.
Prisons Act, 1936-1981—Regulations—Payments to Prisoners.
Sewerage Act, 1929-1981—Regulations—
Fees.
Plumbers Fees.
Waterworks Act, 1932-1981—Regulations—
Fees.
Plumbers Fees.
City of Henley and Grange—By-law No. 7—Vehicle Movement.
District Council of Kadina—By-law No. 4—Petrol Pumps.
District Council of Port Broughton—By-law No. 25—Bathing and Controlling the Foreshore.
District Council of Willunga—By-law No. 36—Amendment to existing by-laws.

By the Minister of Community Welfare (Hon. J. C. Burdett)—

Pursuant to Statute—

Boilers and Pressure Vessels Act, 1968-1978—Regulations—Licences.
Dangerous Substances Act, 1979-1980—Regulations—Licences.
Health Act, 1935-1980—Regulations—Licensing of Private Hospitals, Nursing and Rest Homes.
Industrial and Commercial Training Act, 1981—General Regulations.
South Australian Psychological Board—Report, 1980-81.
Opticians Act, 1920-1974—Regulations—Registration Fee.
Planning and Development Act, 1966-1981—Regulations—
Hills Face Zone.
Corporation of the City of Port Pirie—Interim Development Control.
South Australian State Planning Authority—Report, 1980-81.
Director of Planning, South Australia—Report, 1980-81.
Shop Trading Hours Act, 1977-1980—Regulations—Licences.

OVERSEAS STUDY REPORT

The Hon. J. C. BURDETT (Minister of Community Welfare) laid on the table the Report of his Overseas Study Tour, 9 April to 17 May 1981.

CYSS

The PRESIDENT: In accordance with the resolution passed by the Council on 28 October 1981 concerning the Community Youth Support Scheme, I wrote to the Prime Minister and have now received the following reply:

Dear Mr Whyte,

Thank you for your letter of 28 October 1981 enclosing a copy of a resolution passed by the South Australian Legislative Council concerning the Community Youth Support Scheme (CYSS).

I have carefully noted the points raised in your resolution and have drawn the correspondence to the attention of my colleague, the Minister for Employment and Youth Affairs, with a request that he reply to you on behalf of the Government.

Yours sincerely,

Malcolm Fraser

QUESTIONS

WORD PROCESSORS

The Hon. C. J. SUMNER: I seek leave to make a brief explanation prior to asking the Minister of Community Welfare, representing the Minister of Industrial Affairs, a question on tendering for word processors.

Leave granted.

The Hon. C. J. SUMNER: The Government has been responsible for a fictitious tendering process for the purchase of word processing equipment. The Office Equipment Industry Association of Australia Limited is extremely concerned about the tendering process which led to the contract for supply to the South Australian Government of word

processing (w.p.) and visual display unit (v.d.u.) terminals being awarded to Raytheon.

In the *Pacific Computer Weekly* of 29 May to 4 June 1981 it was announced that the South Australian Government had guaranteed that 50 per cent of Government orders for visual display units and word processors would be placed with Raytheon. This was apparently to encourage Raytheon to establish here. As a result of this the Office Equipment Industry Association, which represents 40 companies currently active in South Australia, wrote to the Hon. Dean Brown on 15 June 1981 in the following terms:

> . . . we view with concern the reported guarantee of 50 per cent of the S.A. Government's word processing and v.d.u. terminal orders to Raytheon.

and asked a number of questions about Government policy and intentions including:

> How will the Government ensure that the various departments get the best solution to their word processing and v.d.u. needs, when a free tendering system is not being used?

This correspondence was ignored by the Minister for over three months until 28 September, when a reply was forthcoming not from the Minister but from the Director-General of the Department of Trade and Industry.

In the meantime, the Government went through the fictitious tendering process. On 3 August tender No. 1099 was called covering the supply of word processing systems to the Government for the two-year period commencing 1 September 1981. Only 24 days later, Raytheon was advised that it had been the successful tenderer. I understand only eight days was allowed for evaluation. It is clear that this was a phoney process. Raytheon had been guaranteed a proportion of Government contracts, but for appearance sake the Government went through a tendering process which could only have one result. It went through this charade only after objections from the industry association.

Members of the Office Equipment Industry Association could not compete on equal terms, because one of the tenderers, Raytheon, had already been guaranteed 50 per cent of the business. It was particularly galling to one member, Canon, which has an established factory in South Australia and which has received no preference or assistance from the South Australian Government.

Further, the standard practice of asking tenderers to provide equipment to the Government to enable evaluation of relative suitability, preference and reliability was not done. This, plus the eight-day evaluation period, emphasises the farcical nature of the tendering process. I have also been advised that the Raytheon model is deficient in a number of respects when compared to its competitors. Finally, I understand that the committee evaluating the tender responses was less than happy with the pressure from the Government, and that a representative from the Health Commission dissociated himself from the committee's decision.

My questions are as follows: First, why were the representations of the Office Equipment Industry Association ignored for over three months? Secondly, how could the tendering process be considered open and fair when Raytheon had already been guaranteed 50 per cent of South Australian Government business? Thirdly, why was equipment not obtained from the various tenderers and tested in Government departments in accordance with standard practice before the tender was accepted? Fourthly, is it Government policy to give preference on Government contracts to any office equipment supplier who sets up a factory here, irrespective of the effect on other local manufacturers?

The Hon. J. C. BURDETT: I think the question may also relate to the Deputy Premier, as the Minister responsible for the Department of Services and Supply. I shall refer the honourable member's question to my colleagues in another place and bring back an appropriate reply.

PARLIAMENTARY STAFF

The Hon. N. K. FOSTER: I seek leave to make a brief explanation before asking you, Mr President, a question on a letter received over your name and also over the name of the Speaker of the House of Assembly.

Leave granted.

The Hon. N. K. FOSTER: I raise this matter, about which I am concerned, with every respect to you, Sir, and I want to make that abundantly clear. I believe all members are in receipt of the letter. I note that a committee has been set up, comprising Public Service Board officers, to conduct certain investigations. A steering committee will comprise the two Presiding Officers attended by their Clerks, the Attorney-General (whom I recognise as a member of the razor gang—and I say that quite intentionally), the Leader of the Opposition or his nominee, and Dr Corbett of the Public Service Board. The letter states:

> Final decisions on future action will remain the responsibility of the Presiding Officers.

At the end of paragraph 2, it states:

> The right of each House to exercise control over its own affairs will be maintained.

I am very concerned that the Joint House Committee, a Parliamentary committee, has been completely and absolutely overlooked in regard to this matter. Last week, I noticed in this building certain members of that committee looking over the shoulders, as it were, of members of the staff of the Parliament. I consider that the faceless men of the Public Service Board have no right to be making inquiries of staff in this building whose applications for wage increases, through their *bona fide* representatives and individual trade unions, are subject to pressure by and opposition from the Public Service Board.

I regard that as extremely serious. If that is the case, why is it that other people have not been represented or notified of the existence of this committee? I have made known to two unions that cover people in this area that this inquiry is proceeding, and I have been at some pains to suggest to one union that it does not take extended industrial action. Diverse employment conditions are involved, and staff are appointed under the Public Service Act by the Governor in Executive Council, under the Joint House Committee Act, or by the Presiding Officers. A great diversity of people acting responsibly or otherwise in respect to the employment of people in this place are also involved.

I see no good coming from this ill-conceived steering committee or review team that is outlined in the letter. I draw members' attention to the House of Commons Administration Act, 1978, which deals with functions of the commission and under which a commission is set up to look after the interests of members in that place. It is a far better proposition to develop that idea than the present *ad hoc* proposal. There seems to me to be a lack of understanding among members of this Parliament to whom I have spoken, because one can speak to 20 members and get 20 different points of view of the purport of that letter.

Therefore, I ask you, Mr President, to answer the following questions. First, is an outside body, namely the Public Service Board, engaged in a witch hunt in respect of Parliamentary staff and/or conditions? The Attorney need not nod his head. He is not a Presiding Officer in this place. He has not been elected by this Parliament to a high office: he has been chosen by one of his own Party to that office, and he should be made aware of that distinction. Secondly, will you, Mr President, inquire as to whether or not the

Public Service Board will no longer adopt its traditional course of opposing wage claims for members of Parliamentary staff who are responsible in many aspects to an elected Parliamentary committee, namely, the Joint House Committee?

Does the so-called inquiry ignore the constitution and functions of the elected Joint House Committee? Will you, Mr President, prevail upon the Speaker of the House of Assembly as Chairman of the Joint House Committee to have the inquiries by the Public Service Board cease forthwith? If not, will you, Mr President, prevail upon the Speaker to similarly write to the Public Service Association, the Liquor Trades Union and other unions that represent staff interests? Finally, did the Presiding Officers consider the Administration Act, 1978, as applies to the House of Commons?

The PRESIDENT: In reply, I can only say that I am not surprised that questions have been asked about this review committee. I sincerely hope that it is not a witch hunt and that wages will not be considered. I am surprised that the unions to which the honourable member referred have not been alerted.

The Hon. N. K. Foster: They hadn't, until I told them.

The PRESIDENT: I am surprised about that, because that was part of the consideration on which I eventually signed my name. Regarding the continuation of the review committee, I will, as the honourable member has requested, discuss this matter with the Speaker.

DEPARTMENTAL PUBLICATIONS

The Hon. B. A. CHATTERTON: I seek leave to make a brief explanation before asking the Minister of Community Welfare, representing the Minister of Agriculture, a question about the release of departmental publications.

Leave granted.

The Hon. B. A. CHATTERTON: I raised this matter in the Council some weeks ago when I asked the Minister of Agriculture to justify the policy that he had implemented whereby the publications of the Department of Agriculture (referring to all publications, including research material that is produced by that department) had to be authorised by the Minister or his press secretary. At that time I queried the professional capacity of the Minister and his press secretary to judge the professional worth of a number of research publications, because a number of officers in the department raised this matter with me and explained that long delays were taking place.

Since I raised that matter and asked that question, the delays have become even longer, and the release of publications has almost ground to a complete halt, as the department is considering a response to the question that I asked. The frustration that was already present in the department at that time has built up even further. Will the Minister hasten his review of that policy, and provide an answer to me before the end of this session as well as a circular to officers of the department so that they clearly understand the situation and the type of censorship that is being applied in the department?

The Hon. J. C. BURDETT: I will refer the question to my colleague in another place and bring back a reply.

PETROL RATIONING

The Hon. K. L. MILNE: Has the Attorney-General an answer to a question I asked on 22 September about petrol rationing?

The Hon. K. T. GRIFFIN: It would be impracticable to restrict petrol supplies to only those persons living outside the retricted metropolitan area as it would require every motorist to produce his licence when making a petrol purchase and place added pressure on service station proprietors to police this measure. There could also be no guarantee that this system would not be abused by motorists borrowing licences from country dwellers.

A $7 limit was imposed on country petrol sales to preserve remaining stocks as several areas were acutely affected by the industrial action involving petrol supplies. While country areas generally have larger petrol stocks in terms of days cover than the city, it is not accepted that country areas should be exempt from any restrictions in times of petrol shortages.

M.V. *SEXY*

The Hon. R. J. RITSON: Has the Minister of Local Government, representing the Minister of Marine, an answer to a question I asked on 20 October about M.V. *Sexy*?

The Hon. C. M. HILL: My colleague, the Minister of Marine, has informed me that Mr Stratton's application to have the operational area of his vessel, the M.V. *Sexy*, extended has been considered by the ship surveyors in his department, and that Mr Stratton has been advised recently of the additional requirements which must be met to enable the extended operation of the vessel.

MEDICAL ETHICS

The Hon. J. R. CORNWALL: I seek leave to make a brief explanation before asking the Attorney-General, representing the Premier, a question about medical ethics.

Leave granted.

The Hon. J. R. CORNWALL: For many weeks I have been conducting a campaign against the small but significant number of medical practitioners in South Australia who are incompetent, negligent or unscrupulous. That campaign includes a demand for amendments to the Medical Act, increased powers, protection and restructuring of the South Australian Medical Board and enforceable regulations to monitor medical performance in all South Australian hospitals.

More recently I have been given invaluable support and technical advice by Dr David Crompton, for which I am extremely grateful. I have also been supported by many senior people in the medical profession, although it is perhaps unfortunate that most have insisted on confidentiality.

To date the Government has responded to my questions with a remarkable imitation of the three wise monkeys. My story today concerns a 56-year-old female patient. She was referred to a surgeon for a painful breast condition. Fortunately there was no malignancy. She was a small plump woman, and the surgeon recommended that she should attend Weight Watchers. She saw the surgeon on several occasions after this and at one consultation he told her she was now ready for an operation on her abdominal area. The patient was surprised but adopted a 'doctor knows best' attitude. Her weight by this time was down to 57 kilograms—something less than nine stone.

The operation was a radical lipectomy, a so-called 'tummy job', in which excess fat tissue is removed surgically and the skin of the abdomen drawn together for cosmetic effect. For several reasons, particularly the poor blood supply to fatty tissue and its known poor resistance to infection, it can lead to dangerous complications. The procedure

should normally be carried out only by a skilled and experienced plastic surgeon. The operation was performed in a private hospital on 26 October 1979. All of the history and the available evidence suggests that it was unnecessary. Less than two days post-operatively the patient was transferred to the Intensive Care Unit of the Royal Adelaide Hospital with severe shock. The wound had developed symbiotic gangrene due to infection with both staphylococci and streptococci.

During the patient's period in the I.C.U. she required a tracheostomy and suffered several cardiac arrests. It is almost miraculous and certainly an enormous credit to the I.C.U. staff that she did not die. She remained in intensive care for five weeks and spent a total of 12 weeks in the Royal Adelaide before being discharged. She was left at this time with a gross permanent residual disability and pain due to severe distortion of the lower abdomen. In fact, I have seen a colour photograph, which shows this remarkable mess. Some time later the patient's husband discussed the matter with Dr David Crompton as a friend. Dr Crompton referred the patient to a general surgeon, Mr Lehonde Hoare, who saw her on 24 April 1980. He described:

> Massive necrosis of large areas of fat of the abdominal wall . . . these areas have either liquified or sloughed resulting in large depressed ulcers . . . The scars are . . . tight and unyielding and they afford her extreme discomfort in various positions.

Mr Hoare organised a series of investigations by Dr Ian Forbes, a specialist in auto-immune disease and a Reader in Medicine at the Adelaide University Medical School.

On 25 May 1980, the patient was referred by Mr Hoare to Dr D. N. Robinson, described as 'the senior plastic surgeon in this city'. She required almost 10 months of careful and competent care to prepare her for a complicated repair operation on 5 March 1981—in other words, almost 18 months after the initial terrible mess. I am pleased to say that two years after the initial momentous misadventure the patient has now largely recovered her health and well being. The total financial cost of this medical horror story has been $20 074. The physical and mental stress for the patient has been incalculable. All of this was caused by an operation which on all the available evidence was unnecessary and was probably performed by a surgeon operating beyond his competence. The hospital accounts total $8 165. The I.M.V.S. account—obviously warranted because of investigations during and after intensive care—was $2 957. There are other accounts too numerous to mention.

Dr Crompton has assured me that he has the permission of both the patient and her husband for me to supply her name and that of the original surgeon to the Premier. Subject to my supplying him with the names of the patient and surgeon, will the Premier ask the South Australian Medical Board to immediately investigate and report to him on the following questions:

1. Did the surgeon who performed the lipectomy have adequate post-graduate training and experience as a plastic surgeon?

2. Does the board consider he had suitable experience and competence to perform a radical lipectomy?

3. Did the patient request the operation or was it instigated by the surgeon?

4. Was the operative procedure explained to the patient and was she told of the possible risks and complications?

5. Was the operation necessary for the health of the patient or was it merely cosmetic?

6. After the massive post-operative infection did the surgeon instruct or ask the hospital to instigate an immediate investigation of—

(a) The pre-operative and theatre preparation of the patient?

(b) Methods of sterilisation and sterility of drapes, instrument solutions, intravenous or local anaesthetic solutions?

(c) Examination of the ward, theatre staff and doctors concerned for any evidence of infection?

7. If so, what were the results?

8. If not, does the board consider that omission to do so constitutes negligence?

9. Why did the surgeon who performed the operation, when requested, fail to refer the patient to Dr D. N. Robinson?

The Hon. K. T. GRIFFIN: I will refer that question to the Premier.

WORKERS COMPENSATION

The Hon. R. C. DeGARIS: I seek leave to make a brief explanation before asking the Minister of Community Welfare, representing the Minister of Industrial Affairs, a question about the definition of 'workman' in the Workers Compensation Act.

Leave granted.

The Hon. R. C. DeGARIS: In the Workmens Compensation Act which passed this Council in 1971 the definition of 'workman' means many things. There are four exclusions in paragraphs *(a)*, *(b)*, *(c)*, and *(d)*. Paragraph *(d)* provides that 'workman' does not include:

> A member of the crew of a fishing vessel remunerated by a share in the profits or the gross earnings from the workings of the vessel.

It appears that the only exclusion is a workman employed on a fishing vessel. Such a workman employed anywhere else would be covered by the Workers Compensation Act.

I have read through the second reading explanation and the debates of 1971 to ascertain why this was done, but I can find no explanation at all. Will the Minister have this matter examined to see whether it is reasonable that a member of a fishing vessel should be excluded from the provisions of the Workers Compensation Act?

The Hon. J. C. BURDETT: I will refer the honourable member's question to my colleague in another place and bring down a reply.

BREAD DISCOUNTING

The Hon. C. J. SUMNER: I seek leave to make a brief explanation before asking the Minister of Consumer Affairs a question about bread discounting.

Leave granted.

The Hon. C. J. SUMNER: There is evidence to suggest that the bread discounting war is hotting up once again. Apparently some supermarkets (for instance, Coles) are ignoring the Government guidelines of restricting discounting to a maximum of 5c a loaf. Coles at Ingle Farm is discounting at 17c below the recommended retail price, and Coles at Semaphore provides an even greater discount. I have been approached by one bread manufacturer who, to say the least, is concerned that a decision will have to be made soon to reduce staff by 300 because of a drop in orders. It is maintained that the discounting is having an incredibly adverse effect on small shops and that they are substantially reducing their orders to the bakery. Government monitoring of its guidelines has been inadequate and there have been numerous other examples of a breakdown in the 5c maximum since it was established in July 1980. I have been advised that discounting beyond the 5c guidelines is having a direct effect on jobs and is a problem for

small business. Will the Government investigate the situation as a matter of urgency?

The Hon. J. C. BURDETT: I shall be pleased to investigate the situation as a matter of urgency, especially the matter that was particularly referred to by the Leader of the Opposition regarding Coles. I would deny the suggestion which the Leader made and which was related to him, apparently, by someone else that the monitoring has been inadequate. The monitoring has been very scrupulous and most successful, and in most cases suppliers who have been operating outside the guidelines, when spoken to by departmental officers, have complied.

It is quite remarkable that, when at a conference bread retailers were asked to comply with those kinds of guidelines, they had in general done so. Most of the people who have not complied were not directly involved in the conference, but supermarkets have, generally speaking, complied very well indeed. I am alarmed to hear about discounting to the extent of 17c a loaf, and I will certainly do what the honourable member has requested and have the matter investigated as a matter of urgency.

PETROL RATIONING

The Hon. C. W. CREEDON: Has the Attorney-General, representing the Minister of Mines and Energy, a reply to the question that I asked on 22 September regarding petrol rationing?

The Hon. K. T. GRIFFIN: The extended metropolitan area was devised on the basis that the boundary should, where possible, be a reasonable distance from the more heavily populated areas of Adelaide and its surrounds. The rationale for selecting the area on this basis was that this would discourage, to some degree, the practice of persons within the defined restricted area driving outside that area to obtain fuel on an unrestricted basis. It was recognised, of course, that no matter what the boundary selected this practice could not be eliminated altogether.

The second criterion which was used was that the defined restricted area should be readily understood by the community. It was therefore decided that the area should be defined on the basis of council areas, and the Corporation of the Town of Gawler was one of the council areas included.

The Department of Mines and Energy is currently carrying out a review of the procedures used in the administration of the recent petrol restrictions, and the matter of the definition of an apropriate metropolitan restricted area is one of the matters under investigation.

RAIL CARS

The Hon. C. W. CREEDON: Has the Attorney-General, representing the Minister of Transport, a reply to the question that I asked on 22 October regarding rail cars?

The Hon. K. T. GRIFFIN: Two 'red hen'-type rail cars are currently being upgraded at Regency Park workshops. One is a power car (class 300) and the other is a trailer car (class 860). The upgrading is a pilot scheme to determine the feasibility and cost of refurbishing more of the 'red hen' fleet. The first of these cars is nearing completion, and the bodywork on the second will be completed soon thereafter. Work of a mechanical nature will also be required on the second car, because this vehicle was due for a major mechanical service at the time that upgrading commenced.

A report on the feasibility of upgrading the remainder of the fleet will be prepared after a thorough assessment of the refurbished cars. A report and subsequent decision is not expected before 1982.

PUBLIC BUILDINGS

The Hon. M. B. DAWKINS: Has the Attorney-General, representing the Treasurer, a reply to the question that I asked on 27 August regarding public buildings and their finish?

The Hon. K. T. GRIFFIN: As part of the Government's general policy to reduce expenditure wherever possible the Public Buildings Department is taking all practicable steps, consistent with the efficient use of the building, to minimise the cost of all new works.

PETROL RATIONING

The Hon. FRANK BLEVINS: Has the Attorney-General a reply to the question that I asked on 22 September regarding petrol rationing?

The Hon. K. T. GRIFFIN: A direct approach to the Institute of Marine and Power Engineers during the recent petrol shortage was undertaken by the Minister of Mines and Energy to request that the union grant an exemption from their industrial action in order to allow a ship to sail from Geelong and deliver urgently needed petrol to South Australia. This action was taken by the Government as the petrol supply situation in South Australia became very acute and was made on the basis that the lack of supply was causing severe dislocation to the South Australian community.

No approach was made to B.H.P. because that company was not directly involved in the supply of petrol to South Australia, but urgent discussions were held with the oil companies in order to take every available means of obtaining petrol for South Australia.

RIGHTS OF ENTRY

The Hon. FRANK BLEVINS: Has the Attorney-General a reply to the question that I asked on 27 October regarding rights of entry?

The Hon. K. T. GRIFFIN: A person may enter property lawfully by contractual right, by public right, by statutory authority, or as an invitee or licensee, that is, with the consent of the occupier. If a person has entered property unlawfully he may be required to leave by a person in authority.

Legislation may authorise specifically that certain persons or classes of persons may enter certain property or institutions. Normally, the purpose for which the authority is given would be spelt out in the legislation. If an authorised person enters property he must do so having regard to his authority. I gave examples of such authorities when the Hon. Mr Blevins initially asked his question on 27 October 1981.

PETROL RATIONING

The Hon. G. L. BRUCE: Has the Attorney-General, representing the Minister of Mines and Energy, a reply to a question that I asked on 22 September regarding petrol rationing?

The Hon. K. T. GRIFFIN: In any future period of petrol shortage the Government would implement whatever procedures were required to preserve fuel for essential users

and, if possible, ensure that any remaining supplies are distributed to the community on an equitable basis. In a situation where the shortage was not acute, a range of measures to restrain demand, of which the odds and evens system is one, would be available to the Government to preserve the available supplies. In a protracted shortage there would be a need to consider the rationing of supplies to essential users only, as happened in the recent dispute.

While the Government is generally satisfied with the procedures used to administer the restrictions during the recent shortage, a review is being undertaken to determine whether any improvements can be made should this situation arise again. Any assessment of the effectiveness of the odds and evens system needs to consider what would have happened had no action been taken by the Government.

From a random sample of service stations, it has been ascertained that, during the four days of odds and evens in the recent shortage, demand was contained to an acceptable level. This would indicate that odds and evens was an effective mechanism to contain petrol demand to a level below what it would otherwise have been.

The honourable member would also be aware that the system of odds and evens has been used by other State Governments as a means of demand restraint, and, in particular, was used by the New South Wales Government in administering the petrol restrictions which recently applied in that State. When the system of odds and evens is combined with other restraining measures such as restricting service station hours, then it can result in a significant reduction from the normal level of demand. This can be illustrated by reference to an article in the *Sydney Morning Herald* of 29 October 1981, where a spokesman for the New South Wales Service Station Association is quoted as saying that the odds and evens system in that State had cut demand for petrol by between 30 and 50 per cent.

The Hon. G. L. BRUCE: I have a supplementary question. I do not believe that the question I asked has been properly answered. The supplementary question I asked previously was:

> Is the Attorney prepared to take the matter to the Minister and ask whether a report could be made by service stations on sales on odds and evens days, compared to sales in the previous week before rationing?

The Attorney says four days of petrol rationing generated less sales than previously, but that is not a good enough answer. Every service station that I am aware of takes a daily tally of petrol sold. During the odds and evens days, there was not one petrol station that did not have a queue. On a normal day you can drive into a petrol station at any time and get service, whereas when rationing was on they were chock-a-block with cars. I believe that service stations sold more petrol on the odds and evens days than on the normal days. I do not see why the information that I requested in this Parliament cannot be made available.

The Hon. K. T. GRIFFIN: I will refer the matter to the Minister of Mines and Energy and bring back a reply.

WORKERS COMPENSATION

The Hon. J. E. DUNFORD: I seek leave to make a short statement prior to asking the Minister of Consumer Affairs, representing the Minister of Industrial Affairs, a question on workers compensation.

Leave granted.

The Hon. J. E. DUNFORD: As a consequence of a High Court decision recently on the interpretation of section 51 (4) *(b)* of the Workers Compensation Act, 1971-1978, in the case of *Harrington v. Harrington,* the benefits to totally incapacitated workers have now become extremely equitable as there is no limit upon the weekly payments that such a worker might receive if the court thinks that this is appropriate.

Unfortunately, the medical profession is making the position of workers who attempt to enforce their rights very difficult and expensive. There is no price control on medical fees referrable to reports and court attendance to give evidence. Neither the A.M.A. nor the Law Society finds that it has any control of these fees. Doctors can charge what they like and 'black ball' any solicitors who advise their clients against meeting their demands.

I have had cases where I have spoken to solicitors on the telephone and said, 'Look, my constituent has been overcharged'. The solicitor has replied, 'Look, Jim, if I go crook at the doctor he will not attend my clients.' This is a very serious situation and is 'blackballing', and I believe that there is an answer to it. This was a case where a woman refused to pay a bill and was taken to court. The person who sued claimed 12½ per cent on top of what he had already charged. The woman was advised by her solicitor to pay because, had she sued for the amount of the doctor's costs, the maximum she would have received from a doctor attending court for part of a day was $300, and for the report about $60. When she was claiming compensation her solicitor received a letter from John D. Fewings which said:

> Thank you for your letter of 20 May 1981 requesting a neurological report re your client.
>
> I regret to advise that it is my policy not to commence the preparation of a report until I have been guaranteed that the cost of this report will be met, in this particular case this would be approximately $125.

That is not the top price on the bill either, the letter continues:

> My fee for attendance at court hearings is $750 per day.

From my experience with workers compensation claims, doctors have appeared for a very short time and have received $750, and then if he appeared the next day he would receive another fee. This is worse than extortion of the poor old workmen; the maximum that they can claim is $300. If a lawyer goes crook at the doctor he is then 'blackballed'. Therefore, he cannot service his client and he loses business. This is a shocking state of affairs.

I wonder whether I misjudged the Minister of Consumer Affairs recently when I asked whether he was personally concerned. Since asking him a question the other day I doubt it very much. However, I will put it to the test again. Will the Minister of Consumer Affairs, representing the Minister of Industrial Affairs, ask that Minister to amend the Workers Compensation Act to have doctors' fees included under section 41 of that Act, which provides that any costs must be taxed by the court? I have talked on this many times and will not read the section out. Will the Minister of Consumer Affairs ask the Minister of Industrial Affairs to provide for monetary penalties by way of fines for breaches of that provision? Will the Minister of Consumer Affairs give consideration to fixing all fees in relation to industrial injuries?

The Hon. J. C. BURDETT: I take it that these questions are all to be referred to my colleague. There was no question of my being put to the test. I shall of course refer the questions to my colleague as I always do.

The Hon. J. E. DUNFORD: I have a supplementary question. I referred a question to the Minister of Consumer Affairs. Did he listen to the third question?

The Hon. J. C. Burdett: I was not sure what you meant.

The Hon. J. E. DUNFORD: You never are. I certainly do not know what is wrong with you. You must be—

The PRESIDENT: Order!

The Hon. J. E. DUNFORD: My third question was to the Minister of Consumer Affairs, and I asked him to give

consideration to fixing all fees in relation to industrial accidents; that means bringing them under price control—under his department.

The Hon. J. C. Burdett: The honourable member is very hard to follow.

The Hon. J. E. Dunford: And you are very stupid.

The PRESIDENT: Order!

The Hon. J. C. BURDETT: When the honourable member sought leave to make a short statement before asking the question, he sought leave to make that statement prior to directing a question to the Minister of Consumer Affairs, representing the Minister of Industrial Affairs. He likes to mix the questions up; I wish he could ask them separately. I cannot be sure what he really does mean.

The Hon. J. E. Dunford: I do not have the time to ask the questions separately. If you cannot understand, you should not be a Minister.

The PRESIDENT: Order!

The Hon. J. C. BURDETT: Regarding the question of fixing what really are costs, this is not a matter that I am prepared to consider as the Minister of Consumer Affairs.

RAPE

The Hon. BARBARA WIESE: I seek leave to make a brief explanation before directing a question to the Attorney-General on the topic of rape cases.

Leave granted.

The Hon. BARBARA WIESE: My question concerns privacy for the victims of rapes. This matter was raised with me following a particularly horrifying gang rape that took place at Underdale, of which four men and one woman were recently convicted. The case was *R. v. Hunt, Taylor, Glennon, Hicks and Hunt.* In this case, the violence and indignities to which the young woman was subjected were dreadful and particularly distressing. Her decision to pursue the matter in court demonstrated very true courage and determination on her part. This case highlighted some of the problems which arise in rape cases concerning sensitivity in dealing with the victims and their right to privacy. In this case the victim gave evidence in closed court, as I understood usually happens, to save her anguish and distress in describing the awful details of the assault in front of other people. On the other hand, the defendants gave evidence in open court and as a result, perhaps understandably, press reports emphasised their evidence rather than the victim's version of the event. While the defendants gave evidence, any member of the public was able to walk into the court to hear that evidence and to hear the victim identified because her name was used several times a day during the course of the proceedings.

I understand that this aspect of the case, the fact that people can walk in and find out exactly who is the victim, is a matter that is deeply distressing for both the victim and her family. In this case it also happened to be rather dangerous because, as I understand it, both the victim and her family have been threatened with violence by friends of the defendants since they learnt of the victim's identity.

I know that the problems that I am raising here are difficult and that solutions will not be easy to find, but they are matters that ought to be discussed. For example, it may be possible to close courts completely in rape cases. I know that this is a problem because it conflicts with the general principle that justice should not only be done but that it should be seen to be done. Alternatively, it may be possible to close the court to the public but not to the press in rape cases excluding, of course, that part of the proceedings where a victim gives evidence *in camera.*

Probably some people would suggest that rape should not be reported in the press at all, but I am not sure that that is a good solution either, because I think that there are some advantages in having rapes reported in the press, since doing so draws the attention of the public to the fact that these horrid crimes occur. Will the Attorney-General comment on this matter and investigate it further, with particular reference to finding ways to further protect the victim from being identified, and also to ensure that press reporting of rape cases does not create an unbalanced view of events which can cause extra anguish to the victim and her family?

The Hon. K. T. GRIFFIN: I have no way of restricting what the press writes with respect to the facts of any particular case, and I would not want to do so, except in those areas where there is a specific provision, as there is in the Evidence Act, with respect to supression of names of persons or any information which may lead to the identification of a person whose name has been suppressed. There are occasions when such an order by the court for suppression of that information is appropriate and, in those cases, the press not only has a moral responsibility but also a statutory responsibility, and I am as anxious as anyone that it should be accepted and enforced by the media generally. I would be somewhat concerned if I took it upon myself or if someone else took up the responsibility for, in effect, censoring the reports of trials of criminal cases.

The Hon. Barbara Wiese interjecting:

The Hon. K. T. GRIFFIN: That in essence is what it comes down to—the possibility of some form of censoring. It might be either positive censoring or negative censoring. However, I would be cautious indeed about embarking on that course. I am certainly willing to give further thought to the matter that the honourable member raises to see whether there is some way in which the privacy of the victim can be better protected than it is at present. As the honourable member indicates, there is a real dilemma in these sorts of criminal cases between, on the one hand, ensuring that the courts are open to the media and the public and that nothing is suppressed except the identity of the victim and, on the other hand, ensuring that the victims are sensitively dealt with during the course of what undoubtedly are traumatic proceedings.

The Committee of Inquiry into Victims of Crime addressed this subject in some respect, but it did not come up with the sorts of solutions which the honourable member suggests as a possibility. Periodically, other reports have drawn attention to possible means of dealing with the privacy of the victim. I will undertake to make some more inquiries, give some more thought to it, and possibly bring down a reply for the honourable member.

PETROL RATIONING

The Hon. N. K. FOSTER: Has the Attorney-General a reply to my question of 22 September 1981 on petrol rationing?

The Hon. K. T. GRIFFIN: The Department of Mines and Energy obtains information on oil company stocks on a regular monthly basis and more often in the event of a potential short-fall situation. In the case of the recent shortage, the department obtained information on oil stocks on 9 September (i.e. one week before the introduction of restrictions), and then monitored the situation at least every two days from that time. When restrictions commenced stocks were monitored daily.

When the situation became very acute and it was known that a shipping tanker was loaded in Victoria and ready to sail for Adelaide, the Minister of Mines and Energy, as the responsible Minister, requested that the Institute of Marine

and Power Engineers exempt this tanker from the strike so as to enable supplies of petrol to be delivered to Adelaide. This action was taken in an attempt to relieve the very critical situation which existed in this State.

EMERSON CROSSING

The Hon. N. K. FOSTER: Has the Attorney-General a reply to the question I asked on 27 October 1981 about the Emerson crossing?

The Hon. K. T. GRIFFIN: Between Tuesday 8 September and Wednesday 16 September 1981, five instances of vandalism occurred in the vicinity of the Emerson crossing which caused the level crossing warning devices to malfunction. On one occasion police officers in attendance at the crossing did lift the boom barrier to clear the road traffic but there was no danger of collision between road and rail traffic. The State Transport Authority has no knowledge of a train stopping within three metres or less of two fully packed buses.

Action has been taken to prevent similar vandalism at Emerson and in addition discussions have taken place between senior officers of the Police Department and the State Transport Authority over the matter. In future police officers will not lift boom barriers to clear road traffic but will await the arrival of a State Transport Authority electrical fitter to repair the defect.

RESIDENTIAL TENANCIES

The Hon. C. J. SUMNER: Has the Minister of Consumer Affairs a reply to the question I asked on 30 October 1981, during the estimates debate, about residential tenancies reports?

The Hon. J. C. BURDETT: Prior to the recent amendments to the Residential Tenancies Act, section 13 provided for the Commissioner for Consumer Affairs to provide a report on the administration of the Act, while section 88 required the Registrar to report on the Residential Tenancies Fund. All the information relevant to the administration of the fund is set out in an audited financial statement on page 5 of the Registrar's report for the year ended 30 June 1980, which was tabled on 2 June 1981. At the time this report was compiled the fund comprised a total of $2 576 184 made up of $2 539 184 cash at bank and $37 000 on fixed deposit. Since then further sums have been invested and details were given in response to a question asked by Estimates Committee A on 15 October 1981.

The Commissioner's report on the administration of the Residential Tenancies Act for the year ended 30 June 1980 was tabled on 9 June 1981. Following the amendments to section 88 the Commissioner for Consumer Affairs is now required to report on the administration of both the Act and the fund and the reports will be combined. The reports for the year ended 30 June 1981 are still in the course of preparation and are not yet ready to be tabled. It is, however, anticipated that this will be done in the near future.

SAVINGS BANK OF SOUTH AUSTRALIA ACT AMENDMENT BILL

Read a third time and passed.

LOCAL GOVERNMENT ACT AMENDMENT BILL (No. 4)

The Hon. C. M. HILL (Minister of Local Government): I move:

That the time for bringing up the report on the Bill be extended to Tuesday 8 December 1981.

Motion carried.

STATUTES AMENDMENT (JURISDICTION OF COURTS) BILL

In Committee.

(Continued from 18 November. Page 2031.)

Clause 2—'Commencement.'

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

Page 1, after line 7—Insert subclause as follows:

(2) The Governor may, by the proclamation made for the purposes of subsection (1), suspend the operation of specified provisions of this Act until a later day fixed in the proclamation or to be fixed by subsequent proclamation.

This amendment allows various parts of the Bill to be proclaimed separately from others so that it will not be necessary to proclaim the total Bill to come into effect on the one day but will give the Government the opportunity to approach the proclamation of the Bill in stages. It is particularly relevant, not so much to the question of jurisdiction, but to those parts of the Bill which affect the administration of the Courts Department. This applies especially to the amendments which I will be moving on page 8. I will be seeking to move amendments which repeal from the Act the schedule of fees.

Presently the Local Courts Act provides for a schedule of fees and to amend them requires periodical resorting to amending Bills. That is a rather cumbersome process and the Government will be seeking, in later amendments, to provide for court fees to be fixed by regulation. From the viewpoint of the courts administration there will still need to be some time given to enable the regulations to be completed. It may be that the Government will want to proclaim earlier parts of the Bill without proclaiming changes to fees until all is in readiness for that variation. That is why the amendment is proposed by me that certain parts of the Act be proclaimed to come into effect differently from other parts of the Bill.

Amendment carried; clause as amended passed.

Clauses 3 and 4 passed.

Clause 5—'Interpretation.'

The Hon. C. J. SUMNER: I wish to take up some questions with the Attorney-General before moving my amendment to this clause. I will deal first with the matters that do not relate to the amendment. Clause 5 deals with the increase in jurisdictional limits of the local court and increases the jurisdictional limit to $60 000 in matters involving motor vehicle accidents in the local court of full jurisdiction and to $40 000 in other cases in the local court of full jurisdiction. The sum is $7 500 in the local court of limited jurisdiction, and $1 000 in the local court in the small claims jurisdiction.

Recently, I have received expressions of concern about the considerable increases in the jurisdictional limits for the local court of full jurisdiction. The present limit is $20 000. Honourable members will recall that I indicated during the second reading stage that that limit had been increased to $30 000 in November 1978 but had never been proclaimed by the Government. The Government now wishes to increase that $30 000 limt in motor vehicle matters to

$60 000. It has been put to me that that is a significant increase and is perhaps not justified.

Two points should be made. First, for most people claims would be less than $60 000. Most people would have only one claim before the court in their lifetime. For the average person in the community, $60 000 is a significant sum: it is certainly as much as the cost of many residences in the metropolitan area—as much as many people pay for a family home. Yet claims of that magnitude are to be adjudicated upon in the local court.

I ask whether the Attorney-General concedes any difficulties in this regard. Perhaps with a motor vehicle claim, it could be argued that $60 000 is justifiable, because matters such as this are generally comparatively simple. The assessment of damages in those cases is usually carried out according to well established principles and there are many such cases, so that judges are used to dealing with them. In other cases with a maximum of $40 000, there is often a much broader range, and that sum represents a large amount to the average citizen. It may be that the Attorney-General is used to counter-signing cheques that run into millions of dollars, but for the average person $40 000 is not inconsiderable. Is it justifiable, then, given that the increases were made in November 1978 and not acted upon, to increase the limit beyond $30 000?

The second point that is of considerable significance is that these jurisdictional limits will increase the waiting time in the local court. At present, a litigant can obtain a trial date in the Supreme Court within four or five months from the date on which the case is set down for trial. In the full jurisdiction local court, the date of trial is approximately one year after the filing of the defence. Many of the claims that exist at present are between $20 000 and $60 000 or $20 000 and $40 000; all of those claims will now find their way into the local court. This will result in a great increase in the trial list in the local court.

On the previous occasion on which I recall jurisdictional changes being made, the Supreme Court conducted a witch-hunt, as it were, on claims within its jurisdiction that could be properly heard within the local court. It transferred all of the claims it could from the Supreme Court to the local court. If that happens, litigants in the local court or district court will be disadvantaged, because the length of trial lists will be substantially increased, unless the Attorney-General has devised some scheme to overcome these difficulties. Does the Attorney intend to appoint more judges to the district court or is there some other means whereby the Attorney intends to solve the great practical problem that will result from this jurisdictional change?

It may be that the problem will be exacerbated at the lower end of the scale, where I understand the length of trial lists for the local court of limited jurisdiction is also over 12 months. If the limit of that jurisdiction is to be increased from $2 500 to $7 500, there will be increasing pressure of work in this area and the lists will become longer. Litigants will therefore have to wait even longer than 12 months to have their claims disposed of. I believe that these matters require some explanation by the Attorney before the clause is considered by the Committee.

The Hon. K. T. GRIFFIN: It is a matter of judgment as to the appropriate level of responsibility for judges of the district court. I believe that in New South Wales judges have a jurisdiction of something like $100 000. Certainly, in road traffic cases and I think in other areas of their responsibility, the limit is a high figure such as $100 000. I believe that the district court should handle cases involving much larger amounts than $20 000 if it is to acquire the sort of status that one would expect an intermediate court to have.

The Hon. C. J. Sumner: What is the limit in New South Wales?

The Hon. K. T. GRIFFIN: I think it is $100 000. The fact that, certainly on my part, there is a policy of appointing to the district court bench practitioners of ability within the profession suggests quite strongly to me that district court judges are capable of handling claims very much in excess of $20 000, which they presently handle. It should be said that, if anyone is disenchanted with a hearing that he or she gets before the district court, there is always a right of appeal to the Supreme Court. Of course, one would not want the litigant to have to resort to that action in very many cases, but nevertheless that safeguard remains. It is always an important aspect of the deliberations of subordinate jurisdictions that at some stage they may be subject to an appeal to the Supreme Court.

My officers have prepared some figures on personal injury cases which, as a result of this legislation, will be transferred from the Supreme Court jurisdiction to the district court. It appears that some 4 per cent of judgments in the Supreme Court relating to personal injury were below $60 000. That figure does not take into account the number of proceedings issued; it only takes into account the number which proceeded to trial and for which judgment was given. It has not been possible to make any examination of the proceedings issued, because damages after the $20 000 claim in the local court are not specified in the Supreme Court jurisdiction. Some 4 per cent of judgments in the Supreme Court for personal injury in the civil area are below $60 000. Whilst that will be significant to the Supreme Court, it will not make a substantial difference to the work load of the district court. It is not as dramatic a change as it might appear at first view.

The Leader of the Opposition has suggested that the increased work load in the district criminal court may well result in increased waiting times for trial. One must take into account that, whilst the district court will take on additional work at the top end of the scale, it will also lose some at the bottom end of the scale. In any event, the establishment of the Courts Department from 1 July this year has meant that the senior judge has a wider responsibility for the allocation of judicial resources and is now able to allocate his judges, not only those directly within the local and district criminal court, but also those in, say, the Appeals Tribunal and to some extent the Credit Tribunal and the Licensing Court, to functions which are essentially those for a local and district criminal court.

By restructuring, additional judicial tasks became available. It is expected that more time will be available after the early part of 1982 when the Federal bankruptcy jurisdiction is exercised solely by the Federal court in South Australia, thus relieving Judge Rogerson from the present burdens of work within the bankruptcy jurisdiction. The assessments we have made indicate that there is unlikely to be an immediate need for the appointment of additional magistrates. It has been agreed at all levels of the judiciary that we should give the new jurisdictional limits an opportunity to settle down before any decision is made about whether or not additional judicial officers should be appointed.

The Hon. C. J. SUMNER: I really think that the Attorney-General is being unjustifiably sanguine about what will happen as a result of these jurisdictional changes. He has not made sufficient provision to cope with what will undoubtedly be a considerable reallocation of work from the top, where at the moment the trial lists are quite respectable, to the bottom where they are not as respectable and undoubtedly will become worse. There is no doubt that those magistrates who will now be hearing cases under $7 500 will have their work load increased enormously. I

am a bit disturbed to find that the Attorney-General has no contingency plan at all to deal with that situation.

As I have said, the present situation in the Supreme Court is not unreasonable. In fact, compared to courts interstate it is very respectable, with a waiting time of only four or five months. However, that situation does not exist further down the hierarchy in the district or local court of full jurisdiction and other local courts. This change in jurisdictional limits will force more and more cases down into the lower jurisdictions where problems and difficulties already exist with trial lists. The Attorney-General has not really satisfactorily explained how he will overcome that administrative problem. Representations that have been made to me certainly indicate that there will be a great problem. I understand that the Law Society of South Australia has considered this issue and is concerned about increases in the district court limit. I am not sure whether the society has approached the Attorney or whether he has simply taken no notice. I do not believe that he has sufficiently considered these difficulties. In fact, I believe the Attorney is being unduly blase.

As Parliamentarians, I suppose that we can say that this is not our problem but the Government's. If the Government wants to increase the length of trial lists and place litigants at a disadvantage because of long trial lists, that is its problem. However, when considering a Bill such as this which will cause that result, I do not believe that we can completely wash our hands of it. I am not really satisfied with the Attorney's response. I am concerned about the fact that the limit of $30 000 was completely ignored by this Government. I am also somewhat concerned about the increases. I am particularly concerned about the effect that these increases will have on cause lists, and in particular that at the lower end of the scale justice will be an even slower process than it is at present.

My amendment deals with the limits of the small claims section of the local court. The law was changed in November 1978 to increase the small claims jurisdiction from $500 to $1 250. That Bill was never proclaimed, so the limit has remained at $500. This Bill seeks to raise the limit to $1 000. I believe that that is too low. I am surprised that the Government has not adopted the recommendation of the Select Committee that investigated this matter during 1978. At that time the Select Committee concluded that a proper limit was $1 250, which is the present limit in the unproclaimed legislation. For some reason the Government has decided to reduce that limit by $250. In my second reading speech, I referred to some of the small claim limits which exist in other States and indicated that in Victoria and New South Wales, particularly, the sum of $1 500 would not be out of kilter with the experience in those States.

The general principle involved is that for small claims one needs to be cognisant of the litigation costs involved. Once one gets involved with the legal fraternity and a fully fought-out case with all the evidentiary strictures that exist in a normal claim, one realises that the costs are increased for the litigants.

The problem is that in the Local Court the party-and-party costs that are awarded on a comparatively small amount do not cover the amounts that the lawyers charge the respective parties on a solicitor and client basis. So, if one has a small claim, one can win the case but come out with one's claim substantially reduced because of the legal fees involved. That is the rationale behind the development of small claims courts in South Australia and throughout Australia: so that these claims can be dealt with informally without legal representation.

The Opposition considers that, rather than limiting the scope of the small claims court, as this Bill does, its scope should be increased at least to $1 500, which, taking into account inflation since November 1978, when this Parliament agreed to the $1 250 in this respect, does not seem to me to be an unreasonable amount. I therefore move:

Page 2, line 6—Leave out 'one thousand dollars' and insert 'one thousand five hundred dollars'.

There are a number of consequential amendments that will depend on the passing of my amendment, which I suggest that the Committee treat as a test case.

The Hon. K. T. GRIFFIN: I certainly was not aware that the Law Society had any concern about the changes in the jurisdictional limits. If I had been informed of any Law Society concern, I certainly would have given the matter careful consideration. However, I have certainly not been told of any concern about the proposed changes.

The Hon. C. J. Sumner: Do you want to talk to them? Put it off.

The Hon. K. T. GRIFFIN: No. The Leader has suggested that I am somewhat blasé about the consequences of the change in jurisdiction, particularly in the district court and in relation to the magistracy. I indicated earlier that there has been some restructuring and freeing up of judicial resources in the district court that should compensate for the additional work load, if any, that may occur as a result of this change in jurisdiction. At the magistracy level, some restructuring of the courts administration has been designed to ensure that the time of magistrates is put to the best possible use.

Resources have again been freed up for this purpose. The Government has recently appointed a Deputy Director of the Courts Department, who will be responsible, among other things, for the administration of the subordinate courts. That is a long overdue recognition of the need for proper administration in those courts, taking the load off judicial officers, who should be left free to deal with cases judicially without having to worry about the day-to-day administration of the courts.

The traffic expiation scheme will also mean some change in the work load. It is correct that a great deal of the traffic work is done by justices of the peace. However, an amount of that work is also done by magistrates, and the introduction of that scheme will again free up some resources in relation to the changed jurisdictional limits.

I now turn specifically to the Leader's amendment relating to the small claims jurisdiction. When the limit was first fixed, it was $500. If one applied to that figure the consumer price index increases one would have found that in 1978, when the c.p.i. had inflated by 44.1 per cent, that the figure should have been increased to $750. Taking that on a further three years, one can see that the sum of $1 000 is consistent with the original figure of $500, increased by the increase in the c.p.i.

Although in other States the small claims jurisdiction is perhaps higher than the $1 000, the Government takes the view that for many people $1 000 is a large sum of money and, although one can recognise the advantages of endeavouring to have small claims resolved in an informal atmosphere, one must still recognise that persons who take advantage of the small claims jurisdiction with claims of less than $1 000 can still be disenchanted if they do not believe that they received an adequate hearing.

One must remember, too, that a hearing in a small claims jurisdiction is informal and that the magistrate is not bound by the rules of evidence. The magistrate informs himself of any matter relating to the claim in such manner as he thinks fit. So, there is always the potential for material that is inappropriate to be considered or for other material that is appropriate not to be considered.

In the light of the flexibility that is given to the magistrate in the small claims jurisdiction, the Government takes

the view that the sum of $1 000 is an appropriate figure below which it is not appropriate to give magistrates the wider flexibility that is presently in section 152a of the Local and District Criminal Courts Act, where counsel are not allowed to be present in the court to give advice to either one or both of the parties. For that reason, I oppose the amendment.

The Committee divided on the amendment:

Ayes (9)—The Hons Frank Blevins, G. L. Bruce, B. A. Chatterton, C. W. Creedon, J. E. Dunford, N. K. Foster, Anne Levy, C. J. Sumner (teller), and Barbara Wiese.

Noes (10)—The Hons J. C. Burdett, M. B. Cameron, J. A. Carnie, M. B. Dawkins, R. C. DeGaris, K. T. Griffin (teller), C. M. Hill, D. H. Laidlaw, K. L. Milne, and R. J. Ritson.

Pair—Aye—The Hon. J. R. Cornwall. No—The Hon. L. H. Davis.

Majority of 1 for the Noes.

Amendment thus negatived; clause passed.

Clauses 6 to 9 passed.

Clause 10—'Reservation of question of law.'

The Hon. C. J. SUMNER: If an issue comes up during the trial of a matter it is always possible for the presiding judge or magistrate to refer that particular matter of law to a higher court for a decision. Clause 10 will exclude this particular procedure for matters involving small claims. I agree with that. The hallmark of the small claims jurisdiction is informality and the question of the procedure for reservation of questions of law may cut across it. There is no doubt that what this clause does is remove an existing right from a litigant that may be a cost saving in the end analysis.

Presumably, some rights of appeal will still exist in the small claims court and often the reservation of a question of law to a high court is a means of short circuiting the subsequent appeal proceedings because, before a judge makes a decision, he can obtain an opinion on a question of law from a higher court. That is a procedure which exists in the magistrates court and the local court and has now been excluded from the local court in its small claim jurisdiction. Can the Attorney-General say what the justification is for this? Can the Attorney-General say whether any particular difficulties have arisen as a result of this procedure and, if there have been no difficulties, what is the reason for removing the procedure from the small claims court?

The Hon. K. T. GRIFFIN: There have been no difficulties as far as I am aware. The change comes about largely as a result of amendments in clause 16, which relate to the right of appeal from a decision in a small claims court, where, instead of giving a right of appeal on certain matters to the Supreme Court, we are providing for a right of appeal from a decision in a small claims court to be made to a local court of full jurisdiction in a context of informality, rather than the formality which would undoubtedly arise from stating the question of law to the Supreme Court. Therefore, the change in clause 10 is really complementary to the amendment we are proposing in clause 16, namely, that appeals from a small claims court will in fact go to a local court of full jurisdiction.

The Hon. C. J. SUMNER: I am not arguing about the change in clause 16; that may be a useful reform in allowing a small claims appeal to a local court of full jurisdiction and for it to be conducted in an informal manner, rather than to have an appeal to the Supreme Court and the trappings that would be involved in such formal appeal. I would have thought that the amendment in clause 10, which abolishes the right of a magistrate to refer a question of law to the Supreme Court, should provide for the same informal procedure to refer a question of law from the small claims court to a local court of full jurisdiction. In other words, a right is being taken away and that right could be maintained in the small claims court, but the system could be changed from stating a case to the Supreme Court, to stating a case in an informal way to a local court of full jurisdiction. The problem with merely leaving it to appeal is that there are some cases where a magistrate may feel that he wants some guidance on the law and he could obtain that guidance by stating a case to a higher court. In this case, he should be able to obtain guidance by stating a case to a local court of full jurisdiction in an informal way, in the same way as will now apply to appeals from a small claims court to a local court of full jurisdiction.

The amendment in clause 10, which would be consistent with what the Government is trying to do in clause 16, would be to provide for cases to be stated to a local court of full jurisdiction, for questions of law to be referred to a local court of full jurisdiction, and for that to be done on the same informal basis as is contemplated by the appeal proceedings in clause 16.

The Hon. K. T. GRIFFIN: Obviously, there would be a conflict if there was a right to state a question of law to the Supreme Court and if, on the other hand, there was a right of appeal to the district court by leave of the district court. I think that the Leader is misled if he believes that the reservation of any question of law from a small claims jurisdiction will be dealt with informally. Once a magistrate, in whatever jurisdiction, states a question of law for consideration by the Supreme Court, it becomes a highly formalised proceeding where particular documents are required to be lodged with the Supreme Court, and parties are heard through counsel in the Supreme Court. It becomes very much foreign to the concept of informality when that proceeding is implemented.

I am not aware of any case that has gone to the Supreme Court from a small claims court on a question of law reserved by the magistrate. If it would assist the honourable member, I am willing to have some inquiries made this afternoon before the Committee stage is completed, and let him have an indication whether or not there have been any questions of law reserved by a local court sitting in a small claims jurisdiction for consideration by the Supreme Court and, if at that stage he wants to pursue the matter further, I will not deny him that opportunity.

The Hon. C. J. SUMNER: I appreciate that opportunity, but I believe that the Attorney has misunderstood the remarks that I was making. Section 57 of the Local and District Criminal Courts Act provides:

> Any local court may reserve any question of law for decision by the Supreme Court.

That is, a case may be stated by the local court to the Supreme Court. Clause 10 is designed to remove that procedure from the local court in its small claims jurisdiction. The Attorney has given as a basis for that the fact that in clause 16 the appeal procedure from the small claims jurisdiction of the local court is to be changed so that an appeal in future will lie from the local court in its small claims jurisdiction to the local court in its full jurisdiction, and that appeal proceedings will be conducted in an informal manner.

What I was suggesting previously was not that section 57 of the Local and District Criminal Courts Act ought to be maintained in its existing form but that, consistent with the appeal provisions, clause 10, rather than doing away completely with the right of a magistrate in the small claims jurisdiction to reserve a question of law, should provide that reservation of a question of law ought to be on the same basis as an appeal; that is, it should be a question for decision by a local court of full jurisdiction and con-

ducted in the same informal manner as an appeal. I do not see why that right ought not still be there, but amended so that it is consistent with the other provisions relating to appeals that will now be brought into existence as a result of this Bill.

The Hon. K. T. GRIFFIN: There are some difficulties in principle with that proposition. I understand that the Leader is putting that, if there is to be a question of law reserved by a small claims court, it should be reserved for consideration by the district court. There is a difficulty in principle which is more difficult than giving the district court a right to re-hear cases in the small claims jurisdiction if the local court judge grants leave. The difficulty is that essentially a local court of full jurisdiction is not a court of appeal. It has granted to it, if clause 16 passes, a right to review informally cases which are taken on appeal from the small claims jurisdiction. I suppose coincidentally that that might mean that a question of law is involved but, generally speaking, these cases involve more questions of fact and credibility of witnesses than questions of law.

The Hon. C. J. Sumner: Sometimes the law involved is tremendously complex.

The Hon. K. T. GRIFFIN: Mostly they are involved in the small claims jurisdiction in an informal manner, as I have indicated, by the magistrate's taking into account things which, if the rules of evidence were applied strictly, he would be precluded from taking into consideration.

The Hon. C. J. Sumner: What is wrong? If you are allowing an appeal to a local court of full jurisdiction, a local court of full jurisdiction may have to pronounce on a matter of law during an appeal. Then why can you not allow the case to be stated to the same level from the small claims court?

The Hon. K. T. GRIFFIN: You are conferring on the district court a different function.

The Hon. C. J. Sumner: You are not—you are already doing that by clause 16.

The Hon. K. T. GRIFFIN: You are asking the court to rule specifically on a question of law. By clause 16, it will have to hear an appeal which is by leave and which, generally, will be an appeal on questions of fact.

The Hon. C. J. Sumner: Not always.

The Hon. K. T. GRIFFIN: Not always, but essentially on questions of fact. I doubt I can take the matter further. It is a question of whether one is going to deal with small claims as they were intended to be dealt with, that is, in an informal manner in the small claims jurisdiction but with a right by some court to review the decision if one or both of the parties is disenchanted. Although an amendment has been made to section 57 in a way which the Leader suggests may be, in remote cases, such as to prejudice a litigant, I have grave doubts that that would ever occur.

The Hon. C. J. SUMNER: The Attorney is being unduly intransigent on this matter. It is not a matter of major significance, but I cannot see why he cannot follow the logic of the position, which is simply that he is allowing an appeal from the small claims court to a local court of full jurisdiction, so he is therefore conferring upon a local court of full jurisdiction some appellate function. That means that a local court of full jurisdiction will pronounce on a matter of law that could arise in the small claims jurisdiction and, given that, I cannot see why a magistrate, who has a particular question of law in the small claims court and wants some guidance on it from a local court of full jurisdiction, should not be able to obtain that guidance.

It may in fact short circuit the proceedings because it may obviate the necessity for a subsequent appeal. I am suggesting that that reservation of a question of law could be done in the same informal way as the appeal procedure contemplated by clause 16. If we pass this clause in its present form we are taking away a right that currently exists. It needs to be amended in line with the procedure laid down in clause 16 but it should not be completely abolished. I cannot see why the Attorney-General is not prepared to be a little more reasonable about the matter rather than relying on the fact that it is a Government Bill and that anything that the Opposition puts up is not worthy of consideration—that is basically what he is saying. There is no question in anyone's mind that the logic in this case is on the side of the proposition which I put.

The Hon. K. T. GRIFFIN: It is not that it is a Government Bill or that any Opposition amendment will not be considered. I am prepared to consider amendments moved by any member of the Council. The Hon. Anne Levy has amendments later to which I will give careful consideration. However, on this occasion I do not see that the 'case stating' procedure is appropriate for a small claims jurisdiction. I endeavoured to give reasons for that. We must accept that the Leader of the Opposition and I will not be able to agree on this point.

The Hon. C. J. SUMNER: I will have to oppose the clause. I believe that some appropriate procedure should be inserted in clause 10 in lieu of the procedure that is now being done away with. My suggestion to the Attorney-General is that an amendment which would allow a 'case stating' procedure to exist from a small claims court to a local court of full jurisdiction should be inserted so that it will be consistent with the new system in clause 16. I intend to oppose the clause on the basis that it ought to be amended along the lines that I have suggested. That is now being refused by the Attorney-General. In view of his refusal to consider an amendment of that kind I intend to vote against the clause.

Clause passed.

Clause 11—'Appeal to the Supreme Court.'

The CHAIRMAN: I intend to make a clerical correction by adding the words 'of subsection (1)' in subsection *(a)* after the words 'by striking out from paragraphs *(a)*, *(b)*, *(c)* and *(d)*'.

Clause passed.

Clauses 12 to 14 passed.

Clause 15—'Certain matters not justifiable under this Part.'

The CHAIRMAN: I intend to make a clerical correction by striking out the words 'paragraph *(a)*' in line 11 and inserting 'paragraph *(b)*'.

Clause passed.

Clauses 16 to 31 passed.

Clause 32—'Order for examination of witnesses who are unable to attend at hearing.'

The Hon. C. J. SUMNER: This clause deals with a situation where a witness may be examined outside the normal procedure while a case is being heard because that witness may be unable to attend the hearing. Clause 32 provides that in the case of the small claims court this procedure will not be available. Again, in relation to the small claims area, we are taking away a right which currently exists and I do not see that that is justified. It will mean that, in circumstances where a witness cannot attend because he may be interstate or ill, the present procedure whereby a witness can be examined outside the context of the proceedings of a case in the court will be abolished. As I pointed out in the debate on clause 10, it is denying a right which currently exists, and there ought to be some justification for it.

Clause 33 deals with a similar topic. In that clause the procedure of providing for a commission for the examination of witnesses who were out of the State is also abolished from the small claims court. Again it is a right which is being taken away from the small claims court. It has not

been justified by the Attorney-General and I would like him to do so.

The Hon. K. T. GRIFFIN: Certainly, we envisage that rights that are exercised in the small claims jurisdiction should not be removed in this context. But the fact that there really have not been any applications for evidence to be taken on commission (so far as I am aware) prompted the Government to consider a variation to section 284 of the Act in the manner suggested by the amendment in clause 32 and to believe that that would not create any hardship in the small claims jurisdiction. It is probably in the same category as stating the case on the question of law, because earlier in respect of clause 10 I indicated that I did not believe that any questions of law had been reserved for the Supreme Court under that provision of the Local and District Criminal Courts Act.

In fact, having checked with the senior magistrate, I find that he is not aware that any questions of law have ever been reserved for the determination of the Supreme Court. In this case, too, under section 284, I doubt whether a judge or magistrate in any case has had to make an order for consideration or examination of witnesses or to administer interlocutories. I cannot see that there is much purpose in leaving section 284 as it is without introducing the amendment as proposed in clause 32.

The Hon. C. J. SUMNER: The Attorney-General is quite right in one respect, namely, that what we have done in clause 10 we are about to do with clauses 32 and 33, and that is to do away with the rights of certain litigants in the small claims court. I believe that the public interest is served by doing away with one set of rights in the small claims court, and that is in doing away with the capacity of a person to be represented. This was for certain practical reasons, which I explained to the Committee earlier. I do not see the compelling reason for doing away with the rights of litigants in other respects.

First, on the question of stating a case and obtaining an opinion on a question of law from a higher court, I would have thought that that was something that could be maintained within the context of the informality that will now be applied to appeal procedures, but the Attorney-General has said that he is not prepared to accept that. Now we have a procedure whereby a witness who may be about to leave the State can be examined under section 284 of the Local and District Criminal Courts Act, or a witness may be able to be examined if he is unable to attend the trial. He may be examined by interrogatories. The situation is particularly bad where a litigant may find out that a material witness is about to leave the State. That witness may be absolutely critical to the litigant's claim for $1 000, as the limit will now be, yet the witness cannot be stopped and examined by any procedure that will be available if the Bill is passed. That small claimant, quite frankly, will be shot down in flames.

Again, it is disturbing. There is a denial and a withdrawal of a right, and it seems to me to be something that is not justified. The Attorney-General said that sections 284 and 285 have not been used in the small claims court, as far as he knows, but that is not the point. I can envisage that, under section 284, there may be situations in which a witness may be about to quit the State. If this clause is passed, that witness can freely quit the State and the poor litigant can be left completely lamenting in his claim for $1 000. In fact, he could know about it before the case came on and he could be told about it by the witness, but he has absolutely no recourse. His claim would come to absolutely nothing. This is the withdrawal of a right in a way that I do not believe is justified.

The Hon. K. T. GRIFFIN: I am prepared to postpone consideration of this clause and the next clause until we come to the end of the Bill to give further consideration to the matters that the Leader of the Opposition has raised. Accordingly, I move:

That consideration of clauses 32 and 33 be postponed and taken into consideration after clause 55.

Motion carried.

New clause 33a—'Court fees.'

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

Page 8—After clause 33 insert new clause as follows:

33a. Section 294 of the principal Act is amended

(a) by striking out subsections (1) and (2) and substituting the following subsection:

(1) The Governor may, by regulation, fix fees to be paid in respect of matters specified in the regulations.;

and

(b) by inserting after subsection (3) the following subsection:

(3a) Payment of a fee prescribed under this section shall, in relation to matters declared by the regulations to be matters to which this subsection applies, be denoted by an adhesive stamp, issued by or on the authority of the Attorney-General, affixed in accordance with the regulations to process of, or a document filed in, the relevant court.

This is the matter to which I referred when I spoke to the amendment to clause 2. Presently, the schedule to the Act provides for the fixing of various fees. Each time the fees are to be amended, an amending Bill must be brought in to amend the schedules. The Government believes the variation of these fees is more appropriately undertaken by regulation, and the amendment seeks to ensure that fees can be fixed by regulation.

New subsection (3a) provides that the regulations may allow fees to be denoted by an adhesive stamp. The Government is seriously considering introducing the claiming of fees on court processes, particularly in the local and district criminal court, by means of an adhesive stamp, which can be purchased in advance, fixed by legal practitioners to proceedings and then cancelled when issued at court. A great deal of saving is likely to be achieved by that action, with no inconvenience to the legal profession or members of the public. The new clause allows not only fees to be fixed by regulation but also regulations to provide for fees to be denoted by an adhesive stamp.

New clause inserted.

Clauses 34 to 39 passed.

New clause 39a—'Repeal of third and fourth schedules to the principal Act.'

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

Page 8—After clause 39 insert new clause as follows:

39a. The third and fourth schedules to the principal Act are repealed.

This clause simply repeals the third and fourth schedules of the principal Act.

New clause inserted.

Clauses 40 and 41 passed.

Clause 42—'Interpretation.'

The Hon. FRANK BLEVINS: In his second reading explanation, the Attorney-General outlined the differences between this Bill and the principal Act. I do not argue with that at all. In fact, I congratulate the Government on its approach to this matter. However, I am disturbed by one aspect of the Bill. In his second reading explanation of 12 November 1981, the Attorney-General stated:

The maximum term of imprisonment that may be imposed in respect of such an offence by a court of summary jurisdiction will remain fixed at two years. However, a new provision will enable a court of summary jurisdiction to remand a convicted defendant to a district court for sentence where in the opinion of the court an adequate sentence cannot be imposed in the particular case because of the limitations referred to above.

If I understand that correctly, a defendant could be found guilty by a magistrate, but if in the magistrate's opinion the offence warranted a term of imprisonment in excess of two years the case would have to be referred to the district court for sentence. If my interpretation is correct, that seems to be an unsatisfactory way of dealing with the matter.

I believe that the magistrate who hears a case, who would see all the witnesses and would have a far greater idea of the nuances of the case, should impose sentence. If the case is handed to another court for sentence, a court which has heard none of the evidence or seen any of the witnesses, the sentence imposed could be inappropriate. Does the Attorney-General agree that the magistrate who hears all the evidence is the most appropriate person to fix penalty?

The Hon. K. T. GRIFFIN: Having heard all the evidence on a minor indictable offence, a magistrate would be in a good position to decide. However, the Government was concerned to ensure that, for the sake of accused persons, they should have the right to be sentenced by a court of higher status and experience, if the penalty to be imposed could exceed two years imprisonment. The jurisdiction of magistrates could have been increased beyond two years, say, to four or five years, but the Government believed that, where a person was to be deprived of his liberty for a period longer than two years, the matter should be determined by a judge and not a magistrate. On the other hand, it was important to ensure that where an offence was not so serious as to be likely to warrant a penalty in excess of two years that, if the accused person so elected, he could be tried summarily before a magistrate.

For minor indictable offences an accused person has the right to be tried by a jury in the district court. However, at the beginning of a case an accused person can elect to be tried summarily. If a magistrate finds a defendant guilty and it appears that it is a case of such seriousness that it warrants a period of imprisonment in excess of two years, it must be referred to the district court. On the other hand, if at the beginning of the case an accused person does not elect, in a sense it is a committal proceeding. At the conclusion of a committal hearing the accused can elect to be tried summarily, in which case he calls his witnesses if he pleads not guilty, and the matter can be resolved; or the magistrate can decide that it is a proper case for trial before the district court; or the accused can plead guilty.

If it is a case which is within the competence of the magistrate and he believes that it does not warrant a penalty exceeding two years imprisonment he can impose a penalty and that is the end of the matter. If there is a plea of guilty and the penalty is likely to be in excess of two years imprisonment, the magistrate must refer it to a higher court. There is a saving to the accused in having the matter disposed of in a court of summary jurisdiction up to that point. I would suggest that there is not a great deal of inconvenience to have the penalty imposed by district court judge if it is to be a penalty in excess of two years. It is a safeguard for the accused because he will be able to make submissions on penalty to a district court judge appropriate to the level of penalty which could be imposed. That does not preclude a district court judge from imposing a penalty of less than two years. It gives the accused an appropriate recognition of his rights.

The Hon. C. J. SUMNER: The difficulty with the Attorney's argument is that he is saying that it is quite satisfactory for a magistrate to try a case that may now have, if this clause is passed, a potential penalty of up to eight years imprisonment, but that it is not satisfactory in some circumstances for that magistrate to sentence such a person.

I agree that it is probably not satisfactory for the magistrate to sentence someone to a term of imprisonment of up to eight years. If that is the case, surely it is somewhat unsatisfactory to have a magistrate hearing a case of that seriousness. Let us face it: a magistrate will now be able to hear very serious matters. He will be able to deal with matters involving assault occasioning actual bodily harm, and with matters of unlawful and malicious wounding.

Under the amendments proposed to the Criminal Law Consolidation Act, the penalty for malicious wounding is to be increased from three years to five years, and indeed to eight years if the person wounded is under the age of 12 years. Similarly, with assault occasioning actual bodily harm, the penalty is increased from three years to five years, and to eight years if the person assaulted is under the age of 12 years.

So, they are potentially serious matters. There maybe cases of assault occasioning actual bodily harm that are not particularly serious. On the other hand, there may be cases that are very serious. There can certainly be cases of unlawful and malicious wounding that are, to say the least, very serious.

Despite this, the Attorney-General is saying that those very serious matters can be dealt with by a magistrate. So, the Attorney seems to be in the curious position where he thinks that a magistrate is capable of dealing with the guilt or innocence of a person involving a potential sentence of eight years imprisonment but that that magistrate is not capable of dealing with the end result of the case, namely, the sentence.

It seems to me that, if a magistrate is not capable of dealing with a sentence of beyond two years, it adds even greater strength to the argument that he ought not to be able to deal with the guilt or innocence of a person in the case of a potential penalty of eight years. That is what this clause does.

The point raised by the Hon. Mr Blevins was legitimate. The honourable member said that at the one level the magistrate would be in the best position to decide what the sentence should be, having heard the full extent of the case. I think we would all agree that a magistrate should not be sentencing for offences that would involve a penalty of eight years imprisonment. So, it seems to me that, rather than the magistrate's sentencing beyond the two-year limit (the maximum that will currently be allowed), the argument really ought to be that the magistrate should not hear those cases that have a potential sentence of imprisonment of eight years, given that they may be very serious.

That is the query that I have about this change. Generally, there seem to be some matters with which one could agree because they provide greater flexibility. However, particularly in relation to assault occasioning actual bodily harm and unlawful and malicious wounding, I query whether it is appropriate for all these offences to be dealt with by a magistrate's court.

The Hon. K. T. GRIFFIN: Of course, there are already offences with which a court of summary jurisdiction may deal in a summary manner and with a penalty very much in excess of two years, but the magistrate is not empowered to impose a penalty greater than two years imprisonment. One refers, for example, to some minor indictable offences. The offence of larceny as a bailee attracts a penalty of five years; larceny of trees attracts a penalty of five years; and embezzlement attracts a penalty of eight years. So, magistrates already have jurisdiction to hear cases where a much higher penalty of imprisonment is provided by the Act than the two years maximum period of imprisonment that they are empowered to impose.

However, the accused will elect whether or not he wants the matter dealt with summarily. When that election has been made, the magistrate makes a decision on guilt or innocence. It is not imposed on the accused: it is by virtue

of the accused's electing to have guilt or innocence determined in a summary way. Of course, the magistrate can refuse that and can commit a person for trial in the district court, and the accused can then plead guilty.

Really, the procedures envisaged in the amendments do not adversely affect the rights of the accused. Indeed, they are enhanced to the extent that, where a penalty that is likely to be in excess of two years is to be imposed, it is imposed by a court of the status of the district court.

Clause passed.

New clause 42a—'Fine in lieu of imprisonment.'

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

Page 10—After clause 42 insert new clause as follows:

42a. Section 75 of the principal Act is amended by striking out from subsection (7) the passage 'two hundred dollars' and substituting the passage 'two thousand dollars'.

This new clause amends section 75 of the Act. This amendment, which was an oversight when the Bill was prepared, ensures that there is consistency in the maximum $2 000 penalty that the magistrate is empowered to impose.

New clause inserted.

New clause 42b—'Term of imprisonment in default of payment of fine.'

The Hon. ANNE LEVY: I move:

Page 10—After line 38—Insert new clause as follows:

42b. Section 81 of the principal Act is amended by striking out from subsection (2) the passage 'ten dollars', wherever it occurs, and substituting, in each case, the passage 'twenty-five dollars'.

I discussed the moving of this amendment during the second reading stage and I do not propose to go into it in any detail. To remind honourable members, the term of imprisonment which someone must undergo in default of payment of a fine was last looked at in 1972 when, for each $10 of a fine that was not paid, a person had to undergo one day's imprisonment. While we are amending all sorts of other monetary limits in this Bill owing to the decreasing value of money caused by the continual inflation that occurs, it seems appropriate that the term of imprisonment in default of payment of a fine should also take into account the decreasing value of money.

The Parliamentary Library has informed me that since 1972 the c.p.i. has risen by 250 per cent. Therefore, it would seem appropriate to amend the monetary value in this clause by the same 250 per cent. Whereas the value of money has decreased, the value of a day's freedom obviously has not to the individual concerned. Therefore, it would be appropriate and in line with inflation since this matter was last looked at nine years ago, to amend it so that for each $25 of a fine not paid a one day's prison sentence will result. I hope that the Attorney will consider this amendment sympathetically.

The Hon. K. T. GRIFFIN: I have given consideration to the Hon. Anne Levy's amendment, and am prepared to accept it. At the second reading stage, I indicated that the Government was considering some amendment in any event and was proposing amending a subsequent Bill which dealt with sundry amendments to the Justices Act. I am not prepared to oppose this on the basis that it was going to be considered later. It is appropriate that it is brought into operation, in the light of the inflation that has occurred since 1972. In New South Wales, the equivalent monetary figure is now $25; in Western Australia and Victoria it is one day's imprisonment for each $20 of an unpaid fine. The Law Society is happy with amending the legislation to $25 and made a recommendation to me that I should consider it on that basis. In those circumstances, it is appropriate that this amendment be made while we are dealing with this Bill. I am pleased to accept the amendment.

New clause inserted.

Clauses 43 and 44 passed.

New clauses 44a and 44b.

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

Page 10—After clause 44 insert new clauses as follow:

44a. Section 108 of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

(2) Where a witness is examined orally, his deposition—

(a) shall be recorded in writing;

(b) shall be read over by, or read over to, the witness; and

(c) shall be signed by the witness and the justice.

44b. Section 109 of the principal Act is amended by striking out paragraph *(a)* of subsection (3).

These clauses are consequent on the change in the definition of minor indictable offences and the variation in practice which is likely to occur as a result of this Bill's passing. Section 108 (1) of the Justices Act, which remains the same, presently provides that, where a witness is to be examined orally, the usual oath should be administered to him. Subsection (2) provides that, where a witness is to be examined orally, his statement shall be taken down in writing in the presence of the defendant, and his depositions shall be read over to the witness and shall be signed by him and by the justice. New subsection (2) provides that the evidence shall be reported in writing, and is to be read over by, or read over to, the witness and is to be signed by the witness and the justice. Recently there has been a change in the practice of taking down of evidence. It may be that some courts are using tape recording services and, in that context, the evidence is not reported in writing.

The Hon. C. J. SUMNER: Mr Acting Chairman, I draw your attention to the state of the Council.

A quorum having been formed:

The Hon. K. T. GRIFFIN: In view of the tape recording system now used in courts to record evidence, it cannot be said that evidence is technically taken down in writing in the presence of the defendant. Evidence is recorded and is then transcribed, but after that it ought to be read over by the witness or read over to the witness. That amendment brings section 108 up to date.

New clauses inserted.

Clauses 45 and 46 passed.

Clause 47—'Procedure and powers of court in relation to charges of minor indictable offences.'

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

Page 11—After line 30—Insert subsection as follows:

(6) In proceedings before a court of summary jurisdiction relating to a minor indictable offence, the deposition of any witness for the prosecution—

(a) shall be recorded in writing;

(b) shall be read over by, or read over to, the witness; and

(c) shall be signed by the witness and the special magistrate.

This clause is related to my amendment to section 108, and again requires that, in proceedings before a court of summary jurisdiction related to a minor indictable offence, a deposition is to be recorded in writing and read over by, or read over to, the witness and is to be signed by the witness and the special magistrate. Again, this brings the Act up to the present practice.

Amendment carried; clause as amended passed.

Clauses 48 to 54 passed.

Progress reported; Committee to sit again.

CRIMINAL LAW CONSOLIDATION ACT AMENDMENT BILL

In Committee.

(Continued from 12 November. Page 1888.)

Clauses 2 to 5 passed.

Clause 6—'Common assault.'

The Hon. C. J. SUMNER: The concern that I expressed in the second reading debate related to the increase in penalty for common assault from one year to three years, that this would place all common assaults into a district court and that a magistrate could not, in any circumstances, deal with a matter involving common assault because the penalty was three years, and that was beyond the limit that could be imposed by a magistrate, which was two years. As a result of the passage of the previous Bill, which we have just debated, the defendant may elect to proceed with a matter of common assault in the magistrates court but, if the magistrate feels that a matter deserves a penalty of more than two years, he will have to refer it to a district court for sentence. The difficulty that has been foreshadowed by me has been overcome, although I am not sure whether three years is not perhaps a little excessive for common assault, which may not even involve any physical contact: it may involve a threat or the mildest of pub brawls. It would appear that those matters will all have to be heard in a district court if the defendant so decides, although they will not have to be heard in the district court if the defendant elects to have the matter heard in the magistrates court.

I personally think that a better solution to the common assault situation would be to increase the penalty from one year to two years. However, the difficulty that I had initially foreseen does seem to have been overcome, although it could mean that more common assaults will now be dealt with in a district court than previously and, as I said, many of them will not be particularly serious. As the difficulty has been overcome, I do not intend to move the amendment which I had suggested.

The Hon. K. T. GRIFFIN: As the Leader has said, to a large extent the difficulty which he raised during the second reading debate has been overcome. He does make some comment about the appropriateness of three years being the maximum penalty for common assault as opposed to, say, two years. That really is a matter of judgment. One year is certainly inadequate to cope with the increasing prevalence of crime where physical violence is threatened with, for instance, some form of weapon. We have to remember that the maximum penalty is reserved for the most serious offence that can be contemplated within that category. The one-year maximum just did not give the courts sufficient flexibility in the light of the increased threats of physical violence with some form of weapon, for example.

A three-year sentence seems to be an appropriate maximum in the context of the other penalties referred to in the Bill. I believe that there will still be an opportunity to have the majority of common assault cases resolved in courts of summary jurisdiction, but of course we have to recognise that there may be more serious cases and, for that reason, we are proposing the opportunity for sentence in a district court.

The Hon. C. J. SUMNER: I want to make the position clear: the main difficulty about which I was concerned was that, if this amendment had been made without the amendment in the previous Bill, it would have meant that all assaults (no matter how serious or minor) would have been dealt with in a district court. I suggested that one way of overcoming that was to restrict the maximum penalty to two years, which would have brought it within the jurisdiction of the magistrates court. Now that the problem has been overcome, as I indicated, I do not intend to object to the three-year maximum sentence or to the clause.

Clause passed.

Clauses 7 to 25 passed.

Clause 26—'Insertion of new headings and sections 270a and 270b.'

The CHAIRMAN: There is a clerical error. On page 4, line 27 the heading should read *'Assaults with Intent to Commit Felonies or Indictable Misdemeanours'.*

Clause passed.

Clause 27 and title passed.

Bill reported without amendments. Committee's report adopted.

[Sitting suspended from 5.45 to 7.45 p.m.]

CRIMINAL LAW CONSOLIDATION ACT AMENDMENT BILL (No. 2)

Adjourned debate on second reading.

(Continued from 18 November. Page 1999.)

The Hon. C. J. SUMNER (Leader of the Opposition): The Opposition supports this Bill and wishes it a speedy passage through the Parliament. It provides a reform in the procedure which can be adopted in a jury trial whereby arguments on the *voir dire* (that is, arguments which take place in the absence of the jury) can be conducted before the judge prior to a jury being empanelled. At the present time a jury must be empanelled before such arguments can proceed but that is in the absence of the jury, because the argument is about whether evidence should be put before the jury or should not be put before the jury during the trial. Of course, the jury is not present during those arguments so it does not have any knowledge of any evidence being argued. If it is decided that the evidence is to be excluded, the jury has had no knowledge of it and it cannot be used by the jury in making a decision. From the viewpoint of efficiency it has been felt that the arguments on the admissibility or otherwise of evidence could just as easily take place before the jury is empanelled. That seems to be a perfectly sensible, logical procedure. Accordingly I reiterate that the Opposition is happy to see this Bill have a speedy passage through Parliament.

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

CORONERS ACT AMENDMENT BILL

Consideration in Committee of the amendments of the House of Assembly:

No. 1. New clause 6a, page 2, after line 14—Insert new clause as follows:

6a. Amendment of s.26—Inquests and other legal proceedings—Section 26 of the principal Act is amended—

(a) by striking out subsection (2);

and

(b) by striking out from subsection (3) the passage 'Except as provided by subsection (2) of this section, a' and substituting the word 'A'.

No. 2. New clause 7a, page 2, after line 17—Insert new clause as follows:

7a. Amendment of s.35 Rules—Section 35 of the principal Act is amended by inserting after paragraph *(a)* of subsection (2) the following paragraph:

(ab) empower coroners to order the payment of costs in respect of inquests and provide for the recovery of such costs;

Amendment No. 1:

The Hon. K. T. GRIFFIN: I propose that these amendments be taken separately on the basis that it may be possible to sway honourable members to agree with the first amendment but it may not be possible for them to agree with the second. Accordingly, I move:

That the House of Assembly's amendment No. 1 be agreed to.

Amendment No. 1 relates to the repeal of the procedure for the coroner to commit a person for trial at the end of a coronial inquest. I previously indicated to the Council that a coronial inquest is not a committal proceeding but rather is an inquiry with a view to establishing the facts surrounding a death, an accident, a fire or some other occurrence within the ambit of the coroner in respect of coronial inquiries. The coroner has committed only one person for trial on a criminal offence since 1975, when the power to commit was included in the Coroners Act. The coronial inquiry is an inappropriate forum for determining whether or not a person should be committed for trial on a criminal offence on the basis that no person appearing before the coroner in such an inquiry is charged with such an offence. It is not a hearing with a view to establishing whether or not there is a case to answer.

The person who may ultimately be committed has not been put on notice during the course of the inquiry that he should be alert to the possibility that he may be committed for trial. Accordingly, it seems to me and the Government that the power of the coroner to commit a person for trial at the end of an inquiry should be withdrawn. Amendment No. 1 seeks to do just that. Therefore, the amendment should be agreed to.

I know it is not relevant to discuss the second amendment necessarily, but I intend to move in the same way in respect to that amendment. I suspect that the Council will disagree to that amendment, which seeks to give the coroner power to make rules and to order the payment of costs in respect of certain inquests. I have already canvassed that matter at much length. It seems to me that the Council is very strongly opposed to that power being given to the coroner, notwithstanding that such rules of subordinate legislation would be laid before both Houses of Parliament.

Broadly, I have given the reasons why the Council should accept amendment No. 1. At the appropriate time I will move the same kind of motion with respect to amendment No. 2, but I suspect that the strength of feeling of the Council will be much greater in that regard.

The Hon. C. J. SUMNER: This amendment provides for the abolition of the power of the coroner to commit a person for trial following the findings of an inquest. We believe that a coroner should have the power to commit for trial, taking the position that obviously he would not do it very often, as the Attorney-General has indicated, but would only take this action if he believed that the evidence that had been placed before him was legally valid and if he was satisfied on the basis of that evidence and after a full inquiry that someone should be put on trial. I have no doubt that the coroner would ensure that the person who was liable to be put on trial would have a good chance to dispute any matters that might be put against him in evidence. Certainly, the coroner would not take this action out of the blue without the proper consideration of the person whom he would ultimately commit.

That was the position we put when the Bill was first introduced. The basic argument was that there is little need for a duplication of proceedings and that, if the coroner could commit, the need for a subsequent committal would be eliminated, given that he would commit only in cases where the evidence was so overwhelming and the person who was committed had been given an adequate opportunity to put his side of the story. However, there is no question that there is some merit in what the Attorney has said, namely, that a person who is charged with an offence should be put on notice to that effect. He should know before proceedings commence that he is to be charged with an offence and he should know precisely with what he is to be charged. That is the general principle to which the power of a coroner to commit for trial during an inquest would be a small exception.

I do not believe that the situation warrants the rejection of this amendment. I believe there is sufficient merit in the Attorney's argument that a defendant should receive notice of the charge he is to face and should have the opportunity to contest that charge in the normal committal proceedings. Because I believe there is merit in that argument, I certainly have no objection to accepting the amendment that has been moved by the House of Assembly, which would remove the right to commit that the coroner presently has. I do not believe that that power did any harm, being used in occasional circumstances but, in view of the strength of the Government's feeling and the arguments that the Attorney has put relating to the civil liberties aspect and the principle that a defendant should have a knowledge of the charges he is to face, I am prepared to vote to accept the amendment.

However, it is another matter in relation to amendment No. 2, which would enable the coroner to impose costs on parties appearing before a coronial inquest and would enable a coroner to impose some part of the costs of an inquest on a person who requested the inquest. I put the view earlier that that could be very disadvantageous to a widow, for instance, who might request an inquest into the death of her husband which occurred at work or on the road. That widow might not have the financial resources to ascertain what happened in that death if she was not able to have an inquest at the expense of the State. That clause can be used to discriminate against some people in the community. A coronial inquest is a service provided by the State in situations that are tragic by their very nature, and that service should be maintained. No person, particularly the sort of person I have mentioned, should be deterred from requesting an inquest because at the back of the person's mind there may be a realisation that costs could be awarded. Indeed, costs could be expensive if one takes into account the costs of forensic evidence and the like.

I strongly urge the Council to reject this amendment. I believe it is particularly obnoxious. It seems to be penny-pinching, and I do not believe that the Government will save very much money because of this amendment. I am prepared to vote to accept amendment No. 1, but I will vote to reject amendment No. 2. I indicate that I am prepared to take that one to the barricade.

Motion carried.

Amendment No. 2:

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

That the House of Assembly's amendment No. 2 be agreed to.

I have already indicated that I have some sympathy with the Leader of the Opposition's view. However, I still believe that this is an appropriate amendment.

Motion negatived.

The following reason for disagreement was adopted:

Because the amendment is not consistent with the spirit of the principal Act.

PLANNING BILL

Adjourned debate on second reading.

(Continued from 18 November. Page 2004).

The Hon. ANNE LEVY: This is an extremely important Bill. Without doubt it is one of the most important Bills to come before this Parliament for many years. It is a Bill for the future—a Bill for the 1990s. It will influence the development of the metropolitan area and other urban areas of this State for many years to come. It is recognised as

being of crucial importance and that it will gradually influence the lives of many people. It is 14 years since the first Planning Act came into force in this State. That first Planning Act was imaginative and innovative and it brought great benefits to the people of this State. However, in the intervening 14 years much experience nas been gained, conditions have changed and, as a result, 23 amending Bills have been introduced. There have also been 165 sets of regulations and 49 amending regulations in that time. Therefore, it is not surprising that finding one's way around the existing legislation and the myriad regulations which accompany it is proving extremely difficult and inconvenient for some people.

This new Bill is highly desirable, because it will clear up a lot of the confusion, set things out as simply as possible and provide for the orderly planning and development of urban areas throughout the State for several decades to come. Before discussing some of the details of the Bill I will refer to the principles in the Labor Party platform regarding the management and assessment of development. This statement was adopted only three days ago at the A.L.P. State convention. It is a completely new programme for the Labor Party. I have no doubt that people will be interested in the current Labor Party policy on development management and assessment, which states:

(a) the policy-making functions should be vested in State and local governments rather than in a statutory authority;

(b) all development proposals should be subject to development approval under a 'one-stop-shop' development application system, with specific areas exempted where appropriate. (This will allow the multiplicity of controls to be rationalised into a single comprehensive development control system);

(c) development control powers should be decentralised to local government, with powers for matters to be called-in for decision at the State level where appropriate;

(d) development controls and environmental assessment requirements should be binding on State and local governments and the private sector;

(e) decisions on whether or not development proposals are of environmental significance, and should therefore undergo environmental assessment, should lie with the Minister responsible for environmental matters;

(f) provision should be made for public access at all levels and stages of the decision-making processes, including provision for third and applicant party appeals; and

(g) provision of appropriate penalties, which act as an effective deterrent against breaches of the law and conditions laid down for developments.

It is in the light of these principles that members of the Labor Party will approach the Planning Bill. If we look at these principles and compare them with the Act, we can see that quite a lot of these principles are embodied therein. Certainly, the policy-making functions are vested in the State Government or in local government. Significantly, the development proposals will be subject to development approval under a one-stop-shop development application system. This is achieved in the Bill that is before us.

Development control powers should be decentralised to local government, with powers existing for matters to be called in for decision at the State level where appropriate. This also is a principle that is upheld in the Bill. Most of the principles enunciated there are followed in the Bill. The major one that is not followed is the whole question of third party appeals, about which I say a little more later.

I think that it is important for us to realise that the public in general has accepted very readily the principles of planning that have applied until now, largely because of the participatory role that members of the public have been able to play in the planning process. It has not been something which was handed down from on high and over which members of the public had no control at all. There have been many avenues for participation and appeals, and one of my major criticisms of the Bill is that the whole system of third party appeals is being reduced.

There is also in the Bill the devolution of much of the planning process to local government, which again is fully in line with Labor policy. There is, of course, the question of whether all local government bodies in this State will be able to carry out this function. For some, it may be a responsibility which they have not had until now and which they may find themselves inadequate to carry out.

So, certainly an overall view at the State level is required so that, if local government is not able to fulfil its responsibility in this area, the State authorities can step in. Again, this is provided for in the Bill, although there may be argument as to the degree and circumstances in which this can occur.

Apart from certain points that I will develop later, a great criticism is the rush that has been apparent with this legislation. We all know that originally a Bill was introduced in the Lower House last June and that it lay on the table there until November of this year. During that time, there has been much public consultation, and 13 public meetings have been held, and 120 written submissions received by the Minister.

In the light of the discussions and submissions, the Minister introduced in another place on 11 November the Bill that is now before the Council, and he proceeded to debate it within three working days of its introduction. Many members of the public did not realise that the final Bill had been presented, and it passed the House of Assembly before they even knew of its existence. Even now, some people are only just discovering that this Bill is in existence, and they are pleading for more time to enable them to examine and comment on it.

The fact that people have commented on the previous draft does not mean that they do not wish to comment on the current one. There are major differences between them, and some people are very concerned that some of the clauses in the earlier draft have vanished in the current draft. There are clauses on which people did not make submissions, because they approved of them and felt that they should be present in the Bill, but, as they were present therein, those persons did not make submissions to the effect that they liked the provisions. Obviously, submissions to the effect that the provisions were not welcome in some quarters resulted in their removal without, it seems to me, the Government's having any idea of the strength of feeling that existed regarding some of the clauses that have been omitted.

The Hon. R. C. DeGaris: They're pleased that some of the clauses are gone.

The Hon. ANNE LEVY: I am sure that some people are pleased that some of the clauses are gone. They are the people who lobbied to have them removed. On the other hand, there are many people who very much wish those provisions to be restored and, because of the procedure that has been followed, the Government will not be aware of the strength of feeling of people who wish to have some of the clauses restored.

The Hon. R. C. DeGaris: Could you name one?

The Hon. ANNE LEVY: People did not make submissions saying which clauses they liked; they merely made submissions stating which clauses they did not like. So, as a result of the Government's bowing to that pressure, clauses have been removed that nevertheless have very strong support in many sections of the community. By rushing the Bill through, as the Government is apparently doing, many people do not have an opportunity to comment on the changes that are occurring.

I constantly receive pleas not to hurry the procedure to the extent to which it is being hurried. Indeed, I have had numerous representations (I could not even count them), and I am sure that many other honourable members would

likewise have received representations from people who have only just realised that the Bill is before Parliament and is proceeding. Those persons have not had a chance to comment, but they wish to do so.

There have been many pleas that the Bill be referred to a Select Committee. A detailed, complicated and important Bill of this nature would indeed be a very fit topic for a Select Committee, where the weighting given to every word of the legislation can be so important. It has been very difficult to give adequate consideration to the Bill in the time that has been available and without the resources and full discussion that would occur in a Select Committee.

I realise that a Select Committee would slow the procedure considerably. However, I ask in all sincerity that the Government consider reporting progress in Committee and not continuing with the legislation until Parliament resumes its sittings in February. This would allow six weeks or so, admittedly including the Christmas period, in which people could study the Bill, make comments on it and discuss it with members of Parliament on both sides. I am not suggesting that the discussions are occurring only on one side. There are many members of the community who would like time to consider and discuss the legislation before it is rushed through.

I appeal to the Government to consider letting this legislation lie on the table in Committee until February before proceeding any further, as this will permit time for discussion and consideration of possible amendments, both by the Government and the Opposition. Such an approach would, I am sure, mollify people who feel upset by the rate at which proceedings are occurring. If the Government considers going no further than to the end of the second reading stage before February, then I am sure that many people will feel that they can then have the opportunity of discussing aspects of the legislation, both those of which they approve and those of which they do not approve, with members of the Council. They will then have an opportunity to suggest amendments, which can be considered by members of this Council.

The Government may respond by saying that it wants the Bill to go through hurriedly. This seems unnecessary, if we look at some of the details of the Bill. A very important section of the legislation refers to the preparation of a consolidated development plan for the whole State of South Australia that will incorporate all the development plans, supplementary development plans, regulations and so on, that currently exist. This will be of tremendous benefit.

The Minister has stated that the Bill will not be proclaimed and become law until this development plan is completed. There is no way in which that development plan can be completed in a hurry. I have heard estimates for its completion ranging from July through to December next year, and as the Bill is not to become law until that time it would seem unnecessary to rush it through now. The legislation can well wait until February, as it will not be proclaimed as law for many months subsequent to that.

The development plan that will result from the legislation can be regarded as equivalent to the city of Adelaide development control principles, which exist for the city of Adelaide under its own Act. I welcome the establishment of the environmental impact statements in Part V of the Bill, thereby putting into the Statute what I know has been the practice for some years now, but that practice has not in fact been legislated for.

A question arises regarding the city of Adelaide. The Bill before us completely exempts the city of Adelaide from the whole of the legislation, and this means that the city of Adelaide is likewise exempted from the environmental impact statement provisions. The earlier June draft of the legislation applied the measure to the city of Adelaide, except for Part V. As Part V included the proposals for environmental impact statements the change from the city of Adelaide being exempt from just Part V to being exempt from the whole Act, makes very little difference with regard to the provision of environmental impact statements within the city of Adelaide.

I understand that the Minister has said that changes will be made to the City of Adelaide Development Act, probably to bring it more into line with the provisions of this Bill, which will apply elsewhere in this State. Can the Minister say whether the changes in the City of Adelaide Development Act will include environmental impact statements for the city of Adelaide, or will the city of Adelaide remain the one part of the whole State for which environmental impact statements will never be required? This certainly seems anomalous. The city of Adelaide is the heart of our State, where our main public buildings are situated and the bulk of public proceedings occur. It seems highly desirable that the law relating to environmental impact statements should apply to the city of Adelaide as it applies to the rest of the State. I realise that this may be what is contemplated in the changes to the City of Adelaide Development Act that the Minister has mentioned. Can the Minister tell us whether this is in fact contemplated because, if not, we may move amendments to the effect that the Part on environmental impact statements should apply to the city of Adelaide, and that it should not have the exemption currently set out under clause 6 of the Act.

The Hon. R. C. DeGaris: I think the correct way to do it would be by amendment to the City of Adelaide Development Act. I agree with what you are saying.

The Hon. ANNE LEVY: That may be the correct procedure, but I want to know whether that is what the Government intends, when the Minister speaks of amending the City of Adelaide Development Act. If that is not intended, it would seem to be better to amend this Act than do nothing. I agree that the most desirable procedure would be to amend the City of Adelaide Development Act, if that is what is contemplated.

The Hon. R. C. DeGaris: Do you think that the commission in this Bill should have some oversight of the City of Adelaide Development Act?

The Hon. ANNE LEVY: I am not discussing that question. I am merely considering the environmental impact statements which, following the passage of this Bill, will apply throughout the entire State except at the heart of our State, which is the city of Adelaide. That seems to be a crazy situation.

I wish to raise a few other points in the Bill and to ask questions of the Minister. The situation regarding supplementary development plans is being changed in this legislation from what currently occurs. At the moment, supplementary development plans, when published, are open for public comment by means of written submissions only. There is no public inquiry with the presentation of evidence but merely a system of written submissions.

However, the result of this process is that regulations are prepared which are laid before Parliament and which can be disallowed. Certainly, there is public approval of such a plan at two points. What is suggested in the Bill is that supplementary development plans will no longer be dealt with as regulations; there will be a full process of public inquiry, and this is much to be applauded but, once a plan is adopted, it will not have to come before Parliament in the form of regulations. To that extent, Parliamentary control of the process is being reduced. Whether this is desirable or not is a moot point, and doubtless there can be arguments on either side.

Certainly, there will be much less Parliamentary control and much greater public participation in the process of

preparing supplementary development plans. Different people may have different notions as to which procedure is more desirable. Obviously, the Government has opted for this one. I can see points on both sides, and I do not wish to argue the position too much. We should be aware that this procedure will diminish the control that Parliament has.

I would now like to say something about third party appeals, which are dealt with in clause 52. I want to make comparisons between the current situation and what will occur if this clause comes into force. Presently there are three types of use set out in regulations of metropolitan councils: a use is prohibited, permitted, or permitted under a consent application. Obviously, matters which are prohibited are prohibited, and uses which are prohibited are prohibited and cannot occur. Uses which are permitted under the regulations can be proceeded with without the need for application for permission being made, but the consent use category requires notice being given, and consent being obtained from the council, with notices being published to inform other people.

This also involves the right of third party appeals against those consent applications. Quite rightly, if a consent use may involve the construction of, say, a shop, a corner deli in a residential area, there must be an opportunity for nearby residents to make an appeal against the decision if they believe that the use will interfere with the amenity of their locality. These third party appeals under consent use are an extremely important part of the process as it occurs now, but what is proposed in the Bill will change the position considerably. Clause 52 provides:

(1) Where—

(a) notice of an application for a planning authorisation has been given in accordance with the regulations; and

(b) a person (not being a party to the application) is authorised by or under the regulations to make representations to the planning authority by which the application is to be determined in relation to the granting or refusal of the application,

the person so authorised may subject to, and in accordance with, the regulations make representations accordingly.

This legalese is the clause that will permit third party appeals in certain circumstances laid down by regulation. What is of crucial importance is what the regulations will provide. Unless it is clear what the regulations will stipulate, then the Opposition believes that there should be amendment to this clause so that the rights of third party appeals, which are an extremely fundamental part of our planning legislation, are not lost, especially as we do not know what the regulations could be.

It has been suggested at one of the public meetings to which I referred earlier that the regulations relating to third party appeals are to change the situation as it exists now. There will still be the three categories of permitted use, prohibited use and consent use and, as before with permitted use, no application for permission will be required. However, even for prohibited uses, a planning authority will be able to give consent for a prohibited use. There would be automatic rights for third party appeals. What are currently in the nature of consent uses, with third party appeal rights would not be automatically available as they are now but only available if the council or the local planning authority agreed that a third party appeal would be permitted.

That is a fairly strange situation, that a planning authority which is making a decision may then allow a third party appeal against the decision which it has made. One can imagine that it will rarely give such consent. In effect, the suggested regulations would mean that there would no longer be any prohibited uses at all in this State. In fact, there would be two types of consent use. Those currently prohibited would become consent uses for which third party appeal rights would exist, and the other type of consent use would be what is now a consent use for which third party appeal rights would be available only if the planning authority decided to permit third party appeals.

This would be completely unsatisfactory and would much reduce the third party appeal rights which many people presently enjoy. Unless the Minister can indicate which categories of development will have third party rights of objection and appeal under the regulations, the Opposition believes that clause 52 should be amended to ensure that the public does not lose the third party rights of appeal that it currently enjoys. I know that the response can be made that currently, of the 127 councils (I think) in this State, only 31 have third party appeal rights at present. Those 31 are all urban councils.

The Hon. C. M. Hill: No.

The Hon. ANNE LEVY: At least many of them are urban councils and would cover the vast majority of the people in this State. Although the number of councils without third party appeal rights may be large, the number of people could be small. The overwhelming majority of people in the State at present do enjoy third party rights of appeal where consent use applications are made.

The Opposition believes that it is very important that they should not lose these rights. By all means let us extend them to the whole State so that everyone can have these rights, but for this overwhelming majority of the population which currently has their party appeal rights they should not be taken away. Unless the Minister can give a firm indication of what categories of development will have third party rights of objection and appeal by the regulations under clause 52 as so stated, we believe that the clause should be amended.

Another matter I wish to raise concerning a large number of people relates to the necessity for interim development plans. The Bill as it stands has a clause 41 which relates to the preparation of supplementary development plans. Under this clause, a supplementary development plan can be prepared either by the council or the Minister if the council requests him to do so, or by the Minister if he has requested the council to prepare a supplementary development plan and it has taken no action at all in this regard for six months. So, at the expiration of six months from the date of the request the Minister can prepare a supplementary development plan if the council refuses to do so. However, all sorts of things can happen during that six months. When the original Bill was presented last June, provision was made for interim development plans which could be proposed by the Minister and could take effect immediately but which would cease to operate either when a supplementary development plan had been prepared or at the end of 12 months, whichever occurred first.

It certainly seems to us that while this clause 41 exists, allowing for six months during which there may be no supplementary development plan at all— six months during which the Minister cannot act at all—there should be provision for interim development control should a situation arise in which a council is not prepared to act and in which it is necessary, in the interests of the entire community, that the Minister be able to step in to prevent some highly undesirable development occurring. We certainly believe that the Minister should have this power. He has the ultimate responsibility for the orderly planning and development of the whole State, and provision for an interim development plan should be open, as exists under current legislation.

The Bill which was brought down in June contained a clause for an interim development plan—clause 44. How-

ever, in the Bill before us that clause has vanished. I will read the clause, as it is of crucial importance particularly in the light of the existing clause 41 before us relating to the preparation of supplementary development plans. The clause states:

44. (1) Where the Governor is of the opinion that it is necessary in the interests of the orderly and proper development of an area or portion of the State that a supplementary development plan should come into operation without the delays attendant upon advertising for, receiving and considering public submissions, he may, at any time after notice that the plan is available for public inspection has been published, declare, by notice published in the *Gazette*, that the plan shall come into operation on an interim basis on a day specified in the notice.

(2) Where a notice has been published under subsection (1) the supplementary development plan—

(a) shall come into operation on the day specified in the notice;
and

(b) shall cease to operate—

(i) when superseded by a supplementary development plan that comes into operation under section 42;
or

(ii) upon the expiration of twelve months from the day on which it came into operation,

whichever first occurs.

If we are to have clause 41 relating to supplementary development plans and permitting a six-month hiatus during which the Minister is unable, in the interests of the public of the whole State, to take any action at all (even if he deems it necessary), it is highly desirable to have a clause such as has been omitted to restore the possibility of interim development controls for a short period. We will certainly be moving that way, and I hope that we will receive the support of responsible members of the Council who would not wish to see this six-month period during which all sorts of development could occur that would be inimical to proper planning and development for the State.

Another point I wish to raise is in relation to clause 6, which provides:

(2) The Governor may, by proclamation—

(a) exclude any specified portion of the State from the application of this Act, or specified provisions of this Act;
or

(b) exclude any specified form of development from the application of this Act, or specified provisions of this Act.

No-one would quarrel with the necessity for the Governor or Executive Council (that is the Government) having the power to do this. It is a necessary power which the Government should have. However, it seems totally unnecessary that this should be by proclamation. Currently, such a provision exists by regulation, and we certainly believe very strongly that this should be done by regulation, so that it comes to the attention of the Parliament and so that members of Parliament can have their say on the matter.

I have spoken about another provision in the legislation which will reduce the powers of Parliament, but this seems a totally unnecessary reduction of the powers of Parliament and a most undesirable one. If certain parts of the State are to be exempted from provisions of the Act, Parliament should have the right of scrutiny of this measure by means of regulation rather than proclamation. It would do just as much in terms of protecting areas because the regulation becomes operative from the day it is published. Only when it is disallowed does it cease to be operative.

Regulation provides plenty of protection for any emergency situation where the Government through the Governor may wish to act in a matter, but it is an excessive bypassing of Parliament to not permit this exemption to come before the Parliament by means of the regulatory power. We will certainly move amendments along those lines, and I hope that members, as members of Parliament who are concerned about the functions of Parliament, will support the amendments.

I wish to move amendments at a later stage relating to the composition of the Planning Commission and the Advisory Committee. A very notable absence from the composition of the Advisory Committee is any person representative of the ordinary workers in this State. The ordinary people who will be putting up with the results of the planning advice generated by this committee will not be represented on the Advisory Committee. To a large extent, the members are professional people, people with expertise and, while in no way denigrating the valuable advice that these people can provide, I believe it is extremely important that their expertise be tempered by their rubbing shoulders and discussing matters with ordinary people who can contribute a practical understanding of the effects of the planning advice. For this reason, I will move to provide that a person nominated by the Trades and Labor Council be included on the Advisory Committee to widen the membership.

Likewise, it is very important that the committee and the commission consist of people of both sexes, and I will move amendments to that effect. Planning decisions can have tremendous and lasting effects on people's lives. It is a fact that in our community the life lived by the average woman is very different from that lived by the average man. Sometimes one sex does not appreciate how changes in the urban environment can affect the life of the other sex. For this reason I believe it is very important that on both the commission and the Advisory Committee there be representatives of both sexes, so that by discussions they can take account of the effects of planning decisions on all people in our community. Again, I hope that such an amendment will be accepted by the Government in the spirit in which it is presented.

Another point I wish to raise relates to the composition of the Planning Appeal Tribunal. The tribunal will consist of a Chairman, who is a judge from the local and district criminal court, and up to six commissioners. There is no provision in the Bill in regard to the existing commissioners and I would like the Minister in his reply to indicate whether he can give an assurance that the current commissioners will automatically become commissioners of the Planning Appeal Tribunal, with exactly the same terms and conditions of employment that they enjoy at present. This is very important. These people have vast experience of the workings of the planning system in this State and it is highly desirable that this experience and knowledge be continued on the tribunal that is to be set up. I ask for that assurance, but I do not suggest that I am threatening in any way when I indicate that, unless the Minister can give an assurance along those lines, we on this side believe that this matter is of such importance that amendments would be moved to ensure continuity for the existing commissioners.

In clause 26 of the Bill, a distinction is made between the powers of the judge and the commissioners. This seems to be a totally unnecessary distinction. The Industrial Commission has judicial members and lay commissioners, and has functioned most satisfactorily with this combination for many years. There is no difference in the powers of the judge and the commissioners in the Industrial Commission where they are sitting together. They are co-equal in all functions of the commission. I can produce plenty of quotes to indicate that not only the commissioners but also the judges of the Industrial Commission have found this to be a highly satisfactory method of proceeding.

The Bill suggests first-class and second-class members of the tribunal. When it is a question of law, only the judge can have a say in determination: when it is a question of

fact, both commissioners and the judge are to consider the question. We believe that such a distinction is totally unnecessary. It has never proved to be necessary in the Industrial Commission and we see no reason why this distinction, which has not existed in the Planning Appeal Board, should exist in the Planning Appeal Tribunal. The commissioners have vast experience and knowledge, and because they spend all of their time in this jurisdiction, they very rapidly become more familiar with the law than the judge on a particular hearing, who may be any judge from the local and district criminal court jurisdiction. The judge may have nowhere near the experience and knowledge that the commissioners have gained of the law in this area. Amendments to clause 26 will certainly be moved to remove this totally unnecessary difference between the members of the tribunal, and I hope that the Government will consider these amendments sympathetically.

One other major difference between the Bill before us and the Bill that was brought in in June seems to be so obvious that one wonders whether it is an oversight on the part of the Government. In the June Bill there was a clause whereby a planning authority could prohibit a development if it was of the opinion that the proposed development would create serious hazards to life or property. Clause 47 (4) of that Bill has been omitted from this Bill. It is incredible that the Government should leave out a provision whereby an overriding authority can step in if a development is proposed which will create serious hazards to life. It is incredible that the Government has removed this clause, and I cannot imagine how it can justify that action. If development is taking place that will pose a hazard to life or property surely it is of the greatest importance that an authority have the ability to step in and prohibit such development. The Opposition will certainly suggest that this clause be reinserted. I hope that the Government will accept the Opposition's suggestion and admit that this omission was an oversight. I cannot believe that this Government would allow development to occur which could create a serious hazard to life and limb and would discourage the establishment of an authority to prevent that from occurring.

I am raising these matters at this stage so that the Government can respond to the questions which have been raised and can also see which matters are of concern to members on this side and which, I hope, are of concern to members opposite. Clause 54 deals with advertisements. Subclause (5) suggests that advertisements which have been lawfully erected or displayed until now but which will become prohibited under this legislation will have three years before they must be removed. I believe that that is far too long. It is most unlikely that this legislation will come into operation for another 12 months or so, because it must wait for a development plan before it can be proclaimed. It seems totally unnecessary to allow unsightly hoardings to persist for an extra three years. Certainly, a degree of flexibility should be given, but that seems an extraordinarily long time. The Opposition can see no reason why it should not be reduced to one year. In effect, that will give two years notice, which should be sufficient time for anyone to remove these hoardings.

Clause 60, which deals with land management, reads very much like the Heritage Act, which is now part of the legislation of this State. One might well ask why it is necessary to repeat those provisions in this Bill. Are amendments planned for the Heritage Act to remove the mention of heritage agreements, which we so enthusiastically embraced about 12 or 18 months ago? It seems to me that much of this clause has already been dealt with under the Heritage Act, although it is not identical. Does this mean that changes to the Heritage Act are being forecast and that some of the powers from that Act will be transferred to this part of the Planning Act? What is the Government's intention in this regard?

There are very strong suggestions that the Marginal Lands Act is to be repealed. As I understand it, suggestions have been seriously considered that, through the repeal of the Marginal Lands Act, marginal lands would come under the Planning Act. If that is so, Part VII of the Bill is the appropriate place for them and probably clause 61. However, that is not mentioned in this clause. What is the Government's intention in this regard? If the Marginal Lands Act is to be repealed it is imperative that appropriate clauses be inserted into this Part of the Bill. Does their absence mean that the repeal of the Marginal Lands Act is not to proceed, or will the Planning Bill be amended when the Marginal Lands Act is repealed? If that is so, this Bill will be amended before it even comes into operation, and I believe that that is undesirable. If we are to introduce a new Planning Act let us get it right from the beginning and not start amending it before it is more than a few months old. I would like some indication from the Government about this matter.

I have discussed this Bill generally and I have referred to some of the details which concern the Opposition. This does not mean that we are not appreciative of the vast bulk of this Bill which we feel is extremely competent and which has been very well prepared. I stress the Opposition's points of disagreement, but that does not mean that the Opposition is not aware of the many points of agreement and the strong contribution that this legislation will make to orderly planning development in this State. In conclusion, I reiterate the Opposition's concern for the rush which has occurred with this legislation.

The Hon. J. A. Carnie: Rush?

The Hon. ANNE LEVY: Indeed, it has been rushed. It was introduced in another place on 11 November and it passed that House four days later.

The Hon. J. A. Carnie: The Bill was there in June.

The Hon. ANNE LEVY: Yes, the previous Bill was there in June, but the current Bill was introduced on 11 November. There are major differences between the two pieces of legislation. These major differences are concerning many people. There are many people who are only just discovering that the Bill exists and who have yet to realise the full implications of the changes that were made between June and November.

In the light of this and because, as I said earlier, the Bill cannot be proclaimed until the development plan is completed (and that will take many months), it should not in any way inconvenience the Government or hold up the planning process of this State by permitting the legislation to remain at the Committee stage until the February sitting of Parliament. This will enable all the people who wish to make representations to do so, and there will then be an opportunity, if the Parliament deems it desirable, to take account of any amendments that may result from such representations.

I appeal to the Government to consider letting the legislation stay at the Committee stage until February. This would greatly ease the minds of many people without, in the final analysis I stress, changing by one minute the date of proclamation of the legislation, seeing that it is so many months off and that the development plan consultations can continue in any case.

The Hon. J. C. Burdett: The consolidated development plan cannot be proceeded with until the fate of the Bill is known.

The Hon. ANNE LEVY: Of course it can. No-one is objecting to the preparation of the development plan. It is not a short procedure and, as I understand it, it has already

started and it will be many months before it is completed. So, the legislation could readily wait until February without affecting the proclamation date. This would ease the minds of many people not only in the community but also in the Parliament who feel that they have had very little time in which to examine and properly consider such an important and complicated piece of legislation. I support the second reading.

The Hon. R. C. DeGARIS: I hope that I will not be very long in my contribution to the second reading debate on this Bill. I would like to congratulte the Hon. Miss Levy on the contribution that she has made to the debate. I do not say that I entirely agree with all that the honourable member said, but certainly her contribution to many of the matters involved was thoughtful.

I was of the opinion when the Bill was introduced that the correct procedure would have been to amend the existing legislation rather than to repeal it and introduce a brand new Bill. I held that view until I spoke to the Minister, who told me that the original intention was to amend the existing Act. However, the changes that were being made, on advice from those who draft Bills, was that it would be better legislation and more easily understood if a totally new Bill was introduced. I accept that view.

As the Hon. Miss Levy has said, the Bill has had what one might term a fairly checkered career. It was drafted some months ago and then circulated and tabled. People with interest in planning matters then examined it. Clearly, this had an impact on the final Bill that was introduced.

The Bill repeals the Planning and Development Act and the Control of Advertisements Act, and running alongside the Bill is another Bill to repeal the Real Property Act. The important point of the Bill is that it changes the basis on which planning and development control has been exercised in South Australia since 1967.

When the original Bill was presented to Parliament, about 60 amendments thereto were moved in this place. Because the Council amended the Bill, the then Government accused the Council of trying to kill and emasculate the Bill, and generally was deeply incensed that the Council dared to interfere with the Government's proposal.

The Hon. C. J. Sumner: When was that?

The Hon. R. C. DeGARIS: That was in 1967. The original Bill went to a very long conference between the two Houses, and from that conference the new planning legislation was placed on South Australia's Statute Book. Since the legislation was assented to, it has operated reasonably satisfactorily.

There is no doubt that the Act was in need of amendments and rethinking. However, many people around the world who are involved in planning legislation said (even though I say that the Bill required rethinking and some simple amendments) that the 1967 South Australian Act, in relation to which this Council played a most important part, was an Act of which South Australia should be proud. One can probably say that that does not say very much for the planning legislation in other countries. Nevertheless, our legislation did receive the approval of many people from other countries who looked at it.

That is not to say that the existing Act is by any means perfect. However, the fact that it has operated for 15 years with reasonable satisfaction and approval must mean that we need to view with caution any radical alterations that might be made to it. We must be careful, in throwing out the existing legislation, that the new legislation does not create more difficulties and produce more litigation.

There are significant changes in the Bill, particularly in relation to the planning appeal tribunal procedures, together with a reduction in the rights of appeal. As the Hon. Miss Levy said, there are other changes that need close examination. Probably, I should go through the views expressed by Council members on the 1967 Bill and the amendments thereon. However, that would take a long while and, I think, would contribute little. I can tell the Hon. Miss Levy, having listened to her read out the present A.L.P. view on planning policy, that it came close to the view that the Council held in 1967.

I believe that a Bill of this nature (which is an important Bill to go on the Statute Book) highlights one thing, namely, that this Council should have legislative committees to which Bills like this can be referred so that, instead our pressuring them quickly through the Houses, we are capable of looking at these measures, taking evidence on and listening to what people have to say about them. This procedure is already in operation and operating to good effect in the Senate.

I do not intend to go through all the matters that the Hon. Miss Levy raised. I am not saying that I agree with all that she said, but clearly there are matters that deserve this Council's consideration. One of the matters that concerns me is the question of Crown developments. The provisions allow State Government agencies to act outside the normal objection and appeal system and beyond the criticism of the public. Also, they put some State developers beyond the scope of the environmental impact statement procedure. This is a very interesting matter, the Hon. Miss Levy having said (I think I am right in relation to what she said) that the A.L.P. believes that the Minister should have a say in regard to when an environmental impact statement is required. That is the position in the appeal: with any private developer, when the Minister feels that an environmental impact statement is required, he can ask for one. This also applies to the Government agencies. What concerns me is that, with Government developers, it is the Minister who determines whether there shall be an environmental impact statement or not. That appears to me (and always has appeared to me) to be somewhat of an anomaly.

The Bill before us puts the Governor in the position of development control authority with respect to State Government departmental and agency developers. There, 'the Governor' means the Cabinet. We have the situation once again where one Minister is responsible for requiring environmental impact statements and another Minister is responsible for a particular development. If an argument arises between the two Ministers, it will produce a most interesting and intriguing constitutional position. This question does deserve close attention. I believe that, whatever happens in this regard, the Crown and its agencies should be bound by the same provisions in the Bill as are private developers.

The current system in the existing Act of binding the Crown has worked fairly satisfactorily over the past 15 years and there is no apparent reason to change that position. Under the new legislation local government will bear a substantial administrative burden—a point that anyone would concede upon reading the Bill. I am pleased that clause 46 of the Bill allows local government to be the relevant planning authority, although the commission has certain powers, and local government can delegate its powers to the commission and the commission can delegate these powers if it so desires.

In recognition of the work that the councils are going to do, it appears to me to be fair that councils should receive some level of reimbursement for expenses incurred in instigating civil enforcement proceedings. I note with interest statements made by the Hon. Anne Levy on the question of third party appeals. Generally, I agree with the thrust of her argument. The Government must answer that par-

ticular question. I agree that in legislation of this type the rights of third party appeals should be included in the Act and not have to rely on regulations. The Government is to be congratulated on the Bill because it makes quite a substantial step forward in planning matters, but it is a new approach as far as this State is concerned. Although I have not dealt with all the clauses here, there are a number of clauses that I will be speaking to at some length during the Committee stage. I draw the attention of the Council to clause 7, which deals with questions relating to matters that I have raised. There are a number of other matters I will be raising during the Committee stage. Most of them have been touched upon by the Hon. Anne Levy. At this stage I support the second reading but I feel that there are matters that deserve mature consideration by this Council during the Committee stage.

The Hon. J. A. CARNIE secured the adjournment of the debate.

STATUTES AMENDMENT (JURISDICTION OF COURTS) BILL

Adjourned debate in Committee (resumed on motion).

(Continued from page .)

Clause 55 passed.

Clause 32—'Order for examination of witnesses who are unable to attend at hearing.'

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

Page 8, lines 12 to 14—Leave out all words in the clause after 'amended' in line 12 and insert 'by striking out the passage "ninety dollars" and substituting the passage "two hundred dollars".'

The Committee may remember that prior to the dinner adjournment there was debate on clauses 32 and 33. The Leader of the Opposition put the proposition that there might be some injustice if we were to pass the amendments currently incorporated in the Bill. I undertook to give further consideration to the points he was making and, having done so, have reached the conclusion that on balance it would be appropriate to allow the provisions of section 284 to apply to certain claims in the small claims jurisdiction. Presently, section 284 provides for a judge or special magistrate to order an examination of a witness in circumstances where a witness is unable to attend the trial of an action, either through illness or other such cause, or is about to leave the State. Presently, that can be ordered if the claim exceeds $90. Incidentally, that $90 took its origin from an amount of £30 in 1886 or earlier, and that was amended to $60 in about 1965 and sometime after that the amount was increased to $90. If one were to translate the £30 into the current value, one would probably find that it is now in excess of $1 000. Notwithstanding that, presently in the Act there is a minimum of $90 before the section comes into operation. I have been persuaded that an appropriate figure would be $200.

If the amendment is carried, section 284 would then allow a judge or special magistrate to make a special order in the circumstances to which I have referred where the claim exceeded $200. Section 285 relates to the taking of evidence on the commission where the claim exceeds $90. For the same reasons, I will be moving at the appropriate time an amendment which increases the $90 to $200.

The Hon. C. J. SUMNER: This was a matter which I raised earlier in the day and about which I am pleased that the Attorney has agreed to the proposition which I put up. Accordingly, I support the amendments.

Amendment carried; clause as amended passed.

Clause 33—'Commission for examination of witnesses out of State, etc.'

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

Page 8, lines 15 to 17—Leave out all words in these lines after 'amended' in line 15 and insert 'by striking out the passage "ninety dollars" and substituting the passage "two hundred dollars".'

Amendment carried; clause as amended passed.

Title passed.

Bill reported with amendments; Committee's report adopted.

MOTOR VEHICLES ACT AMENDMENT BILL (No. 5)

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

The Hon. K. T. GRIFFIN (Attorney-General): I move:

That this Bill be now read a second time.

It makes major changes to Part IIIc of the Motor Vehicles Act, which relates to the tow-truck industry, by repealing but then reintroducing the majority of the existing provisions in a logical sequence, making necessary amendments to other sections, and introducing new initiatives. The motor vehicle towing industry provides an important service to the motoring public. It is an industry which has had problems over the years with illegal and unethical practices, and a number of legislative changes have been made to try to deal with these.

The previous Government set up a working party into those problems and introduced legislation into the Parliament in 1979. This was referred to a Select Committee of the Legislative Council. Before the Bill could proceed beyond that point Parliament was dissolved. Since taking office, the present Government has given very careful consideration to this issue and has consulted extensively with all groups affected by it. The Government has been concerned to see that adequate and effective protection is provided for members of the public, while at the same time the regulatory burden placed on the industry is not excessive. I believe that this Bill strikes a fair balance between these objectives. The major initiatives taken by the Bill are as follows: elimination of the need for the dangerous practice of tow trucks speeding to the scene of accidents, commonly known as 'accident chasing'; elimination of the present situation of an excessive number of tow trucks and drivers attending at the accident scene and unnecessarily subjecting accident victims to harassment; creation of professional standards for personnel, vehicles, business premises and practices for those who attend at accidents in accordance with an organised procedure; elimination of such unsavoury practices as 'buying and selling off the hook' (the process whereby a tow-truck driver unethically disposes of a damaged vehicle to a motor body repairer, very often without the owner's knowledge), and 'accident spotting' (the payment of fees to people for passing on information about the location of an accident or damaged vehicle, thus leading to 'accident chasing' and congestion at accidents)—practices which create an unwarranted cost to the public; protection of both the industry and the motoring public by ensuring the payment of lawful claims for services rendered, but at the same time protecting the property and rights of the vehicle owner; creation of a tribunal to hear and determine matters arising out of the new legislative framework, with the tribunal being industry-based so as to ensure that matters unique to this industry are judged by a body equipped to understand the problems; and the establishment of an accident towing roster, to provide for the rostering of qualified tow-truck operators to attend accidents in sequence as supervised by the police

but retaining the right of an individual to request that a particular tow-truck operator of his choice be summoned.

The new initiatives in this Bill are based on consideration of overseas and interstate experience as well as extensive reviews of the South Australian situation. I believe that the improved legislation will provide a basis for fair business practices within the industry and, therefore, acceptable level of service to the public. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 provides that the measure is to come into operation on a date to be fixed by proclamation. Under the clause, different provisions may be brought into operation at different times. Clause 3 makes amendments to section 5 of the principal Act, the interpretation section, that are consequential to amendments proposed to Part IIIC of the principal Act. Clause 4 repeals sections 98c to 98m of the principal Act and substitutes new sections 98c to 98ml. Proposed new section 98c provides a definition of 'inspector' for the purposes of Part IIIC.

Proposed new section 98d prohibits a person who does not hold a tow-truck certificate from driving or operating the equipment of a tow-truck within the declared area as defined by clause 3. Under proposed subsection (2), a person is not required to hold a tow-truck certificate in order to drive or operate the equipment of a tow truck within the declared area if he does so in the course of a busienss conducted from a place of business outside the declared area and does not use the tow truck for the purpose of towing a motor vehicle damaged in an accident occurring within the declared area.

Proposed new section 98e provides for applications for tow-truck certificates to be made to the Registrar of Motor Vehicles and the manner and form in which such applications are to be made. Proposed new section 98f provides that a person shall be granted a certificate if he is of or above the age of 18 years, holds a class 2 or class 3 driver's licence, is a fit and proper person, has an adequate knowlege of the legal requirements relating to tow trucks and is proficient in driving and operating the equipment of tow trucks. Proposed new section 98g provides for annual renewal of two-truck certificates. Proposed new section 98h empowers the Registrar to impose conditions of tow-truck certificates. Proposed new section 98i provides for the surrender of tow-truck certificates. Proposed new section 98j provides that a tow-truck certificate shall be suspended for any period for which the holder is not the holder of a class 2 or class 3 driver's licence.

Proposed new section 98k empowers the Registrar to issue temporary tow-truck certificates. Proposed new section 98l provides for the form of tow-truck certificates and temporary tow-truck certificates. Proposed new section 98m empowers the Registrar to issue duplicate certificates. Proposed new section 98ma provides for the recovery by the Registrar of tow-truck certificates or temporary tow-truck certificates that have been cancelled or suspended. Proposed new section 98mb provides that the Registar is to keep a register of tow-truck certificates and temporary tow-truck certificates.

Proposed new section 98mc requires a tow-truck operator to keep the Registrar informed of the two-truck drivers in his employment who are required to hold tow-truck certificates. 'Tow-truck operator' is defined by clause 3 to mean any person who carries on a business of or that includes towing motor vehicles. Proposed new section 98md provides that it shall be an offence for any person, for, or in expectation of, any fee, reward or benefit, to proceed to, or be present at, the scene of an accident that occurred within the declared area for any purpose relating to the towing, storage, repair or wrecking of a motor vehicle damaged in the accident. This is not to apply to the holder of a tow-truck certificate who has been directed to the accident by the police in accordance with a rostering system which is to be erstalbished under the regulations. Under subsection (3) of this section, an inspector or member of the Police Force may give directions to persons present at the scene of an accident for the purpose of preventing undue soliciting or harassment.

Proposed new section 98me regulates towing at and from the scene of any accident occurring within the declared area. Under the section, the towing must be carried out by the holder of a tow-truck certificate; the tow-truck driver must be acting pursuant to directions of the police given under the proposed rostering system to the driver, if he is a tow-truck operator, or to the tow-truck operator by whom he is employed; the vehicle used for the towing must be a tow truck registered in the name of the tow-truck operator; and the towing must be pursuant to a written authority to tow which must be in a certain form and be completed, signed and dealt with in the manner set out in the section.

Subsection (2) provides that a tow-truck operator or driver shall not be competent to give an authority to tow except where the vehicle to be towed is owned by that person or he was the driver or a passenger in that vehicle. Subsection (2) also provides that a person under 16 years of age shall not be competent to give an authority to tow. Subsection (3) requires the tow-truck driver to tow the vehicle to the place specified by the person giving the authority to tow. Subsection (4) prohibits any person from preventing the vehicle from being towed to the place specified in the authority to tow. Subsection (5) prohibits a tow-truck driver from inducing the owner or person in charge of a vehicle to authorise removal of the vehicle to any place other than the registered premises of the tow-truck operator directed to remove the vehicle. Subsection (7) prohibits any unauthorised alteration of any of the particulars of an authority to tow. Subsection (9) prohibits any person soliciting a variation or revocation of an authority to tow. Subsection (10) empowers an inspector or member of the Police Force to revoke an authority to tow that he considers has been improperly obtained or incorrectly completed or where he considers the vehicle should be preserved as an exhibit for any future court proceedings. Subsection (11) empowers an inspector or member of the Police Force to give reasonable directions requiring a tow-truck operator or driver to tow a vehicle at or from the scene of an accident in order to remove any obstruction or danger. Subsections (13) and (14) regulate the manner in which the duplicate and triplicate copies of an authority to tow are to be dealt with. Subsection (15) provides that a tow-truck operator shall be entitled to a fee determined according to the regulations for removing a motor vehicle in accordance with an authority to tow.

Proposed new section 98mf requires any tow-truck operator, if he has agreed to provide the service of storing a vehicle for its owner, to store it as his registered premises and not at any other place. Subsection (2) provides that a tow truck operator shall be entitled to a fee determined according to the regulations for storing a motor vehicle that he has removed pursuant to an authority to tow.

Proposed new section 98mg provides that a vehicle that has been removed from the scene of an accident to the place specified in an authority to tow shall not be removed to any other place by any person for fee or reward, or in the course of a business, unless that person has obtained a

written direction from the owner or a person authorised to act on his behalf authorising the removal of the vehicle to a place specified in the direction. Under the section the person into whose possession the vehicle has come as a result of being towed from the scene of the accident may remove the vehicle if he has made reasonable attempts to obtain, but has failed to obtain, a directionfrom the owner and the Registrar approves the removal of the vehicle to another place.

Proposed new section 98mh prohibits soliciting at the scene of an accident, or within twelve hours after an accident, for a contract, authority, insurance claim or other document relating to the storage, wrecking or repair of the vehicle damaged in the accident. Subsection (2) of this section provides that a contract for the repair, or for a quotation for repair, of a vehicle damaged in an accident within the declared area, if entered into before the prescribed time, shall be unenforceable unless it is in a certain form and is confirmed not less than six hours nor more than fourteen days after the making of the contract. 'Prescribed time' is, by subsection (4), defined to mean the time at which the vehicle's owner, or some person acting on his behalf, recovers possession of the vehicle, or the expiration of 24 hours after removal of the vehicle from the scene of the accident, whichever last occurs. Subsection (3) is designed to prevent any lien arising in respect of the cost of repair work or preparing a quotation unless the repair work or the preparation of the quotation is done pursuant to a contract entered into and confirmed in accordance with subsection (2).

Proposed new section 98mi requires any person who has possession of a vehicle damaged in an accident and removed by a tow truck to return the vehicle to the owner of a person acting on behalf of the owner when requested to do so and upon payment or tender of all amounts lawfully claimed in respect of the towing, storage or repair of the vehicle. Subsection (2) provides that no amount may be claimed for storage for a period exceeding 14 days unless notices required under the regulations have been given before the expriation of that period. Subsection (4) authorises and inspector to seize and remove a vehicle that he has reason to believe is being retained in contravention of the section.

Proposed new section 98mj prohibits any person from entering into agreement under which, for a fee, reward of benefit of any kind, he provides or receives information relating to the occurrence of motor vehicle accidents or the location of damaged vehicles. Proposed new section 98mk provides that it shall be an offence for a person to give or receive a fee, reward or benefit of any kind for obtaining for himself or another person the work of repairing or preparing a quotation for repair of a damaged motor vehicle, permission to place a damaged vehcile into storage or possession or control of a damaged vehicle for any purpose related to its storage, repair or wrecking.

Proposed new section 98ml requires the holder of a tow truck certificate to have his certificate fixed to his person in accordance with the regulations at all times while his driving, operating or riding in a tow truck and, upon request by an inspector or member of the Police Force, to deliver it for inspection. Clause 5 amends section 98n of the principal Act which regulates the use of traders plates on tow trucks. The clause increases the penalty for an offence against that section from $200 to $500.

Clause 6 amends section 98o of the principal Act which regulates the persons who may ride upon tow trucks. The clause increases the penalties for offences against this section from $200 to $500. The clause also inserts a new subsection under which, in the case of a tow truck over five tonnes, a further person who is the holder of a tow-truck certificate may ride in the tow truck with the driver. Clause 7 amends section 98p of the principal Act which provides for the appointment of inspectors and sets out their powers. The clause amends this section so that it is an offence to fail to answer an inspector's question forthwith. At present, the section allows 48 hours for the answering of questions put by inspectors under the section. Clause 8 inserts new sections 98pa to 98pg.

Proposed new section 98pa empowers an inspector to issue a written notice requiring a person to furnish information, produce a vehicle for inspection or attend in person to answer questions. Proposed new section 98pb provides that the Registrar shall, before refusing an application for a tow truck certificate or temporary tow truck certificate or before imposing a condition of a certificate, refer the matter to the consultative committee for decision. Proposed new section 98pc provides for the establishment of a Tow-truck Tribunal. The Tow-truck Tribunal is to be composed of a district court judge, special magistrate or legal practitioner who will be the chairman and two other members, one being a nominee of the South Australian Automobile Chamber of Commerce and the other being a nominee of the Minister.

Proposed new sections 98pd provides that the tribunal may inquire into the conduct of any person who holds or has held a tow-truck certificate or temporary tow-truck certificate and, where appropriate, discipline the person by reprimand or fine or by suspension or cancellation of his certificate. Proposed new section 98pe provides for a right to apply to the tribunal for a review of decisions or orders of the Registrar made under the proposed regulations establishing an accident towing roster system.

Proposed new section 98pf sets out the powers of the tribunal. Proposed new section 98pg protects the Registrar, the members of the consultative committee and the members of the Tow-truck Tribunal from liability, for any act done or omission made in good faith in the performance or purported performance of any power or duty under the Act.

Clause 9 amends section 134a of the principal Act by removing the right of appeal to a magistrate against suspension or cancellation of a tow-truck certificate. Clause 10 amends section 135 which provides for an offence of making a false statement to the Registrar, an officer acting on behalf of the Registrar or a member of the Police Force. The clause widens this provision so that it applies to false or misleading statements made in providing any information or keeping any record pursuant to the Act. Clause 11 amends section 135a which provides that it is an offence for a person acting in the administration of the Act to receive a bribe or for a person to give a bribe to such a person. The clause amends this section so that it extends to soliciting a bribe. The clause also increases the penalty to the level proposed for an offence against section 135 of making a false statement, that is, a maximum fine of one thousand dollars or imprisonment for six months.

Clause 12 amends section 138a which provides for the provision of information to the Registrar by the Commissioner of Police relevant to the question whether a person is a fit and proper person to hold a licence, permit or tow-truck certificate under the Act. The clause adds to this list of matters in respect of which information is provided the question of whether a person is a fit and proper person to hold a position on the accident towing roster proposed to be established under the regulations. Clause 13 amends section 139b which provides for the establishment of the consultative committee. The clause provides for the appointment of a deputy of a member of the committee. The clause also inserts a new subsection designed to preclude argument that a breach of natural justice may arise where the Registrar, in accordance with the provisions of the Act, refers to

the consultative committee the question of whether an applicant should be refused a tow-truck certificate and then sits as a member of the committee.

Clause 14 inserts a new section 139c providing for the service of documents by post. Clause 15 amends section 140 which is an evidentiary provision related to information recorded in the register of motor vehicles and the register of licences kept by the Registrar under the Act. The clause widens this provision so that it applies to information recorded in any register kept pursuant to the Act. Clauses 16 and 17 make amendments providing for the facilitation of proof of certain matters related to the tow-truck provisions. Clause 18 amends section 143 so that it is an offence to cause or permit a person to do or omt to do anything in contravention of the Act. Clause 19 inserts a new section 143a providing that a member of the governing body of a corporation convicted of an offence against the Act shall be guilty of an offence attracting the same penalty unless he proves that he could not by the exercise of reasonable diligence have prevented the commission of the offence.

Clause 20 amends section 145 which provides for the making of regulations. The clause provides for regulations to be mde relating to the issuing of directions by members of the Police Force for tow trucks to proceed to the scenes of accidents occurring within the declared area. The clause provides for regulations providing for and regulating the administration of an accident towing roster under which the tow trucks of tow-truck operators holding positions on the roster may be directed to proceed to the scenes of accidents occurring within the declared area. The clause goes on to provide for the making of regulations related to the accident towing roster system and the conduct of tow-truck operators who hold positions on the roster.

The Hon. FRANK BLEVINS secured the adjournment of the debate.

ADJOURNMENT

At 9.43 p.m. the Council adjourned until Wednesday 2 December at 2.15 p.m.