LEGISLATIVE COUNCIL

Tuesday 3 April 1984

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

PUBLIC WORKS COMMITTEE REPORTS

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

Mount Burr Sawmill (Re-equipment of Green Mill),
Witton Bluff Protection.

PAPERS TABLED

The following papers were laid on the table:

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

Pursuant to Statute—

Acts Republication Act, 1967—Schedule of alterations made by the Commissioner of Statute Revision to the Classification of Publications Act, 1974.

Schedule of alterations made by the Commissioner of Statute Revision to the Film Classification Act, 1971.

Commissioner of Police—Report, 1982-83.

Rules of Court—Supreme Court—Supreme Court Act, 1935—Planning Act Compensation and Appeals.

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

Pursuant to Statute—

Planning Act, 1982—Crown Development Reports by South Australian Planning Commission on—

Proposed Storage Shed at Fisheries Department property, Minlaton.

Proposed erection of four transportable classrooms at Munno Para Primary School.

Erection of a dual transportable classroom and dual timber classroom at Coorara Primary School, Morphett Vale.

Proposed development at the Cambrai Area School.

Proposed development at Swan Reach Area School.

Proposed land division at West Lakes.

Proposed development at Glossop High School.

Erection of a pluviometer station at Coromandel Valley East.

City of Whyalla—By-law No. 25—Taxis.

District Council of Murat Bay—By-law No. 1—Repeal of By-laws.

By the Minister of Agriculture (Hon. Frank Blevins):

Pursuant to Statute—

River Murray Commission—Report, 1983.

By the Minister of Correctional Services (Hon. Frank Blevins):

Pursuant to Statute—

Prisons Act, 1936—Regulations—Resettlement Fund.

QUESTIONS

WINE EXCISE

The Hon. M.B. CAMERON: I seek leave to make a short explanation before asking the Minister of Agriculture a question regarding the wine excise.

Leave granted.

The Hon. M.B. CAMERON: Members will recall that when the excise on fortified wines was introduced there was a considerable amount of confusion within the Federal Government as to the amount that would be recovered from this tax. In fact, figures were given to me by the Minister which finally led to a realisation that the Federal Government had made a serious error of calculation, either deliberately or otherwise, and that, in fact, it would gain more revenue than the Government had indicated and, as a result, there was a reduction in the set amount. Since then the wine excise has had the effect that everybody expected; that is, there has been a dramatic downturn in the production of fortified wines. Of course, this has its own effect at the production level of grapes.

Recently the Federal Minister for Primary Industry publicly admitted that the wine excise tax was a mistake. He made that statement in answer to a question at a recent agricultural meeting.

Will the Minister of Agriculture make urgent representations to the Federal Minister for Primary Industry (and to the Federal Government generally) to have the wine excise tax, the majority of which is paid in South Australia, abolished in the forthcoming Budget? Will he also take urgent steps to ensure that the Federal Government is aware of the fear which has been expressed about this matter over a number of years and which continues to be expressed that a sales tax on wine will be introduced in the 1984-85 Budget?

The Hon. FRANK BLEVINS: The honourable member would be aware that just about every year in the pre-Budget period the question of such a tax is raised. South Australia's position in relation to this matter has been consistent, irrespective of the political ideology of the Government in power: this Government totally opposes taxes on wines for many reasons. One of the principal reasons for that opposition is that such a tax is discriminatory against South Australia.

The Hon. M.B. Cameron: We produce 80 per cent of all wine, I think.

The Hon. FRANK BLEVINS: No, 60 per cent. As South Australia produces about 60 per cent of Australia's wines it is obvious that such a tax has more impact on South Australia than on any other State. Therefore, we have made representations ('we' meaning this Government) as have other South Australian Governments for as long as anybody here can remember. So, it is not a question of 'whether' I will make urgent representations to the Federal Government, because the position of this Government is such that it continues at every opportunity to point out to the Federal Government, and to the Ministers in that Government, its opposition to the fortified wine tax; indeed, any proposal to tax wines at all is bitterly opposed.

I will be seeing John Kerin, probably later this month, and will again mention to him that I agree completely with his remarks that this is an unwise and badly thought out tax that is not returning the revenues envisaged, even if the tax had some rationale on the basis of raising revenue: it will not do that—this tax will just put a lot of business people out of business.

The Hon. M.B. Cameron: The wine grapegrowers.

The Hon. FRANK BLEVINS: As the Hon. Mr Cameron interjected, it is putting wine grapegrowers out of work. There will be no long term benefits to the Commonwealth from persisting with this tax. I assure the honourable member, and all members of this Council, that both the Premier and I will continue our approaches to the Prime Minister about this matter. We will never let up in our efforts to have this tax abolished and to ensure that no other impost at all is placed on wine.

ROXBY DOWNS

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

Leave granted.

The Hon. K.T. GRIFFIN: Today's *Advertiser* contains a report on a decision reached by the Supreme Court in the matter of an appeal by the Crown from a decision of a magistrate in dismissing a prosecution against a protester charged with loitering in a public place during the Roxby Downs blockade last year. The report suggests that all other prosecutions arising as a result of that blockade may be dropped because of this Supreme Court decision. It is also suggested in the report that there may be a further appeal to the Full Bench of the Supreme Court. The decision of Mr Justice Cox is disturbing and raises serious questions about the capacity of the law to adequately protect property rights such as mining developments and other investments, to name just a couple. If there is not the capacity to protect property from invasion and occupation by protesters then, obviously, the law must be changed. In the light of this report, I ask the Attorney-General the following questions:

1. Will the Government appeal to the Full Supreme Court from the decision of Mr Justice Cox?

2. Will the Government amend the Police Offences Act, the Mining Act, or other relevant legislation to put beyond question the right of lawful authorities to remove protesters from property in circumstances similar to those of the Roxby blockade?

3. Does the Government intend dropping all other loitering prosecutions arising from the blockade?

4. What charges, other than for loitering, will continue to be prosecuted by the Crown or will those charges, too, be dropped, as a result of the decision?

The Hon. C.J. SUMNER: I am not in a position to answer the honourable member's questions. I saw the report in the paper this morning of the decision of Mr Justice Cox, and I have not yet studied that decision. I will obtain advice from the Crown Solicitor about the matter and will consider then what action needs to be taken. The other matter which the honourable member raises in questions Nos 3 and 4 will also need to be considered in that context, although the honourable member seems to be indicating that the police do not have any interest in this matter and somehow or other it is all a matter for the Government. Obviously, that is not the case. The matter will have to be discussed with Crown Law officers and the police before any decisions are taken. For the moment I intend to study the judgment and obtain the advice of the Crown Solicitor. Decisions will be made following that.

ETHNIC ARTS

The Hon. C.M. HILL: What has the Minister of Ethnic Affairs done to honour his promise made at the last election to appoint an ethnic arts development officer to review ethnic arts, to identify needs of ethnic arts and artists and funding priorities?

The Hon. C.J. SUMNER: This is part of the Government's programme of developing policies in each Government department relating to ethnic affairs. As honourable members will recall—and I have advised the Council on previous occasions—that programme was begun in 1979 when I had a report prepared on the health needs of migrants by the then adviser to the Minister of Ethnic Affairs. It was the beginning of an ambitious programme, and it was probably the first time in Australia that mainstreaming had been adopted as a policy for ethnic affairs—that is, that within Government departments there should be a reflection of the Australian community and that people in the Australian community come from different ethnic and cultural backgrounds. Upon the election of the Hon. Mr Hill as Minister assisting the Premier in Ethnic Affairs that programme, begun in 1979, was cancelled and there were three years of nothing.

The Hon. C.M. Hill: What have you done?

The Hon. C.J. SUMNER: I am just getting on to that.

The Hon. C.M. Hill: You have not got to the question yet.

The Hon. C.J. SUMNER: Just a minute. The Hon. Mr Hill cancelled that programme that had been set in place. That was one of the most disastrous decisions taken in relation to ethnic affairs in recent times and was taken by the former Government—the cancellation of a—

The Hon. C.M. Hill interjecting:

The Hon. C.J. SUMNER: You made no progress.

The Hon. C.M. Hill: Come back to the question.

The Hon. C.J. SUMNER: I'm getting around to it.

The Hon. Frank Blevins: He sacked the typist.

The Hon. C.J. SUMNER: He sacked the typist and several other people and destroyed, in effect, the Ethnic Affairs Branch such that it could not proceed with policies.

The Hon. C.M. Hill: You cannot answer the question.

The Hon. C.J. SUMNER: The question will be answered, but I want to place it in context. That programme was cancelled by the former Government. When I resumed office that programme was begun again. Task forces are operating in the area of health—

The Hon. C.M. Hill: What has health got to do with this question? Why don't you admit that you haven't done a thing?

The Hon. C.J. SUMNER: I have done quite a lot and I will explain what I have done. Health, community welfare and education have been started; one other area that has to be attacked is the question of arts development. In the review of the Ethnic Affairs Commission it was suggested that there should be an officer concerned with the ethnic arts. That was a commitment made also by the Labor Party at the last election, and it will be honoured. However, as honourable members—and, indeed, the Hon. Mr Hill—will know, certain decisions have had to be taken in relation to the Ethnic Affairs Commission to provide more back-up for the Commission. One of the areas in which there will need to be back-up is ethnic arts. In the next financial year I hope that funds can be made available for the appointment of an ethnic arts development officer. In the meantime, with the restructuring—

The Hon. C.M. Hill: The money was used for an overseas trip this year.

The Hon. C.J. SUMNER: That is absolute nonsense, as the honourable member will know. Money was made available this financial year for the appointment of a secretary to the Minister of Ethnic Affairs. Also, money was made available for the appointment of a Deputy Chairman in this financial year. All the money allocated in this financial year simply was not used for those purposes. I remind honourable members that the Hon. Mr Hill's—

The Hon. C.M. Hill: The money was not put aside this year.

The Hon. C.J. SUMNER: It was.

The Hon. C.M. Hill: It wasn't—not in the Budget.

The Hon. C.J. SUMNER: The Hon. Mr Hill seems to know more about the Budget than I do.

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: I assure the Hon. Mr Hill that money was made available—

The Hon. C.M. Hill: Not for the Budget for this year.

The Hon. C.J. SUMNER: In this current year money was made available by the Treasury. The Treasury approved the creation of two positions this financial year. That is quite clear.

The Hon. C.M. Hill: It was not in the Budget. You got it through after the Budget.

The Hon. C.J. SUMNER: It is in the Budget allocation for this year. Money is available this year for those—

The Hon. C.M. Hill: It is not available.

The Hon. C.J. SUMNER: I am not quite sure what the honourable member is saying.

The Hon. C.M. Hill: It did not come through in the Budget. You didn't get an increase in the Budget to provide for inflation for the existing outgoings.

The Hon. Barbara Wiese: That's because you spent so much on an overseas trip.

The PRESIDENT: Order!

The Hon. C.J. SUMNER: The honourable member is interjecting in a manner that is out of order. I am saying that money was made available this year for the additional positions. That is quite clear. The honourable member gets pedantic and says that it is not in the Budget. I could not give a continental whether or not it was in the Budget. The money is available, and the positions have been approved.

The Hon. C.M. Hill: It wasn't in the Budget.

The Hon. C.J. SUMNER: The honourable member is now being farcical.

The Hon. C.M. Hill interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: There is money in this year's Budget for those positions in the Ethnic Affairs Commission.

The Hon. C.M. Hill: What have you done about this promise?

The Hon. C.J. SUMNER: I am explaining, if the Hon. Mr Hill will stop interjecting. The Government is committed to that. I hope that some money can be made available in the Budget for a specific position. If that is not possible, in the revamping of the Ethnic Affairs Commission, I hope that one of the project officers can be given the task of the ethnic arts development officer. That will occur if a specific position cannot be created. It is an important area and the Government is concerned to provide for the development of the ethnic arts. It is not a promise that has been ignored. It will be taken up in the context of the overall review of the Ethnic Affairs Commission and the appointment of additional personnel to the Commission.

SISTER ELIZABETH

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation before asking the Minister of Ethnic Affairs a question about the future of Sister Elizabeth's position as a co-ordinator of the Indo-Chinese/Australian Women's Association.

Leave granted.

The Hon. DIANA LAIDLAW: It is appropriate that I ask this question today, because there are considerable doubts within the Indo-Chinese/Australian Women's Association over its ability to retain the services of Sister Elizabeth. Today Sister Elizabeth receives from His Excellency the Governor the Medal of the Order of Australia, which she was awarded in the Honour's List last Australia Day. As honourable members would be aware, Sister Elizabeth has been an inspiration to many people. Not only has she been an inspiration in assisting many Indo-Chinese women to begin their new lives in Adelaide on a more secure basis, but she has also been instrumental in raising the awareness of thousands of people in the State to the basic needs of others.

In the past, Sister Elizabeth's salary as co-ordinator of the Association has been met on a shared basis through a grant of about $9 000 from the Department of Community Welfare, with a further $9 000 coming from the Australian Refugee Trust. About a month ago the Association received advice that the $9 000 from the Australian Refugee Trust would not be forthcoming this financial year, as earlier promised. Unless the Association is able to find money urgently to fill this shortfall Sister Elizabeth's services to the Association will have to be terminated. I understand that the Association has applied to the Department for Community Welfare for emergency funding, but that it has not heard whether its submission has been considered and, if so, whether it has been approved.

Will the Minister of Ethnic Affairs agree, as a matter of urgency, to liaise with the Minister of Community Welfare in an ardent endeavour to provide the Indo-Chinese/Australian Women's Association with the funding necessary to ensure that Sister Elizabeth is able to continue her valuable work with the Association?

The Hon. C.J. SUMNER: I will inquire into the matter and bring back a reply as soon as possible.

VIDEO CLASSIFICATIONS

The Hon. R.I. LUCAS: I seek leave to make a brief explanation prior to asking the Attorney-General a question on video classifications.

Leave granted.

The Hon. R.I. LUCAS: The *News* yesterday, under banner headlines in the early edition, covered a story on video pornography to be discussed at a coming Attorneys-General conference. The article stated:

> 'The system we have introduced is satisfactory for videos at the bottom end of the scale,' Mr Sumner said. 'The question now is whether there should be compulsory classification for the G (general exhibition) to M (mature) range.'

For the information of honourable members, the 'M' category of films covers the following:

> Mature is suitable for persons 15 years of age and over . . . referred to this material which is considered likely to disturb, harm or offend those under the age of 15 years.

For violence under the 'M' category the guidelines state:

> . . . what is permitted 'may be strong, realistic and sometimes bloody, but not exploitive, relished, very cruel or very explicit, e.g., dismemberment or beheadings, limited to flashes only; sexual violence, e.g., rape, only if very discreet.'

So, one can see flashes and discreet rape at the moment under the 'M' category. The problems for parents are quite clear in trying to purchase videos for their children or families, if there is not going to be a distinction between 'G' (general exhibition) films and mature films. Quite clearly some parents will take the view that certain material is available under the 'M' category but would not be suitable for their children or even for themselves.

To cite a personal instance which I mentioned in the debate last year, we borrowed a cassette which had an innocuous cover with Elliot Gould dressed as Father Christmas on the front of the video cassette. The title was equally innocuous. There was nothing to indicate from the title or the cover that there was anything violent about the film. However, about two-thirds of the way through the film Elliot Gould runs rampant and starts attacking a poor lady and, amongst other things, repeatedly ducks her in a fish pond to the accompaniment of increasingly loud screams. I did not want my young fellow watching that. It did not worry me, but clearly parents will be concerned if there is no guideline for them to distinguish between a 'G' rated film or those which may be innocuous and an 'M' rated film which they do not want their child to see. Will the Attorney-General be supporting proposals for compulsory classification in the 'G' (general exhibition) to 'M' (mature) range videos?

The Hon. C.J. SUMNER: I thought that the honourable member would agree that what I said in the *News* was correct. It is clear in the newspaper report yesterday to which the honourable member referred, that I will be arguing for compulsory classification of videos in line with the undertakings I gave to the Parliament last year. Honourable members will recall that the South Australian Government was the first in Australia to introduce legislation to bring videos within the authority of the Classification of Publications Board to provide for the hiring of videos to be covered by legislation and to provide for violence to be a category that can be considered in deciding whether the Board should refuse classification to a video, book or magazine.

This legislation was introduced last July as a result of agreement at a meeting of Ministers for censorship matters. The problems in this area have been known for many years, but no action was considered or taken by any previous Government.

At that time certain members expressed a point of view about compulsory classification. I suggested that the Bill, which would enable some controls to be instituted, should pass, it has passed and the controls are now in place. At the same time I also said that the Bill that was left should be split and remain on the Notice Paper, where it still is and that, in the meantime, I would approach the Commonwealth Attorney-General to see whether he would convene another meeting and agree to compulsory classification. The Federal Attorney-General agreed to that meeting, which will be held this Friday, where I will be putting the arguments put in this Chamber by honourable members in support of the compulsory classification system.

I have no objection to the compulsory classification system. My objections to it during the debate were based on the fact that at State and Federal level there had been agreement on a particular system and I could not unilaterally repudiate that by agreeing to the amendments put up on the compulsory classification system without the agreement of the other Governments, both Commonwealth and State. I also felt that it would not be proper or, indeed, practicable for South Australia, in effect, to become the censor for the whole of Australia in this area. That is still a view I hold. It would be very difficult for South Australia to go it alone and establish an elaborate system of compulsory classification of all videos when that is not being done elsewhere in Australia. There are problems that need to be addressed. I intend to go to the meeting on Friday to argue the case put in this Parliament for a compulsory system of classification, including a system involving G, PG and M.

FUNDING FOR NON-GOVERNMENT SCHOOLS

The Hon. ANNE LEVY: I seek leave to make a brief statement before asking the Minister of Agriculture, representing the Minister of Education, a question regarding funding for non-Government schools.

Leave granted.

The Hon. ANNE LEVY: I refer yet again to figures presented to this Council on 20 March which I, and many other people, have been studying since that presentation.

The Hon. R.J. Ritson: Is this a Dorothy Dixer?

The Hon. ANNE LEVY: No, it is not a Dorothy Dixer at all. The procedure which has been followed by the Non-Government Schools Advisory Committee is, supposedly, to determine the needs of each non-government school in this State, from which it determines the category the school is to fall into and then allocates a per capita grant according to the category of school. However, many non-government schools, as members know, are parts of systems. There is a Catholic school system which encompasses most, though not all, Catholic schools in this State. There is a Lutheran school system and an Adventist school system.

I understand that, when the Committee has determined the category for each school and the per capita grant for that category, the money for each school is not given to the school, but the total for each system is given to the systemic authorities for distribution amongst the schools in their system. Can the Minister indicate what different sums, in total, for each of these three systems would have resulted in 1982 and 1983 if a flat per capita grant had been provided to each system instead of the supposedly needs-based assessment of each school?

The Hon. FRANK BLEVINS: I will refer that question to my colleague and bring back a reply.

SCHOOL OF ART

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for the Arts, a question regarding the South Australian School of Art.

Leave granted.

The Hon. L.H. DAVIS: The March/April 1984 edition of *Artlink,* a South Australian art magazine published ironically with the assistance of the South Australian Government, contains an article titled 'A victim of wilful neglect: the South Australian School of Art—a recent history'. The author is Mr Tim Waller, who has been a lecturer in painting at the school for 16 years. He states:

> In 1970 the School of Art was a single, semi-autonomous body with a clear identity in the community. In 13 years it has become one barely identifiable school among 25 in the shaky faceless corporate megastructure.

The School of Art is at Underdale, incorporated in the Faculty of Art, Design and Applied Sciences. It is the only degree granting art school in the State. Mr Waller makes a series of allegations. He claims that the principle of replacing retiring staff has been abandoned; that the principle of promotion for merit or even for added academic responsibility has been abandoned; that there have been no promotions within the art school since 1981; that current staff strength is 35, with five or six senior positions remaining unfilled; and that staffing is on an *ad hoc* basis with temporary contracts, hourly paid lecturers and doubling of units being the rule rather than the exception. The average staff/student ratio in the South Australian School of Art is 1:13 compared with the national average of only 1:8. I understand that the number of students is 500 full time equivalents. Mr Waller claims that staff are teaching classes of 17 students for 20 to 24 hours a week in studio-based subjects which, of course, is most inappropriate in studio units.

In the same edition of *Artlink* a letter by a former School of Art student, Mr Alan Lee, claimed that students bought essays previously submitted or commissioned essays from other students or someone outside the institution. He claims that the going rate for a 2 000 word essay is between $50 and $100. To be fair, this allegation is strenuously denied by the senior lecturer of visual art theory in a letter in the same edition of the magazine. However, my inquiry shows that the South Australian School of Art, once highly regarded in art circles throughout Australia, has fallen from grace. It is a poor shadow of its former self. Its visiting lecturers' programme has been savagely cut back in contrast to other States, including Tasmania, where there is a flourishing visiting lecturers' programme. I do not wish to comment on the standard of teaching in the School of Art: I am not in a position to do so. But, I am concerned that in the Festival City of Adelaide the once respected South Australian

School of Art is a shambles, indeed, some have suggested a scandal: Adelaide's Watercolourgate some might say.

Will the Government, as a matter of urgency, investigate the allegations contained in Mr Waller's article? Secondly, will it investigate the allegations contained in Mr Lee's letter? Thirdly, will it investigate the funding needs of the South Australian School of Art? Finally, will it inquire into the desirability of providing the South Australian School of Art with a greater degree of administrative autonomy than is presently the case?

The Hon. C.J. SUMNER: I will refer this question to the Minister of Education, who has responsibility for this matter, and advise the honourable member if any action is needed.

TEMPORARY POSITIONS

The Hon. I. GILFILLAN: Does the Minister of Agriculture have an answer to the question about temporary positions that I asked on 20 March?

The Hon. FRANK BLEVINS: With respect to the Hon. Ian Gilfillan's reference last week to Mr Richardson of the Department of Agriculture, I should only like to add that he is not to be lost to the State. This officer has been seconded to the Department of Technical and Further Education in the rural studies area, which is of special interest to him and which makes particular use of his farm management training skills.

Regarding the question asked by the honourable member on 19 October 1983 as to the number of temporary positions in the Department, I apologise for the delay in providing this information. As at 29 February 1984 there were 133 temporary positions, comprising 30 positions paid from State funds and 103 from industry trust funds, Commonwealth recoup, or brucellosis and tuberculosis eradication moneys.

ABORIGINAL EMPLOYMENT

The Hon. ANNE LEVY: I seek leave to make a brief explanation before asking the Attorney-General, as Leader of the Government in this Council, a question about Aboriginal employment.

Leave granted.

The Hon. ANNE LEVY: I understand that a working party has been set up in the Public Service to investigate Aboriginal employment in that Service. This matter is of great interest to all who are concerned with equal opportunities, not least being the Aboriginal community itself. Can the Leader of the Government give any information about when this report may be considered and whether or not it will be endorsed and implemented?

The Hon. C.J. SUMNER: I am not in a position to provide that information to the honourable member, but I will obtain it for her.

INDUSTRIAL SAFETY, HEALTH AND WELFARE ACT

The Hon. R.J. RITSON: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister of Labour, a question about the Industrial Safety, Health and Welfare Act.

Leave granted.

The Hon. R.J. RITSON: Honourable members will recall that for some time I have asked a series of questions about diving safety some of which were connected with the application of the Industrial Safety, Health and Welfare Act. By way of explanation, I want to distinguish quite clearly between the two sides to this problem. On the one hand is the hospital treatment of diving casualties and, on the other, the on-site safety measures required by the Act. To point up the contrast in Government attitudes, I state that the Minister of Health has responded promptly and courteously to my correspondence on this subject, granted an interview and is continuing to consider certain measures.

The Hon. J.R. Cornwall: Actively consider.

The Hon. R.J. RITSON: Yes—that means they have found the file! On 13 December 1983, a matter of days after the Attorney-General announced in this Council that, 'All Government divers have the protection of the Act,' I wrote to the Hon. Mr Wright, the Minister responsible for the enforcement of the safety regulations in question, quoting the Attorney-General's opinion about the application of the Act. I included in the letter excerpts from a letter signed by the officer in charge of the School of Underwater Medicine, HMAS *Penguin,* expressing great concern about certain Government diving activities as I described them to him. I asked the Minister to consider enforcing the provisions of the Act and, in particular, the provisions of regulations made under the Act that require a certain minimum diving team, including standby divers at all times, and provisions requiring either access to or the provision of an on-site recompression chamber.

The point of this question is that Mr Wright has not, apart from his Department's sending me a cursory acknowledgement slip, responded to that letter. I am aware that at the time I wrote that letter the Hon. Mr Blevins was acting for him, so whether or not Mr Blevins had a double interest in the question, I do not know. However, I expected some sort of reply by now, in view of the serious content of the letter and of Mr Wright's past expressions of concern for the safety of workmen. My questions to the Minister through the Attorney-General is as follows: will he discover the file in which my letter lies and will he answer it rather than treating the matter with contempt? Also, does he not consider that a Minister has a solemn duty to enforce Acts committed to his care?

The Hon. C.J. SUMNER: I do not think there is anything unexceptional in what the honourable member says. I suggest that he takes the opportunity on Mondays at 7.30 p.m. to view a certain television programme from which he might gain some added knowledge of the ways of bureaucracies. I will refer his questions and requests to the Minister concerned. I am sure that, in due time, they will be acceded to.

STATUTORY AUTHORITY INVESTMENTS

The Hon. R.C. DeGARIS: I seek leave to make a brief explanation before asking the Attorney-General, representing the Treasurer, a question about funds invested by statutory authorities.

Leave granted.

The Hon. R.C. DeGARIS: Predictions contained in the Budget papers introduced by the Government for this financial year stated that funds invested by statutory authorities would reach $127.5 million this year. At the end of February the amount invested with the Government by statutory authorities amounted to $25 million. First, does the Government expect the funds to be invested by statutory authorities to reach the Budget proposal figure; and, secondly, has any policy related to statutory authorities, outside the scope of any Government influence, reduced the amount that might be deposited with the Government by statutory authorities in South Australia?

The Hon. C.J. SUMNER: I will refer the question to the Treasurer and bring back a reply for the honourable member.

RIVERLAND WATER RATES

The Hon. R.I. LUCAS: Has the Minister of Agriculture a reply to a question that I asked on 9 November last year concerning Riverland water rates?

The Hon. FRANK BLEVINS: Water costs as a percentage of total costs vary according to size of holding, crop type and the quality of management. In September/October 1981, a stratified sample survey was carried out in the Riverland explicitly taking these factors into account.

The data on income, costs, assets, debts, yield and irrigation structures resulting from the survey were then developed into a farm expenditure model, and the farm model was used to calculate water use for farms of different sizes and crop types. Using a water price of 2.1c kl, which was appropriate in 1980-81, water costs as a percentage of total costs were calculated to be 7 per cent. From this, the effect of the increase in irrigation rates was determined to be a 2 per cent increase in total costs.

ETHNIC AFFAIRS POLICY

The Hon. C.M. HILL: I ask the Minister of Ethnic Affairs the following questions: under the heading 'Industry' in his Ethnic Affairs policy at the last election, the Minister stated that his Party 'supports the employment of bilingual inspectors experienced in industry in the Department of Labour'. First, does the Minister still maintain that same interest? Secondly, can he say how many bilingual inspectors were employed at the time of the last election? Finally, have any new appointments of bilingual inspectors been made in the Department of Labour during the term of this Government?

The Hon. C.J. SUMNER: Yes, that is a desirable aim. The question of ethnic affairs policies in the Department of Labour will be addressed shortly in terms of the task force proposals that I have already outlined. I indicated earlier today that there have been task forces in areas of health, community welfare and education, and that there will be one in the area of the arts. Indeed, I hope that in the reasonably near future there will be one in the area of labour and industrial matters. So, the proposition still stands. It is a desirable aim and I hope that it will be addressed by a task force which should be established in the reasonably near future when certain proposals can then be set in train in the relevant departments. The problem of a speedier implementation or development of task force proposals in Government is simply a matter of resources in the Ethnic Affairs Commission, but I hope that that will be addressed in the near future with the additional appointments that are to be made to the Commission.

RESOURCE RENT TAX

The Hon. L.H. DAVIS: Has the Minister of Agriculture a reply to the question that I asked on 6 December 1983 regarding a resource rent tax?

The Hon. FRANK BLEVINS: The Minister of Mines and Energy advises that he has responded in detail to the Minister of Resources and Energy on his recently released resource rent tax discussion paper. The Minister for Resources and Energy has given the matters raised in that response his close attention and, at the last meeting of the Australian Minerals and Energy Council, he made it clear that it was largely as a result of some of the difficulties raised by the South Australian Minister of Mines and Energy that he had decided not to pursue a resource rent tax for onshore oil at this stage.

The Hon. L.H. DAVIS: Am I to take it from that response that the South Australian Government is against the imposition of a resource rental tax, given the impact that it would have on offshore oil and gas exploration and development in this State?

The Hon. FRANK BLEVINS: I will refer the honourable member's supplementary question to the Minister in another place and bring down a reply.

OVERSEAS QUALIFICATIONS

The Hon. C.M. HILL: I seek leave to make a short explanation before asking the Minister of Ethnic Affairs a question about overseas professional qualifications.

Leave granted.

The Hon. C.M. HILL: During the time to which the Minister referred a few moments ago when he claimed that the former Government had not done anything at all in the area of ethnic affairs, that Government took part in the establishment of a national committee to look into this important question of overseas trade and professional qualifications for newly arrived migrants. I notice in the Minister's policy speech, under the heading 'Industry', that he states:

> Mechanisms for the recognition of overseas trade and professional qualifications should be developed.

During the time of this Government, that national committee (chaired by Mr Fry from Tasmania) completed its findings and reported, and I have been waiting to hear or read of some definite initiatives which are now needed, first, so that the Government's promise can be honoured and, secondly (and more importantly, to me), so that some migrants who find themselves at a disadvantage on the question of acceptance of overseas qualifications can be helped in a positive way. Has the Minister made any progress in this area at all? What steps has he in mind as a result of the final report of the Fry Committee?

The Hon. C.J. SUMNER: That was a Federal committee with State participation on it. The report was finalised and made available to the last meeting of Commonwealth and State Ministers of Immigration and Ethnic Affairs. The report was referred to the various States for comment and that comment is being obtained, for instance, from the Industrial and Commercial Training Authority in South Australia. I understand that there will be a further report to the next meeting of Ministers which is due to be held in Brisbane on Friday week and which I will attend. Following that meeting, I should be in a position to provide some further information to the honourable member. I can assure him that the Commonwealth and State Governments accept the need for some action in this area and that the report, which has been presented, is in the process of detailed consideration by the State and Federal Governments.

COMPANIES AND SECURITIES LEGISLATION

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

Leave granted.

The Hon. K.T. GRIFFIN: Before giving the explanation, in respect of my question on Roxby Downs, I took it from what the Minister said that he was going to get some answers and bring them back, and I would like him to confirm that.

In regard to companies and securities, a Bill entitled 'Companies and Securities (Miscellaneous Amendments) Bill (No. 1)' was introduced last Wednesday in the Federal Parliament. It deals with three issues: first, the deregulation of stock exchanges; secondly, the question of time sharing, being prescribed interests under the Companies Code and, thirdly, registration of charges. In the past, whenever any Bill was introduced into the Federal Parliament, it was done according to a programme that would allow a reasonable opportunity for public comment on the Bill before it was proceeded with in that Parliament. I would like to know from the Attorney whether this Bill was exposed for public comment? If it was, when was that exposure undertaken? If it was not exposed for public comment, why not, and what is now the policy of the Ministerial Council on Companies and Securities in respect of public comment on Bills before introduction and passing by Parliament?

The Hon. C.J. SUMNER: The policy has not changed. There is now another Bill before the Ministerial Council which, I believe, is about to be exposed, if it has not already been exposed. So, there is no change of policy. The introduction of this Bill in the Federal Parliament was approved at the last meeting in Adelaide in March. My recollection is that it did go through the normal procedures of exposure but, if that is not the case, I will stand corrected on it and obtain a report for the honourable member on what process of consultation was gone through in regard to the Bill that is now before Federal Parliament. In general terms, there has not been any change of policy in the Ministerial Council in regard to consultation about Bills that are to be introduced in Federal Parliament.

CONTROLLED SUBSTANCES BILL

In Committee.

(Continued from 27 March. Page 2820.)

Clause 2—'Commencement.'

The Hon. J.C. BURDETT: Clause 2 provides that this Act shall come into operation on a day to be fixed by proclamation. This Bill seeks to repeal the Narcotic and Psychotropic Drugs Act and the Food and Drugs Act. I take it, as I think has been outlined by the Minister in his second reading explanation, that a new Food Act will be brought in during this session. It is obvious that before this can be proclaimed it will be necessary to prepare quite extensive and complicated regulations in regard to this legislation and also in regard to a new Food Act.

The present regulations under the Food and Drugs Act, for example, are very extensive indeed. It is obvious, therefore, that before this legislation is proclaimed a great deal of work has to be done. I know that this is a difficult question for the Minister, but can he give the Council any kind of indication as to the time frame? Are we looking, for example, at the Bills or parts of them being proclaimed during this year or will it be later? It is difficult, but many of the professions and occupations that operate under the present Acts are concerned about when Acts can be proclaimed.

The Hon. J.R. CORNWALL: I am unable to give an accurate indication of the time frame if by that the honourable member means to the month. Parts of this legislation can come into operation or be suspended by proclamation as we have the various parts of it ready to go, but ultimately we will repeal the Food and Drugs Act. That cannot be done *in toto* until we have the new model Food Bill passed by both Houses of the South Australian Parliament. That Bill is in an advanced stage of drafting; either the first or second draft has become available. In the reasonably near future we will consult extensively with the Local Government Association, because it is directly concerned with many of the things that we want to do in upgrading and updating the food legislation; so the processes of consultation should start in the near future.

The preparation of the Bill has been approved by Cabinet. We do not have yet a finished product to take back for Cabinet approval. In view of the very large amount of legislation that is on the programme already for this autumn session, I have some doubts at this stage as to whether it is likely to see the light of day or be passed by both Houses before we get up on 10 May. Since it is absolutely imperative that I be on the North American continent very shortly after that, I am not anxious to prolong the autumn session unduly. However, I can give a firm undertaking that the Food Bill will be introduced no later than the Budget session. It has had a very long gestation and there is a substantial demand, particularly from the national food industry.

Clause passed.

Clause 3 passed.

Clause 4—'Interpretation.'

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

Page 2, lines 1 and 2—Leave out all words in these lines.

The lines in question are the definition of 'assessment panel'; the provision in the Bill is that 'assessment panel' means 'a drug assessment and aid panel established under Part IV'. In my second reading speech I said that I opposed the establishment of drug assessment and aid panels. In the further amendments that I have placed on file I will move to delete the clauses that provide for drug assessment and aid panels, but I will treat this as a test case. If the definition of 'assessment panel' is struck out, I will take it that the Council supports me on this issue.

If my amendment is defeated and the definition remains, there will not be much point in my opposing the clauses dealing with drug assessment and aid panels. I repeat the point that I made before: all offences against the law alleged to be committed by adult persons should be dealt with by the courts. To provide otherwise would be an erosion of our criminal justice system, even though that system may not be perfect in all respects. That system has been changed from time to time, and can be changed again to cope with any new situation. I thoroughly support the system of reports being made available to the courts when dealing with drug offenders, and I refer to alleged offenders charged with simple possession of what might be briefly called hard drugs. That ability already exists. It is already competent for courts to call for reports from psychiatrists, and for various other reports. I have no objection if it is thought that that facility should be strengthened. However, I object to taking out of the hands of the courts the ability to deal with adult persons who are charged with offences.

I have no objection to courts dealing with drug offenders. There already exists the ability to place offenders on good behaviour bonds with various conditions, including that they accept treatment, abstain from drugs, and so on. I have no objection if it is felt that the support facilities should be strengthened. However, the appropriate body to assess an adult person alleged to have committed an offence and decide what should happen to him is one of the courts of the land. To do otherwise would be to seriously erode our judicial system. I mentioned during the second reading debate that the Sackville Report recommended such a course.

Supporters of the panel system have relied on the success of child protection panels under child protection legislation. I submit that that is quite a different matter. It has long been traditional in the law that child offenders are dealt

with differently from adult offenders. The child protection panels have been successful because they deal with children, and children are likely to take notice of appearing before a panel and what the panel has to say to them. When one is dealing with possessors of hard drugs for personal use, one is dealing with people who by their nature are likely to become addicted and are not likely to take notice of what a panel might say or to adhere to its directions.

There is no provision in the Bill in relation to what happens if a drug assessment panel lays down certain conditions and they are not followed. There is no provision for that at all. I take it that what must happen is that the authorities must wait until a person offends again and then do something about it at that stage. I acknowledge that there are special considerations in regard to drug offenders, as there are in regard to all offenders. Each category has its own problems: there are matters that are special to drug offenders; there are matters that are special to sexual offenders; and there are matters that are special to offenders charged with dishonesty, and so on. It has not been suggested that any of the other things should be taken out of the mainstream of criminal law, to be dealt with in a different way and to be referred to bodies other than the courts. For these reasons I oppose the concept of drug assessment and aid panels.

I support giving any support to alleged offenders in regard to pre-trial procedures, reports, and also in regard to assistance after sentencing, if that happens. I oppose any move to remove dealing with those persons from the hands of the courts. My amendment will delete the definition of 'assessment panel'. If my amendment is carried, I will oppose the subsequent clauses of the Bill that deal with the powers and procedures before assessment panels.

The Hon. J.R. CORNWALL: The Government strenuously opposes the Hon. Mr Burdett's amendment. I believe that this is a very comprehensive piece of legislation, and it does great credit to all those who have been involved in its drafting, including Parliamentary Counsel, my staff, the Health Commission (particularly the senior people in the pharmacy area), the Attorney-General's office, and the Chief Secretary's office, to name but a few. I think that the Bill does them all great credit. At the heart of the Bill, as far as I am concerned with my particular interest in drug law reform, is the question of the drug assessment and aid panels, which was a major recommendation of the Sackville Report. It has lain fallow since the first half of 1979, when the Sackville Royal Commission Report was first made public in this State. It has been left to me to pick it up, almost five years later.

It is a very significant reform and one that gets away from treating the victims of addiction—and they are victims in every sense of the word—as criminals. It is absolutely central, and it is the major reform of the Bill. It is one of the major reasons for the Bill being before Parliament. I utterly reject the notion and the argument put forward by the Hon. Mr Burdett that addicts should be treated as criminals. Let us make no mistake—that is the proposition that the Hon. Mr Burdett is putting. The Hon. Mr Burdett, on behalf of the Opposition, is proposing that addicts should be treated under criminal law in exactly the same way as those vermin who trade and deal in hard drugs. The proposition under this amendment would be that we would retain the *status quo* and that those unfortunate victims of their own addiction would continue to be treated as criminals under criminal law. The Government rejects that proposition, and I personally reject it with all the vehemence that I can muster.

The Hon. K.T. GRIFFIN: The fact is that assessment panels only come into operation if an offender admits an allegation. If an offender does not admit an allegation that he or she has committed a simple offence, the matter goes before a court. It is only in a very few cases that the so-called assessment panels will operate.

If the offenders do not admit the charge, they go to court. So, there is a significant inducement to admit the charge, even if one believes that legally one is not guilty. To suggest that the Opposition wants to treat all victims of drug addiction as though they are criminals is utter nonsense. Let us look at the way in which drug assessment panels will operate. If a person is arrested on a simple possession offence and held in custody, that is the preliminary to a charge being dealt with in the courts and is an infringement of a person's liberty in all circumstances except where an offence is alleged to have been committed. So, the preliminary to an assessment panel hearing may be an arrest.

Then, the assessment panel will have wide powers. It will have the power to summon persons to appear or to have documents produced. It can require the person alleged to have committed the offence, and any other persons appearing before the assessment panel (presumably the prosecution witnesses and others), to answer questions relevant to the matters before the assessment panel. It may require the person alleged to have committed the offence to submit to an examination to determine whether he or she is experiencing physical, psychological or social problems connected with the misuse of drugs.

If the person does not comply with a notice requiring attendance or the answering of questions, or does not answer questions truthfully, an offence is committed and a prosecution may follow for that breach of the Act relating to the procedures and powers of the assessment panel. The only defence is in respect of answering questions where a person appearing before a panel may decline to answer questions on the ground that the answers may tend to incriminate that person of an offence. In all other respects the assessment panel has wide powers.

Then, as part of the operation of the panel, it can require a person to give written undertakings relating to the treatment that he will receive. That may involve intrusion into the body of that person either by way of injection, examination, or other treatment. That, I would have thought, is a matter of concern to those having some sensitivity towards civil liberties. The panel may require participation in a programme of an educative, preventative or rehabilitative nature, and any other matters which will, in the opinion of the assessment panel, assist that person to overcome any personal problems that may tend to lead or may have led to the misuse of drugs. That undertaking is to be effective for a period not exceeding six months—a period to be determined by the assessment panel.

Looking further ahead, at any time during the period of that undertaking, the assessment panel can request a person to give a fresh undertaking in substitution for the existing undertaking, but not so as to exceed the period of the initial undertaking. That suggests that at any time during the initial six months the panel can require another undertaking of a further period up to six months. That undertaking relates to serious questions of the rights of the person appearing before the panel and that person's liberty. It should be remembered that, in the context of this Bill, the person appearing before the assessment panel is not entitled to be represented, so that person is entirely at the mercy of the assessment panel. It may well be that members of the assessment panel are motivated by the best of intentions, but they have wide-ranging powers to impinge upon the liberty of the individual and there is no right of appeal. There is no right to any of the protections granted to a citizen appearing before the courts on any charge. To me, that is a serious consequence of drug assessment panels.

The assessment panel can only deal with one if the allegation has been admitted. So, a significant inducement exists to admit to the allegation even though one might otherwise desire to defend it in a court. At any time the assessment panel can decide to continue to authorise a prosecution, although the answers one gives to the panel will not be used against one at any subsequent prosecution.

The Hon. R.C. DeGaris: Do you have any objection to referral by the courts to assessment panels?

The Hon. K.T. GRIFFIN: That is a totally different concept. If there is an assessment panel to which persons who are accused can be referred by the court for assessment, that is eminently sensible and there is no infringement of liberty in that concept. It is part of the normal sentencing procedures of the court. In fact, as I said during the second reading debate, the court now frequently requests pre-sentencing assessments or reports from experts in these sorts of cases. I have grave concerns about the concept of assessment panels as they are not subject to the scrutiny of the courts. They provide no protection to the rights and liberties of the person appearing before them and I would have thought that, to any reasonable member of this Council, that would raise serious questions about the desirability of assessment panels prior to any decision whether or not to proceed.

So, I certainly support my colleague the Hon. John Burdett in his opposition to the proposal for establishing assessment panels for those reasons, which go to the very heart of the rights of citizens, whether offenders or witnesses summoned to appear before assessment panels. They compromise the rights and liberties of the citizen.

The Hon. ANNE LEVY: I oppose the amendment moved by the Hon. Mr Burdett and most strongly support the whole concept of assessment panels as contained in the legislation. It seems that this is one of the big advances being made in the legislation before us and is probably the most significant piece of law reform in the drug area in this State for a long while. I listened in amazement as the Hon. Mr Griffin was detailing the powers of the assessment panels as if this was something against them. I can only applaud them. The Hon. Mr Griffin is forgetting clause 36 (2) *(c)*. Assessment panels are voluntary. Nobody has to go to an assessment panel if they do not want to. If they wish to plead 'not guilty' or 'guilty' in a court, they can do so.

The Hon. K.T. Griffin: They have to go to the panel even before that decision is taken.

The Hon. ANNE LEVY: The assessment panel will not undertake a hearing unless the person admits the offence and is also willing for an assessment panel to consider the matter. I think that the Hon. Mr Griffin is forgetting the difference between someone who is part of the most unpleasant and obnoxious drug scene and someone who is a victim of it—the person who has become an addict. These people need help. They do not need the full force of the law brought down on them, to be put in gaol or fined heavily.

The Hon. J.C Burdett: Or released on a bond.

The Hon. ANNE LEVY: Yes, they can be released on a bond, but that will not necessarily help them with their addiction. What these people need is medical help and compassion to overcome the addiction. If these people admit that they have an addiction and that they need help, they will surely welcome the opportunity to go to an assessment panel which, as I stated, is not compulsory but voluntary. If these people go to that panel they can receive the help they need for their addiction without having a criminal offence recorded against them. Surely this is an important point. People who have become addicts need help; society should provide this help to rescue them without stigmatising them with a criminal conviction. That is the whole purpose of the assessment panel.

I do not accept the argument of the Hon. Mr Burdett that these panels are completely different from the children's assessment panels. It seems to me that it is analogous. Children do not have to go to a court: they can go to the Children's Aid Panel, where they can be sympathetically dealt with and helped, rather than have convictions recorded against them. I put to honourable members that someone who has become addicted to a drug like heroin needs help, just as much as any child appearing before an assessment panel needs help, and that these assessment panels will go a long way towards achieving what we should all, in compassion, be trying to do.

The Hon. J.C. BURDETT: It has been suggested that the amendment makes criminals out of victims. I suggest that the Bill already does this. It is the Bill that makes drug possessors guilty of a criminal offence—my amendment does not. My amendment simply means that, if persons are charged with a criminal offence, they should be dealt with by the courts in the usual way.

The Hon. J.R. Cornwall: And if they are found not guilty they will be absolved. If they are found guilty, they are guilty of a criminal offence which they will carry for life, as far as you are concerned.

The Hon. J.C. BURDETT: That may or may not happen. The point I am making is that it is the Bill that makes them criminals. The Bill deals with persons who are in possession of certain drugs and makes them guilty of a criminal offence. By this amendment I am suggesting that such persons should be dealt with by the courts with all the aids available to them. As the Hon. Mr Griffin said, and as I previously said, I do not mind the provisions already existing which provide aid and assistance to those who are convicted and are addicts—

The Hon. Anne Levy: 'Who are convicted'.

The Hon. J.C. BURDETT: Yes—to assist them in their situation. As the Hon. Ms Levy pointed out, the panels can only eventually deal with the person against whom the offence is alleged if that person admits the offence. That holds out an inducement to them to plead guilty. I suggest that no reasons have been given to take these matters out of the hands of the courts. There is no reason why people should not have medical help if they are dealt with by the courts any more than if they are dealt with by a panel. No good reason has been shown to me, and I think to most members on this side of the Council, why the courts should not deal with this class of offender, and they are offenders under the Bill. I have every sympathy with persons who become addicts, and with other classes of offenders. There is every ability existing already on the part of the courts to deal with them sympathetically. I have no objection to more aid being given to the courts. I believe that people against whom these offences are alleged should be dealt with by the courts.

The Hon. K.T. GRIFFIN: I want to respond to what the Hon. Anne Levy said. The scheme of Division II of Part V is that all matters will be referred to the Assessment Panel. Under clause 32 the panel undertakes an assessment but:

> Where it appears to the assessment panel, after interviewing the person alleged to have committed the offence, that—
> *(a)* the matter should be dealt with by a court; or
> *(b)* the person—
> (i) does not admit the allegation; or
> (ii) does not desire the assessment panel to deal with the matter, the assessment panel shall not proceed further with an assessment under this Division, and shall certify accordingly.

So, the person who is to be the subject of a charge is required to attend. That is part of the assessment process. The powers of the panel granted by clause 33 may be exercised, that is, the power to summon witnesses, call for documents or do

other matters, being required to answer questions still applying. After that part of the assessment has been made the panel may decide that the matter should be dealt with by a court and then that is referred to the court system. However, if the panel becomes satisfied that the person does not admit the allegation or does not desire the assessment panel to deal with the matter, then the panel shall not proceed further. It is at that point that the assessment panel ceases to have the subsequent powers to require undertakings, etc. I agree with that. But it should not be said that it is voluntary all the way through. It is voluntary after the point at which the assessment panel has conducted part of the assessment and has become satisfied that the allegation is not admitted or that the person does not desire the assessment panel to deal with the matter. Up to that point it is an assessment panel which has wide powers in investigation, summonsing—

The Hon. Anne Levy: Not until after that point.

The Hon. K.T. GRIFFIN: No. The powers to summons, call for documents and require questions to be answered are in relation to any part of the assessment process. If they are limited to the point after which the panel has decided that the matter should be considered further by the panel, then that certainly relieves some of the concern I have, although it does not relieve all my concern regarding assessment panels across the board. As the Bill is drafted, the powers of summoning persons to appear, to provide information, to produce books and papers, and to require answers to questions, are not limited to only that part of the process of the assessment panel which follows after the panel has decided that the person will plead guilty—they apply to the whole process. I think that that should be a matter of concern.

I agree with the Hon. Anne Levy's point that, in respect of undertakings to do certain things, they apply only in circumstances where the offender has admitted guilt and the assessment panel is then proceeding with the assessment. So, to that extent the assessment comes in two phases. But the powers in respect of summonsing and requiring questions to be answered and so on apply equally to both parts of the assessment process.

The Hon. ANNE LEVY: Without being a lawyer, I would dispute what the Hon. Mr Griffin is saying. Clause 32 (1) states:

> Where it is alleged that a person . . . has committed a simple possession offence, the matter shall be referred to an assessment panel.

Clause 32 (2) states:

> Where a matter is so referred, the assessment panel may, by notice in writing, require the person alleged to have committed the offence to appear before the panel.

Subclause (4) states:

> Where it appears to the assessment panel, after interviewing the person alleged to have committed the offence, that—
> *(a)* the matter should be dealt with by a court;
> or
> *(b)* the person—
> (i) does not admit the allegation;
> or
> (ii) does not desire the assessment panel to deal with the matter—

Then they go no further; those are the steps involved. Someone is charged with a simple possession offence and the matter goes to an assessment panel, which interviews that person. Only in this way can the assessment panel determine whether or not the person admits the offence and wishes the panel to deal with it. If those two conditions are not met the assessment panel proceeds no further. Clause 32 (4) states that the assessment panel will not proceed beyond that point unless those conditions are fulfilled. It states that it will not proceed further with an assessment and then goes no further. I submit that what happens in clauses 33, 34 and so on only comes into force where a person admits an offence and wishes the assessment panel to proceed. I think that the points raised by the Hon. Mr Griffin are not relevant to the way in which an assessment panel will proceed. The first thing an assessment panel will do is ascertain whether or not an alleged offender wishes it to proceed. It is not going to waste time doing anything before that is ascertained.

The Hon. K.T. GRIFFIN: There is an assumption there that the accused person will be brought before the panel first up and that the panel will not do anything other than interview that person.

The Hon. Anne Levy: Why should it? That would be wasting time if a person does not want the panel to go ahead; that is the first thing for it to find out.

The Hon. K.T. GRIFFIN: That would be a reasonable course of action, but there is no obligation to do that. Even in that context of a person being brought before the panel that person is still required to answer questions (and answer them truthfully) unless that person takes the point that he or she refuses to answer questions on the ground that it might tend to incriminate him or her. There is no legal representation allowed, so one assumes that there will be a free and open discussion before the panel makes its decision. That, in itself, is a matter of concern in the case of the individual just cited. There are many presumptions being made in respect of the way in which these panels will operate when, in fact, there is no basis in the Bill for that to occur.

The Hon. R.J. RITSON: I remind honourable members that the question of therapy is something of a red herring because therapy is available to anybody wishing it, and from a wide variety of sources within the State and, as has been pointed out, is available as part of normal sentencing procedures.

The Hon. J.R. Cornwall: It is not!

The Hon. R.J. RITSON: Imprisonment for simple possession is fairly rare. Therefore, the question of therapy is, indeed, a red herring. Therapy is available as part of the normal sentencing procedure and can be substituted for punishment where the court sees fit. The only unique thing about this provision is that it will enable people who have admitted an offence (which, as the Hon. Mr Burdett said, is created under this Bill) to have a conviction recorded. In that sense, it is a Clayton's form of decriminalisation of marihuana and the Committee must decide—

The Hon. J.R. Cornwall: It has nothing at all to do with marihuana, which is specifically excluded.

The Hon. R.J. RITSON: That was a slip of the tongue.

The Hon. J.R. Cornwall: That was a stupid thing to say. If the honourable member wants to get into a debate he should know about the Bill involved. This one has been around for four months.

The Hon. R.J. RITSON: It was a slip of the tongue. This is simply a way of enabling people who have admitted a breach of the law to avoid the recording of an offence. It has nothing to do with therapy, so I hope that we do not believe that if we support Mr Burdett's amendment we will be denying people access to therapy because that is not the case. I think that that should be quite clear.

The Hon. J.R. CORNWALL: There is an amendment to a later clause in the Bill standing in my name. It relates to three-person assessment panels. The amendment, which was drafted for me, caused me to raise my eyebrows by referring to the three persons as being 'one of whom shall be a legal practitioner and two of whom shall be persons'. I queried that description and was told that this is acceptable legalese. As a lay person I still walked away scratching my head. I now see why this was done. I believe that they had the

Hon. Trevor Griffin in mind specifically at the time because, on his own admission, he is a Conservative—he looks and acts like one. Just as sadly, he speaks like one.

The honourable member has clearly been sheltered from the real world and has no idea of what happens in the drug scene, none whatsoever! He has a young family but has never been put in the position that hundreds, indeed thousands of parents in the real world, have been placed of having a son or daughter who got into the hard drug scene. I hope that that never happens to him, but I warn him that it ill-behoves him to sit here and pontificate in the worst possible way about how the sanctions of the criminal law should be invoked against addicts—how they should be dragged before the courts and suffer the full sanctions of the criminal law. He insists that, if apprehended, and convicted, they should receive a serious criminal conviction which, so far as he is concerned, should stay with them forever.

The honourable member was Attorney-General of this State for more than three years. At no time did we hear a whisper that he might consider expungement of criminal records after a certain period or in certain circumstances. What he is supporting is a retention, a continuation of the *status quo,* where some genuine victim of drug addiction is convicted by the court regardless of what advice or recommendations may be made regarding treatment. Once that person is convicted he has a criminal record. As I said earlier, the honourable member is sheltered from the real world, unlike some of us who are a little older, wiser and a good deal more compassionate. He is sheltered, and he pontificates. He is the sort of person who, frankly, gives Christianity a bad name. What he ought to know is that, in the event that such people are convicted and given prison sentences, therapy is not available to them in prison.

One of the specific recommendations of the Smith Inquiry into Mental Health Services (that part which dealt with alcohol and drug services), had much to say about drug services, drug treatment and drug rehabilitation in our prison system. The simple fact is that a prison term in many instances serves no useful purpose whatsoever.

The Hon. Mr Griffin further says that the proposal within the Bill derogates from the authority of the court and that it is an inducement to plead guilty. Frankly, that is a ridiculous notion. It does the honourable member no credit at all (particularly with his legal training) in putting it forward. The honourable member claims that it is supposed to set some sort of precedent. Again, that is nonsense. The Hon. Mr Griffin and the Hon. Mr Burdett ought to know that there are comparable tribunals: the Mental Health Tribunal, for example, and the Residential Tenancies Tribunal, to name but two.

At present, I am involved actively in trying to establish, among many other initiatives in the drug rehabilitation area, a parent support group. As I said before, the Hon. Mr Griffin, with a young family, has never had the experience of having a son, a daughter or a loved one being involved in the drug scene or the so-called 'drug subculture'. I hope that that never happens to him.

The Hon. M.B. Cameron: You can leave his family out of it.

The Hon. J.R. CORNWALL: The Hon. Mr Cameron, who is always prepared and only too willing to personalise matters, suggests that I should leave his family out of it. That is the disgusting sort of way that the Hon. Mr Cameron operates. It does him no credit and is one of the reasons why he sat for a long time in Opposition.

Members interjecting:

The Hon. J.R. CORNWALL: He raised the matter, not me, Mr Chairman. It ill-behoves the Hon. Mr Cameron to bring up the matter; I did not.

The Hon. M.B. Cameron: You did; you referred to his young family.

The Hon. J.R. CORNWALL: I said that he had a young family and, therefore, he was fortunate at this stage that none of his family could or would be involved. Certainly, I hope that they will never be involved. A little while ago I referred to the thousands of parents who have had teenagers involved in one way or another in that scene, and I refer to the hundreds of parents who have children, teenagers, adolescents currently in the scene. A story in the *Advertiser* only last week told of the heartbreak of a mother. Does anyone seriously suggest that that son should be convicted of a criminal offence, locked up or put away? Does anyone seriously consider the sort of trauma that that mother is going through? Have any members of the Opposition ever sat down and thought about the support that we ought to be providing to parents who find themselves in these distressing circumstances? Have they ever canvassed that matter and put it forward as a positive initiative? Of course, they have not. They know little of the scene, they do not want to find remedies; they simply want to make political capital out of other people's misfortunes, and I believe that their attitude to the whole matter is appalling. I find it most regrettable that they should be moving this amendment and, again, I oppose it very strenuously indeed.

The Hon. J.C. BURDETT: Briefly, it would be remiss of me if I did not take issue with the Minister in regard to his disgraceful personal attack on my colleague, the Hon. Mr Griffin.

The Hon. Anne Levy: He did not.

The Hon. J.C. BURDETT: There was just no warrant for that at all. The Hon. Trevor Griffin set out in quite rational terms the reasons for his support of the amendment, because it is quite clear that the amendment does derogate from the authority of the courts in regard to crime—

The Hon. K.T. Griffin: And the protection of the individual.

The Hon. J.C. BURDETT: Yes, and in this case a crime established by this Bill. The last matter raised by the Minister involved the question of support of people who become addicted to drugs. I support that entirely. I am entirely in agreement with providing all the support that can be appropriately given to them and, if there are no assessment panels, there is no reason why such support cannot be given.

The Hon. Anne Levy: Only with a conviction!

The Hon. J.C. BURDETT: Not necessarily.

The Hon. R.C. DeGARIS: I do not wish to add much to this debate, except to say that I am a little upset by the comment of the Minister of Health who said, in referring to the Hon. Mr Griffin or other speakers, that political capital was being made out of other people's misfortune. That is not a fair comment on this position. I point out to the Minister that I have spoken in the second reading debate and I have also said very clearly that eventually I believe our society will have to reach the position where the actual use of drugs will be decriminalised, not only in regard to marihuana but also in regard to other drugs, because I do not believe our present legal system—if the predicted continuance of drug usage continues—can handle the position.

At present this Bill provides that drug use is a crime: that is clear. We do not decriminalise anything, neither cannabis, heroin nor any other drugs or controlled substances set out in the Bill. Therefore, what we are doing in this Bill is to say clearly that, because the Bill continues with the use of those drugs being a crime, in those circumstances for people over the age of 18 years, you cannot use assessment panels. That is clear and the Hon. Mr Griffin's point has been made clearly on this matter. I understand that the Australian Democrats will vote for this provision in clause 4.

The Hon. Peter Dunn: They are not in the Chamber now.

The Hon. R.C. DeGARIS: Maybe, but they always come running in when the bells ring. The other point I want to make in passing is that the definition of 'assessment panel' means 'a drug assessment and aid panel established under Part IV' but really that should be Part V. I believe that the Democrats will support the Government's drafting of this Bill and, if that happens, it leaves the position where Parliament should think, as far as this matter is concerned, about the court being able to take the first step and refer those whom it believes are best referred to assessment panels. Then the court has and should have control of it—the court should know what is going on.

I suggest to the Minister that, if he does hold this amendment, he looks at the question of court referrals, which are being used not only in Australia on other matters but also in the drug scene throughout the Western world, where court referrals are made to particular panels for this course of action. I suggest to the Minister that he should examine the question of allowing the assessment panels to establish, but for the court to make the first step and, where possible, refer those people to assessment panels to report back to the court on that matter. There is another interesting point. After the conviction of a person who is involved in the use of drugs, maybe on the odd occasion for the first, second or third time—that could happen—as I am advised, a number of countries will not extend to such people a passport because they have been convicted of a drug offence in Australia. That is a tremendous difficulty to be encountered by young people who may be involved, as many of them are, for a short period.

Then, in the future they cannot get a passport to another country to which they wish to go. Therefore, for the first offence the court referral system, where there is no conviction but the court handles it and refers it to an assessment panel, may be the correct way to go if this amendment is held in this Chamber.

The Committee divided on the amendment:

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

Noes (10)—The Hons Frank Blevins, G.L. Bruce, B.A. Chatterton, J.R. Cornwall (teller), M.S. Feleppa, I. Gilfillan, Anne Levy, K.L. Milne, C.J. Sumner, and Barbara Wiese.

Pair—Aye—The Hon. C.M. Hill. No—The Hon. C.W. Creedon.

Majority of 1 for the Noes.

Amendment thus negatived.

The CHAIRMAN: It is proposed to make a clerical correction to clause 4. On page 2, line 2, 'Part IV' should read 'Part V'.

The Hon. R.I. LUCAS: There is another clerical error in the next line, relating to 'authorised officer'. That should read 'Part VII' rather than 'Part VI'.

The CHAIRMAN: Thank you. It will be corrected accordingly. The Hon. Mr Milne. Unless the Hon. Mr Milne is here to move his amendment there is little that we can do about it.

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

Insert new definition as follows:

'cocaine' means cocaine (including synthetic cocaine) or laevo-ecgonine and such substances related to cocaine or laevo-ecgonine as may be prescribed:.

In my second reading speech I said that there were two matters in this Bill which were left to regulation and which were important matters that ought to be written into the Bill. This definition relates to those matters, one of which concerns clause 29 (3), which says:

For the purposes of this section, a person who knowingly has in his possession more than a prescribed amount of a drug of dependence or a prohibited drug, being an amount that is prescribed for the purposes of this subsection, shall, in the absence of proof to the contrary, be deemed to have that drug in his possession with the intent to sell or supply that drug to another person.

This provision makes a person deemed, in the absence of proof to the contrary, to be guilty of the very serious offence with very serious penalties of having the drug in his possession with the intent to sell or supply that drug to another person. This should not be left to be prescribed by regulation, but should be written into the Bill. In my second reading speech I said that I recognised that the present Act in this regard was framed in this way, but the present Act relates to specified drugs—drugs to which this Act applies. Here, the whole matter of drugs to which the Act applies is left to regulation. Also, in regard to this Bill the penalties are quite properly very serious—much more serious than those in the existing Act. I do not object to that; they should be. I said that in my second reading speech. Let there be no doubt that I agree with the Minister in saying that persons who prey off the weaknesses of others in this way and in a way that completely destroys people are criminals of the worst order. But, where one has a quantity of a drug that makes one deemed to be guilty of that very serious offence that should be written into the Bill. The next matter also relates to clause 29, in regard to whether penalties vary in accordance with the quantity of the drug concerned.

I maintain that, when changing substantial penalties for very substantial offences, the point at which the penalties change should be written into the Bill and not be left to regulation. I appreciate that the virtue of regulations is that they are flexible and may be readily changed. However, that can be a disadvantage as well as an advantage. I think that, when dealing with substantial matters such as this, it should be up to Parliament to make the change. I have moved this amendment because in the Narcotic and Psychotropic Drugs Act there are certain definitions of the various drugs, and they have been extended mainly to include derivatives. In this Bill these matters are to be left to regulation and, of course, those definitions were omitted. My amendment will reinsert the definitions.

The definitions contained in my amendment either insert into the Bill definitions that existed in the previous legislation or, in some cases, embellish and go further than the definitions in the parent Act in cases where, I have been advised, further definition is required. My amendment will write a definition into the Bill for the purpose of moving my subsequent amendments to clause 29 in regard to the quantity of drugs that deem a possessor to be possessing for the purpose of selling or supplying a drug to another person; and the penalty will be changed substantially from one scale to another.

The Hon. J.R. CORNWALL: The Government opposes the amendment and amendments of a similar vein that follow. They simply adapt existing definitions contained in the Narcotic and Psychotropic Drugs Act of 1934, which is almost 50 years ago. They are about as relevant in 1984 as nothing. In part, the amendment deals with the whole business of referring to medicinal opium and whether it is powder or granulated, and so on. For example, it provides that 'prepared opium means any preparation of opium in a form capable of being used for the purpose of smoking and includes dross and any other residues remaining after opium has been smoked'. The definitions are not relevant in 1984.

One of the reasons for introducing this comprehensive piece of legislation is to upgrade it by 50 years. I do not know where the Hon. Mr Burdett obtains his advice (most of it bad), but it is certain in this circumstance that he did not get it from a pharmacologist. It is much more practical, much neater and more sensible in all the circumstances to do this by regulation, which is subject to the scrutiny of Parliament. It is not done by proclamation. I will not go off in some underhanded way and conspire to do it with

one or two persons unknown. There will be a tremendous amount of work in making regulations under this very comprehensive piece of legislation. The regulations produced will be subject to the scrutiny of Parliament in the normal way. It is a much more elegant way of doing it. It brings the legislation, the phraseology and the nomenclature screaming into the 1980s. It does not leave the rather quaint and largely irrelevant sort of nomenclature that the Hon. Mr Burdett proposes in his amendments.

The Hon. J.C. BURDETT: At this stage I refute the matters raised by the Minister, who said that the Narcotic and Psychotropic Drugs Act is 50 years old. That is correct, but it has been amended substantially. The definitions that I have adopted from that Act have all been passed in the past decade, and are comparatively modern definitions. Generally, most of the definitions have been upgraded beyond the definitions in the Narcotic and Psychotropic Drugs Act. I have been advised that in some cases those definitions should be further extended, and that has been done. I am using modern definitions and I have extended them further. As I have said, in most cases the extension relates to derivatives or products similar to the drug referred to. I have stated why I do not think the definitions should be left to regulation. When dealing with such substantial and serious matters, when making a person deemed to be guilty of such a serious offence with such heavy penalties subject to forfeiture, and so on, and when changing penalties from a high level to a higher level, Parliament should be responsible for changing the definitions as time goes on, if that is necessary.

The Hon. K.T. GRIFFIN: The Minister should know that, under the Subordinate Legislation Act, the only way that either House of Parliament can be involved in the regulations is by disallowing them.

The Hon. J.R. Cornwall: Which can be done in this place at the drop of a hat.

The Hon. K.T. GRIFFIN: Of course it can be done. However, it may be that only one or two aspects of the regulations need to be amended. Neither House of Parliament has the power to amend a regulation; one either decides to disallow the whole regulation, or one allows it to go through. The Minister knows that it is very difficult in these sorts of issues—

The Hon. J.R. Cornwall: You could set up a Select Committee.

The Hon. K.T. GRIFFIN: A Select Committee cannot be set up to inquire into the disallowance of regulations; a Select Committee can only inquire into specific issues. The Minister knows that Parliament's power in respect of regulations is very limited: it is either disallowance of the whole, or no disallowance at all. To embark upon disallowance of what he has already stated will be comprehensive regulations in this area would throw the whole area into confusion, and that is something on which no House of Parliament or members of whatever political persuasion would embark lightly.

It is very much a trend in Government to do things by regulation rather than put things into a principal Statute, because it is easier and one does not have to crystallise one's thinking until much later. In some of these areas, such as this piece of legislation and the Fisheries Act, with which we had to deal when in Government, one has merely to put the bare bones up to Parliament, not define anyone's rights, obligations or penalties, and leave it all to regulation. That is a very sinister development in Government, and it is something that all Ministers of all political persuasions ought to be fighting, because it takes away from Parliament the right of enacting what obligations are to be placed on the community. As the Hon. Mr Burdett has said, in this case, if we do not provide some definitions of certain drugs that will be the subject of very substantial penalties upon individuals, including imprisonment and forfeiture of drugs, we are on a very rapid decline in respect of the recognition and protection of the rights of citizens in the community.

Frankly, I am surprised that the Minister would allow himself to be the subject of this sort of advice to proceed only with the bones of a very substantial piece of legislation with quite serious consequences for the community whilst leaving everything else to regulation. Frankly, that surprises me: in fact, it appals me that someone who professes to be interested in so-called patient care in the hospital dispute and other personal issues is prepared to allow the rights of citizens to be so ill-defined as reflected in this legislation. For those reasons, I can only support in the strongest possible way the amendment moved by the Hon. John Burdett.

The Hon. R.C. DeGARIS: I will be brief in this matter. Again, I strongly support the views expressed by the Hon. John Burdett and the Hon. Trevor Griffin. I will not go over the same ground over which the Hon. Trevor Griffin has gone except to ask the Minister to inform the House of any other regulation-making power that the Government has dealing with the question of penalties such as those which exist in this piece of legislation. We are dealing with the question not only of the quantities but also of penalties that this Bill holds. That must be considered when dealing with the regulation-making powers.

The Hon. K.T. Griffin: It's 25 years in gaol for dealing in a drug—

The Hon. R.C. DeGARIS: Sure. I pose that question to the Minister and ask him whether he has knowledge of any other piece of legislation where, by regulation, the penalties of a past Parliamentary agreement can be changed. It is all very well to talk about regulations, but the problem with regulations is that they can be made when Parliament is not sitting and could be for a considerable period. Even when the House disallows the regulations, the Government can remake the regulations the very next day. What the Hon. Trevor Griffin said was correct: we are taking away from Parliament an important issue in relation to the high penalties that exist in this legislation. I suggest that the Minister write into the legislation the quantities that are required under it.

The Hon. J.R. CORNWALL: I am not aware of any other situation where regulations are used or proposed to be used for penalties of such magnitude. But, then, I am not aware of any other crime as heinous as drug trafficking—trafficking in hard drugs. I am dumbfounded at the Hon. Trevor Griffin's enthusiastic fight for the rights or civil liberties of drug traffickers.

The Hon. K.T. Griffin: I am fighting not for the rights of drug traffickers but for the rights of citizens.

The Hon. J.R. CORNWALL: The Opposition knows very well that the drugs about which we are talking are narcotics. The regulations will be proclaimed in the normal course of events. I spelt out quite clearly in the second reading explanation the quantities about which the Government is talking, and I am not prepared to go any further. I do not believe that it is appropriate to go any further. I do not intend to accept these amendments nor the subsequent amendments which refer to quantities. I have spelt out that intention. Members know what are the drugs. Everyone in South Australia, by taking a little trouble, can know what are the drugs and precisely the quantities about which I am talking. I am not prepared on behalf of the Government to take away the very necessary flexibility that we need. For example, it is very likely in the near future that a number of drugs will be added to the list of drugs of dependence. It is my advice that the time has probably arrived when all barbiturates should be declared drugs of dependence.

It is appalling in my view that doctors are still able to write prescriptions for barbiturates in circumstances significantly different from those in which doctors are writing prescriptions for pethidine or methadone. We will have to examine the situation closely. We need flexibility if we are fair dinkum about the business of tackling the polydrug abuse that goes on in our society. That is the sort of flexibility we need and the sort of flexibility that I demand. I demand that not on behalf of John Cornwall personally but on behalf of the Government. No question exists that we need that flexibility.

Some other drugs may well be declared drugs of dependence in the near future, not just by South Australia but by national consensus. Serepax and Valium are the housewives' friends. Some friends indeed! In many circumstances, not only with housewives and lonely women at home but also with teenagers out there on our streets, they are causing all sorts of enormous problems.

The Hon. R.J. Ritson interjecting:

The Hon. J.R. CORNWALL: They are coming out of pharmacies, Dr Ritson, on the prescription of doctors. Those doctors are being conned into writing such prescriptions but some of them, as the honourable member knows and as every member in this Council would know, are being written by a small number of unscrupulous script doctors. We need that flexibility. Rohypnol is another drug which clearly ought to be considered for inclusion as a drug of dependence. Barbiturates, Serepax, Valium, and Rohypnol, to name but four, are drugs with which we will need flexibility.

The Hon. R.J. Ritson: Are you going to prevent the legitimate use of them?

The Hon. J.R. CORNWALL: That, like most of the honourable member's interjections, is stupid. Of course we are not going to prevent the legitimate use of any therapeutic substance that has a genuine positive therapeutic effect. To suggest otherwise is plainly ridiculous. But, we will certainly stamp out, within the next two or three years and hopefully sooner, the sort of polydrug abuse going on in Adelaide and South Australia at the moment. The amount of illegal and illicit prescription writing whether on forged prescriptions, because of patients faking symptoms to obtain drugs illegally and then dealing in those drugs, or simply on the sort of acting and faking by addicts who should be treated sympathetically but who certainly should not have access to Dilaudid prescriptions with repeats, is something that we intend to stamp out, and for that we need flexibility. For that I do not apologise. One should not take the ignorant lawyer's approach to this matter but should look at it in the broadest sense.

It is all very well to stand up and fight for the privileges and rights of Parliament but, frankly, I am just as concerned to stand up for the privileges and rights of parents and kids who are, in many circumstances and for a variety of reasons, locked into this very unfortunate and unhappy scene. Let us not pontificate about Westminster, the rights of Parliament and all those noble-sounding phrases whilst people out there in the real world are struggling—

The Hon. K.T. Griffin: God Cornwall!

The Hon. J.R. CORNWALL: Not God Cornwall at all. I am amazed to see the Hon. Trevor Griffin and the Hon. Mr DeGaris fighting for the civil liberties of drug traffickers. I do not intend to support that line nor any of the amendments.

The Hon. J.C. BURDETT: I would refute the ridiculous allegations that the Opposition is fighting for the civil liberties of drug traffickers.

The Hon. J.R. Cornwall: Come down out of cloud cuckoo land.

The Hon. J.C. BURDETT: We are not in any cloud cuckoo land. The simple fact is that this is important legislation. The legislation in regard to drug traffickers carries serious penalties. It has been elicited by a question from the Hon. Mr DeGaris that the Minister can give no other example of where matters pertaining to offences that carry such heavy penalties can be prescribed by regulation. There is no suggestion of protecting the civil liberties of drug traffickers. The Opposition is saying that, when one is dealing with such serious offences, Parliament ought to define such offences, and they should not be defined by regulation.

The Hon. R.C. DeGaris: It is really the reverse of what the Minister is saying: drug traffickers should be assisted by regulations being—

The Hon. J.C. BURDETT: Exactly, because the regulations could be changed very readily. The Hon. Mr Griffin has pointed out all the defects of regulations. When one is trying to do something of a substantial nature, such as this, they have their place (as they have their place in this Bill), particularly regarding prescription drugs and all sorts of things. In speaking to later clauses, I will be agreeing with the Minister in that there are matters such as—

The Hon. K.T. Griffin: He might still disagree with you.

The Hon. J.C. BURDETT: He might. The matters include the definition of poisons, therapeutic substances, therapeutic devices, and so on, which are very properly the subject of prescription by regulation. But, matters of this kind are not. I accept the Minister's point that there may be changes from time to time in what are and should be regarded as drugs of dependence. However, the Minister knows perfectly well that, if it is a question of changing or adding to a definition, this can be done by a simple Bill that can be prepared in five minutes.

The Hon. K.T. Griffin: And passed in less time.

The Hon. J.C. BURDETT: Yes, and prepared just as quickly and easily as regulations, and passed very rapidly. When the Minister talks about drugs of dependence being added to (barbiturates and that kind of thing) perhaps on a national basis, it will take time to obtain national consensus. For the Minister to suggest that there is any serious difficulty in changing the definition of a Bill before Parliament, I do not know what he is on about.

The Hon. K.T. GRIFFIN: I put on record, if it ever needed to be on the record, that my comments are not in any way directed towards supporting drug traffickers. For the Minister to lower himself to that level of retort does him no credit at all. The Minister put a ridiculous proposition. It should also be put on record that what the Minister is seeking to do is bypass Parliament in the way in which obligations will be placed on members of the community in respect of very serious penalties. I support the penalties. I was the one who introduced a private member's Bill to provide for confiscation of the assets of drug offenders, and I am delighted that the Government has picked that up in this Bill. So, I am in favour of the toughest possible penalties for drug offenders. In proposing those penalties, every member of the community has a right to know what the law says is or is not an offence and what the penalties are or will not be in relation to those offences.

No drug is defined in this Bill, and it is to be left to the Public Service to make recommendations for regulations and for the Government to promulgate those regulations and lay them before Parliament, determining what drugs will be the subject of the penalties. Whatever the Minister says and whatever names he calls me (because he probably will call me other names; that is the sort of debate he embarks on), this Parliament is the proper place for determining what drugs will be affected by the very significant penalties which are imposed by the legislation. It is not a matter for the Executive of the day to take this decision: it is for Parliament to make the laws, and it does not make

the laws when it comes to considering regulations, because its powers are very limited.

If the Minister suggests that in future we should pass legislation which only provides a mechanism for making regulations, leaving wide sweeping powers to the Government of the day to promulgate the regulations, at least that is on the record and we know where he and his Government stand on this issue when it comes up to the next election.

The Hon. R.J. RITSON: I understand that the Minister gave as his principal reason for opposing this amendment the need for Government flexibility, and he particularly cited the possible need for inclusion by regulation of offences relating to trafficking in a wide range of barbiturates and other minor tranquilisers and sedatives. The Minister already has at his disposal a wide range of regulations that make this illegal. So, the only reason to argue that he may have to, by regulation, include them in his provisions would be to bring the level of penalties for such use or abuse of those other drugs in line with the very severe penalties of this Bill. That is really quite amazing.

The Minister must know from his training that drugs such as defined in the amendment, principally the opium alkaloids, cocaine and L.S.D., are of quite a different order of dangerousness compared with the other drugs that he listed. I put it to members that the Minister can succeed (and I hope he does succeed) in controlling the abuse of those other drugs using the powers that he already has. The abuses he listed are already illegal, and surely there is no need for this, given the difference in quality of the milieu in which those drugs are used, especially when one considers the difference between that and the social and criminal scene surrounding the use or abuse of opium alkaloids; I cannot for the life of me see why the Minister wants to reserve the right to lump them all in together by regulation. I submit that it is perfectly reasonable to single out the opium alkaloids, L.S.D. and cocaine, as those drugs to which the Draconian penalties shall apply, to provide the evidentary clause for the presumption of selling and to leave the Minister with his very good intentions and very adequate existing regulations to attack the abuses of those less dangerous drugs which he mentioned.

The Hon. J.R. CORNWALL: As I sink into incipient middle age, I have had occasion to query recently whether or not I was becoming less tolerant than I used to be when I was younger. I think the answer is 'No' on any objective analysis. The fact is, however, that I am increasingly sickened by the cant and hypocrisy of conservative politics.

Members interjecting:

The Hon. J.R. CORNWALL: Let me give a couple of examples. Let us put this nonsense to rest by the simple use of logic. I have in my hand the Narcotic and Psychotropic Drugs Act, 1934-1974. I commend to members section 4 (3), which states:

> If, in the opinion of the Governor, it is desirable that—
>
> *(a)* any derivative of morphine or cocaine or of any salts of morphine or cocaine;
>
> *(b)* any other alkaloid of opium—

and we are not dealing with placebos—

> *(c)* any psychotropic drug or substance—

a fair sweep at the Hon. Mr Ritson, I am sure members will agree—

> or
>
> *(d)* any other drug or substance of whatever kind—

one cannot get much wider than that—

> should be brought within the provisions of this Act, the Governor may declare by proclamation—

not by regulation—

> that that derivative, alkaloid, drug or substance shall be a drug to which this Act applies and thereupon it shall become a drug to which this Act applies in accordance with the proclamation.

The Hon. K.T. Griffin: It does not make it right, does it?

The Hon. J.R. CORNWALL: Not by regulation, but by proclamation. The Hon. Trevor Griffin (a former Attorney-General) and the Hon. John Burdett (a former Minister of Community Welfare) were both members of the conservative Tonkin Government of three years and two months. Indeed, the Hon. Trevor Griffin stymied at every opportunity anything likely to be done toward consolidating the Narcotic and Psychotropic Drugs Act or the Food and Drugs Act. He stymied and stonewalled for more than three years so that there were no worthwhile amendments made to drug legislation in this State.

These great defenders of the Parliament, these two honourable members, who sit there with the full cant and hypocrisy for which they are becoming increasingly notorious, say that these penalties are so Draconian that we have no right to be declaring the drugs by proclamation. Let us look at the classes of drugs that they were declaring by proclamation on 31 July 1980. This list went through the Cabinet of which they were both members (and in the case of the Hon. Mr Griffin, a very senior member). In my recollection, the penalty for trading in narcotics was 25 years under the Act. Perhaps the Hon. Mr Griffin can tell me whether that is correct.

An honourable member interjecting:

The Hon. J.R. CORNWALL: The maximum penalty for trading in narcotic drugs was 25 years. I will mention some of the classes of drugs that the previous Government was putting through by way of proclamation. Two pages of such drugs appeared in the *Gazette* in fine print. The list included drugs such as methadone, pethadine and about 30 varieties of the salts of amphetamine—three of the most potent and dangerous drugs known to man were put through by amendment during that period. That is extraordinary!

Regulations must go before the Joint Committee on Subordinate Legislation to be considered before they are brought into the Parliament, where any member can move for disallowance. However, this is not so when things are done by proclamation. Such matters simply go before Cabinet (backbenchers know nothing about such matters; nor do Opposition members), and are then signed by the Governor in Executive Council. They then suddenly appear in the *Gazette*. I wonder what the Hon. Mr DeGaris would say in response to this.

Where are all these great guardians of the rights of the South Australian Parliament who allowed this Act to sit for a decade while they were in Government and in Opposition without doing anything about it? The Narcotic and Psychotropic Drugs Act, last amended in 1974, was allowed to stay on the Statute Book. Under that Act, the Governor may, by proclamation, declare, among other things, any other drug or substance of whatever kind. Let us have no more of this cant and hypocrisy, let us get this matter to a vote and get on with the business of the badly needed reform of drug laws in South Australia.

The Hon. J.C. BURDETT: My copy of the Act has a notation of an amendment in 1976, so I think that the Minister was wrong when he mentioned the year 1974. The point is that this legislation is now before the Parliament and should be got right. The right situation (as the Hon. Trevor Griffin, the Hon. Ren DeGaris and I have suggested) is, when there are such serious offences as this one (involving not only 25 years in prison but also forfeiture and various other penalties—penalties that I agree with), that as a matter of principle (and we are now in a position to talk about matters of principle and put them into an Act of this Parliament) the drugs involved ought to be set out in the Bill, and that is what we are seeking to do.

The Committee divided on the amendment:

Ayes (10)—The Hons J.C. Burdett (teller), M.B. Cameron, L.H. Davis, R.C. DeGaris, Peter Dunn, K.T. Griffin, C.M. Hill, Diana Laidlaw, R.I. Lucas, and R.J. Ritson.

Noes (11)—The Hons Frank Blevins, G.L. Bruce, B.A. Chatterton, J.R. Cornwall (teller), C.W. Creedon, M.S. Feleppa, I. Gilfillan, Anne Levy, K.L. Milne, C.J. Sumner, and Barbara Wiese.

Majority of 1 for the Noes.

Amendment thus negatived.

The CHAIRMAN: The next amendment is one of the Hon. Mr Burdett's in relation to clause 4, 'after line 22'.

The Hon. J.C. BURDETT: In view of the vote on the previous amendment, which I took as being a test vote, I do not now propose to move my amendments relating to matters after lines 22, 24, 26 and 36.

I may add that when it comes to the substantial amendments to the definitions to which we are referring, I reserve my right to move those amendments without definitions if I see fit at that time. In regard to the definition amendments on the first page of my set of amendments, I do not intend to proceed to move those now.

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

Page 2, line 42—Leave out 'drug' and insert 'substance'.

I hope that this logical amendment will be accepted by the Committee. I do not expect any opposition to it. We are inserting the word 'substance' instead of the word 'drug'. Substances like dioxin are extremely potent and toxic. Indeed, they are among the most toxic substances in the world. It was believed that the word 'drug' was not the right word to cover substances like dioxin, whereas 'substance' covers drugs generally as well as other substances and, for that reason, I am advised that we should make this amendment.

The Hon. J.C. BURDETT: Trusting that the Minister has had good advice on this matter I have no objection to the amendment. I suppose that as substances are to be prescribed by regulation anyway, it is only a matter of semantics whether they are called drugs or substances. I do not think I have any objection to the amendment.

Amendment carried.

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

Page 2, line 43—Leave out 'drug' and insert 'substance'.

This is an identical amendment to the previous amendment.

Amendment carried.

The Hon. J.C. BURDETT: I have left my amendment to line 43, which is another definition amendment, so as not to interrupt until we got to line 42. As I said before, the same applies in regard to the other definitions. I do not intend to proceed with the definition amendments after line 43, but I reserve my right to move the substantial amendments when we come to them if I see fit. The same applies in regard to my amendments on file to page 3, lines 26 to 31. I do not intend to proceed with that amendment standing in my name.

Clause as amended passed.

Clauses 5 to 11 passed.

Clause 12—'Declaration of poisons, prescription drugs, drugs of dependence, prohibited drugs, volatile solvent, therapeutic substances, therapeutic devices and volatile solvents.'

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

Page 6, line 29—Leave out 'drug' and insert 'substance'.

This amendment is similar to amendments moved earlier.

Amendment carried.

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

Page 6—

Line 19—After 'declare' insert ', individually or by class,'.
Line 22—After 'declare' insert ', individually or by class,'.
Line 24—After 'declare' insert ', individually or by class,'.
Line 27—After 'declare' insert ', individually or by class,'.
Line 30—After 'declare' insert ', individually or by class,'.

Again, my advice is that we should amend the clause by inserting 'individually or by class'. In other words, you can do it with an individual substance or a class of substances. It would be much simpler in some circumstances, given the thousands or hundreds of thousands of substances which now exist and which are identified and classified, to do it by class. A simple example which all members of the rural community would be conversant with is in respect of chlorinated hydrocarbons or the organo-phosphates. One can have all sorts of permutations and combinations chemically of those poisons but, in all circumstances, they are nasty poisons. They are two fairly simple examples. They are classes of substances with which most members of the Committee and certainly many members on the other side would be conversant.

Amendments carried.

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

Page 6, lines 32 to 36—Leave out paragraphs *(a)*, *(b)* and *(c)* and insert 'as a therapeutic substance,'.

The amendment replaces paragraphs *(a)*, *(b)* and *(c)* which refer to substances which may be or are designed to be used *(a)* for a purpose related to the physical or mental health or hygiene of humans; *(b)* for a purpose related to contraception; or *(c)* as a cosmetic. I am advised that that is too prescriptive. Among the people who have brought that to my attention are the South Australian Division of the Australian Veterinary Association. There is no mention of veterinary therapeutics, yet there are literally thousands of veterinary therapeutic substances. It is a big industry, particularly in relation to large animals and even in the small animal field. No doubt there are other examples which do not come to mind now, but it is felt that, in all the circumstances, the amendment is better, rather than trying to spell them all out, to simply replace these paragraphs with the phrase 'as a therapeutic substance'.

The Hon. J.C. BURDETT: I have some misgivings in that, as I have already indicated, where it is possible I prefer to spell things out in the Bill rather than to leave them to the regulations which have all the disabilities which the Hon. Trevor Griffin referred to earlier. At the time when the Bill was drafted it was apparently considered that these matters should be spelt out. However, as it pertains only to the matters which are set out in the clause (it is nowhere near as serious as the matters dealing with penalties to which I referred earlier), I suppose I have no real objection.

Amendment carried.

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

Page 6, line 38—After 'declare' insert ', individually or by class,'.

Page 7, line 5—After 'declare' insert ', individually or by class,'.

I canvassed in some detail the question of 'individually or by class' and moved a series of amendments before. This is consequential.

Amendments carried.

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

Line 6—After 'is a volatile solvent,' insert 'or contains a volatile solvent,'.

This is essentially a stylistic amendment. It purely results from advice that I have and is based on grounds of technical drafting and construction.

Amendment carried; clause as amended passed.

Clause 13—'Manufacture, production and packing.'

The Hon. K.L. MILNE: I move:

Page 7, line 16—After 'dentist' insert ', chiropractor'.

I had intended originally to seek to have chiropractors added to the Controlled Substances Advisory Council because I believed that it would have been appropriate to do so; the council would not be complete without them. But, both the Hon. Mr Burdett and the Minister have indicated that they would oppose this. It is better not to press the matter at

this stage, but we will find very soon that chiropractors should be represented on that council. However, I have been assured that chiropractors will be represented on the working party that will advise the council. Perhaps very soon we will be able to see what their contribution is to that and can amend the Act at a later stage.

I was not here to move the amendment to clause 4 because of a misunderstanding betweeen the Minister and me, as I understood that he would foreshadow that we would recommit clause 4. I will ask later that this courtesy be extended to me in order that I can press the chiropractors' case and hear the opinions of the Government and the Opposition.

I now seek to have the word 'chiropractor' inserted in clauses 13, 17 and 28; we are dealing with clause 13 at the moment, knowing that the definition of 'chiropractor' is simple and feeling confident that we will recommit clause 4 and that that definition will be inserted. I move this amendment because if one looks at clause 13 it says:

(1) A person shall not manufacture, produce or pack a poison, therapeutic substance or therapeutic device to which this section applies unless—

(a) he is a medical practitioner, pharmacist, dentist or veterinary surgeon acting in the ordinary course of his profession; or

(b) he is licensed to do so by the Health Commission.

If the Committee does not agree that the word 'chiropractor' should be inserted after the word 'dentist', as I have asked, I would ask it to consider putting the word 'chiropractor' in the definition later on because the chiropractors will then be in a position to be licensed by the Health Commission. I am sure that some of the chiropractors may request that or the Commission may feel that they should be, but I am hopeful that the Committee will agree that the word 'chiropractor' be inserted.

The Hon. J.R. CORNWALL: The Government opposes this amendment. We believe that chiropractors, like most other people and professions involved in the health industry one way or another, should be subject to quality controls if they are into manufacturing. The only people who are specifically mentioned or exempted from the necessity to hold a licence issued by the Health Commission—by the public health authorities—are medical practitioners, pharmacists, dentists, or veterinary surgeons. That is a very narrow group of professionals, and appropriately so. If we start to insert the word 'chiropractor' we should put in naturopath, homeopath, maybe occupational therapists, certainly physiotherapists, and so it goes on and on. It is a very inappropriate opening of Pandora's box.

I only hope that by putting the natural foods people in with some of those other professions or those other professions in with the natural foods people, simply to illustrate a point, I will not have them knocking on my door. No offence was intended on the one hand, on the other hand, in the middle or anywhere else. This should be specifically restricted to those four professions. Anybody else may apply for a licence and in reasonable circumstances one would expect that that would be issued by the Health Commission. The chiropractors are certainly entitled to do that; if they encounter any difficulties I would be pleased if they would come and talk to me.

They do not and should not supply prescription drugs—that is, S4 poisons—as part of the ordinary course of their profession. Therefore, whilst I am canvassing our opposition to the Milne amendment to clause 13, I would also explain why they should not be exempted from clause 17. I would go further with regard to the foreshadowed amendment to clause 28, since it follows logically, and say that the Government does not believe that they should possess drugs of dependence or utensils (for example, syringes and hypodermic needles) as part of the course of their ordinary profession. Their profession is basically, as I understand it, about manipulation of the muscular-skeletal part of the anatomy. It is about taking radiographs in appropriate circumstances. I am unaware that they need to use drugs of dependence in any circumstance. Therefore, I do not believe that it is appropriate that they should be exempted from clause 28.

In opposing the Hon. Mr Milne's amendment to clause 13, although I know that he is moving it in a spirit of goodwill and cordiality, and that he has a place in or about his heart reserved for chiropractors (because he once wrote a book about chiropractic), I am afraid that in all the circumstances I cannot accept the amendment.

The Hon. J.C. BURDETT: I must also oppose the amendment, largely for the reasons that the Minister gave. If the amendment were to pass it would mean that chiropractors could prescribe drugs, including some poisons, which is quite undesirable and which they do not seek to do at present. It would be inappropriate if they were put in the same category as medical practitioners, pharmacists, dentists and veterinary surgeons acting in the ordinary course of their professions.

As the Minister has said, irrespective of whether or not a definition of chiropractor is inserted—and I would not see that that is necessary—they can be licensed if they find any problem. As I pointed out in my second reading speech—and the Minister adverted to this subject also in his reply—many people who have been alarmed by clauses 13, 14 and 17 have forgotten to look at the definition, which defines therapeutic substance, therapeutic device, and poison as being matters that are prescribed by regulation.

In this matter, as I have referred to before, the use of regulation is perfectly proper. I have argued it in regard to matters pertaining to serious crimes, but in this sort of situation such things are generally prescribed by regulation or proclamation. Under the present Food and Drugs Act matters can be declared by proclamation which are just as important and could be just as disadvantageous to people in the health community—chiropractors and so on—as applies under clause 13.

As I said during the second reading debate, I do not believe that this Bill is the occasion for any greater control over the health industry, chiropractors, naturopaths, and so on. I referred to an article in the press recently where reference was made to possibly greater controls over these areas of the health industry. Very recently there was an article in the press where the Minister made an announcement in this regard. He suggested that leaders and reputable practitioners in the health food industry would support some measure of control. He stated that he was conducting some investigation. As I have said, it is only those poisons, therapeutic substances and therapeutic devices that will be prescribed by regulation that are caught by clause 13.

Obviously, the Minister cannot be too specific because he has set up an investigation to inquire into the question of the control of the health food industry, but could he say in a general way whether or not he is contemplating prescribing the kinds of substances, in relation to clause 13, that are presently manufactured, produced or packed by the health food industry and, in particular, by chiropractors?

The Hon. J.R. CORNWALL: I really do not have a great deal to add to what has been the subject of two recent newspaper articles, the most recent of which was on Sunday. I have set up a working party as a result of representations that were made to me in the first instance by the National Nutritional Foods Association of Australia. Representation on the working party includes, among others, chiropractors, the Natural Practitioners Association (I think that is its title), and a homeopath. I guess all of them are people involved in the practice of alternative medicine in that wide area. The working party will look at a whole range of issues

from quality control to educational programmes for the proprietors of health food shops.

I can provide the exact membership of the working party. It includes two representatives of the National Nutritional Foods Association, one each from the Australian Chiropractors Association and the United Chiropractors of Australia, one from the Australian Natural Therapists Association, and one manufacturing industry expert from Hamilton Laboratories, which is a local laboratory with an excellent reputation in the manufacturing and packaging of therapeutic substances generally. Finally, the working party will have a consulting pharmacologist. The working party will be chaired by an appropriate Health Commission officer when it becomes a subcommittee of the Controlled Substances Advisory Council.

I am sure that the Committee will be aware that there is provision in the proposed legislation for the setting up of subcommittees, as there is in the Medical Practitioners Act, for example. It is proposed that the working party will ultimately become a subcommittee of the Controlled Substances Advisory Council. At that time it will be desirable, if the membership is reviewed, to include, amongst others, a medical practitioner with an interest in the natural therapies. I will detail the working party's terms of reference, because this is a matter of substantial interest to many people in the community who are into health foods, megavitamin dosing, and so on. The working party's terms of reference are:

a. to examine ways and means of classifying herbal medicines and nutritional supplements, including vitamins, into groups for the purpose of applying controls as therapeutic substances under a South Australian Controlled Substances Act.

b. to examine ways and means of applying the Code of Good Manufacturing Practice and the Voluntary Advertising Code on Therapeutic Goods to these products.

c. to examine and recommend an appropriate system of licensing the manufacture, wholesale dealing and retailing of herbal medicines—including the desirability of limiting the retail sale/supply/dispensing of some preparations to suppliers who have undergone appropriate training.

d. to examine methods of developing standards for safety (and, later, efficacy) and advertising on a Co-ordinated National Basis.

The final term of reference—and I hope the Hon. Mr Griffin is not listening too carefully—states:

e. any other matters referred by the Minister.

The final term of reference is a bit of a catchall. I can assure the honourable member that it has nothing to do with my alleged God complex. It is simply there in case other matters come up for consideration in the next six months while the working party looks at its other very wide terms of reference.

I am not putting any firm proposal before Parliament at this time. I have no firm proposals to put before Parliament, Cabinet, Caucus or even the public health authorities. There are matters that have been canvassed with me. I think that there is an emerging consensus that we need some sensible controls on the health food industry generally. I repeat, as I have done many times: they are terms of reference for the industry itself which is represented very widely and in fact has majority representation on the working party. They are matters that must be addressed because some of the substances in herbal preparations are quite potent, and I am sure that the Hon. Dr Ritson would know that better than any of us.

However, I repeat for the nth time that I have no specific proposals at this stage. The proposals will be developed with the industry. I hope that proposals will be developed nationally, because I think ultimately that is the important place for that to be done, particularly if we are going to have quality control on these substances and, more importantly, if we are to avoid a repetition of the recent nasty incident where kelp imported from Norway was found to contain 10 times the maximum permissible amount of arsenic.

The Hon. R.J. RITSON: I rise to make a brief point to the Hon. Mr Milne. His amendment argues for chiropractors to be admitted to the whole range of prescribing, dispensing and administering prescription drugs, antibiotics, morphia, and so on. That is quite unreasonable and illogical. In the first place, there is nothing in the training of chiropractors that suggests that they would know how to handle these potent drugs. More particularly, by and large they are a group that rejects conventional medicine in favour of alternative methods. For them to say that, having rejected and refrained from training in conventional medicine, they now want the power to be a pharmacist, a physician and a prescription writer is quite unreal. I cannot believe that a significant number of chiropractors want what the Hon. Mr Milne is suggesting that they have.

Amendment negatived.

The Hon. R.I. LUCAS: Now that we have resolved the question of chiropractors, I will pursue the matter that I raised in my second reading speech. As the Minister replied quickly after my contribution, he clearly was not in a position to respond in any way. He has touched, at least at a tangent, on the matters that I raised. The subject matter of my second reading speech was in relation to the activities of physiotherapists and also, in part, to the activities of occupational therapists, podiatrists and speech therapists. It does cover a range of clauses, but I will restrict my question to clause 13 in regard to the manufacture, producing or packing of therapeutic devices.

The most common example to which I referred previously was that of a physiotherapist, who is trained and, as a matter of course, normally manufactures splints for a wide variety of uses. Physiotherapists and representatives who put the case to me believed that splints could well come within the definition of 'therapeutic device'. They certainly manufacture them, and as a result, it would appear that it is likely that the Minister, under this clause was seeking, either knowingly or unknowingly, for physiotherapists to be licensed by the Health Commission.

The Hon. J.R. CORNWALL: The short answer is a very firm 'No'. It is nice to see that there are in the community so many groups that take an interest in this legislation, which I guess is understandable as it is a wide-ranging Bill. That is a *reductio ad absurdum*, if I remember my Latin correctly. We have no intention of having 'therapeutic device' apply to splints, just as we have no intention of having 'therapeutic device' or the required licences therefor applied to beds. It is in that category or context that it should be seen. We will certainly be looking at quality control issues and things like diabetic syringes, and so on. It is more at that end of the scale that these sorts of proposals will apply, but not in regard to splints any more than to hospital beds, although I suppose that, if one takes a broad-brush approach to this, a hospital bed is very much a therapeutic device.

The Hon. R.I. LUCAS: I am partially comforted by that answer. I therefore take it that the specific instance I gave of the Australian Physiotherapists Association's manufacture of a therapeutic couch would not be covered and that the other examples of burns support garments would not be prescribed by the regulations under subclause (2).

The Hon. J.R. CORNWALL: No.

The Hon. R.I. LUCAS: I also gave an instance of a voluntary organisation which I believe is called Technical Aids for the Disabled. To refresh the Minister's memory, I understand that it is a voluntary organisation of engineers and medical technicians who can, upon request from a disabled person, endeavour to construct a one-off prototype of a technical aid for that disabled person. It is a voluntary organisation and clearly a technical aid for a disabled person

could possibly come within the definition of 'therapeutic device'. The Minister talked about quality control. I take it from that that he is certainly covering manufacturers, paramedical suppliers and people who make electro-medical equipment. If he is covering those paramedical suppliers under this clause and requiring them to be licensed, will he also be requiring this voluntary organisation to obtain a licence from the Health Commission?

The Hon. J.R. CORNWALL: The short answer again is 'No'. It is related to accepted standards as promulgated by organisations like the Australian Standards Association. I give a wide variety of examples to which it will apply as follows: surgical catheters; contraceptive diaphrams and condoms; insulin syringes and needles; home pregnancy testing kits; home blood pressure testing devices; child resistant containers; home electromagnetic devices; and batteries for cardiac pacemakers. I do not believe that any of the things that the honourable member has covered would come within the scope or ambit of the quality control and standard sort of issues which will be applied to the range of therapeutic devices about which I am talking.

In case there is something which I have not covered, or if the honourable member has any query which he believes is unanswered or not covered by those responses, I shall be pleased if he would take it up with me in writing and I will undertake and guarantee to obtain a reply rapidly. It is certainly not the spirit or intent of the legislation that the sort of scenario which the Hon. Mr Lucas has painted should happen.

The Hon. R.I. LUCAS: I am comforted to hear that, as I am sure physiotherapists and other professional groups will be comforted. The Minister mentioned condoms and other related matters. Does he intend for manufacturers of sex aids such as vibrators and assorted other objects to be covered under this provision?

The Hon. J.R. CORNWALL: Not at this time.

The Hon. R.I. LUCAS: I will pursue that matter with the Minister under clauses 14 and 15, when we talk about sex shops and licensing, because the Minister answered 'not at this time'. Clearly, that is not as definite as his previous responses of 'No' in regard to physiotherapists. I will pursue the matter in regard to licensing of sex shops, which sell by wholesale or retail, those sort of devices. Without being frivolous, some of those things may come under quality control.

The Hon. R.J. Ritson: How therapeutic are they?

The Hon. R.I. LUCAS: They may well be a therapeutic device. I am sure some people would argue that they are therapeutic devices. If we are working within the Minister's definition of 'quality control', certain of these sex aids may well come within the realm of problems with respect to quality control. If that is the general tenor of the way in which the Minister is tackling these clauses, it may well be that under clauses 13, 14, 15 and subsequent clauses that sex aids and sex shops are included.

My final question also relates to clauses 14 and 15 in regard to appeal provisions for licensing. I will pursue this later under clause 51. In effect, the Health Commission has the final say in everything; it would appear that that is the intent and that there is no appeal provision at all. The Health Commission could rule that a particular person or body can or cannot have a licence, or can have a licence under certain conditions, and that person, whose livelihood may well be affected particularly if we are talking about a company that is manufacturing, would have no redress at all and no option for appeal because, under clause 51, the decision of the Health Commission in this respect is final. I ask the Minister to respond.

The Hon. J.R. CORNWALL: The Hon. Mr Lucas never fails to amaze me. He should have been present the other day when the beavers arrived at the Adelaide Zoo, because he does beaver away. Nothing is too minute for him. I congratulate the honourable member, who spends a lot of time reviewing legislation. He takes his reviewing duties very seriously. Regarding sex shops, I was about to say that the thought had not crossed my mind. Perhaps that would be an inappropriate choice of words. I say, instead, that I have given no consideration whatsoever to whether or not sex shops should be licensed and whether or not some of the products that they sell are therapeutic devices under the definition of this Act or otherwise. I am unable to say that some of my best friends are sex shop proprietors, as I do not know any. I have never met a sex shop proprietor; nor have I ever had any representations made to me by any organisation purporting to represent the proprietors of sex shops. So, it is an area about which I have to admit, unlike most other areas, I have a vast ignorance.

However, being a nifty politician, I would not immediately stand up and say, 'No, I have no intention at any time in the foreseeable or imaginable future to license or not license sex shops.' If at some point evidence is forthcoming to show that they are health hazards, as well as potential wealth hazards, it may be that the Government of the day would want to use the powers under this particular part of the legislation to do something about it. I make it very clear that I would not regard the licensing of the health aspect of sex shops or bringing them under significantly more control as being one of the great democratic socialist goals for the 1980s. There are no appeals under the existing legislation and there are no proposed appeals in the proposed legislation. So, nothing is changing in that respect.

The Hon. ANNE LEVY: Relating to clause 13, the Minister mentioned a vast number of devices which would be subject to quality control. Would he include tampons and sanitary napkins under that provision? I presume that, if they are so included for quality control in production, under clause 14 Woolworths and Coles would not have to be licensed to sell them?

The Hon. J.R. CORNWALL: The short answers are, 'Yes' and 'Yes'. Your presumptions are correct. They will certainly come under the ambit of the quality control issue with therapeutic devices, as they should.

The Hon. Anne Levy: The toxic shock syndrome.

The Hon. J.R. CORNWALL: The toxic shock syndrome is well known to many of us. It is enormously important that they have the most stringent and reasonable quality control parameters applied to them. Concerning the licensing of outlets, as I understand it there is no intention that supermarket type outlets will need any specific licence.

The Hon. R.I. LUCAS: If tampons are to be prescribed as a 'therapeutic device', then they must be caught by clauses 14 and 15. Therefore, it means that Woolworths, Coles and every supermarket will have to be licensed, as clause 14 states:

> This section applies to such . . . therapeutic devices as may be prescribed, individually or by class, by the regulations.

The Hon. Anne Levy: The regulations for clause 14 will be different from the regulations for clause 13.

The Hon. R.I. LUCAS: There will be different regulations for clauses 13, 14 and 15—for transport and storage—under all clauses?

The Hon. Anne Levy: Yes, why not?

The Hon. R.I. LUCAS: I would be interested to hear the Minister's response to that. The definition of 'therapeutic device' states:

> 'therapeutic device' means a device declared by the regulations to be a therapeutic device for the purposes of this Act:

The Hon. Anne Levy now suggests that a therapeutic device will be a therapeutic device under one clause and not another and that there will be an opting in and opting out provision.

I am sure, too, that that is not the intention of the Act. I am sure, too, that the administration of the Act by the Health Commission will not allow that. In my view it would be a ludicrous situation. The more we go into these clauses the more interesting it becomes. The Minister has indicated that tampons will definitely be prescribed by the regulations as a 'therapeutic device'. As a result, a person or shop who sells these products will have to be licensed. Pharmacists are let out as they are already covered under the first provision. But, all other shops or outlets such as Woolworths, Coles and some delicatessens—

The Hon. Anne Levy: The same applies for condoms.

The Hon. R.I. LUCAS: Yes, there is now pressure for condoms to be sold at more retail outlets. So, on my reading it would appear to mean that all those retail outlets will have to be licensed. Therefore, clause 13 would mean (and I am not sure where all these therapeutic devices are manufactured—whether in South Australia or not) that the manufacturing plants for tampons, condoms, sex aids or whatever, would have to be licensed by the Health Commission. I have a number of other questions but the Minister looks keen to answer. Perhaps he has an answer for us.

The Hon. J.R. CORNWALL: I do not know whether I am keen or otherwise. I simply want to state the facts, which I could have done some minutes ago and, thereby, saved the Council some time. Quality control will be applied at the wholesale level. Quite clearly, common sense will prevail—I would hope that I am well known for my common sense—and Coles, Woolworths and other supermarket outlets selling tampons will be exempted from the necessity to have a licence. There will be specific exemptions for those one, two or three products, or whatever number is appropriate.

The Hon. R.I. Lucas: How will you do that?

The Hon. J.R. CORNWALL: It can be done very simply within the legislation.

The Hon. R.I. Lucas: Can you point to it? How?

The Hon. J.R. CORNWALL: The honourable member should be able to work that out.

The Hon. K.T. Griffin: You tell us. You are the expert.

The Hon. J.R. CORNWALL: I am telling you it can be done within the legislation.

The Hon. R.I. Lucas: How, where, and under what power?

The Hon. J.R. CORNWALL: The honourable member seems to have developed an extraordinary preoccupation with tampons in supermarkets. I am telling the honourable member that it will be done. I do not know how it will be done. I am not learned in the law. I am simply telling members as a matter of policy it will be done and will be done under this legislation. That is firmly on record. Members opposite should not play petty politics with a matter of this importance. It will be done. I have no intention of insisting that Coles and Woolworths have licences under the legislation to sell tampons, anymore than they have licences under the existing legislation. All I am saying is that we will reinforce quality assurance mechanisms at the wholesale level. Likewise, we will do that with condoms. They will continue to be able to be sold in vending machines in a wide variety of locations.

The Hon. R.I. LUCAS: That is an extraordinary situation. These are genuine inquiries, and the further we go into it the more problems there are. These questions are not being asked with the intent of playing petty politics, as the Minister accuses. They are genuine questions, and it is no good for the Minister of the Crown in charge of the Bill in this Chamber saying that he would not require this to happen, that he did not know how to do it, but that it would be done.

Another honourable member referred to the supposed God-like qualities of the Minister of Health. However, we cannot, in assessing the Bill before us, do anything other than rely upon the words in it. If the Minister has a particular, all-encompassing power somewhere, it is still a simple question—could he please indicate how he can do as he says he will do? Quite clearly (and I am comforted by the fact that the Hon. Mr Burdett agrees with the point I am putting), under these clauses if one is going to prescribe condoms, sex aids, and tampons as therapeutic devices then the logical extension of that will be that those outlets and manufacturing establishments we are talking about will have to be licensed. We are close to the dinner break and I wonder whether the Minister might take advice on this matter during that break so that we can pursue this matter at a later stage.

The Hon. J.R. CORNWALL: I complimented the beaver before on the way he beavers. However, I will have to take that back because there are times when he does no more than try a person's patience and make a mockery of the Parliamentary process. He knows as well as I that these exemptions can be made by regulation. There is no (I repeat 'no') intention of requiring Coles, Woolworths or other supermarkets currently selling tampons, or any outlet selling condoms, to be specifically licensed under the Controlled Substances Act (as this Bill will become). The simple fact of the matter is that we will be applying increased quality assurance to a range of devices at the manufacturing and wholesale level; in many circumstances, I say, quite happily and proudly, that it will apply at the retail level. However, a modicum of common sense will apply and in the case of tampons, condoms and quite a range of other substances there will be exemption by regulation.

I repeat that the regulations will be scrutinised by the Joint Committee on Subordinate Legislation, and then come before this Council. At that time the eager beaver, if he thinks it appropriate, can move for their disallowance. I do not believe that this debate will get anywhere if we confine it to the imagined controls that the Government may be proposing for sex aids, in sex shops, tampons or condoms. I think we ought to get clause 13 through, adjourn for dinner, and then get back to the serious business of this serious and comprehensive piece of legislation.

The Hon. R.I. LUCAS: It is quite clear that the Minister has not responded to my question. I asked whether he would delay the vote on clause 13 until after dinner so that I could look at the regulatory powers at the back of the Bill to ascertain whether or not the Minister can do as he seeks to do. I am not saying that he cannot do that, I am merely asking that he should show how he can do it and whether or not he can do as he says he will do. I still have a number of questions in relation to the appeal provisions in clause 13, and following clauses, so if the Minister is not prepared to do this I will pursue my questions on those appeal provisions.

The Hon. J.R. CORNWALL: I have no intention of doing what the honourable member suggests. I have answered his questions at length, in depth and with a great deal of clarity. He has the answers, and if he cannot retain them in his memory in the short term he can read them in *Hansard* tomorrow.

The Hon. R.I. LUCAS: I will pursue the matter in respect of appeal provisions, which cover clause 13 and a number of other clauses. Why does the Minister believe that there ought not to be right of appeal for a company or a person whose livelihood might be threatened by a potentially arbitrary decision made by an officer of the Health Commission? I am making no criticism of officers of the Health Commission, but under many other Acts of Parliament, and in relation to a wide range of administrative decisions taken, there are rights of appeal. It is a commonly accepted safeguard against arbitrary administrative decisions taken by public servants that I certainly support. I hoped that the Minister would support the right to have an appeal provision. It is really a non answer for the Minister to say that, with

respect to appeal provisions, there is no change from the previous situation.

The Minister has spent a deal of time when discussing previous clauses criticising former Governments for not acting in certain areas and for leaving deficiencies in those areas. It is no answer for the Minister to say that we have never had this provision before so we are not having it now. My question, which is quite specific, is this: why should there not be appeal provisions when the livelihood of a company or particular person involved in the manufacture, production or packaging of a poison, therapeutic substance or device might be threatened? If a person cannot get a licence in such circumstances, that person is not able to undertake business transactions which may involve their whole livelihood. That decision is taken by officers of the Health Commission—by the Government. Why should people whose livelihoods are threatened not have some right of appeal against a decision?

The Hon. J.R. CORNWALL: In view of the lateness of the hour, I think that I should take advice on this matter from my learned colleague.

[Sitting suspended from 6.3 to 7.45 p.m.]

The Hon. J.R. CORNWALL: I have taken advice on the question of whether or not there should be a right of appeal under clause 13 from a number of people during the dinner adjournment, not the least of whom was our Senior Legal Services Co-ordinator within the South Australian Health Commission and our Senior Pharmacist. The position as I see it at the moment is that the South Australian Health Commission is the body charged under its own legislation with the good conduct of the health industry within and throughout the State. That in the circumstances is the appropriate body to make decisions as to whether people are appropriate to be licensed or otherwise under clause 13, particularly under subclause (1). Subclause (2) refers to 'such poisons (other than drugs of dependence), therapeutic substances or therapeutic devices as may be prescribed, individually or by class, by the regulations'. So, there is an appeal in the sense that none of these things will be prescribed except by regulation; there will be an opportunity for the Subordinate Legislation Committee of the Parliament to look at them. The licensing provisions of the Health Commission should stand alone. That is our position at this time.

The Hon. R.I. LUCAS: I accept what the Minister says with respect to subclause (2); that is, with respect to the regulations there is the control of the Parliament. I do not have any alternative to offer with respect to the licensing provision; so, I cannot pursue that matter at this stage other than that I raise the general question that some people's or some groups' livelihoods could be completely wiped out by a decision not to license or to license under certain restrictive provisions. Those persons or groups would have no recourse at all.

My final comment on clause 13—and then we could from my viewpoint proceed—is that, whilst I accept that the Minister has said that he certainly has had no intention at all to license sex shops and the like, clearly the vehicle is there for not necessarily this Minister but for a future Minister to do such a thing. The vehicle is there; it just awaits a driver.

The Hon. J.R. CORNWALL: I make two points which are important: first, if we look at the business of extending the ambit of the Act by regulation I have made it clear that it is not my intention or the Government's at this time to look at restricting the operations by license of sex shops, for example, or regarding splints and other devices as they concern the physiotherapy profession or of a whole lot of areas that were canvassed by the honourable member during the course of the debate before the dinner adjournment. That undertaking is in *Hansard.*

I am told by the lawyers that these things are not always taken terribly seriously by the courts, but the fact remains that that is our stated position. I would have thought, since they have to be done by regulation, that to a significant extent the protection of the Parliament is available and that the political odium of the population at large is also available in the event that we or any Government in the future—distant or otherwise—try to bring in additional regulations other than the sort of ambit that we have indicated. I am sure that the honourable member and other members of the Council would agree that there is nothing so compelling as the force of public opinion.

In that respect, in terms of the generality of the application of clause 13, the sort of protection available to the public is available in a whole range of other circumstances. That does not cause me a lot of alarm or distress. I am aware that when we prepare and ultimately pass legislation we try to do so in circumstances where that legislation will be enduring. If one looks at the Narcotic and Psychotropic Drugs Act and realises that it has served South Australia reasonably well for half a century, one can appreciate that the new legislation should be seen in that sort of time frame. The millenium has not yet arrived; I am certainly not confident that the legislation that we are putting through at this time will last for a thousand years. I say that with my tongue through both of my cheeks to some extent; quite obviously it will be affected by changing mores, customs and circumstances, but one would hope that it would be that sort of life span as a minimum that we are looking at.

Because of the nature of the democratic process in the Parliament and all the rest of these things, what we are doing in clause 13 will be perfectly reasonable with regard to the generality of its application. Some doubts have been sown in my mind by the questions raised by the honourable member with regard to individuals. I was involved in a private practice endeavour as a veterinarian—a small businessman; some would say a very small businessman—over 20 years; so I have both an empathy and a sympathy with the sorts of things that the bureaucracy can impose or attempt to impose by way of licensing on individuals. By the same token, it can become unnecessarily cumbersome if there is a right of appeal to the Supreme Court in just about every circumstance that exists in a range of Acts like this.

Accordingly, the best course at this time is to indicate that if it were brought to my attention by individuals or organisations that the operation of this Act was causing any undue restriction or certainly any hardship with respect to livelihood of individuals involved in what is a fairly complex and difficult area, I would give the Council a firm and sincere undertaking that I would review the operation of clause 13 and any associated regulations as a matter of urgency.

I would not in any circumstance as the Minister of the day tolerate a situation where anyone's reasonable right to earn a livelihood, while remaining within the spirit and intent of controlled substances legislation, would be prejudiced in any unreasonable sort of way.

Clause passed.

Clause 14— 'Sale by wholesale.'

The Hon. R.I. LUCAS: I take it that the personal guarantees that the Minister has given technically in respect of clause 13 also extend to clauses 14 and 15 with respect to physiotherapists, occupational therapists, podiatrists, and speech therapists?

The Hon. J.R. CORNWALL: Certainly, I extend that to any other group of professionals with legitimate claims within the spectrum of the health area generally.

Clause passed.

Clause 15—'Sale by retail.'

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

Page 7, line 35—After 'pharmacist' insert 'or veterinary surgeon'.

This matter was brought to our attention by the Australian Veterinary Association (S.A. Division). Clause 15 (1) *(a)* provides:

He is a pharmacist acting in the ordinary course of his profession.

It was brought to our attention that veterinary surgeons, particularly rural veterinary surgeons, acting in the ordinary course of their profession very often provide some sort of therapeutic substance or substances in the normal course of the conduct of their profession. It was felt that it was highly desirable that the words 'or veterinary surgeon' be inserted after the word 'pharmacist'. I think it is a highly desirable and self-explanatory amendment.

The Hon. R.J. RITSON: I am out of touch with current practice in remote areas of Australia in relation to dispensing by medical practitioners. I am aware that it was done in the past and that medical practitioners actually purchased their own drugs and dispensed and received a dispensing fee, as would a pharmacist, in some country towns where there was no pharmacist. Is the Minister aware of any medical practices which dispense medicines now and, if so, should that be taken into account under this clause?

The Hon. J.R. CORNWALL: The situation that I am immediately aware of is Leigh Creek. The pharmacy there is conducted within the hospital, which is incorporated under the Health Commission Act. Leigh Creek is essentially a company town in the sense that it is an ETSA town, but it provides services to the entire community. The pharmacy is conducted in a part-time way by the medical practice in the town. I think that can be very easily overcome by simply licensing it under the proposed legislation. I see no difficulty in the Health Commission licensing in that circumstance. As I have said, Leigh Creek is the only example that comes to mind immediately, but there may be one or two others. If so, it would be a minimal number.

The Hon. R.J. Ritson: It used to be more common.

The Hon. J.R. CORNWALL: Probably before the Hon. Dr Ritson had the good fortune to be elected to the Upper House, thereby ruining a distinguished career in medicine.

Amendment carried; clause as amended passed.

Clause 16—'Sale of certain poisons.'

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

Page 8, line 7—After '*(b)*' insert 'unless'.

This is purely a drafting amendment and in no way is it controversial.

Amendment carried; clause as amended passed.

New clause 16a—'Sale of poisons the possession of which requires a licence.'

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

Page 8—After clause 16 insert new clause as follows:

16a. A person shall not sell a poison the possession of which requires a licence under this Act unless the purchaser produces his licence.

Penalty: Two thousand dollars.

This is an important amendment, and I specifically draw members' attention to it for two reasons. First, poisons such as strychnine have particular application under this clause. Those members who have been here for some years will recall that back in those days when I was a backbencher in Government (happier days perhaps in some ways, with less responsibility) one of the things that I pursued with some vigour was the question of strychnine. I am sure that you would remember, Mr Chairman, with some clarity that it was of concern to me that strychnine as a bait for vermin control had been freely available through stock and station agents in particular for very many years. At one stage I tried to estimate just how much strychnine was lying around sheds, barns, outhouses, and so on on various farming, pastoral and grazing properties of South Australia. The potential figures were rather mind boggling because strychnine has been, and I guess remains, a very common bait for foxes, for example.

The Hon. Peter Dunn: Mostly for mice.

The Hon. J.R. CORNWALL: Mostly for mice, particularly if one has the misfortune to live on the West Coast. The clause provides further restrictions, but not unnecessarily cumbersome restrictions, on purchasers of strychnine. People buying poisons must be known, and there is some discussion about the purpose for which the poison is required, and so on. I think that is a very sensible course indeed. The other thing that it does, and in my view it is even more significant, is to bring within the ambit of the legislation carcinogenic substances that are required to be used in limited circumstances for a variety of reasons. I think it shows the real ambit of the legislation in that it literally is about controlled substances, not simply illicit drugs, therapeutic drugs, therapeutic substances or poisons, but goes right across the board. I consider this to be one of the very good amendments that has been brought up in the course of the discussion that occurred in the more than four months that the Bill has lain upon the table. I commend it to the Committee.

The Hon. R.I. LUCAS: Therefore, a farmer wanting to purchase strychnine would have to have a licence—is that right? The Minister gave the background to the situation. I presume the purchaser would be the farmer and I understand from new clause 16a that any farmer who wants to purchase strychnine will somehow have to obtain a licence unless the purchaser is known to the vendor. Will the Minister explain the situation for members of the farming community? The Minister has instanced farmers on the West Coast getting rid of mice with strychnine. Does it apply?

The Hon. J.R. CORNWALL: Yes, the answer is simply that they will require a licence. That will not require an ASIO or security clearance but it will require that they write and apply to the appropriate body within the South Australian Health Commission. Whether they are intending to use a carcinogenic substance for experimentation on the one hand or use strychnine for vermin control on the other hand, we ought not to be shrinking violets or apologising for that. I do not regard it as an unnecessary or unreasonable intrusion by the bureaucracy as strychnine is an extremely potent poison.

I was concerned some years ago when I started to tot up just how much strychnine there might be lying around the State one way or another. On any figures or sums that one did, there was no doubt that, at one stage, there was enough strychnine lying in barns, shearing and implement sheds and elsewhere around the State to have killed the entire population of the State as it is extremely toxic, even in small doses.

We have a duty to have some idea where it is, for what purpose it is being used and to make sure that the people to whom it is being made available are reasonably responsible citizens. It is not intended that we set up a brand new branch of the bureaucracy within the public health area to process a huge number of applications. They will be processed in the normal course of events. Given that the Hon. Mr Dunn, for example, writes in as a primary producer, sets out his name, occupation and the details and purpose for which he would normally want to use strychnine, be it for fox, mice or dog control, it would be exceptional for him not to receive an appropriate licence. It will give some modicum of control so that strychnine will not find its way casually into the wrong hands or into the hands of people who have not got at least a reasonable idea of its extra-

ordinarily lethal properties or the manner in which it should be stored, used and so on.

The same sort of restrictions will apply to people wishing to use known carcinogenic substances for experimental purposes. These sorts of similar restrictions already exist with regard to known carcinogens. They have to go to Cabinet and to the Governor in Executive Council for specific permission to use known carcinogens. In that respect the law will not change a great deal. With respect to tightening up on strychnine provisions, that will occur.

The Hon. PETER DUNN: Does the Minister intend to set up agencies to process this provision or will he allow strychnine to be sold in a broken down form, that is diluted in wheat or whatever? At the moment almost every store in country towns of South Australia is selling strychnine bait as such for mice control. It is an effective way of doing just that. Although strychnine is highly dangerous, so is sodium fluro-ascetate, known as 10:80 which is even more insidious because it has no smell or taste. It is under strict control and can only be distributed by district councils. It would be a big impost if people could not pick up diluted strychnine. I am aware, as is the Minister, that it is a highly dangerous substance and needs to be treated with great respect. In that form—the form ready to poison mice—it is not so dangerous but is convenient and useful for controlling rodents.

The Hon. J.R. CORNWALL: Yes, we can prescribe under the regulations the poisons in various dilutions if needed. There is also protection for existing legitimate rights for people under the regulation-making powers of clause 59 (1) *(h)* and 59 (3) *(h)*. We will work out the regulations carefully in consultation with the industry. To give some indication of time frame at which we are looking in having this legislation or significant sections of it proclaimed, implemented and working with the appropriate regulations—given that in the meantime we have to introduce a food Bill, talk to the Local Government Association and so on—it will probably be a minimum of 12 months. There will be adequate time for consultation: I give that unqualified guarantee. Adequate protection exists under clause 59 (3) *(h)*.

The Hon. R.I. LUCAS: This matter has only just come to light. I express some major concerns about the provision. The Hon. Mr Dunn knows better than all of us that there may be hundreds or thousands of farmers who will have to obtain a licence from the Health Commission. The Minister says that it is not going to be too onerous a task and that these hundreds or thousands of farmers can write to the Health Commission listing their name, occupation and address and that it would be exceptional if the licence was refused. If that is the way it is going to operate, I express concern and ask why we need to bother with the licence at all. There must be an alternative administrative mechanism at which the Minister could look to cover the situation.

The Minister further seeks to allay these concerns by pointing to the exemption power under the regulations. Once again, if we are going to be exempting everything—and I refer back to clauses 13, 14 and 15—one wonders whether we should be going through such an onerous administrative nightmare which the Minister says would not be policed very much, anyway.

If one compares clause 16 with proposed new clause 16a, one sees on first reading that there appear to be significant differences. My reading of clause 16 indicates that the purchaser is not required to produce a licence. Subclauses (2) and (3) provide:

(2) A person shall not sell a poison to which this section applies—

(a) unless the purchaser is known to the vendor;

or

(b) the purchaser produces satisfactory evidence of his identity.

(3) Where a person seeks to purchase a poison to which this section applies, the vendor shall ask the prospective purchaser the purpose for which he requires the poison, and shall not proceed with the sale unless the question is satisfactorily answered.

So, under clause 16 a farmer or I can go to a vendor and seek to buy a poison; the vendor will ask me as the prospective purchaser why I want that poison; and, if I give him a satisfactory answer, the vendor will give me the poison. On my reading of clause 16, I, as a prospective purchaser, do not have to produce any sort of licence at all. Subclauses (4) and (5) states:

(4) A person who sells poisons to which this section applies shall keep a record of—

(a) the names of the purchasers of such poisons;

(b) the stated purposes for which those poisons were purchased;

and

(c) such other matters as may be prescribed.

(5) This section applies to such poisons as may be prescribed, individually or by class, by the regulations.

So, under clause 16, it appears, on my reading, that I or a farmer could purchase a poison as long as we satisfactorily answered the questions put by the vendor as to why we wanted the poison. Yet, new clause 16a appears to be quite different. It states:

A person shall not sell a poison the possession of which requires a licence under this Act unless the purchaser produces his licence.

The Minister appears to have an answer. I have a few other questions, but I will await his reply and pursue the other matters shortly.

The Hon. J.R. CORNWALL: I hope that the beaver does not have many more questions on this clause, as we are only up to clause 16 on this Bill and, although the night is not dark and stormy, the hour is rapidly growing late. There are two simple answers to the queries raised by the honourable member. I concede that they are *bona fide* queries. To set the honourable member's mind at rest, if he turns to new clause 20a—and one should look at proposed new clauses 16a, 20a, and 24a as the one amendment—the honourable member will see that they are composite in that respect. New clause 20a provides:

(1) A person shall not have in his possession a poison to which this section applies unless he is licensed to do so by the Health Commission.

Penalty: Two thousand dollars.

(2) This section applies to such poisons (other than drugs of dependence) as may be prescribed, individually or by class, by the regulations.

So, new clause 20a (1) contains the heart of the explanation that the honourable member wants.

The Hon. R.I. Lucas: So, anyone who has a poison must have a licence.

The Hon. J.R. CORNWALL: Yes, but let me give the honourable member the second point, because I said that there were two explanations. The equally important part is that there is already a requirement for persons purchasing strychnine to have a licence. The Vertebrate Pests Authority issues a licence with the authority of the Central Board of Health under existing legislation and regulations. So, in that respect, the issue of licences will not change as such; nor, as I understand it, unless some sort of dramatically changed regulation is introduced, will the parameters or requirements under which those licences are issued change.

The Hon. PETER DUNN: Some years ago I purchased strychnine through a stock and station agent. I believe that a licence was obtained for me because I received the strychnine. Would I be correct in assuming that that is the position? I am asking whether, as I have strychnine now, this legislation will be retrospective so that I will have to purchase a licence because I am holding the strychnine on my property at the moment? If so, does the Minister intend to set up an agency, perhaps the local police station or something similar, to handle the licences?

The Hon. J.R. CORNWALL: I will turn my great mind to that at the appropriate time. The scenario described by the honourable member is quite accurate. The stock and station agent from whom he ordered the poison obtained the licence on his behalf from the local representative of the Vertebrate Pests Authority. At this point we are not proposing any change from that. It may be that local authorities will have to be set up to process this; that matter will have to be examined. I assure honourable members that I will not get into the business of running a State unemployment relief scheme in order to issue licences. I have better things to do with the limited amounts of additional money that I might find in my budget. Basically, we have the mechanisms now in place. It will be a question of refining, rather than extending, existing mechanisms.

The Hon. R.I. LUCAS: I remain unconvinced about new clause 16a. I accept what the Minister has said with respect to the Vertebrate Pests Authority and the current need for licences. Really, this will be a bit different. As I understand what the Minister is saying, basically the Hon. Mr Dunn's stock and station agent has done it for him and his colleagues. Under new clause 16a, on my reading of it, the Hon. Mr Dunn and his colleagues will all have to write (I do not know whether or not the licences will be annual) to the Health Commission at predetermined periods to obtain a licence.

Will the Minister say why this cannot be done in a similar fashion as envisaged under clause 16, that is, if one is obtaining a poison one must establish a reason for it, and one's name, address and stated purpose are recorded? At the moment, if I, as a consumer of certain pharmaceutical items, go along to a pharmacy, not necessarily for a poison but for a wellknown brand of cold sore cream, for example, I am asked by certain pharmacists to give my name and address. Why could there not be an alternative administrative mechanism along these lines if, as the Minister says, basically all he wants is some sort of limited control, that is, name, address and occupation recorded at the Health Commission? Why must we set up this elaborate licence issuing procedure when perhaps an alternative administrative mechanism is available that may solve the problem?

The Hon. J.R. CORNWALL: Clause 16 refers to the broad ambit of agricultural and veterinary chemicals, as I understand it, and proposed new clause 16a refers more particularly to those especially toxic chemicals and carcinogenic substances, of which strychnine happens to be a spectacular case in point.

The Hon. R.I. Lucas: They both refer to poisons though, don't they.

The Hon. J.R. CORNWALL: Not as a carcinogen but as a spectacularly toxic chemical. New clause 20a refers to the procedures that will be followed with respect to a small number of very poisonous things like strychnine and a number of carcinogenic substances which are available on licence, primarily for experimental purposes. Certainly, proposed new clauses 16a and 20a set the framework and guidelines for tightening up, by regulation, what currently exists.

The extent to which that will be tightened will depend largely on the sort of advice and consent that is available to me from the community and the regulatory bodies at the time that those regulations are framed. Regulations come to me in a whole range of areas from the Central Board of Health. I can assure the honourable member, as Minister of Health (and any Minister of Health is placed in the same position), that they must be diligently scrutinised and understood before they go to Cabinet because other Cabinet members do not have access to either the same sorts of expert advice, or the same sort of patient advisers, to explain the full ramifications of those regulations. The practical political position is that, if a Minister of Health of the day takes regulations to Cabinet and does not fully explain the ramifications and consequence of the regulations as proposed, when they are eventually promulgated and are seen by members of the community at large or particular interest groups which realise their full ramifications, the buck stops on the desk of the Minister of Health.

I can assure the honourable member, and all other members of this Council, that all those regulations (which are often quite technical in nature and which contain very long chemical names) are very carefully scrutinised by any Minister of Health who is worth his or her salt or who expects to retain the job for more than 12 months. My personal experience in relation to regulations that come through with fairly monotonous regularity from the Central Board of Health is that I scrutinise those regulations quite diligently. If there is ever any doubt in my mind about them, I can assure the honourable member that they are returned forthwith to the Central Board of Health for further explanation.

The Hon. PETER DUNN: This clause deals only with pure strychnine. Provided a dilutant is not affected and can be distributed in that form through the normal outlets such as grocery stores, that it has now, I do not object to it, provided that those involved are permitted to purchase by licence and that there is a licence at the local stock and station agent. I cannot see a great deal of harm if the effect is to centralise control and to know exactly where the substance is coming from. It ought to be made quite clear that these licence applications ought to be freely available in each centre.

The Hon. J.R. CORNWALL: The Hon. Mr Dunn said that very well and very concisely. I should be delighted if he would take the trouble to knock up an eight part press release and send it to the rural press throughout South Australia. There is no intention, at least at this time, to impact in this area of those diluted products that are available. My advice is that this is not necessary. When one starts to talk about quantities of pure strychnine, which is extraordinarily poisonous, one certainly wants to know the distribution chain, the amounts that are around in the community at any time, why it is around, who is using it, and those sorts of details. I think that that is a sensible and responsible public health measure.

The Hon. R.I. LUCAS: I appear to be a lone voice in the wilderness. However, I register my opposition to this procedure, and will leave matters at that. I believe that the Minister can achieve (if this is what he wants to achieve) a record of who has got what through a different administrative mechanism rather than setting up this new licensing procedure. This procedure will be cumbersome. As a general principle, we ought to be reducing, if we can, the number of licences, forms and applications that each of us must complete as part of our day-to-day livelihood. No good case has been made out for this new licensing procedure, so I register my opposition to this provision.

New clause inserted.

Clause 17—'Supply and administration of prescription drugs.'

The Hon. K.L. MILNE: In view of the Committee's decision regarding clause 13, and having heard what was said by the Minister and Opposition members (and I can see their points of view), I will not now proceed with my amendments to clauses 17 and 28 as circulated; nor will I proceed with the recommittal of clause 4, as I believe that that would merely delay the proceedings of this Council. However, I trust that those chiropractors, if any, who wish to be licensed by the Health Commission will be treated fairly, as I am sure they will be. The definition or the description of the profession under the Chiropractic Act includes a number of matters other than manipulation, for which they are most recognised. I think that there may

come a time when, if that definition in the Chiropractic Act is examined, some of the applications will be successful. I hope that, should the chiropractic profession be represented on the council as well as on the working party, we all recognise that fact and take the action necessary to achieve it. I would be gratified (as I think members of the profession would be gratified) if the Minister would give an assurance that the interests of the chiropractic profession will be protected when this Bill comes into force.

The Hon. J.R. CORNWALL: I am delighted to speak up for the profession of chiropractic, which has its own Act and registration board. I am acutely aware of the fact that it is a profession, albeit, a reasonably new one, in the legal sense, in South Australia. I am always pleased to talk to chiropractors and to accord them the substantial position they they now clearly occupy in the health industry. They are still regarded, I guess, by some people as being on the fringe or as belonging to alternative medicine, if one likes, but I think that increasingly the medical and allied health professions are regarding chiropractic as an acceptable and successful regime of treatment, and a profession. One of the things that distresses me is that they are still rather basically split as a profession in a rather debilitating way. We have the UCA and the ACA, which tend to get locked in mortal combat from time to time, which is not good for the profession.

I have put to them—both UCA and ACA—that it is very much up to them to get together and to act in a way that is conducive to a positive expansion and a positive perception of their role within the spectrum of health services. I am encouraged to say, and I am pleased to say, that there is at least tenuous evidence at this stage that that is beginning to happen. I made the point earlier that I do not think that it is acceptable or desirable that they should be in the business of manufacturing drugs without a licence.

I do not think that they should be in the business of writing prescriptions for S4 drugs. As I understand the profession, it is counterproductive that they should have access to or control over drugs of dependence. If at some time they are able to make representations to me or my successors to prove otherwise, I am sure that they would be given a hearing and that the merits of their case would be weighed by all parties involved. In other words, there is no need for the chiropractic profession to believe that in 1984 it is discriminated against in the way that it might have been by certain hierarchies or professions in that hierarchical structure 10 years ago.

Nevertheless, I do not believe that, as of right, they ought to be on the Controlled Substances Advisory Council. I do not believe that it is desirable that they should be in the business of writing prescriptions for S4 poisons, given the very nature—the healing nature—of their profession, which relies largely on manipulation, knowledge of anatomy, and so forth. Certainly, I do not believe at this time that they should be involved in the possession of drugs or the use of drugs of dependence in their practices. In summary, they have a useful role on the working party that I have set up, the details of which I gave to the Committee earlier.

I would see them having a useful role on one of the subcommittees in regard to the Controlled Substances Advisory Council. I see them as a profession in a robust adolescence in the normally accepted professional sense, and I look forward to working with them closely while I am the Minister of Health. I do not see it as appropriate to automatically give them a place on the Controlled Substances Advisory Council or to have them involved with S4 drugs, restricted drugs, or drugs of dependence at this time.

The Hon. J.C. BURDETT: The Minister has done very well in accommodating the Australian Veterinary Association (S.A. Division) in regard to the matters that it has brought to his notice. He has done this by way of amendment, and I am going to ask what he has been prepared to do for the Optometrists Association, which has also brought certain matters to his notice. The association wrote to me and told me that it had sent a letter to the Minister and set out the matters raised with him. It may well be that the Minister has replied to the Association, but I would like him to tell the Committee what he intends to do about the very legitimate matters raised by that Association. Clause 17 prohibits a person from supplying or administering to another person a prescription drug, not being a drug of dependence, unless he is a medical practitioner, and so on.

The Association pointed out that there are certain drugs that its members administer to other people in the normal course of their profession. I have told them that the Minister could accommodate them in various ways. First, he may not prescribe the drugs that they use as being prescription drugs, although I suspect that these drugs will be prescribed. Another method that he can use is that he may prescribe them as a profession under clause 17 *(b)*, or he may license them through the Health Commission or, in clause 59 (3) *(h)* he can exempt them conditionally or unconditionally.

I advised the association that I would ask the Minister by which means—whether by amendment or by not prescribing those drugs, whether by prescribing them as a profession under clause 17 *(b)*, whether by licensing them or by exempting them under section 59 (3) *(h)*—he would accommodate what seemed to be the quite legitimate matters that the Association raised.

The Hon. J.R. CORNWALL: It is past April Fool's day, so I guess that one has to take some of those matters seriously.

The Hon. J.C. Burdett: Why don't you take their letter seriously?

The Hon. J.R. CORNWALL: I always take the optometrists seriously, and I take the $2 million scheme that they administer on my behalf very seriously—the South Australian Spectacles Scheme. Some of my best friends are optometrists, and that is entirely—

The Hon. L.H. Davis: What about doctors?

The Hon. J.R. CORNWALL: Some of my best friends are doctors, too.

Members interjecting:

The CHAIRMAN: Order! The Bill has taken long enough now.

The Hon. J.R. CORNWALL: It is taking not only an inordinately long time but a ridiculously long time because much nitpicking is going on. With regard to the remark of the honourable member that I had looked after the Veterinary Association well but he wondered about the optometrists, I guess that one has to treat that half seriously, at least. I wonder, if the honourable member did his homework—the poor man does not begin to grasp his shadow portfolio—and even if he drew sundry long bows, I wonder what similarity he could find between a veterinarian using 50 ml of pethadine and 50 mg per ml to treat a horse with colic: what parallel could he draw between that and an optometrist testing sight in his rooms? It is patently ridiculous and stupid—

Members interjecting:

The Hon. J.R. CORNWALL: The Hon. Mr Griffin chuckles in his place, but he is easily amused by the antics of his fellow conservatives.

The Hon. L.H. Davis: Stop provoking yourself.

Members interjecting:

The CHAIRMAN: Order!

The Hon. J.R. CORNWALL: I am not willing to sit down until you make comments from the Chair, Mr Chairman.

The CHAIRMAN: Having obtained quiet for you, I point out that you immediately launched an irrelevant attack. I now ask you to proceed in a manner that will facilitate better debate.

The Hon. J.R. CORNWALL: You offer a lot of gratuitous advice from the Chair, but it is nearly all directed at me. Why do you not offer it to the people who interject and interrupt all the time?

The CHAIRMAN: Order!

The Hon. J.R. CORNWALL: It is about time that you conducted affairs the way they ought to be conducted.

The CHAIRMAN: I called for order and you jumped to your feet.

The Hon. J.R. CORNWALL: You just gave me gratuitous advice, as you do so often. You don't control them over there.

Members interjecting:

The CHAIRMAN: Order!

The Hon. L.H. Davis interjecting:

The CHAIRMAN: Order!

The Hon. J.R. CORNWALL: I wish to proceed with you controlling the Committee.

The CHAIRMAN: If you reflect on the Chair, I will take the action that I have threatened throughout the last couple of days.

The Hon. J.R. CORNWALL: It is called unilateral action, I believe. What about controlling some of those jackasses?

The CHAIRMAN: Order! After the last exercise on this I went carefully through *Hansard* and I can prove that, in fact, I gave you every bit of protection that was possible. I have just called for order from the other side. I asked you to proceed and you immediately tried to provoke a quarrel, and I asked you not to do that. The Minister should proceed.

The Hon. J.C. BURDETT: I would like an answer to the question.

The Hon. K.T. Griffin: It was a serious question.

The Hon. J.C. BURDETT: It was a serious question. The optometrists wrote to the Minister—so they informed me, and I believe them—and set out their causes of unease about this clause. I have suggested that the Minister could satisfy them in four ways. They wrote to him and I ask that he says how he will accommodate the matters that they have raised. As he apparently has not been listening to the substance of the question I will repeat briefly that they pointed out in the letter to him that they use drugs that may be prescribed as prescription drugs and administer them to their patients in the course of their profession. They pointed out that they are controlled under the Opticians Act and asked to be exempted completely from the provisions of clause 17 of the Bill.

I pointed out in my reply to them that that was one method that could be used—by amendment—as has been done in other cases, but that there were various others. I have been through them once and I will not go through them again. The Minister owes the optometrists the courtesy of telling us in this place what he proposes to do in regard to enabling them to continue administering drugs in the course of their profession as they do at present.

The Hon. J.R. CORNWALL: As I was saying before the Council went berserk—the members on the other side did and there was a tendency to lose control—

The CHAIRMAN: I will not lose control; don't you worry about that for one second.

The Hon. J.R. CORNWALL: I am concerned more about the self-control of some of the people opposite from time to time, but I worry about you from time to time, Mr Chairman, in various ways.

The Hon. L.H. Davis interjecting:

The CHAIRMAN: Order!

The Hon. J.R. CORNWALL: You have made more remarks from the Chair, Sir. You continuously make gratuitous remarks from the Chair that reflect on me as a Minister. You have done it again, Sir.

The CHAIRMAN: You astound me.

The Hon. J.R. CORNWALL: Not as much as you astound me. You said that you worry about me; you are concerned about me.

The CHAIRMAN: Why don't you proceed now that you have that chance, instead of arguing with the Chair?

The Hon. J.R. CORNWALL: I do not terrify any people. Anybody who treats me reasonably gets treated reasonably in return. All I ask for is protection from the Chair on an ongoing basis. The Hon. Mr Burdett again raises similarities between the veterinary profession and the optometrists. I cannot see any similarity whatsoever. If there is some sort of inference there—and he chuckles, poor old chap—if he can see a similarity between an equine practitioner and an optometrist, that is his problem, not mine.

The optometrists have written to me and asked that we take certain comments on board. We have already done that; they are being considered by the appropriate senior officers in the Health Commission and we will respond to the optometrists in due course. They are not at this point directly involved in the major thrusts of this legislation, but as regulations are developed and as the consultative mechanisms proceed they will be involved to the extent that is appropriate.

The Hon. J.C. BURDETT: I do not think that the Optometrists Association will be very happy with the reply, but that is the Minister's problem.

Clause passed.

Clauses 18 to 20 passed.

New clause 20a—'Possession.'

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

Page 9—After clause 20, insert new clause as follows:

20a. (1) A person shall not have in his possession a poison to which this section applies unless he is licensed to do so by the Health Commission. Penalty: Two thousand dollars.

(2) This section applies to such poisons (other than drugs of dependence) as may be prescribed, individually or by class, by the regulations.

I have already canvassed the general thrust of new clause 20a. It is essential.

The Hon. R.I. LUCAS: I indicated my opposition to new clause 16a, which was the other part of this package of proposals. I will repeat my opposition to the package by opposing this provision. One matter that I did not get a chance of expanding on under new clause 16a is the words, 'the purchaser must produce his licence under this package of proposals.' The Minister sought to allay the fears of the Hon. Mr Dunn and other rural producers (who sought to get, for example, strychnine) by saying that the present procedures probably could continue.

The present procedure, as the Hon. Mr Dunn outlined, was that basically the form was sent off at the same time as the purchase, not by the rural producer but by the stock and station agent. The Minister said that under this provision it would not be the stock and station agent but the rural producer. The inference that he was giving under this package proposal was that the farmer could lumber into his local retail outlet, purchase the substance—whether strychnine or whatever—and send off the form at the same time. The construction of this package proposal would indicate that that would not be the case because the purchaser must produce his licence; the purchaser cannot buy the strychnine and send the application form off. The purchaser must have in his little hand the licence; so the purchaser will not be able to operate in roughly the same fashion as purchasers evidently have operated for many years, but will be required to fill in the form, send it off to the Health Commission,

wait for the officers of the Health Commission to process the form and do whatever it is that officers of the Health Commission do with such forms and send the licence back to the rural producer.

I am sure that many of my rural colleagues, particularly those in far away places, will indicate that the mail is not as good as it is in the city. They may get it weekly if they are lucky or a couple of times a week; so they have to wait for that. Of course, they are not in their local retail outlets every day of the week. It involves, for the Minister's understanding, probably the travel of many miles to their retail outlet to purchase whatever it is they need for their day to day operations. One of these things may well be, for example, the strychnine; so, there will be another trip back to where ever it is he has to purchase this and proudly show his newly won licence from the Health Commission to whoever he will buy it from and, finally, get the quantity of stuff he had been getting for many years. I will not pursue it at any great length other than to say that I oppose new clause 16a and new clause 20a because they are part and parcel of the same administrative nightmare into which the Minister has got himself in this matter.

New clause inserted.

Clauses 21 to 24 passed.

New clause 24a—'Use.'

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

Page 10—After clause 24, insert new clause as follows:

24a. A person shall not use a poison, therapeutic substance or therapeutic device otherwise than in accordance with the regulations. Penalty: Two thousand dollars.

New clause inserted.

Clause 25—'Prohibition of advertisement.'

The Hon. R.I. LUCAS: I have a question put to me by persons representing physiotherapists. They informed me that they have a journal and a newsletter and some of the manufacturers of therapeutic devices advertise in those publications. I take it from what the Minister said before that it certainly would not be the intention to prohibit that practice and that he will ensure by regulation or whatever that that sort of normal commercial activity is covered under clause 25 (1).

The Hon. J.R. CORNWALL: The honourable member is correct.

Clause passed.

Clause 26 passed.

Clause 27—'Forgery, etc., of prescriptions.'

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

Page 10, line 34—Leave out 'may' and insert 'shall'.

It makes it mandatory for pharmacists to retain a forged prescription. The Bill as laid on the table of this Chamber last November provides that a pharmacist 'may'. The amendment provides the word 'shall' and strikes out the word 'may'. It is a very good amendment and I commend it to the Committee.

Amendment carried; clause as amended passed.

Part V—'Special Provisions Relating to Drugs of Dependence and Prohibited Drugs.'

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

Heading, page 10, line 40—Leave out 'Drugs' and insert 'Substances'.

The Committee has already passed several identical amendments, and this is consequential.

Amendment carried; heading as amended passed.

Clause 28—'Prohibition of possession or consumption of drugs of dependence and prohibited drugs.'

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

Page 10, line 44—Leave out 'drug' and insert 'substance'.
Page 11, line 3—Leave out 'drug' and insert 'substance'.

These are consequential amendments.

Amendments carried.

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

Line 7—
After 'drug' first occurring insert 'or substance'.
After 'drug' second occurring insert 'or substance'.

These are a similar amendments. The amendments allow that we have 'drug' in the limited sense, and 'substance' as it covers the whole gamut.

Amendments carried.

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

Page 11, line 9—Leave out all words in this line and insert '(2) A person who contravenes this section shall be guilty of an offence and liable to a penalty as follows:'.

A series of amendments were placed on file with members this afternoon and this is the first of them. The very simple rationale for the amendment is that it makes it clear that it is a contravention of the section and that it is an offence.

The CHAIRMAN: The Hon. Mr Burdett also has an amendment to this line, so the amendment now before the Chair will be a test case.

The Hon. J.C. BURDETT: As I understood what you just said, Mr Chairman, you are inviting me to speak to my amendment to this line at this time. I believe that is the most appropriate course of action. At the present time the penalty for simple possession of *cannabis* for personal use is $2 000 or imprisonment for two years, or both. The Bill seeks to make the penalty a maximum of $500 and remove any period of imprisonment. That will substantially reduce the penalty for the simple possession of *cannabis*. I would be the first to acknowledge that the question of possession of *cannabis* for personal use is not an easy question. There are various views about the matter and I have mine, and the Opposition has its view.

The Sackville Report recommends that possession for personal use should not be an offence at all. The Minister has expressed the same view. He caused a survey to be undertaken on the public view about this matter and has acknowledged that at the present time the public is of the view that the simple possession of *cannabis* for personal use should remain an offence. The public has come to that view quite substantially. If that is the case and if it is acknowledged that simple possession of *cannabis* ought not to be legalised at this stage, we should not interfere with the law concerning it at all. It has been pointed out that in ordinary first offences, unaggravated cases, the penalties normally imposed by the courts are fairly modest, of the order of about $100 or $150. That is fine. As I pointed out during the second reading debate, the traditional relationship in the matter of penalty between Parliament and the courts is that Parliament indicates to the courts by the maximum penalty that it expresses in the legislation its view of the seriousness of the offence in the most aggravated circumstances. When a court comes to a particular case it decides on a penalty somewhere between nothing and the maximum laid down by Parliament, according to the circumstances of the case.

It would follow from this that, if the monetary penalty is reduced to a quarter, from $2 000 to $500, we would expect to get the present penalties reduced in the same way (to a quarter of what they are at the present time). We would be looking at penalties of about $40 or something of that order. I suggest that that is quite illusory and ridiculous if we are going to retain the offence on the Statute Book. I make it clear that it is my view that the offence ought to be retained on the Statute Book. It is also the view of the Opposition.

The point I am making now in regard to this amendment is that the Bill seeks not to legalise possession for personal use (make no bones about that) but to retain it as an offence whilst substantially reducing the penalties. If we are going

to retain the offence, as the Bill does, there is no reason, with the way the courts are handling the matter at the present time, to interfere with the penalty. The present legislation is operating reasonably in this regard.

I pointed out that the logical consequence of a reduction in the maximum penalty would be a reduction in the actual penalty and we are making nonsense of retaining simple possession as an offence. The situation is satisfactory as it now stands and I therefore commend to the Committee my amendment to let the situation remain as it is presently.

The Hon. R.J. RITSON: I support the Hon. Mr Burdett's amendment and endorse all that he has said about sentencing customs, about the maximum being the maximum reserved for the most outrageous examples of the type of offence and the fact that the courts generally award a lesser penalty than the maximum and therefore a reduction of the penalty to $500 maximum will reduce the usual penalty to a point where it is barely a deterrent. Indeed, the situation is that one is continuing the illegality of a practice but virtually eliminating any deterrent penalty.

I refer to the place of imprisonment, because it may be that for some people the notion of sending someone to prison for a simple offence is abhorrent and, indeed, in most cases it would be. I remind honourable members that penalties of terms of imprisonment are scattered throughout the Statute Book, coupled with quite modest financial penalties, for a good reason. I have been reminded that the Medical Practitioners Act contains a number of penalties of imprisonment for doctors scattered throughout its pages. These are, in many cases, for relatively minor breaches such as being rude to a member of the Medical Board in the course of a hearing and other similar offences. One must envisage in determining penalties that there will be rare occasions where a fine is no deterrent and where a person will continue openly to flout the law.

One could imagine the situation of a rather wealthy popular entertainer who regularly and publicly used *cannabis* in contravention of the law. He may quite easily be able to afford to pay the $500 or $2 000 every time he was apprehended and would virtually hold the law in contempt. There will be from time to time rare and special cases where a court must have recourse to imprisonment to defend the law against its being held in contempt in this way. So, I would argue strongly for the retention of the previous penalties on the understanding that imprisonment would be extremely rare for a non-aggravated simple possession offence. There may be equally rare cases where it is the only sanction to which the law could have recourse effectively in the case of a wealthy person openly and repeatedly defying the law. Therefore, I support the amendment.

The Hon. ANNE LEVY: I oppose the Hon. Mr Burdett's amendment and need not repeat all the remarks I made in my Address in Reply speech of only a few months ago. Many of my comments were relevant to this subclause. A very large number of people are consuming or smoking *cannabis*. The latest opinion poll taken in January of this year showed that almost 20 per cent of Australians have used *cannabis* and in the younger age group 33 per cent have used *cannabis*. That is a very large number indeed.

The Hon. R.J. Ritson: Is that an argument for legalising it?

The Hon. ANNE LEVY: I certainly believe it is an argument for legalising it or for having small penalties.

The Hon. R.J. Ritson: We could have two things.

The Hon. ANNE LEVY: The honourable member has had his turn—it is my turn now. He can have another turn in a minute—he has no need to interject. Increasingly, a large number of people in the community believe that *cannabis* consumption should not be illegal.

I refer again to the Morgan poll published in the *Bulletin* this year which showed that 46 per cent of the population said that possession of small amounts of marihuana should not be illegal whilst 49 per cent said that it should be illegal. In other words, views on whether the possession of marihuana should be legal or illegal is almost equally divided in the community. The legislation before us is not proposing to make it legal but I believe it accurately reflects the community's view that possession of a small quantity is not a great crime and should not be treated as such with a heavy penalty.

I believe that one of the great benefits of the Bill before us is that it is making a very clear distinction between possession of a small amount of *cannabis* and trading or trafficking in *cannabis* or any other substance.The production and sale for great commercial gain is very strongly frowned upon and has very high penalties which I do not oppose at all.

The Hon. R.C. DeGaris: How do you get small amounts if you do not have blokes growing it?

The Hon. ANNE LEVY: You too can have your turn in a minute. It seems to me to be fitting in very well with community attitudes, that a very clear distinction is made between possession of a small amount not being a serious crime—crime though it be—and cultivation, production, trafficking or trading in *cannabis* being regarded as a very serious offence. In legislation, penalties should reflect the differing views held on this matter in the community. I hate to think what the Hon. Dr Ritson would say if he went to Canberra where, he may be interested to know, the maximum penalty for possession of *cannabis* is $100—only one-fifth of what is being suggested in this legislation. As far as I know society in Canberra has not fallen to bits as a result of the change in legislation.

The Hon. K.T. Griffin: That is a matter of opinion.

The Hon. ANNE LEVY: I am not referring to the non-residents of Canberra who go there periodically. In Canberra the penalty for possession of *cannabis* is only $100, but in the Bill before us $500 is suggested. Personally, I would like to see the penalty even lower. I am happy to support the Bill as it is before us and oppose the amendment in that I think it is making a significant change and further separation between the possession of a small quantity versus commercial trading and trafficking in *cannabis*—a distinction which the populace is certainly making as is shown in the opinion polls.

The Hon. K.T. GRIFFIN: The fact that an opinion poll might indicate that a certain number of Australians might be in support of legalisation and a certain number opposed to it, and the fact that a certain number of persons may have tried marihuana on at least one occasion, is no real justification for suggesting that penalties ought to be reduced. What this Bill seeks to do, if it passes, is demonstrate to the courts a view of the Parliament that the possession of marihuana ought to be treated more leniently than it is at the moment. That will mean that although the average penalty might be over $100 per offence, with a maximum penalty of $2 000, if the Bill passes it will mean that the courts will impose lower penalties as a natural and logical conclusion that Parliament regards the offence as being less serious than it is at the moment.

I support the amendment of the Hon. Mr Burdett. During my second reading speech I referred to the recommendations of the Williams Royal Commission, a more extensive Royal Commission than the Sackville Royal Commission which focused on all that was known about *cannabis* at that time. It concluded that the state of knowledge was very limited indeed and recommended that no changes be made to the laws relating to possession of *cannabis* in Australia for 10 years and that during that period of time extensive research

should be undertaken to identify the real effects of *cannabis* on individuals who used it. I believe that that is an appropriate recommendation to support and, for that reason, I am not prepared to support that part of the Bill which makes the possession of *cannabis* more attractive by being more lenient. I will support the amendment to retain the *status quo*.

The Hon. I. GILFILLAN: Mr Chairman, I was somewhat confused earlier when you mentioned that we were discussing several amendments at once. Could you clarify the situation?

The CHAIRMAN: The Minister has moved to take out the penalty for an offence against this section. In line 9 he wants to insert, 'A person who contravenes this section shall be guilty of an offence and liable to a penalty as follows:'. The Hon. Mr Burdett wants to leave out the whole of subclause (2), including *(a)* and *(b)*, and insert, '$2 000 or imprisonment for two years or both.'. So, we will put the Minister's amendment first. If that is successful I presume that the Hon. Mr Burdett will not proceed with his amendment.

The Hon. I. GILFILLAN: Thank you for the explanation, Mr Chairman. I express my personal attitude to the level of penalty which seems to be the point at issue, and I hope that it is in order. I feel that the offence of possession is still a crime and still, in what appears to me to be the amended state, carries quite a substantial penalty. No-one cheerfully parts with $500 and I think that it is still a significant offence in society for a person to be in possession of marihuana. My personal opinion is that there is a very good case for legalising the use of marihuana, not because I have any enthusiasm for the community at large to consume any more of what are deleterious substances. Alcohol, tobacco, analgesics and *cannabis* are, in my opinion, in a similar category. The Democrats have repeatedly said that there should be very strenuous efforts to reduce the dependence—and the word is dependence—of members of society on any drugs they tend to lean on, some to a pathetic extent and others perhaps just as temporary props.

The point I am making in supporting this clause for the penalty to remain at $500, which is a substantial reduction, is that society does not encourage the use of *cannabis;* it recognises the fact that a high proportion of the community uses it the same as another high proportion of the community uses alcohol and tobacco and that it is going towards the direction of removing the vast very profitable illegal racket that is involved around the production, sale and marketing of marihuana. So, in making my remarks in support of the amended penalty, which I assume under the Minister's amendment will still remain at $500, I indicate that it seems to me that there are, if this is logical to support, good grounds to reduce the penalty for those who are growing marihuana for their personal use. I realise that we may well come to address that later during this debate.

The Hon. DIANA LAIDLAW: I wish to speak briefly on the subject in support of the Government's proposition that the fine be reduced and the imprisonment term be removed. In speaking to this clause I specifically speak against the amendment moved by the shadow Minister of Health, the Hon. Mr Burdett. His amendment is founded on two premises, the first being that the maximum penalties imposed by Parliament are an indication to the community and court of the seriousness with which Parliament views this offence. It is my view that in 1984 there is no justification for Parliament to regard the possession of *cannabis* with the alarm with which it was viewed when present penalties and imprisonment sentences were fixed by this Parliament. There is no doubt that community attitudes and values in relation to *cannabis* have changed dramatically since that time. I do not want to elaborate on those matters because they have been well explained by the Hon. Anne Levy and referred to by the Hon. Ian Gilfillan.

I will refer briefly to the Sackville Royal Commission, which members have referred to during this debate. It noted that, in 1978, a large sample survey showed that 17 per cent of metropolitan adults used *cannabis*. In the 18 to 26 year old group, 36 per cent had used *cannabis*, and in the 18 to 24 year old male group 43 per cent had used it. These figures, of course, are six years old, and there is every reason to suggest that present percentages are much higher today among young people, in particular, because personal use and possession of *cannabis* is certainly not seen as either an anti-social act or an act of a criminal nature. Many Royal Commissions and other inquiries have been conducted around the world on this subject. From scanning those reports, it has become quite clear that they are all in agreement that moderate use of *cannabis* has no long-term harmful effects and that its effects are no more harmful than those of the moderate use of alcohol or cigarette smoking.

The second premise on which the Hon. Mr Burdett bases his opposition to the Government's proposal is founded on the fact that he believes that the proposed reduction would reduce the penalty to an illusory amount. It is my view that the very decision to maintain *cannabis* as a prohibited drug, with its use therefore being an offence, is more than a sufficient penalty. In fact, many people would argue that the qualities of *cannabis* do not warrant its use being considered an offence. I wanted to indicate my views on this matter so that there would be no misunderstanding, either in my Party or elsewhere, about my views on this matter.

The Hon. R.I. LUCAS: In speaking to this clause I make no apology if I repeat certain things that other members have said thus far in this debate, because it is an important matter. Because of the position I intend taking in relation to this clause, I think it is important to place on public record my reasons for taking that position. It is important, first, to point out what this clause does not cover. It does not cover legalisation of the possession of *cannabis* or the decriminalisation of the use of *cannabis*. Quite simply, it will still be an illegal product and offenders will, in the main, still have criminal convictions recorded on their record if caught using this substance. Therefore, debate about decriminalisation or legalisation of *cannabis* use can be left, in my view, to another day.

The Hon. R.C. DeGaris: What is the difference between decriminalisation and legalisation?

The Hon. R.I. LUCAS: The Hon. Mr DeGaris asks a good question. The Hon. Mr Burdett gave me some good instruction earlier on the fact that there is a difference between the two. Others argue that there is no difference, and many lawyers take a different position from that of the Hon. Mr DeGaris. I am not in a position to judge one way or the other. However, I am in a position to say that, whether there is or is not a distinction (and, on the balance, possibly there is a marginal distinction), this clause does not cover either legalisation or decriminalisation of the use of *cannabis*. The clause does two things: first, the Government's original clause will remove imprisonment as a possible penalty for this offence, and, secondly, it reduces the fine from a maximum of $2 000 to a maximum of $500.

The Hon. Mr Burdett's position, to which I am opposed, is that the Government's move be opposed and the original penalties reinserted. A number of independent surveys over past years have indicated quite clearly to me that the use of *cannabis* is not limited to a small group of people, or to long haired (or short haired as they are now) university students. A wide cross section of the community is using and has used *cannabis*. I refer to two instances quoted in the Sackville Royal Commission Report to which the Hon. Diana Laidlaw referred and which states that at least 15 per

cent of adults in Adelaide, at the time of the survey in the late 70s, had used *cannabis*. Certainly, a higher percentage of young people had used *cannabis*, but even in the older age group, those between 35 and 60 years, 4 per cent indicated that they had used *cannabis*. The Morgan Poll earlier this year, to which the Hon. Anne Levy referred, indicated that 18 per cent of Australians had used *cannabis*. I do not have precise calculations, but a rough calculation included in a *Choice Magazine* summary, indicated that two million Australians had used *cannabis* at some stage, is around the mark. The Hon. Anne Levy said that in the 14 to 29 year age group 33 per cent have used *cannabis*.

I do not give these figures as a justification for any view that I take on this matter. I have said before, and will repeat, that our decisions in this Council will not be dictated, in the main, by public opinion. We need to form our own views taking into account what public opinion may or may not be on a matter.

However, I believe those surveys show (and there are many other surveys on this subject) that *cannabis* use covers all age and socio-economic groups and all geographic areas of Australia. Technically, under our current South Australian law two million Australians, if caught and convicted, could be convicted for this offence and then imprisoned—that potential exists. I am not suggesting that that is the practicality of the situation, but I am saying that those two million Australians, if caught and convicted, could be imprisoned under our present criminal law system.

I suppose that I am in a similar situation to that of the Hon. Mr Griffin, because my family is still young and these problems are ahead of me. However, I am sure that many parents would be appalled to know that if their child were caught experimenting with marihuana (perhaps being one of the unlucky ones) that child could be imprisoned as a result of a possession and use offence.

The Hon. R.J. Ritson: You don't believe that: that for a first offence it is unlucky; it is the sort of case that deserves imprisonment, surely.

The Hon. R.I. LUCAS: The Hon. Dr Ritson says that I do not believe it. I would not be saying it if I did not believe it. I am not suggesting that all these two million offenders will end up in the gaols of Australia; that would be ludicrous, but I am sure that many parents would be appalled if they found that their university-age child was caught on a Saturday night at a party smoking marihuana and happened to be an unlucky one who ended up being convicted and sentenced to a term in prison.

It is fair to say that imprisonment has been little used. The South Australian figures were provided to me by the Bureau of Crime Statistics, and I seek leave to have this table, as it is of a statistical nature, inserted in *Hansard*.

Leave granted.

MARIHUANA OFFENCES

The Bureau of Crime Statistics has provided the following figures:

	Average Fine $	Number Imprisoned	Number Convicted	Number Fined
1979-80	135	2	717	648
1980-81	119	4	850	797
1981-82	117	7	1 059	999

The Bureau advised that the difference between conviction and fines is because of suspended sentences, bonds, no penalties and imprisonment.

The Hon. R.I. LUCAS: This table, which refers to the years 1979-80 through to 1981-82, indicates two things: that the average fine in those three years decreased from $135 to $119 to $117, bearing in mind that the current maximum is $2 000.

The Hon. R.C. DeGaris: You had a letter from Mark Lawrence, too.

The Hon. R.I. LUCAS: No, it comes from the Bureau of Crime Statistics—Adam Sutton. The number of people imprisoned is small, and that is the main reason for my introducing the table. In the first year two people were imprisoned, in the second year four people were imprisoned, and in 1981-82 seven people were imprisoned. The number of convictions is of the order of 700, 800 and 1 000; it has been increasing.

The Sackville Royal Commission at page 245 of its report indicates that in 1977 for example—in a table, 'Outcome of charges—all courts'—1.1 per cent of the total number of offenders had been imprisoned in that year; that works out to about 11. The number who received suspended sentences was 1.7 per cent; so I presume that in due course some of those may well have found themselves in the gaols of South Australia as well. In 1977 a minimum of 11 and possibly up to 20 people were imprisoned for the offence of possession. It is reducing; it is now of the order of two, four and seven in the past three years for which figures are available. It is a small number, but it is of little comfort if one is the person who happens to draw the short straw and a particular magistrate takes a harder line on a certain possession offence than all the other magistrates throughout South Australia and that, as a result of an offence for which 1 000 other people have been convicted and fined, one happens to draw the short straw and end up being imprisoned.

The Hon. R.J. Ritson: Do you know whether those imprisonments were related to particular magistrates?

The Hon. R.I. LUCAS: The Hon. Dr Ritson asks a very important question. I do not know. The information I have is that it appears that a lot of those people would have been imprisoned as a result of the attitude of one particular magistrate. As a result of that, I sought through the Bureau of Crime Statistics information as to the case note numbers of those people who had been imprisoned. I thought that it was a simple request and nothing that would infringe civil liberties. As I understand it, the transcript of those cases would be available at those courts or wherever they are kept, but, rather than having to ferret through 1 000 transcripts or however many it might be, I sought information from the Bureau of Crime Statistics to narrow it down to the 12 concerned so that I could look at the circumstances: whether they were first or perpetual offenders and whether all in one magistracy or not.

I sought that information some four months ago. If it were not such a serious matter it would be comical, in that letters were flying backwards and forwards from the Bureau of Crime Statistics to the police and to the Chief Secretary, and we have had another Chief Secretary. I was finally advised this morning verbally—I have not received anything in writing yet—by the Parliamentary research officer that my request had been denied after four months. To answer the Hon. Dr Ritson, yes, the stories are that they do come from one particular magistrate in the main, but I have not been able to obtain access to the information that would either prove or disprove that story.

An earlier contribution to the second reading debate made by the Hon. Trevor Griffin cited the Williams Royal Commission as a reason for opposition to this move by the Government and in support of the proposition put by the Hon. John Burdett. As sometimes happens, I must take a different view to that adopted by the Hon. Trevor Griffin. I refer to a relevant section of the quotation made by the Hon. Trevor Griffin. I will not take all of it; it is important for my argument that I put it again. I quote from the Williams Royal Commission, as follows:

After nearly 20 years of acrimonious division, the time has come in Australia to put aside polemics and to enter upon a

period of balanced consideration of the issues of cannabis. This consideration must take place in the context of a consideration of the whole area of drug abuse in Australia. In the Commission's view, the operation of the national strategy which is recommended for this period of time will place the Australian community and its policy makers in a position to review objectively whether present prohibitions against cannabis should be maintained. This moratorium will ensure that a relaxation of the prohibitions against cannabis is taken for good reason. A decision to relax the prohibitions at the moment will, in the Commission's view, be an unwise reaction to emotive and possible misguided pressure.

The fact that Australians must bear in mind is that a decision now to remove the prohibition against cannabis can never, from the practical point of view, be reversed.

Recommendations:

The Commission recommends that:

No relaxation of the present Australian prohibition on cannabis be made for 10 years from the commencement of the operation of the drug information centres recommended in Part XIV.

At the expiration of the 10 years the legal prohibition against cannabis be reviewed by the Commonwealth and State Governments acting in concert.

The operative word through all of that quote is 'prohibition'. 'Prohibition' to me means, quite simply, banning, or raises the context of legalisation or decriminalisation. 'Prohibition' to me does not refer to the question that we are being asked to address at the moment: whether or not the present level of penalties should be reduced by some margin.

The Hon. K.T. Griffin: It is an integral part of it, though.

The Hon. R.I. LUCAS: The Hon. Mr Griffin says that it is an integral part. Perhaps one could go that far. Once again, I would disagree.

The CHAIRMAN: You have gone about as wide as you ought to go.

The Hon. R.I. LUCAS: I would not take that complexion of the particular clause. Quite clearly, the operative word is 'prohibition', which refers to legalisation and decriminalisation. I do not believe that it is directly relevant to the question of penalties, which is what we are addressing in this clause. Public opinion on such an emotive issue is important. As I suggested before, it should not be the be-all and end-all in deciding how to vote, but nevertheless it is important.

I think the Minister of Health in effect conceded this when he withdrew the original submission that he made with respect to the legalisation of personal cultivation, possession and use of *cannabis*. He floated that idea, found that the community as a whole was substantially opposed to it, and withdrew that proposal in favour of what I suggest is a more reasoned proposition. I refer to page 305 of the Sackville Royal Commission Report, and the result of an independent survey commissioned by Sackville, as follows:

Nearly one-third of respondents (30 per cent), when asked their opinion on the penalty appropriate to possession of *cannabis* for personal use, considered that no penalty should be imposed. Another 11 per cent thought the penalty should be a light fine, less then $100, while 12 per cent thought a bond or probation was appropriate. Sixteen per cent thought the penalty should be a heavy fine, more than $100, and 15 per cent favoured a period of imprisonment. A similar percentage (16 per cent) favoured treatment or some other penalty. These opinions contrasted sharply with views on the penalties appropriate to the selling of *cannabis* for profit. Only 7 per cent thought such an activity should attract no penalty and only 3 per cent considered a light fine to be suitable. On the other hand 43 per cent favoured more than one year's imprisonment and 8 per cent imprisonment for less than one year, while 24 per cent specified a range of other severe penalties. Thus public opinion appears to distinguish clearly between possession of *cannabis* for personal use and selling the drug for profit in determining appropriate penalties.

Quite clearly, the major results of the survey were, first, only 15 per cent supported imprisonment for simple possession, while 51 per cent supported imprisonment of varying lengths for selling *cannabis* for profit. I believe that, if a similar question was put in South Australia today, there would be a similar result; that is, only a small number would support imprisonment for possession of *cannabis* and a majority would support imprisonment of varying terms for the sale of *cannabis* for profit.

I support that view, because I believe that imprisonment is too harsh a penalty for someone caught simply possessing and using small quantities of *cannabis*. I believe that my view in this instance is supported by the vast majority of the public. In considering my particular position on this clause I was interested to follow the Victorian debate on a similar provision late last year. The Victorian Labor Government introduced a proposal similar to that now before the Committee. In Victoria, the Victorian Liberal Party supported the amendments presented by the Victorian Labor Government. I have not been able to ascertain directly, but I understand that an amendment was moved to distinguish between first and subsequent offences with respect to imprisonment. However, the Victorian Labor Government proposal, which is also being put forward by the South Australian Labor Government, was supported by the Liberal Party.

In my research I have also been interested to read the Australian Senate Committee on Social Welfare Report of 1977 which went further than this proposal by recommending that possession for personal use should constitute a civil penalty rather than being a criminal offence. As I said, that goes further than this particular provision and further than I would be prepared to support. That particular committee was chaired by Senator Peter Baume, who is a former Liberal Minister for Health and who is now Federal shadow spokesman for education.

The Hon. J.R. Cornwall: He is also a medical practitioner.

The Hon. R.I. LUCAS: Yes, he is also a medical practitioner.

The CHAIRMAN: Order! That is really of no great consequence to the penalty.

The Hon. R.I. LUCAS: The committee recommended a civil penalty, so it does deal with penalty. I make the point that certain sections of the Liberal Party—the Victorian Liberal Party and a senior Federal Liberal Senator—have supported reform of *cannabis* laws, particularly in relation to possession and use. Therefore, the position being adopted by the Hon. Miss Laidlaw and me on this matter is not unknown for members of the Liberal Party throughout Australia. I distinguish between the two parts of this proposal: imprisonment and a reduction in the fine.

As I indicated earlier, the courts in South Australia impose an average fine of about $100—under the present maximum of $2 000. I think that there is certainly substantial evidence to show that the real value of the fines over the years has been steadily declining. Therefore, I will oppose the amendment moved by the Hon. Mr Burdett. If the Hon. Mr Burdett's amendment is defeated, I will move an amendment the import of which will leave the monetary penalty the same, that is, $2 000, and remove the penalty of imprisonment. In conclusion, in adopting this position, I make it quite clear that this is not a vote for legalisation; it is not a vote for decriminalisation; it is not a vote for encouraging greater use of *cannabis*; it is not a vote that can be interpreted as going soft on drugs. Rather, I believe that it is a vote for the sensible reform of one area of drug laws in South Australia.

The Hon. J.R. CORNWALL: I will be extremely brief because I have very little to add to the intelligent and constructive comments that have been made by the Hon. Miss Levy, the Hon. Miss Laidlaw and the Hon. Mr Lucas. I think it is important for me to outline that the original proposal in the Bill before the Committee is not a move to legalise *cannabis*, and it is not a move to decriminalise *cannabis* for personal use. There is a significant difference between legalisation and decriminalisation for personal use.

The Hon. Mr DeGaris interjected and indulged in some exchange with the Hon. Mr Lucas and asked the difference between legalisation and decriminalisation. Of course, there is a very significant difference. To legalise is to remove any legal sanctions at all. It would make trading in any sort of quantity of *cannabis* legal. To decriminalise for personal use would mean that people could possess or grow their own *cannabis* without the sanctions of criminal law, without it even being a summary offence. I make it clear to the Committee that the Government is not going anywhere near that far. We are certainly not legalising and we are certainly not decriminalising the personal use of *cannabis*. That is a point that the public of South Australia has not yet reached. There is still a majority of people in opposition to that, based on the survey that was recently done for the Government by ANOP. There is still a majority of South Australians who believe that *cannabis* should not be legalised or decriminalised for personal use.

Therefore, the Government does not propose that in this Government Bill. However, we propose a modest reform which will take account of the current practices of the courts, where the average fine in 1982-83 (on the latest figures available) for personal possession of *cannabis* was about $115. That is all that this Bill does. It does not remove it from the sanctions of the criminal law. It remains a summary offence and, in that context, it is a modest reform indeed. It is a social issue on which the Legislative Council is prepared to express a view and is about to express a view. I have no need to say any more—only thank honourable members for their contributions.

I am opposing the Hon. Mr Burdett's amendment. Likewise, I will oppose the Hon. Mr Lucas's amendment, albeit for a different reason. I believe that $500 is an adequate fine at this time. As one can see from the Bill, the Government does not believe that the gaol sentence is any longer appropriate for the simple possession of *cannabis*. Therefore, I believe that the penalties should reflect more closely what the courts are doing.

As the Minister of Health I want to make it absolutely crystal clear that I believe that *cannibis* is a drug which, on balance, is harmful. I do not believe that it is in the same league as alcohol or tobacco. We know that tobacco kills 1 400 South Australians prematurely each year and that it has a quite dramatic effect on the quality of life of ageing South Australians through such things as peripheral vascular disease. South Australians are having amputations almost exclusively, in their ageing stages, for example, because they are smokers. We know that emphysema is another common affliction in heavy smokers. The evidence is absolutely irrefutable, if one does the rounds of facilities involved—both voluntary agencies and our own agencies such as the Alcohol and Drug Addicts Treatment Board—with the treatment of alcoholics and alcohol-related diseases, that alcohol is a tremendous problem in the health spectrum. If one lines up marihuana against those two substances, there is no convincing evidence that it is in the same league. However, by the same token, it does have a number of physical and psychological effects which are increasingly well documented.

I do not in any way encourage its use and, in fact, discourage its use in every possible forum. I believe it causes more harmful effects than it could possibly have beneficial effects but, on balance, it most certainly does not cause enough harmful effects for us to be registering major convictions against those people who possess it for personal use as many thousands of people do. For that reason we are proposing as a Government what I regard and the Government generally regards as a modest sensible reform in relation to marihuana in the context of what is the most wide ranging and comprehensive piece of legislation in the drug area that has ever been brought before the South Australian Parliament.

The Committee divided on the Hon. Dr Cornwall's amendment:

Ayes (14)—The Hons Frank Blevins, G.L. Bruce, B.A. Chatterton, J.R. Cornwall (teller), C.W. Creedon, R.C. DeGaris, M.S. Feleppa, I. Gilfillan, Diana Laidlaw, Anne Levy, R.I. Lucas, K.L. Milne, C.J. Sumner, and Barbara Wiese.

Noes (7)—The Hons J.C. Burdett (teller), M.B. Cameron, L.H. Davis, Peter Dunn, K.T. Griffin, C.M. Hill, and R.J. Ritson.

Majority of 7 for the Ayes.

Amendment thus carried.

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

Page 11, line 14—Leave out 'of' and insert 'not exceeding'.

This simple amendment makes clear a maximum penalty.

Amendment carried.

The Hon. R.I. LUCAS: I move:

Page 11, line 14—Leave out 'five hundred' and insert 'two thousand'.

Basically, my amendment will leave the monetary penalty at $2 000, as currently exists. Therefore, as an amendment to the Minister's amendment it will increase the penalty from $500 to $2 000. As I indicated earlier, my major bone of contention with the penalty provisions was with respect to imprisonment. I have a very strong view that imprisonment should not have been part of the penalty package. However, I am not that concerned about the monetary penalty being $2 000, particularly when it has been interpreted by the courts over many years as averaging out at about $115, when the present maximum is $2 000. It could perhaps be argued that, if there were persistent offenders, the monetary penalty might be increased for second, third and subsequent offences. As I said, my major opposition is to imprisonment. I am not that fussed about the monetary penalty and test the feeling of the Committee by moving the amendment.

The Hon. J.C. BURDETT: I do not wish to go over the arguments again, as I think they have been clearly put by all people who have spoken in the debate. The vote of the Council has just taken we all understood to indicate the defeat of the amendment which I had on file and to which I spoke. That amendment having been effectively defeated and my having lost the principle that the penalties should stay as they are, my second preference is certainly for the Hon. Mr Lucas's amendment. I will not debate the reasons on which I spoke previously, but I would prefer the monetary penalty to stay as it is. For those reasons, I support the amendment.

The Committee divided on the amendment:

Ayes (8)—The Hons J.C. Burdett, M.B. Cameron, L.H. Davis, Peter Dunn, K.T. Griffin, C.M. Hill, R.I. Lucas (teller), and R.J. Ritson.

Noes (13)—The Hons Frank Blevins, G.L. Bruce, B.A. Chatterton, J.R. Cornwall (teller), C.W. Creedon, R.C. DeGaris, M.S. Feleppa, I. Gilfillan, Diana Laidlaw, Anne Levy, K.L. Milne, C.J. Sumner, and Barbara Wiese.

Majority of 5 for the Noes.

Amendment thus negatived.

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

Page 11, Line 17—Leave out 'of' and insert 'not exceeding'.

This is part of the overall amendments that I have been moving and follows on from where I started. It is identical to the amendment moved to line 14.

Amendment carried.

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

Page 11—

Line 30—Leave out 'or renders' and insert '(4) Nothing in this section renders'.

Line 32—Leave out 'or to'.

These are purely technical drafting amendments.

Amendments carried; clause as amended passed.

Clause 29—'Prohibition of manufacture, production, sale or supply of drug of dependence or prohibited drug.'

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

Page 11, line 36—Leave out 'drug' and insert 'substance'.
Line 37—After 'drug' insert 'or substance'.
Line 38—After 'drug' insert 'or substance'.
Line 39—After 'drug' insert 'or substance'.

These are are all consequential amendments. We have been through the substantial reasons for them before.

Amendments carried.

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

Page 11, lines 42 and 43—Leave out paragraph *(e)* and insert paragraph as follows: *(e)* have such a drug or substance in his possession for the purpose of the sale, supply or administration of that drug or substance to another person.

Present paragraph *(e)* makes it an offence to posses with intent to sell. The Crown Prosecutor's office pointed out during the long process of consultation that we had after this Bill was first laid on the table that 'A' may possess for sale by 'B' and it can be arguable whether 'A' possesses with intent to sell. The present Narcotic and Psychotropic Drugs Act provisions makes it an offence to possess for the purpose of sale. That old wording is now, preferred, and accordingly I have moved this amendment.

Amendment carried.

The Hon. R.J. RITSON: I refer to exemptions granted to medical practitioners, dentists, veterinary surgeons, etc., in relation to the manufacture, production, sale and supply and to the words 'a member of any other prescribed profession' and 'a person licensed to do so by the Health Commission'. What professions and what sorts of persons does the Minister envisage being exempted and in what circumstances does he envisage these exemptions being made?

The Hon. J.R. CORNWALL: None at the moment, although, as I said earlier, the Bill is designed to last at least for 50 years.

The Hon. R.J. Ritson: It is just a safety measure?

The Hon. J.R. CORNWALL: There is no proposal at the moment to extend it beyond existing professions that are nominated.

The Hon. R.J. Ritson: It is giving room to manoeuvre?

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

Page 12, line 14—Leave out 'section' and insert 'subsection'.

This is purely a drafting amendment.

Amendment carried.

The CHAIRMAN: On page 12 we have another dovetailed amendment, where the Hon. Mr Burdett wishes to speak to lines 16 to 18 and the Minister wishes to speak to line 17.

The Hon. J.C. BURDETT: I think I can solve this problem. When my amendments to the definition clauses for the purpose of the substantial amendments were defeated, I reserved my right to move the substantial amendments without the definitions. However, I do not now propose to move any of my amendments to clause 29. I will accept the vote on the definition clauses as being the vote of the Committee. I reiterate my view that important matters such as the setting out of amounts of drugs which deem possession to be trafficking and which change the amount of the penalty ought to be set out in the Bill and not be left to regulation. This was the purpose of my amendment to clause 29.

The Hon. I. GILFILLAN: I will be seeking to recommit this clause because of my concern about the issue of the prescribed amount which occurs in subclauses (3), (5) *(a)* (i) 5 *(b)* (i). It appears that where these very substantial penalties apply and are determined by the Parliament, the actual level of the drug quantity that will determine whether or not an offender is in a category where he can be charged with this offence is subject to regulations, and can be determined by the Minister or the Government. It seems to me that it is wise to extend the responsibility for that determination and I will be moving that the Advisory Council be involved in the determination of these prescribed amounts.

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

Page 12, line 17—Leave out 'drug' and insert 'substance'.

Amendment carried.

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

Page 12, line 19—Leave out all words in this line and insert 'that drug or substance in his possession for the purpose of the sale or supply of that drug or substance'.

This drafting amendment does not affect the main thrust of the Bill.

Amendment carried.

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

Page 12, line 23—Leave out 'drug' and insert 'substance'.

This is a consequential amendment.

Amendment carried.

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

Page 12, line 33—Leave out all words in this line and insert:
(5) A person who contravenes this section shall be guilty of an offence and shall, subject to subsection (6), be liable to a penalty as follows:

This new section simply makes clearer that contravention of the general section 29 is an offence.

The Hon. J.C. BURDETT: I just want to be sure that we are voting on new subclause (5), because I support this provision but intend to oppose new subclause (6). It was clear from what the Minister said, but I seek that assurance.

The ACTING CHAIRMAN (Hon. G.L. Bruce): We are dealing only with new subclause (5).

Amendment carried.

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

Page 12, line 40—After 'penalty' insert 'of both a fine'.

Amendment carried.

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

Page 12, line 41—After 'imprisonment for' insert 'a term not exceeding'.

This amendment indicates that the term is a maximum.

Amendment carried.

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

Page 12, line 46—Leave out 'drug' and insert 'substance'.
Page 13, line 1—Leave out 'drug' and insert 'substance'.

Amendments carried.

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

Page 13, line 3—After 'drug' insert 'or substance'.

This is another machinery measure.

Amendment carried.

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

Page 13, line 4—After 'section' insert 'a penalty of both a fine not exceeding'.

This amendment clarifies the position in regard to penalties and is a drafting amendment.

Amendment carried.

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

Page 13, line 5—After 'imprisonment for' insert 'a term not exceeding'.

Amendment carried.

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

Page 13, line 7—After 'case' insert 'a penalty not exceeding'.

This is a drafting amendment to clarify and improve the legislation.

Amendment carried.

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

Page 13, after line 8—Insert new subclause as follows:
(6) Where a person is found guilty of an offence of producing *cannabis* but the court is satisfied that he produced the *cannabis*

solely for his own smoking or consumption, the person shall be liable only to a penalty not exceeding five hundred dollars.

This amendment is important. In many ways it is consequential on the proposal that we agreed to recently that the maximum penalty for personal possession of *cannabis* should be $500, which has been reduced from the penalty in the existing Narcotic and Psychotropic Drugs Act of $2 000 or two years imprisonment. I must say that this particular amendment has caused many good brains in the legal profession and elsewhere to spin. What we were searching for over a period of perhaps nine months or more when the Bill was going through its gestation and early birth (the early drafting stages) was something that would leave personal cultivation within the criminal law as we have done with personal possession but at the same time to reflect the sort of penalties which are currently being handed down by the courts.

It was also very important that, by moving to amend the legislation, we did not in any way facilitate the avoidance of the full impact of the law on people who might have subcontracted by having a relatively large number of people cultivating marihuana in their backyard not only for their personal use but for criminal trading. As I said, this caused many people, including senior Parliamentary Counsel and legal advisers, even the Attorney-General at one stage, to propose many possible amendments none of which, quite frankly, filled those simple but extremely important criteria. Ultimately, we have before us an amendment that has been drafted virtually within the past 48 hours after a tremendous amount of consultation which, I am advised, fills the simple but important criteria that I have outlined. It is very much in keeping with the reduction in penalty for personal possession of *cannabis* but maintains it as a summary offence.

At the same time, it makes it very clear that anybody would have to rely on the court, virtually, to decide that he or she was not involved in criminal activity in the sense of trading or trafficking. Again, as I said with the previous amendment, it is a modest reform. It does not decriminalise the personal cultivation of marihuana; it does not remove the cultivation of marihuana from criminal law.

It has to be set against the penalties which are introduced in this legislation and which have already been passed by the Council. Penalties for trafficking in large commercial quantities of marihuana are increased to 25 years and $250 000 and the confiscation of personal assets and the sequestration of those assets: those very Draconian penalties that were the subject of some comment earlier in the day. So, let us keep the whole thing in perspective. It is certainly not a green light for people to start to get into some sort of cottage industry for the cultivation of marhiuana for commercial sale. Indeed, quite the reverse: with the sorts of quantities that were outlined in the second reading explanation, members will see very readily that, if people try to organise some sort of backyard accommodation on any sort of scale for trading or trafficking, they will be treated with the full rigour and vigour of the law. On the other hand, it takes account of the fact that we believe that personal cultivation, like personal possession, whilst it should remain within the criminal law, should attract a penalty that represents the contemporary attitudes of the courts in South Australia.

The Hon. J.C. BURDETT: I oppose the amendment. I cannot regard this amendment as being in any way consequential on the provision in the Bill that has been already passed with regard to the simple possession of cannabis for personal use. To reduce the penalty for that offence from $2 000 and imprisonment to $500 is one thing, but to reduce the penalty for producing cannabis where the court is satisfied that it was produced solely for the person's own smoking or consumption is another thing. Probably the arguments are very much the same, but I have suggested before that the offence remains in regard to possession for personal use. Under this amendment, as has been pointed out by the Minister, the offence is still there in regard to producing cannabis, even where the court is satisfied that the cannabis was produced solely for the grower's own smoking or consumption. I do not see any reason to disturb the existing penalty.

The Minister has correctly pointed out that there is no open slather, even under this amendment. The person would have to satisfy the court that the cannabis was produced solely for his own smoking or consumption, and if there were any question or producing for trafficking he would be subject to the full rigour of the law that the Bill provides. However, there is more danger of its being associated with some sort of trafficking, and more danger of its getting into the market for cannabis if the penalty in regard to production is reduced. It may be that in some circumstances the person charged might be able to satisfy the court that he had produced the cannabis in respect of which he had been charged solely for his own smoking or consumption where, in fact, he was engaged in some sort of undesirable operation of trafficking or involving other people. While I oppose the reduction of penalty in regard to simple possession, the offence of producing is more serious and more subject to abuse, even where the person charged has to satisfy the court that it is produced solely for his own smoking or consumption. Particularly in this case, I can see no reason for disturbing the existing penalties, and I oppose the amendment.

The Hon. ANNE LEVY: I support the amendment as moved by the Minister. The amendment, despite what the Honourable Mr Burdett says, is more or less consequential on that which has been passed earlier. If we have a different penalty for cultivation for personal use from the penalty for possession we will have the anomalous situation that, because the penalty for possession is less than that for cultivation for personal use, we are encouraging people to purchase cannabis as opposed to growing their own; while both remain offences, one will have a lesser penalty than the other. This encourages the commercial trafficking and trading in cannabis.

People who are in possession of a small quantity have obviously either grown it themselves or purchased it. To have a lesser penalty for their having purchased it compared with growing it for their own use is encouraging trafficking or trading. It would seem to me desirable that we not have that situation in our law and that the penalty for personal use be the same as the penalty for cultivation for personal use.

It is a fact in our courts at the moment that individuals who have been found growing a small number of plants for their own use are not being charged with cultivating or producing but are being charged with possession, which is an option open to the police. To a large measure, they are taking that option. In other words, we can see not only the logic that I described before but that the police themselves are putting cultivaton of a very small number of plants obviously for personal use into the same category as possession, because that is what those people are being charged with in the courts at the moment. It seems to me perfectly logical and consequential in logic from the previous amendment that the penalty in this case should likewise be the $500.

The Hon. DIANA LAIDLAW: I can appreciate the Minister's remarks that this amendment complements the spirit of the earlier amendment that I supported, which was to change the penalty for possession of marihuana. Certainly it has been my view for a long time that we should be concerned that the mixing of drugs, which is a danger if

they are bought locally, is a most unsatisfactory situation. Nevertheless, having made those remarks, I will not support this provision.

One of the other reasons why I supported the earlier clause to which I have referred was on the basis that in Victoria and the A.C.T. there were similar lower penalties. We were not setting new standards in that case. Neither that State nor Territory when introducing lower penalties saw a need also to introduce a clause similar to that being considered by this Government. Is South Australia the first State in which the cultivation of marihuana for personal use will be a reform, and will South Australia be leading the other States in that regard? I believe that it should be a national reform. I would like the Minister of Health, through the forum which he has said he has attended in the past (that is, the Health Ministers forum), to raise this matter in order to see whether some satisfactory resolution can be found on a national basis. The Minister may well have had nine months to consider this matter, but it has been on our desks for certainly less than nine hours. The amendment has major consequences; it is certainly not just a consequential amendment.

The Hon. R.I. LUCAS: I find myself in a difficult situation with respect to forming a view on this amendment. As the Hon. Miss Laidlaw has quite rightly said, the Health Minister has been pondering the amendment or versions of it for nine months. The Hon. Miss Laidlaw has been generous, because we have not even had it for nine hours. I think that we first saw it after the dinner break.

The Hon. Anne Levy: No, it came in at the same time as your amendment.

The Hon. R.I. LUCAS: That was about 4 o'clock. Anyway, that is a very short time—about six or seven hours. That places me in a difficult situation in trying to decide what to do about it. I can see some of the logic, although not all of it, in the Hon. Anne Levy's argument. I share the concern expressed by the Hon. Mr Burdett. It appears to me to be extraordinarily difficult for a court to satisfy itself that a person produced *cannabis* solely for his own consumption.

I wonder about a situation that is quite common, that is, where many young people share accommodation. There could well be about six people sharing the same accommodation. I suppose that each and every one of them is then entitled under this amendment to cultivate marihuana up to the amount envisaged under this clause as being produced solely for one's own consumption. There are many instances of that. There are a few instances, and perhaps in the future there will be even more, of commune type situations where many people share accommodation in the hills or out in the rural areas of South Australia. That will involve not just six people but perhaps 100 people, and certainly 20, 30 or 40 people. Once again, each and every one of them could advance an argument for producing individually the minimum amount of marihuana envisaged under this amendment.

The Hon. Anne Levy: That would be $50 000 in fines.

The Hon. R.I. LUCAS: That is the maximum fine. As I said, whilst I see some of the logic in the Hon. Ms Levy's argument, I share the concerns expressed by the Hon. Mr Burdett about the potential for abuse. As we have had only a short time to form a view on this clause, as opposed to the other clauses where we have had many days and weeks to ponder them, I will certainly take on this occasion what I see as the safe approach and I will oppose the amendment.

The Hon. BARBARA WIESE: I indicate my support for the amendment. I refer briefly to one of the points made by the Hon. Mr Lucas in relation to what might be defined as 'cultivation for personal use'. The Hon. Mr Lucas referred to a situation where there might be a commune with 20, 30 or 40 people, all of whom might want to cultivate *cannabis* for personal use. I presume that the point made by the Hon. Mr Lucas is that that would amount to a huge quantity of *cannabis* being grown in any one spot. I do not think that that would become a problem as far as the law is concerned. The part of this amendment that would be operative in that situation would be that the court must be satisfied that the amount of *cannabis* being grown was for personal use. The court already has a fair idea of what is a reasonable amount and would make that sort of judgment. Therefore, we could quite happily leave it to the court, and the problem raised by the Hon. Mr Lucas is not serious, as I see it.

The Hon. K.T. GRIFFIN: I will not canvass all the points made by the Hon. Mr Burdett; I agree with them. Under this subclause the Crown is obliged to prove beyond reasonable doubt that a person is guilty of an offence. That is a fairly heavy onus of proof on the Crown. It is only necessary for the accused to satisfy the court on the balance of probabilities that he produced the *cannabis* solely for his own smoking or personal consumption, and that is a very much lower burden of proof on the accused. It certainly seems that, taking into account the respective onuses of proof on the Crown and the accused, this really frees up the system in favour of the accused much more than some speakers have suggested during debate on this clause. Whilst it is appreciated that there is a reverse onus provision, no-one should be under any delusion that it will be difficult for someone to satisfy that onus, because it involves a low onus of establishing it only on the balance of probabilities.

The Hon. I. GILFILLAN: I welcome this amendment enthusiastically. I think that the evils of Griffiths, the trading and the bloodshed have culminated at a very appropriate time for us to address what will be an inevitable reform across Australia at the proper time. The sooner the better, as far as I am concerned. I think that the real evil of the *cannabis* situation is that it is fostering and nurturing illegal trafficking in the underworld, and forcing people into being quite blatant criminals in their activities.

Although these amendments do not decriminalise, and it is still a criminal offence with a reasonable penalty, the significance of the penalty is much more realistic to the way in which the mood of Australia is changing in its attitude to *cannabis*, to the illegal commercialised way in which it is being distributed and promoted around the country, and to the gross abuses to which that can be subjected. This is an essential step if we are to wipe out the totally unacceptable and un-Australian underworld of drug trafficking.

Perhaps there are other areas in other drugs which will be hard to eliminate, but they have certainly fed on the fact that the market for *cannabis* has been illegal. Certainly, this will not completely cure the situation. However, those members of our society who wish to use *cannabis* and who are prepared to take the risk of penalty, and those who choose to take the risk of penalty for possession will, if this amendment is carried, be able to provide the material at their risk with no greater penalty than that for possession.

If this penalty is not reformed, they will be accessories to an act which is a very serious crime if related to the penalty. So, in my opinion, logic does not apply. If we are, as a Parliament, accepting that the penalty for possession is at a certain level, it is inextricably linked with the penalty that we attribute to growth for personal use. I believe that, in logic, this amendment is defendable. In relation to the well-being of Australia in attempting to stamp out the real cancer of this exercise, which is the illegal trafficking and the rogues and murderers involved in it, this is a step forward. I therefore enthusiastically support this amendment, as will my colleague.

The Hon. PETER DUNN: I fail to see that last part of the Hon. Ian Gilfillan's argument because, although it may sound fine in logic, in practice we are talking about small

lots and big lots. The big lots are the traders and the people who peddle it while the small lots are the individuals who will be picked up for growing their own. In fact, the big fellows will fractionate their programme and split it up into small lots, and we will find it very difficult indeed to stop them from doing that. I do not think it matters what the police will do or what the courts will come down with. How will they decide if operator 'A' says that he has 30 crops in a particular area split up quite legitimately? He will be able to say that it is for personal use.

The Hon. J.R. Cornwall interjecting:

The Hon. PETER DUNN: That is right—'I will pay the fine.' This argument is not about growing your own plant in a pot in the backyard. It is not about growing one plant.

The Hon. Anne Levy: Yes, it is.

The Hon. PETER DUNN: Come on; do not be naive. If one fractionates big lots one will have many little lots, and that is what the courts will finish up determining. I cannot support the amendment for that reason. It is the practicality—it is nothing to do with the argument about lowering the penalties. One one side we have a Draconian penalty for growing and peddling *cannabis* in big lots. What is the difference between that and growing and peddling it in small lots?

The Hon. R.C. DeGaris: What are the big lots?

The Hon. PETER DUNN: No-one seems to know.

The Hon. J.R. Cornwall: You didn't read the second reading explanation and you clearly have not read the Bill.

The Hon. K.T. Griffin: You said that you were inclined to it. You have not given an unequivocal commitment that they would be the quantities.

The Hon. PETER DUNN: I could not support it on that basis. This happens in every other section of the community and in many sections of business: if one cannot sell something in big lots, one sells it in little lots.

The Hon. J.R. CORNWALL: I will reply to the point made by the Hon. Mr Dunn, who talks about big lots and little lots. He talks about wonderful enterprises whether it be 20 or 30 backyard people all having their little garden—

The Hon. C.M. Hill: Subcontractors.

The Hon. J.R. CORNWALL: Yes, subcontractors.

The Hon. R.I. Lucas: They'll have to be on award rates afterwards because—

The Hon. J.R. CORNWALL: If that were to happen, there would have to be some form of preference to unionists. If one looks at the legislation and the amendment and reads the two together, one sees quite clearly that it would have to be established to the satisfaction of the courts that that person was into personal cultivaton. If it could be established that he or she was not into personal cultivaton, and that that lot of six plants in the little suburban garden was part of a wider operation, that it was not at that person's principal place of residence or that somebody was working a deal around the place by living in the eastern or the western suburbs and going out on a regular round to Virginia in the north and wherever else in the south, clearly there would be no legitimate defence in the 'big lots/little lots' argument.

The Hon. Miss Laidlaw asked whether this was the first time in Australia that there had been a major reform with respect to personal cultivation. The simple answer is that to the best of my knowledge it is, but I point out again that we are only following the practice of the courts. This amendment clarifies the law. The police prosecutors and the courts presently interpret the situation, anyway, and the equivalent offence of personal cultivation is a finding that the courts are handing down on a regular basis under the existing legislation.

An honourable member: They treat it as if it's possession.

The Hon. J.R. CORNWALL: They treat it currently as if it was possession. Again, we are not starting a revolution, about to establish that South Australia is the backyard trafficking capital of Australia or any other extravagant claims that will no doubt be made by the more reactionary members of the conservative Opposition. None of those things is happening or is proposed, and no reasonable person believes that they are. We are not even creating a new or separate offence: we are simply reducing the penalty for personal cultivation, and clarifying the law. Woe betide anyone who tries to make these arrangements for subcontracting, as the Hon. Mr Hill puts it.

The Hon. K.T. Griffin: You go and get the evidence.

The Hon. J.R. CORNWALL: One has to get that evidence currently, of course as the poor classical Mr Griffin interposes. Indeed, all that one has to do under these proposals is show that the individual is producing. It will not be difficult in those circumstances to obtain a conviction under the much larger provisions of the legislation.

The Hon. K.T. Griffin: That shows your ignorance of the law and of the difficulties in getting prosecutions.

The Hon. J.R. CORNWALL: I have numerous sources of legal advice from some people who are senior and knowledgeable in the law. I am happy to tell the Council that I do not include the Hon. Mr Griffin amongst them.

The Hon. K.T. Griffin: That is a compliment actually.

The Hon. J.R. CORNWALL: It ill-behoves the Hon. Mr Griffin to criticise my senior officers by proxy.

The Hon. K.T. Griffin: I am not criticising your senior officers—you said 'senior lawyers'.

The Hon. J.R. CORNWALL: I do not know how to otherwise interpret—

Members interjecting:

The CHAIRMAN: Order!

The Hon. J.R. CORNWALL: I do not want to play the Opposition and the umpire, too, so perhaps you had all better settle down.

The CHAIRMAN: What is the reason for bringing the umpire in on it?

The Hon. J.R. CORNWALL: You are very sensitive, Mr Chairman.

The CHAIRMAN: Perhaps you have made me that way.

The Hon. J.R. CORNWALL: Maybe that is mutual. I hasten to point out yet again that this amendment does not decriminalise personal cultivation of marihuana nor does it legalise personal cultivation of marihuana. It takes account of the contemporary practice of the courts, and I commend the amendment to honourable members.

The Hon. R.I. LUCAS: I do not wish to prolong the debate but I merely ask the Minister or his adviser to indicate roughly how many average sized plants we are talking about in a person's back yard as constituting personal use.

The Hon. J.R. CORNWALL: That would be very much up to the courts. One of the reasons we did the agonising that we did through this long gestation period was that specifying the number of plants was canvassed at various times as was specifying their stages of maturity. One of the things canvassed seriously was the idea of writing a figure of six plants into the legislation and then maybe looking at six to 20 plants as the next stage in a gradation. On balance, that was rejected. I guess there were two major reasons for that: first, the Crown Law Department advised us that in practice an amount of up to 20 plants was generally regarded as a personal production sort of criteria, anyway, so that in practice we would have been making the law, by inserting a figure of six plants, potentially three times more stringent than it is in present practice.

The other reason why this idea was rejected involved the question of the produced amount, state of maturity, and so on. On balance the Government, Caucus and I did not feel that we should tie the courts to specific quantitites. It is for this reason that, ultimately, the amendment produced today

very much puts the matter back at the discretion of the courts. It is our view that that is where it is appropriate for it to be. All we are doing is reflecting in the law the current practice of the courts, anyway. In that sense, there is absolutely nothing revolutionary about this proposal.

The Hon. I. GILFILLAN: There are a couple of points I would like to make in response to remarks made by other honourable members. Although this amendment has not been before us for a long time, the issue certainly has. I think that those of us who have paid particular attention to the problem have had a long time to assess the pros and cons of whether or not growing marihuana for personal use should be a substantial crime as measured by its penalty or a relatively minor offence. I believe that we have had an opportunity to consider this. The question of big or little plots and what sort of stimulus there would be for wider production for market is overlooking the fact that if those who choose to break the law, use marihuana and take the risk of these lower penalites grow their own marihuana the actual market for these gangsters will shrink as will their ability to control that market.

All of those people who have looked intently and critically at the drug scene in Australia recognise that the ebb and flow and artificial restriction of cannabis availability quite often lead to a dependence on far more obnoxious drugs, so I think that there are some side benefits here. Also, there is the fact that if there is wider growth for personal use the opportunity for exploitation and illegal marketing and trafficking will become much less attractive and the desired result will be that it will shrivel and die.

The Hon. J.R. CORNWALL: There is one important point that I neglected to make when on my feet. One of the previous speakers asked what the position would be if 30 or 40 adults in a commune were each growing marihuana for personal use or producing it for personal use. I take the opportunity to make the point yet again that we are not decriminalising marihuana for personal use, or any other use. If 30 or 40 people are involved in production of marihuana for personal use in a commune situation, and are apprehended for so doing (remembering that any amount of marihuana being cultivated remains illegal—even a relatively small amount of marihuana), they are still potentially subject to the full vigour of the law. If it could be proved that they were all involved, every one of them could be subject to a maximum fine of $500. As the Hon. Anne Levy has pointed out to me, if one multiplies $500 by 30 or 40, that is a substantial potential penalty for 30 or 40 people involved in the communal living situation just hypothesised.

The Hon. R.I. LUCAS: It would appear that 20 average size plants is roughly the rule of thumb for the number of plants allowed per person. What is the situation with respect to children in the 11 to 18 year age group caught growing 20 plants out in the backyard? What happens to those children within our criminal justice system if they are growing those 20 plants for personal use?

The Hon. J.R. CORNWALL: They would be subject to the law just like anybody else and would be charged in the children's jurisdiction. I suspect that they would go through the children's aid system. I suggest that any 11-year-old growing substantial quantities of marihuana, or producing half a dozen plants for personal use unbeknown to his parents, may well be in need of care and protection and, indeed, should finish up under the jurisdiction of children's aid panel or the juvenile Court system. In that case the parents would be subjected to the law if it could be proven that they were responsible for such a happening.

I might say in the same way, if we revert for a moment to the question of the commune, that if there are 30 or 40 people involved in the production of 30 to 50 plants the onus would be on them, under these proposals, in the first instance to prove that an amount as large as that was not being produced for trading or trafficking. The lesser penalty would only apply in the event that they could prove to the satisfaction of the Police prosecutor, or ultimately to the court (and more importantly to the court), that those 30 to 50 plants were not being grown for trade or traffic. A conviction for trading would attract a penalty of 10 years or a fine of $40 000 or for trafficking could potentially attract a maximum penalty of 25 years, a fine of $250 000 and confiscation of property and sequestration, so it is not in any way a question of open slather.

The Committee divided on the amendment:

Ayes (10)—The Hons. Frank Blevins, G.L. Bruce, B.A. Chatterton, J.R. Cornwall (teller), C.W. Creedon, M.S. Feleppa, I. Gilfillan, Anne Levy, C.J. Sumner, and Barbara Wiese.

Noes (9)—The Hons. J.C. Burdett (teller), M.B. Cameron, L.H. Davis, R.C. DeGaris, K.T. Griffin, C.M. Hill, Diana Laidlaw, R.I. Lucas, and R.J. Ritson.

Pair—Aye—The Hon. K.L. Milne. No—The Hon. Peter Dunn.

Majority of 1 for the Ayes.

Amendment thus carried; clause as amended passed.

Clause 30 passed.

Clause 31—'Establishment of assessment panels.'

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

Page 14, line 14—After 'persons' insert ', one being a legal practitioner and two being persons'.

This refers to the composition of the proposed assessment and aid panel. Three persons will be on the panel. The amendment is that, of the three, one be a legal practitioner; in other words, we believe that there needs to be some legal expertise. This amendment was suggested during the process of consultation by our own Alcohol and Drug Addicts Treatment Board.

Amendment carried.

The Hon. J.C. BURDETT: I indicated when I moved to strike out the definition of 'assessment panel' that I would accept that as a test case. I therefore propose simply to call against these clauses. I do not propose to speak at any length or to divide, but simply at this stage to reiterate that I consider that the use of an assessment panel in preference to the courts in some circumstances for dealing with people who under the Bill are offenders against the law is an erosion of the traditional court system.

The Committee divided on the clause as amended:

Ayes—(10)—The Hons. Frank Blevins, G.L. Bruce, B.A. Chatterton, J.R. Cornwall (teller), C.W. Creedon, M.S. Feleppa, I. Gilfillan, Anne Levy, C.J. Sumner, and Barbara Wiese.

Noes (9)—The Hons. J.C. Burdett (teller), M.B. Cameron, L.H. Davis, R.C. DeGaris, K.T. Griffin, C.M. Hill, Diana Laidlaw, R.I. Lucas, and R.J. Ritson.

Pair—Aye—The Hon. K.L. Milne. No—The Hon. Peter Dunn.

Majority of 1 for the Ayes.

Clause as amended thus passed.

Clause 32—'Assessment of simple possession offences by panel.'

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

Page 14, line 24—After 'writing' insert 'given personally or by post'.

This is a stylistic amendment only.

Amendment carried.

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

Page 15, line 1—Leave out 'Where' and insert 'Subject to subsection (7), where'.

Amendment carried.

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

Page 15, line 2—After 'information' insert '(if not already laid)'.

Again, this is a stylistic amendment only.

Amendment carried; clause as amended passed.

Clause 33—'Powers of panel upon an assessment.'

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

Page 15, lines 29 and 30—Leave out '(not being the person alleged to have committed the offence)'.

This is purely an amendment suggested by the draftsman on consideration of the Bill after it had lain on the table for four months.

Amendment carried; clause as amended passed.

Clause 34 passed.

Clause 35—'Conduct of proceedings before a panel.'

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

Page 16, after line 12—Insert new subclause as follows:

(1a) Upon a matter being referred to an assessment panel, the panel shall proceed to carry out and complete its assessment as expeditiously as is reasonably practicable.

This is an important amendment, which refers to the assessment panels under the legislation. We want a clear indication in the legislation that we do not want people who elect to go before a panel to be held up, or harshly or unreasonably treated, while the panel takes an unconscionable or unreasonable time to consider its position.

The Hon. K.T. GRIFFIN: This amendment is in something of a conflict with what the Minister and the Hon. Miss Levy put to the Committee earlier today in respect of the point at which the assessment by a panel commences and finishes. If the Committee accepts my interpretation, the requirement for a panel to interview an accused person is part of the assessment process. If an accused person does not admit guilt or does not desire the assessment panel to continue with the matter, the assessment panel is not to proceed with the assessment under the Division.

This clause provides that the panel must carry out and complete its assessment as expeditiously as is reasonably practicable. It seems that there is a conflict in the sense that the panel is not able to complete its assessment if clause 32 (4) is complied with, that is, in certain circumstances it shall not proceed further with an assessment. I suggest that there is something wrong with the drafting.

The Hon. J.R. CORNWALL: There is no conflict at all. The former Attorney does not seem to understand the drafting of the legislation. The panel will not be involved in hearing evidence from anyone who is protesting his innocence. By its very nature, the panel will be interviewing people who have pleaded guilty to the alleged offence and are appearing for assessment. It is reasonably practical in the circumstances and makes very good common sense.

The Hon. K.T. GRIFFIN: That really demonstrates that the Minister has not read the Bill because, in fact, every person is required to attend before the panel; it is not only persons who have pleaded guilty. Every person must appear before the assessment panel. It means that some people are being assessed up to the point where they do not admit an allegation or do not desire the assessment panel to deal with the matter. In that event, the assessment is not to proceed. In other cases the assessment proceeds. If the Minister does not want to do anything about the drafting, be it on his head. At least I have drawn attention to what is a contradiction in the drafting between this amendment and the provisions of clause 32.

The Hon. R.I. LUCAS: My understanding of clause 32 was that a person could admit to an allegation and that the panel could still decide under paragraph *(a)* that the matter should be dealt with by a court. Is that correct?

The Hon. J.R. CORNWALL: Yes.

The Hon. R.I. LUCAS: I should have thought that, if that was the case, a person could admit to an allegation and that the assessment panel could still decide that the matter should be dealt with by a court. That gives the lie to what the Minister just said. The clear indication in his previous statement was that that is not the case. The Minister now indicates that a person could admit an allegation and still have to appear before a court because an assessment panel decided that that was appropriate under clause 32 (4) *(a)*.

The Hon. J.R. CORNWALL: Perhaps honourable members opposite would like me to read clause 32 in full. I do not think that there is any point in pursuing this nitpicking, frankly.

Amendment carried; clause as amended passed.

Clause 36—'Prosecution for simple possession offence.'

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

Page 16, line 37—Leave out 'examination' and insert 'assessment'.

The word 'assessment' is a more suitable word in the circumstances. It is not considered that an assessment panel will be involved so much in an examination, as it will be an assessment of the facts and the person appearing before it.

Amendment carried; clause as amended passed.

Clauses 37 and 38 passed.

New clause 38a—'Alternative verdict in relation to offences against section 29.'

The Hon. J.R. CORNWALL: I move to insert the following new clause:

38a. If upon the trial of a person for an offence against section 29 the jury is not satisfied that the person is guilty of the offence charged, but is satisfied that he is guilty of an offence against section 28, the jury may bring in a verdict that he is guilty of the latter offence.

It enables the jury to find a person guilty of the lesser offence of possession instead of the more serious section 29 offence with which he has been charged. It gives more flexibility and reason and enhances the legislation.

New clause inserted.

Clause 39 passed.

Clause 40—'Matters to be considered when court fixes penalties.'

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

Page 18, lines 7, 9 and 10—Leave out 'drug' last occurring and insert 'substance'.

This amendment is consequential and has occurred numerous times previously.

Amendments carried; clause as amended passed.

Clauses 41 and 42 passed.

Clause 43—'Court may order forfeiture to the Crown of certain property.'

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

Page 18, line 31—After 'section 29', insert '(not being an offence of producing *cannabis* for which he has been sentenced pursuant to subsection (6) of that section)'.

The amendment is to clarify the offence and the situation under the major amendment that we passed, new clause 29 (6), concerning the personal production of marihuana. I intimate that I do not intend to move the amendment on page 5 of the original amendment as circulated.

Amendment carried.

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

Page 18, line 42—Leave out 'is made for' and insert 'has been made prior to conviction for the'.

This change aims to reflect the reality that an application for forfeiture is more likely to be made before a person is convicted rather than after conviction, which is the way the present provision clause tends to read. So, it is a matter of clarification.

Amendment carried.

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

Page 19, line 1—Leave out 'to have' and insert 'would'.

This is a grammatical amendment.

Amendment carried; clause as amended passed.

Clauses 44 to 47 passed.

Clause 48—'Power to search, seize, etc.'

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

Page 20, line 25—after 'complied with' insert 'or have been contravened'.

This is a suggested amendment from the Parliamentary Counsel. It makes a deal more sense and makes for better legislation.

Amendment carried.

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

Page 21, line 5—Leave out 'believe' and insert 'suspect'.

The same remarks apply as applied to several preceding amendments. It is a matter of changing the word 'believe' and inserting the word 'suspect' which again makes for better legislation in the circumstances.

Amendment carried.

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

Page 21, lines 8 and 9—leave out paragraph *(j)*.

Paragraph *(j)* was left out because of civil liberties ramifications of requiring any person to answer any question that may be relevant to an investigation. This, along with clause 48 (9) *(b)* and 48 (10) was inserted by Parliamentary Counsel following the usual provisions for authorised officers referred to in other Acts. In this area there is a great deal of sensitivity about police powers. It was put to me and to the Government that we should not be creating new police powers beyond those which already exist under the Narcotic and Psychotropic Drugs Act in particular. We have accepted those submissions and are moving amendments accordingly.

The Hon. K.T. GRIFFIN: It seems that what the Minister has just said is somewhat contradictory. Already in the Bill a provision exists that a person is not required to answer a question put to him pursuant to this section if the answer would tend to incriminate him. It seems that that is an adequate protection for anybody who may be required to answer a question under paragraph *(j)*. I am certainly not convinced that it is appropriate to remove the provision from the Bill. Unless there is something more than this bland reference to civil liberties where there is already adequate protection in subclause (10), I am not prepared to support the proposed amendment.

I do not follow the Minister's reasoning as to why he wanted to delete paragraph *(j)* and subsequently subclause (10), because the form of words in this paragraph, when read with subclause (10), provides adequate protections for the citizen in respect of the requirement to answer questions; that is, whilst a person is required to answer any question that may be relevant to investigation, a person is not required to answer a question put to him pursuant to the section if the answer would tend to incriminate him. That formula has been used in many pieces of legislation by former Liberal and Labor Governments. It seems that it is better to express that protection than to leave it open to the common law. So, unless there is a more compelling reason to remove paragraph *(j)* and subclause (10), I believe that the Bill ought to remain as it has been drafted.

The Hon. J.R. CORNWALL: Basically, it changes the onus. Apart from that, I am acting on advice from far more learned minds than mine in these matters.

The Hon. K.T. Griffin: How does it change the onus?

The Hon. J.R. CORNWALL: The honourable member ought to be able to work that out; he is a former Attorney.

The Hon. K.T. GRIFFIN: It is all very well for the Minister to say in an off-hand way that I ought to be able to work it out. I do not believe that it does change the onus. The obligation is there to answer a question. There is the protection that, if the answer is likely to incriminate the person, that is sufficient reason for his not answering the question.

That is the position that generally prevails under legislation in relation to this sort of activity. I believe that it is very important to leave in this provision. The Minister should be reminded that he is removing the provision where in fact it ought to be expressly provided to deal with the situation that the Minister says he is covering in this Bill, and that is to come to grips with very serious problems of drug trafficking.

The Hon. J.R. CORNWALL: The former Attorney is supposedly learned in the law, and on most occasions I do not doubt that. The honourable member should read all three clauses carefully and objectively: he would see that to leave them in their present form would create an illogical absurdity. All my advice, including advice from Crown Law, is that these amendments are appropriate.

The Committee divided on the amendment:

Ayes (10)—The Hons. Frank Blevins, G.L. Bruce, B.A. Chatterton, J.R. Cornwall (teller), C.W. Creedon, M.S. Feleppa, I. Gilfillan, Anne Levy, C.J. Sumner, and Barbara Wiese.

Noes (9)—The Hons. J.C. Burdett, M.B. Cameron, L.H. Davis, R.C. DeGaris, K.T. Griffin (teller), C.M. Hill, Diana Laidlaw, R.I. Lucas, and R.J. Ritson.

Pair—Aye—The Hon. K.L. Milne. No—The Hon. Peter Dunn.

Majority of 1 for the Ayes.

Amendment thus carried.

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

Page 21, line 12—Leave out 'and *(c)*'.

Parliamentary Counsel suggested this amendment. It is a very wise amendment on the basis that authorised officers other than police may need to require drivers of a vehicle to stop.

Amendment carried.

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

Page 21, lines 14 to 16—Leave out subclause (4).

Amendment carried.

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

Page 21, lines 23 to 25—Leave out all words in these lines.

These lines contain the 'urgent action' provision.

Amendment carried.

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

Page 21, after line 32—Insert new subclauses as follows:

(6a) Subject to subsection (6b), an authorised officer who is a member of the Police Force may search any person who he believes on reasonable grounds has in his possession any substance or equipment in contravention of this Act.

(6b) Before a person is searched pursuant to subsection (6a), he shall, if he so requires, be taken before a justice.

(6c) A justice before whom a person is taken pursuant to subsection (6b) may order that the person be searched, or that he not be searched, as he thinks the justice of the case requires.

(6d) Where an authorised officer who is a member of the Police Force suspects on reasonable grounds that a substance that would afford evidence of an offence against this Act is in any vehicle, vessel or aircraft, he may—

(a) require the driver of the vehicle, the master of the vessel or the pilot of the aircraft to stop the vehicle, vessel or aircraft;

(b) detain and search the vehicle, vessel or aircraft; and

(c) seize and remove from the vehicle, vessel or aircraft anything that he has reasonable cause to suspect affords evidence of an offence against this Act.

This is an important amendment. It restates the search powers of the police. In particular, it reinstates fully existing Narcotic and Psychotropic Drugs Act provisions that a person may ask to be taken before a justice before being searched. It also states in clear terms the existing provisions under the Narcotic and Psychotropic Drugs Act as to the police power to stop, search, and seize vehicles as well as vessels and aircraft.

Amendment carried.

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

Page 21, lines 43 and 44—Leave out paragraph *(b)*.

This is a similar amendment. It impacts upon the matter about which the Hon. Mr Griffin and I were having an intellectual debate a short time ago.

Amendment carried.

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

Page 22, lines 1 to 3—Leave out subclause (10).

This amendment relates to the same matter.

Amendment carried.

The Hon. R.I. LUCAS: As all the amendments are out of the way, I would like to express concern about the very wide powers of searching and seizing encompassed under this clause. Clearly, there is considerable argument for this sort of power with respect to drug related offences. However, the Controlled Substances Act covers a wide variety of situations and in the future it may cover an even wider variety. The Minister indicated that he does not intend to license physiotherapists, occupational therapists, podiatrists, and so on, or sex shops and sex aid manufacturers. However, the Minister has conceded that there is a vehicle for a future Minister of Health to, in effect, license such people, companies or professional groups.

This power of search and seizure has been basically approved, I guess, in the context of drug related matters. We are attuned here to the need for extensive powers for police or authorised officers. I raise a note of concern that this could well extend to a whole range of other groups. Perhaps rather than just looking to the future I will list, for example, electro-medical equipment manufacturers or para medical suppliers who manufacture electro-medical equipment for physiotherapists. It is clearly within the ambit of the quality control that the Minister was talking about originally that these manufacturers are likely to require licensing and that therefore many, if not all, of the provisions of this clause, if required, could be brought into play in respect to their operations.

We have also talked about the requirement, for example, for farmers to hold a licence to purchase poisons. Under this clause the situation of authorised officers with respect to people who hold licences is such that the full powers of this clause, which are very wide, could be brought to bear if a particular administration wanted to do so. I am not referring to anything in detail but just raise my concern at this stage that at some time in the future these provisions could be brought to bear on a group of people we might not be thinking about at this stage.

Amendment carried; clause as amended passed.

Clause 49—'Analysis.'

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

Page 22, line 11—After 'is, or is not, a' insert 'particular'.

This is a minor technical drafting amendment.

Amendment carried.

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

Line 12—Leave out 'drug' and insert 'substance'.

This also is a consequential amendment concerning the words 'drug' and 'substance'.

Amendment carried; clause as amended passed.

Clauses 50 and 51 passed.

Clause 52—'Research permits.'

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

Page 23, line 22—Leave out 'drug' and insert 'substance'.

This is the same consequential amendment.

Amendment carried; clause as amended passed.

Clause 53—'Prohibition by Health Commission of manufacture, production, packaging, sale, supply, prescription or possession of specified substances or devices by certain persons.'

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

Page 23, line 45—After 'administering' insert ', using'.

This is a minor amendment providing clarification by inserting the word 'using' after the word 'administering'.

Amendment carried; clause as amended passed.

[Midnight]

Clauses 54 to 56 passed.

Clause 57—'Evidentiary provisions.'

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

Page 25, lines 24 to 31—Leave out subclauses (1) and (2).

Subclauses (1) and (2) are being deleted from this clause on the advice of the Crown Prosecutor.

Amendment carried; clause as amended passed.

Clause 58 passed.

Clause 59—'Regulations.'

The Hon. I. GILFILLAN: I move:

Page 26, after line 6—Insert new subclause as follows:

(2a) No regulation shall be made prescribing an amount relating to a drug of dependence or prohibited substance for the purposes of section 28 (2) or section 29 (3) or (5) except upon the recommendation of the Advisory Council.

The final opinion of counsel was that what I indicated as a reason for resubmitting clause 28 and section 29 has been negated by inserting this new subclause here. The reason for this is discomfort with the comparison of fixed penalties of such massive proportions in those sections that would be based on a quantity of drug prescribed by regulation by the Minister and the Government of the day with the normal procedure of variation available through regulation. It is with this in mind that the amendment seeks to have the Advisory Council involved in the decision about what should be the prescribed amount to determine an actual offence. I put to the Committee that this amendment is worthy of consideration and support.

The Hon. J.R. CORNWALL: The Government opposes this amendment as it would set a horrendous precedent. I ask the Opposition as the alternative Government to consider carefully its position in this matter and not to set a precedent which it might, at some fortuitous time, regret. The amendment states:

No regulation shall be made prescribing an amount relating to a drug of dependence or prohibited substance for the purposes of section 28 (2) or section 29 (3) or (5) except upon the recommendation of the Advisory Council.

In other words, there would be no freedom for the Minister of Health of the day to make a recommendation or to take a recommendation to Cabinet and have it approved and subsequently submitted through the processes of regulation to the scrutiny of the Parliament. The simple fact would be that if at some time because of the foibles of things that had happened before his time and may be due to circumstances well beyond his control a Minister would be stuck with a Council completely out of tune with the thinking of the professionals of the day—the pharmacologists, medicos, allied health professionals, social workers and the Government. It might well be that the Government would feel very strongly that the amounts should be changed significantly, either up or down, yet the Minister of the day would be able to do little more than sit quietly in his or her office and tear his or her hair out. As a policy issue I think it has very grave implications and the Government rejects the amendment.

The Hon. J.C. BURDETT: I support the amendment. I spoke at length expressing my fears about quantities of drugs being prescribed by regulation for the purposes of sections 28 (2) and 29 (3) and (5). I pointed out that, because the quantities affect the deeming of possession to be trafficking and the quantities also affect the change in penalties, and because the penalties are so severe and the matters so important, I believed, and still believe, that the matter ought not to rest with the Government but with the Parliament.

I tried to spell out the quantities in the Bill so that change could be made only by Parliament. I lost my amendments. This amendment goes just a little way towards allaying my fears. It puts some controls and restraints on regulations which can affect so drastically the nature of an offence and of a penalty. I support the amendment.

The CHAIRMAN: The Hon. Mr DeGaris.

The Hon. J.R. Cornwall: He is the one who started it all.

The Hon. R.C. DeGARIS: I know: I haven't finished yet, either.

The Hon. J.R. Cornwall: You should be ashamed of yourself. This has horrendous implications.

The Hon. R.C. DeGARIS: It is not as horrendous as if you leave the Bill as it is.

The Hon. J.R. Cornwall: You are taking it out of the hands of the Parliament and of the Government. You really have a double bunger.

The Hon. R.C. DeGARIS: The problem quite clearly has been pointed out by the Hon. John Burdett in speaking to previous amendments. This question has been raised by the Hon. Ian Gilfillan. Although I do not prefer this amendment to what was originally put by the Hon. John Burdett, at least it does give some protection to this Bill. Let me put it quite clearly to the Council: what would we do in this Council if, for example, we had an amendment to a Bill saying that the penalty for driving under the influence of alcohol or having a certain blood alcohol level in the body of a person involved a gaol sentence, but we waited for regulations that the Government might make to say what would be the rate of alcohol in the blood for that offence? That is exactly the same thing that this Bill does.

The Hon. J.R. Cornwall: That is the greatest *non sequitur* that you have put forward in 22 years in this place.

The Hon. R.C. DeGARIS: It is not; it is exactly the same thing. The Minister is asking this Parliament to pass a piece of legislation with extreme penalties of up to $250 000 and a 25 year gaol sentence and then not know what is the crime to be committed to which that penalty applies. I know the problems; I know that there are difficulties so far as the Minister is concerned, but he gave no consideration to what I believe is a very important point. The Hon. Ian Gilfillan has come up with an answer that improves the present position, although it does not fulfil what the Parliament should be doing in this matter. Therefore, I support the amendment as the best thing that is available to this Committee to accept in this very difficult problem.

The Hon. J.R. CORNWALL: I entreat members, particularly the mover of the amendment, to consider what they are doing. The amendment really castrates the Bill—

The Hon. J.C. Burdett: Good!

The Hon. J.R. CORNWALL:—or emasculates it or performs an ovariectomy, in the interests of being even handed. We are going from a position under the Narcotic and Psychotropic Drugs Act—the Hon. Mr Burdett interjects late at night and says, 'Good'; he does not mind being sabotaged; he is perfectly happy; presumably he does not mind that this very important part of the Bill is being sabotaged by the amendment—where the Government can declare the drugs and amounts by proclamation. The Government of which the Hon. Mr Burdett, the Hon. Mr Griffin and the Hon. Mr Hill were all members was perfectly happy to live with that situation. In other words, it did not come anywhere near the Parliament; we are talking not about lollies either, but about drugs like pethedrine, morphine, the amphetamines, and so forth. So, it ill behoves the Hon. Mr Burdett to carry on over this one; I am dumbfounded that someone of Mr DeGaris' Parliamentary and Ministerial experience would be a party to such a thing. We are going quietly by the Cabinet through the Governor into the *Gazette.* to a position where we were proposing that it should happen by regulation.

That is now to be removed completely from the Minister and the Government, and the Government will have no say. That is what the Hon. Mr Gilfillan is doing, and he should be aware of it. He is taking the guts out of the Draconian penalties that I as Minister of Health specifically propose in this Bill. If the Hon. Mr Gilfillan persists with his amendment, I hope that he wears the public odium for it. It provides:

. . . except upon the recommendation of the advisory council.

As I have said, the Minister of the day, regardless of whom it may be, will sit in his office perhaps knowing that the whole matter of narcotic drugs and drugs of dependence needs to be completely overhauled. However, he or she will be fettered—to use a recently rediscovered word—by possibly a hostile advisory council that has been inherited as a quirk.

If this legislation passes with this amendment from this Chamber, I think that the Government as a matter of policy and principle would have no option but to reject it in another place. At best, we will be faced with a conference of managers, and I do not know what the Bill's ultimate fate might be. Certainly, in the first instance, if it does become law, I will have first bite of the cherry as Minister of Health of the day. I will be able to hand pick my advisory council to a certain extent. I will be able to scour the highways and byways and try to find out the attitudes of particular people before I recommend that they should be appointed to the advisory council and perhaps, even worse, I will virtually have to undertake a major investigation into their politics.

The Hon. R.I. Lucas: Do you do that?

The Hon. J.R. CORNWALL: No, I do not do that. As a matter of fact, if the Hon. Mr Lucas looks at any hospital board on which I have had a say in regard to appointments in the 16 months during which I have been Minister of Health, he will see that I have quite deliberately attempted to be as even-handed as possible. The Hon. Mr Lucas can chuckle as much as he likes. As an example, I refer to the Port Augusta Hospital board: I had the opportunity to appoint the entire new board. There is probably something of a four to three or three to four situation there. I try to avoid politicising boards of management, because I do not think that they work.

The Hon. R.I. Lucas: What do you mean by a three to four or four to three situation?

The Hon. J.R. CORNWALL: Four Liberal members and three Labor members, or vice versa. I did not run around the countryside asking how each person votes.

The Hon. R.I. Lucas: You must have.

The CHAIRMAN: Order!

The Hon. J.R. CORNWALL: Everyone knows how prominent people in places the size of Port Augusta vote. That is just a fact of life. You will learn lad as you go along. I have deliberately refrained from making political appointments. I think that it would be very sad. That is what the Hon. Mr Gilfillan is forcing on me. If that is the way in which the parsimonious and sanctimonious Democrats want to go, so be it.

The Hon. I. GILFILLAN: I think that the Minister is over-reacting to the implications of the amendment. I do not doubt for a minute, whether or not this clause is passed, that the appointment of the advisory council would and should reflect the sort of people who the Minister expects will implement it and contribute to it in a manner that he anticipates and the Bill demands.

It is most unlikely that this very highly qualified personnel on the council would be people towards whom any Minister need feel particular alienation or suspicion. The determi-

nation of the prescribed amount will be a matter not only for the advisory council; quite obviously, the Minister will have an enormous input. If the Minister cannot persuade the eminent people that he will have appointed to the advisory committee that his prescribed amounts are appropriate, then they probably stand a very good chance of not being appropriate for the community at large.

I believe that it is a faily minor imposition, and although it may be mildly bothersome I think the result will be better and people will have more confidence in the prescribed amounts as being appropriate to the offence. I am a staunch advocate of the intention of the Bill and in no way do I see this amendment diminishing the impact and the influence of these very severe penalties as a deterrent in drug trafficking.

The Hon. J.R. Cornwall: Sabotaging our strategy.

The Hon. I. GILFILLAN: No, I do not think so. The point that the Minister misses is that if his successors are softer in this line than he is, he may well be grateful in his retirement that the advisory council is peppering up the prescribed amount, thus creating a level at which the Minister would like to see traffickers prosecuted. It is a two-edged sword. In fairness to the Minister, if it were not so late and if he were not so tired, he would see that it has blades on both sides, and that this will be an advantage to him in his later years. So, I think that the Minister will come to realise the value of it, and if this amendment is passed in this place, the Government will have a chance to see its value.

The Committee divided on the amendment:

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

Noes (8)—The Hons Frank Blevins, G.L. Bruce, B.A. Chatterton, J.R. Cornwall (teller), M.S. Feleppa, Anne Levy, C.J. Sumner, and Barbara Wiese.

Pair—Aye—The Hon. K.L. Milne. No—The Hon. C.W. Creedon.

Majority of 3 for the Ayes.

Amendment thus carried.

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

Page 26, line 10—Leave out 'packaging' and insert 'prescribing, possession, use, handling'.

The amendment is simply to clarify regulation-making powers.

Amendment carried.

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

Page 26, lines 22 and 23—leave out paragraph *(e)* and insert paragraph as follows:

(e) provide for or regulate the application for, grant, refusal, renewal, suspension or revocation of licences and permits under this Act by a person, a committee of persons or an authority;.

Again, this is to clarify regulation-making powers.

Amendment carried.

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

Page 26, line 26—leave out 'drug' and insert 'substance'.

Amendment carried.

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

Page 26, line 33—After 'committee of persons' insert 'or in authority'.

The amendment simply adds a little more and clarifies the position.

Amendment carried.

The Hon. R.I. LUCAS: I will not delay the proceedings unduly, but I point out that clause 59 (3) *(h)* would appear to be the regulation-making power that will be much used under this Act. From the number of questions members on this side raised earlier in the debate, clearly the only way around the problem will be to have very many regulations and exemptions under clause 59 (3) *(h)*.

The Hon. J.R. CORNWALL: That is a precise and intelligent understanding of the position.

Clause as amended passed.

Title passed.

Bill read a third time and passed.

WATERWORKS ACT AMENDMENT BILL

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

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

That this Bill be now read a second time.

In view of the lateness of the hour, I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

There are a number of changes necessary to the Waterworks Act, 1932, to overcome various problems associated with deficiencies in that Act. The Waterworks Act does not allow for the proper recovery of costs of installing the larger water supply connections. Section 35 of the Waterworks Act requires that a standard fee be charged for all water services supplied. It is impractical to set a standard fee for water services larger than 50 mm because of the variability in the costs of components, the engineering problems encountered, installation techniques and the circumstances of each individual case. In order to allow proper recovery of costs it is necessary to amend the Act so that installation charges may be made based on a firm question at estimated cost.

Proper fittings and installation standards are necessary for the safe and efficient working of the water supply system. To ensure safe and efficient working of the water supply system. Directions are required which set installation standards and which require appropriate procedures and fittings to be used, similar to the Sanity Plumbing and Drainage Directions (parts 1 to 8) issued under the Sewerage Act. There is no provision specifically given in the Waterworks Act for the issue of such directions and hence the power in the Act for the Minister to make and issue these Directions is now required.

Problems are being experienced in the installation of hot water services, which do not comply with accepted standards throughout Australia, both in the equipment used and the method of installation. There have been several instances where the hot water service tanks have exploded due to sub-standard workmanship, and extensive damage has been caused to houses and property as a result. This has occurred in particular, outside of sewered areas where installation by qualified persons is not required.

To further emphasise the need for improved installation standards, as recently as 19 November last year a water heater became displaced and caused the death of a householder in this State. This unfortunate incident emphasises the need for steps to be taken to avoid a repetition, and as a starting point changes to the Act to authorise the issue of plumbing and installation directions are now urgently required.

All fittings and apparatus used in connecton with water supplies are required to be approved. The present Act requires a stamping procedure for certain approvals which is costly and inefficient for both Industry and the Water Authority and which is incompatible with modern production methods and technology. The major water supply and sew-

erage authorities in Australia are parties to an agreement on the evaluation, type testing, testing and stamping (or marking) of pipes, fittings, fixtures and apparatus used in sanitary plumbing and drainage and/or hot and cold water installations that are connected to the public water supply and sewerage systems under their statutory control.

These arrangements are necessary to ensure that substandard materials, fittings, fixtures and apparatus, that could result in contamination of the water supply, water wastage or public health problems, are not used in conjunction with the public water supply and sewerage systems.

Changes to the Waterworks Act are now required so that:

1. The Engineering and Water Supply Department can participate in amended procedures and practices under the reciprocity agreement between all major Water Suppy and Sewerage Authorities in Australia for the examination, testing and approval of plumbing fittings, fixtures and apparatus

and

2. South Australian manufacturers of plumbing products will not be disadvantaged in both local and interstate markets.

The Waterworks Act does not adequately cover the precautions and practices necessary to prevent serious contamination of water supplies from bacterial hazards and from weedicides, pesticides, fertilisers and other potential contaminants.

A recent practice has been developed of injecting fertiliser (and in some cases, pesticides) into drip irrigation systems. This practice could readily lead to contamination of water supplies. The Department of Agriculture has encouraged this method as a desirable technique to efficiently replace leached nutrients. The use of drip irrigation is expanding rapidly throughout the State due to water economies and other advantages. To avoid the use of high cost tanks and pumps and to minimise the cost to the farmer it is proposed to overcome the potential contamination problem by the use of backflow prevention devices.

There has also been a proliferation in recent years of devices for fertiliser, weedicide and pesticide dispensers which are connected to garden hoses. Most do not incorporate satisfactory backflow protection and these present a very real and serious threat to public health. Contamination of water supplies can also originate from appliances and fixtures, such as hospital, industrial and domestic washing machines and cisterns connected to sewerage systems, where adequate backflow protection is not provided.

There is currently no power in the Waterworks Act for regulations to be made covering the installation and use of backflow prevention devices and to prevent water contamination in certain circumstances. The present penalties for breaches of the Waterworks Act are unrealistically low and totally inadequate when considering present day monetary values. Hence they fail to act as a deterrent which is their main function.

Present maximum penalty for breach of the Waterworks Act is $200. For comparison, penalties in other Acts are: New South Wales Metropolitan Water, Sewerage and Drainage Act, 1924—$10 000 maximum for a corporation and $1 000 maximum for others. Melbourne and Metropolitan Board of Works (by-law 163)—$5 000 maximum and $2 000 per day for continued offence. Increases in penalties are necessary. The term 'by-law' is used in certain sections of the Act 'by-law' should now be changed to 'regulation' in accordance with a previous amendment to the Act in 1974.

A minor change to the Act is required to clarify the conditions for exemption from rates for land acquired for charitable purposes. Service rents are applied to those additional services which are provided to properties, in excess of the one service normally allowed. It is required that the fee for Service Rent be set by notice in the *Government Gazette*, in the same manner as water rates are declared, instead of being set in regulation 7 which is currently the requirement.

Clauses 1 and 2 are formal. Clause 3 amends section 4 of the principal Act. The removal of the passage from the definition of 'fittings' by paragraph *(a)* will widen the meaning of the term. New subsection (2) inserted by paragraph *(b)* makes clear the meaning of connection to and disconnection from the waterworks. Clause 4 amends section 10 of the principal Act which provides for the making of regulations. The introductory words of the section are replaced with a passage in the modern style giving the Governor a general power to make regulations for the purposes of the principal Act. New paragraph V will enable the fixing of fees and charges by regulation or by the Minister. New paragraph VIII makes it clear that regulations may be made dealing with the quality of plumbing materials and procedures for installation and inspection. New paragraph XVI will facilitate the control of the sale and use of pipes, fittings, appliances and equipment connected to the waterworks. New subsection (2) of section 10 inserted by this clause will enable the Minister to authorise the sale and use of pipes, fittings or equipment subject to such conditions as he thinks fit and will allow regulations to refer to specifications prescribed from time to time by the Minister or other authorities. Subsection (2a) will allow the Minister, in turn, when prescribing specifications to make reference to specifications published by another authority. Subsections (2b) and (2c) make provision for penalties. Clause 5 increases the penalty prescribed by section 18 of the principal Act.

Clause 6 amends section 35 of the principal Act. Paragraph *(a)* removes the reference to 'prescribed fee' in subsection (1). In future the power to fix fees under this subsection will come from new paragraph V of section 10 (1) of the principal Act. The three new subsections inserted by paragraph *(b)* provide for the connection of additional services and fixing of annual charges in respect of additional services. Clause 7 increases the penalty prescribed by section 38 of the principal Act. Clause 8 amends section 39 of the principal Act so that its terminology will be consistent with amendments to earlier provisions of the principal Act. Clause 9 amends section 42 of the principal Act. This section allows the Minister to estimate the amount of water supplied to land through a defective meter. The purpose of the amendment is to ensure that an estimation can be made where the meter is not situated on the land concerned.

Clause 10 replaces section 43 of the principal Act with a new section which makes owners and occupiers of the land guilty of an offence if the meter through which water is supplied to their land is damaged or interferred with. This provision is wider than the existing provision in that a person may be liable even though the meter is situated outside his property. However the new provision gives him a defence if he did not know of, or suspect, the damage or interference. Clause 11 increases the penalty prescribed by section 45. Clause 12 amends section 46 of the principal Act. Paragraph *(a)* achieves consistency of expression and also removes a reference to 'by-law'. Paragraph *(b)* increases the penalty imposed by the section. Clause 13 amends section 47 of the principal Act for consistency of expression.

Clauses 14 to 20 make amendments to various sections of the principal Act increasing penalties or to achieve consistency of expression. Clause 21 increases the penalty prescribed by section 57 and removes the continuing penalty which is not appropriate in relation to the offence. Clauses 22 and 23 increase penalties prescribed by sections 58 and 59 of the principal Act. Clause 24 increases the initial penalty for the offence referred to in section 60 of the principal Act. The continuing penalty is removed because

it is not appropriate. Clauses 25 to 28 of the principal Act amend sections 62, 63, 65 and 87 of the principal Act to increase penalties and in the case of section 87, to remove a reference to 'by-law'. Clause 29 amends section 88 of the principal Act to bring that provision into line with section 65 of the Sewerage Act, 1929. Clauses 30 to 33 remove references to 'by-law' from various sections of the principal Act.

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

SEWERAGE ACT AMENDMENT BILL

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

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

That this Bill be now read a second time.

In view of the lateness of the hour, I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

There are a number of changes necessary to the Sewerage Act 1929 to overcome various problems associated with deficience is in that Act. Proper fittings, sizing, and installation standards and procedures are necessary for plumbing and drainage systems in order to ensure proper functioning of those systems and for the protection of public health and safety. Regulation 16 under the Sewerage Act gives the Minister power to make and issue directions, which is exercised on technical matters and culminates in the issue of Sanitary Plumbing and Drainage Directions (parts 1 to 8). These plumbing and drainage directions which have been issued for many years are used for the proper sizing and installation of sanitary plumbing and draining systems and cover the basic standards for all plumbing and drainage installations. These directions are vital in the control of good and uniform standards and they play an important role as a text for the training of apprentices and tradepersons. As a matter of interest the original plumbing directions were incorporated in the Adelaide Sewers Act of 1878, 105 years ago. A Crown Law opinion has been expressed that the Sewerage Act does not authorise the issue and use of such directions and hence changes are required to the Act to overcome that deficiency.

The application of certain recognised and approved technical standards and codes of practice similar to the current Specifications and Codes of Practice of the Standards Association of Australia is necessary to prevent substandard fittings, materials, fixtures and apparatus being used in plumbing and drainage systems. This matter relates to the technical standards which the materials, fixtures, fittings and apparatus must meet in order for them to be approved in terms of the Act and regulations. It also relates to the standards of workmanship and the installation codes of practice applicable to the installation of those items. However, there is no provision in the Act for the Minister to approve such standards or codes of practice and so it is recommended that the Act be amended to ensure that such action is within his power.

All fittings, fixtures and apparatus used in connection with the sewerage system are required to be approved in accordance with Section 13 of the Act and regulation 8.5. The present procedures however are costly and inefficient for both Industry and the Engineering and Water Supply Department and they are incompatible with modern production methods and technology and hence changes to the system must be made. The major water supply and sewerage authorities in Australia are parties to an agreement on the evaluation, type testing, testing and stamping (or marking) or pipes, fittings, fixtures and apparatus used in sanitary plumbing and drainage and/or hot and cold water installations that are connected to the public water supply and sewerage systems under their statutory control.

These arrangements are necessary to ensure that substandard materials, fittings, fixtures and apparatus, that could result in contamination of the water supply, water wastage or public health problems, are not used in conjunction with the public water supply and sewerage systems. Changes to the Sewerage Act are now required so that:

1. The Engineering and Water Supply Department can participate in amended procedures and practices under the reciprocity agreement between all major Water Supply and Sewerage Authorities in Australia for the examination, testing and approval of plumbing fittings, fixtures and appartus

and

2. South Australian manufacturers of plumbing products will not be disadvantaged in both local and interstate markets.

Changes are necessary to the Sewerage Act to prevent harmful and illegal discharges to the sewerage systems.

These changes are necessary:

- for the safety of sewerage maintenance and operating personnel.
- to prevent costly damage to the sewage drainage system.
- to prevent the malfunction of sewage treatment works.
- to ensure that the environment is not adversely affected by poluted effluent and sludge discharged from the treatment works.
- and to protect public health.

Compared with alternative waste disposal procedures, the discharge of wastes to municipal sewers offers many advantages to commerce and industry. However, industrial wastes can also create quite serious and potential problems for the safe and effective operation of the sewerage system and it is therefore necessary to have reasonable control of potentially harmful trade wastes at their source.

Although regulation 10 under the Sewerage Act prohibits certain discharges and specifies conditions for the discharge of trade wastes, there is very little reference in the Act itself to trade waste matters and this is an area where continued and persistent abuse occurs. With sewer replacement costs at such prohibitive levels it is imperative that the corrosive discharges be adequately controlled at their source. To provide an effective means of control of toxic trade waste and to be consistent with practices in other States and overseas, maximum limits of toxic substances need to be imposed on discharges. So in order to effectively prevent harmful illegal discharges to the sewerage system, a number of broad changes to the Act and Regulations are required:

- Clarification in the Act is required in regard to trade waste matters.
- Maximum limits for the discharge of toxic substances need to be imposed.
- Power is required for the Minister to disconnect premises from the sewer where blatant and persistent non-compliance is involved.
- Trade Waste Officers of the Department must have the authority to enter and examine works and take samples, at any reasonable time.

The present Sewerage Act penalties are unrealistically and totally inadequate and date back to monetary values prevailing in 1929 when the Act was first proclaimed. There is a need to update those penalties to realistic levels so that

they will act as a deterrent. The maximum penalty for infringement of the Sewerage Act is $100. This is compared with $10 000 and $5 000 for the equivalent Acts in New South Wales and Victoria, respectively. Section 78 of the Sewerage Act provides the power to rate properties following gazettal that a sewer main is available for connection. In practice, however, the Department levies sewerage rates from the quarter following:

- the gazettal of the main; or
- the connection to the main;

whichever occurs first.

For a variety of reasons, a sewer main may be laid but not gazetted as available for connection until some time later. In the interests of public relations and for practical reasons, connections to these mains are made, where required, as soon as possible and often prior to gazettal. The practice of rating following connection is of doubtful legality and it is therefore desirable that this anomaly should be corrected by the inclusion in the Act of a new section 78a which allows charges to be made in relation to services provided by means of sewer before notice of it has been published in the *Gazette*. Section 73 (6) of the Sewerage Act provides a rate-in-the-dollar ceiling for sewerage rates in country drainage areas. It states:

> The annual sewerage rate in respect of land within a country drainage area shall not exceed twelve and one half cents for each dollar of the annual value of the land.

From 1 July 1981, 'annual values' were replaced by 'capital values'. The annual value was, in fact, 5 per cent of the capital value. The change was purely an administrative expedient and necessary legislative amendments were effected by Act No. 29/81, which substituted the words 'capital value' for 'annual value'.

The country drainage area ceiling, however, was not appropriately amended at that time. The country drainage area ceiling, expressed as a rate-in-the-dollar of capital value, converts to 0.625 cents (in lieu of 12.5 cents of the annual value). The current maximum rate-in-the-dollar of capital value in a country drainage area is 0.366 cents, and the Director-General and Engineer-in-Chief reports that it is unlikely that it will ever be necessary to exceed 0.625 cents. In the interests of deregulation, it is therefore considered that sub-section 6 of section 73 of the Sewerage Act should be repealed rather than have it amended. It is proposed that land acquired for charitable purposes be entitled to the same exemption from sewerage rates as land actually used for charitable purposes.

The Sewerage Act needs to be amended to permit sewer connections in excess of 150 mm in size and also second and subsequent connections that are required by landholders, and alterations or additions to sewers that are necessitated by the division of land, to be charged for on the basis of either actual cost or a firm quotation based on estimated cost of the work involved.

Clauses 1 and 2 are formal. Clause 3 amends section 4 of the principal Act which provides definitions used in the Act. The removal of the passage from the definition of 'fittings' by paragraph *(b)* will widen the meaning of the term. New subsection (2) inserted by paragraph *(d)* makes clear the meaning of connection to or disconnection from the undertaking for the purposes of the Act. Clause 4 amends section 13 of the principal Act which provides for the making of regulations. The introductory words of the section are replaced with a passage in the modern style giving the Governor a general power to make regulations for the purposes of the principal Act. New paragraph IIIa added to subsection (1) makes it clear that regulations may be made dealing with the quality of plumbing materials and procedures for installation and inspection. New paragraph IV will facilitate the control of the sale and use of pipes, fittings and equipment used for drainage purposes. New paragraph VII will enable the fixing of fees and charges by regulation or by the Minister. New subsection (2) of section 13 inserted by this clause will enable the Minister to authorize the sale and use of pipes, fittings or equipment subject to such conditions as he thinks fit and will allow regulations to refer to specifications prescribed from time to time by the Minister or other authorities. Subsection (3) will allow the Minister, in turn, when prescribing specifications to make reference to specifications published by another authority. Subsections (4) and (5) make provision for penalties.

Clause 5 replaces the substance of nine existing sections of the principal Act with four new sections which state the law more concisely and which include some additional requirement Subsection (4) of new section 33 provides for an initial and a daily penalty for failure to comply with the requirements of the section. New section 34 replaces existing section 37. New section 35 replaces section 38. New section 36 replaces existing section 36 of the principal Act. This new section prohibits the discharge of waste material onto the land or onto neighbouring land in addition to prohibiting such discharge into a pit or well. The Minister may, if he consents to the discharge, do so subject to such conditions as he thinks fit. Subsection (4) ensures that disconnection from the sewer by the Minister will not be used as an excuse to avoid the requirements of this section. Clause 6 increases the penalty prescribed by section 49 of the principal Act. clause 7 replaces section 51 of the principal Act. The new section allows an inspector to inspect material that may be discharged into the sewer and to take samples of material for testing. He may, in excercising his powers, enter upon land at any reasonable time without giving notice.

Clause 8 increases penalties prescribed by section 52 and replaces subsection (3) with a more precisely constructed provision relating to the continuing offences and penalty prescribed by the section. Clause 9 replaces section 54 of the principal Act. The new section prohibits the discharge of materials falling within certain categories into the sewer and also controls the rate at which material may be discharged. It is necessary that the rate be set by the Minister to allow changes in the rate to be made quickly in emergency situations. Subsection (4) gives the provision flexibility by allowing the Minister to authorize the discharge of waste material generally or by a particular person. Such a power will be of advantage, for instance, where a manufacturer is unsure whether or not a particular material will damage or be detrimental to the sewer. If the Minister authorizes him to discharge that material he will be able to do so with impunity. Clause 10 increases the penalty prescribed by section 55 of the principal Act. The provision as to a continuing penalty is removed as it is not appropriate to an offence of this sort. Clause 11 replaces section 56 of the principal Act with a more comprehensive section. The new section is drawn on the same lines as new section 33 but deals with the prevention of injury to the undertaking and the overloading of the undertaking.

Clauses 12, 13, 14 and 15 increase the penalties prescribed by sections 57, 58, 59 and 60 respectively. Clause 16 enacts new section 61 which empowers the Minister to close off or disconnect a drain on land if it is likely that the owner will continue to contravene the Act by discharging prohibited material into the sewer or by hindering an inspector in the performance of his duties. Clause 17 amends section 65 of the principal Act so that land acquired for charitable purposes referred to in the section as well as land used for those purposes will be exempt from sewerage rates. If the land is not subsequently used for the purpose for which it was acquired the unpaid rates must be paid. Clause 18 removes subsection (6) of section 73 of the principal Act. Clause 19 inserts new section 78a into the prinipal Act. This section

provides for charges for drainage or sewerage services to land before notice of the laying of the sewer has been published in the *Gazette*. Sewerage rates are not payable until after notice of the sewer has been published and this provision will allow for the connection of premises to the sewer before the notice is published. Clause 20 inserts an evidentiary provision which replaces existing section 55(2) and section 56(4). Clause 21 removes section 102 of the principal Act. This provision was first enacted more than a century ago and is no longer appropriate or relevant.

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

LOCAL GOVERNMENT ACT AMENDMENT BILL (1984)

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

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

That this Bill be now read a second time.

In view of the lateness of the hour, I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

The aim of this Bill is to amend section 157, subsections 5 to 8 of the Local Government Act to establish the legislative framework for a single superannuation scheme for all local government employees in lieu of the multitude of schemes currently operated by individual councils. It provides for the separate presentation before Parliament of such benefits and conditions of the scheme as may be agreed between the councils and unions and approved by the Minister of Local Government. Section 157 of the Local Government Act requires councils to provide superannuation for their full-time employees. It became part of the Local Government Act in 1972 following a review of superannuation in the local government industry at that time.

In its present form the Local Government Act gives no absolute prescription of the level and type of superannuation which must be provided and any scheme dealing with superannuation for local government employees must be approved by the Minister of Local Government. In order to give guidance on what could be regarded as reasonable for approval, a set of 'minimum standards' was formulated by the Public Actuary in 1973 and became available to local government. These minimum standards were set at a time when the introduction of a national superannuation scheme was being widely discussed. It was considered that all local government employees should, through council-sponsored superannuation arrangements, receive benefits on retirement, death in service, etc., additional to those which could be received from the then proposed national scheme.

It was felt, however, that employees on lower incomes had less capacity to pay for additional benefits and had less need for additional benefits because of the anticipated national superannuation pension. In addition, it was also considered females had less need for, and less interest in, additional benefits. Consequently, the minimum standards allowed, but did not compel, councils to divide employees into two classes for the purpose of superannuation. Class A consisted of all male office staff and other supervisory and managerial staff employed outside the office and Class B comprised all female staff and outside staff not of supervisory or managerial level. The minimum standards required a lump sum retirement benefit after 40 years service of three times final salary for a Class A employee and one times final salary for a Class B employee.

Since 1973, and with the failure to introduce a national superannuation scheme, there has been considerable pressure from a wide range of sources for a review of the local government superannuation system. Much criticism has been levelled at classification on the grounds of sex and employment type and lack of portability of superannuation when employees move between councils. There is no doubt that many local government employees are being seriously disadvantaged because their superannuation arrangements have not kept pace with developments in other industries and it is obvious that this could have a detrimental, long-term effect on the development of local government in this State. In 1978-79 the then Minister set in motion a review of the local government system and asked the Public Actuary for a full report on its effects and implications. Questionnaires were sent to each council and the managers of the various funds and the Public Actuary prepared a report on the responses. In addition an investigation was carried out on interstate local government superannuation arrangements and these were summarised in a second report. Both reports were prepared in 1981 together with a discussion paper on local government superannuation.

The reports' findings indicated that approximately 60 per cent of council funds differentiated in their benefits on the grounds of sex and approximately 95 per cent on the grounds of type of employment. The Class A/Class B distinction had produced some very marked differences in superannuation coverage, and across councils there was a wide variance in retirement benefits. For example, retirement benefits for Class A employees with 40 years service ranged from three times final salary to seven times final salary. It was obvious from the data obtained that the same variability and discrimination was widespread in other areas such as contribution levels, qualifying periods, disablement, vesting and portability. Although there is not yet any anti-discrimination legislation in Australia which affects superannuation schemes, most new schemes in the private sector would not differentiate on the grounds of sex and many established schemes are creating equal conditions for males and females.

The minimum standard benefit levels for Class B employees are grossly inadequate by present-day standards when judged against private and public sector superannuation practice. Even the minimum standard benefit levels for salaried staff are low when judged against private sector arrangements for equivalent employees and against arrangements for local government employees in other states. Many councils indicated that they would like to see full portability of superannuation for staff moving between councils, for a natural progression of jobs in the local government sector virtually requires such moves.

There is full portability in Victoria, Queensland, and Western Australia for those States all have local government superannuation schemes run by statutory boards with benefit and contribution levels specified in the relevant legislation. Although the conditions vary between the States, interstate superannuation provisions are more rational and offer greater advantages than in South Australia.

When the Government was elected in 1982 it had within its local government platform a firm committment to improve superannuation conditions for local government employees. The previous Minister of Local Government, Mr Hemmings, in a speech to the Local Government Association of South Australia in February 1983 pointed out that the policy of the Government was to provide fair superannuation benefits to all employees and he urged the Association in the following 12 months to come up with a scheme which would meet these objectives. The Local Government Association had in fact been meeting with its advis-

ers from the private sector to review its superannuation arrangements and to provide a single, non-discriminatory scheme for all local government employees. It had established a task force to formulate a design for such a new scheme. After some initial meetings the task force was broadened to include representation from the relevant union (the M.O.A. and Australian Workers Union) as well as representatives from the Public Actuary's office. The atmosphere in the meetings was extremely constructive and all members of the task force are to be congratulated for their approach.

At a special general meeting of the Association held on 19 August 1983 endorsement was given to the recommended plan design by the task force and the honourable Minister of Local Government was requested to implement any legislative backing required to give effect to the proposed scheme. This Bill will provide that legislative backing. Before I detail the clauses of the Bill, I should summarise the main features of the proposed scheme as they have been worked out between the councils and the unions with guidance from the Public Actuary.

Membership will be offered to all permanent employees without discrimination because of sex or type of employment. Membership will not be compulsory. Councils will contribute 7½ per cent of the salaries of all employees who join the scheme while the member themselves will be able to choose levels of contributions from 2½ per cent to 10 per cent of salary. Benefit levels will vary according to the level of contribution chosen. At the lowest level of contributions, employees will receive a lump sum retirement benefit after 40 years service of 4.8 times their average salary during their last three years of service. The maximum retirement benefit will be seven times final average salary.

Lump sum benefits will also be payable on death or total and permanent disablement, though any of the lump sums will be able to be switched to a pension. The resignation benefit will incorporate a share of the council's contribution which increases with length of membership of the scheme. Members of existing council schemes will not be disadvantaged. They can choose to remain with their present contribution levels and benefit entitlements or else transfer to the new contribution benefits with their accrued benefits being preserved. Because all councils will participate in the scheme there will be full portability of superannuation for staff moving between councils. The scheme will be run by a board of six comprising two local government Association representatives, two union representatives, a representative of the Public Actuary and a person appointed by the Minister as Chairman. The scheme will be administered initially by a life office appointed by the board and the funds generated by the scheme will be invested by investment managers appointed by the board with the approval of the Minister.

The rules and conditions of the scheme will be detailed in documentation being formulated by the task force referred to earlier. After approval by the Minister, the documentation will be gazetted and laid before both Houses of Parliament. Any subsequent amendments to the scheme will be similarly formulated, gazetted and tabled. Either House of Parliament could disallow the scheme or amendments thereto. Before I deal with the Bill, clause by clause I should point out that the Bill has been developed in consultation with the task force and has the general support of both the councils and the unions.

Clause 1 is formal. Clause 2 provides that the measure is to come into operation on a day to be fixed by proclamation. Clause amends section 157 of the principal Act which makes provision (*inter alia*) for each council to develop a superannuation scheme for its full-time employees. The clause strikes out the provisions relating to superannuation leaving the remainder of the provisions of that section which deal with the appointment of employees and their long service leave and sick leave rights.

Clause 4 provides for the insertion of new sections 157a to 157f. Proposed new section 157a provides that the Minister may approve a scheme providing for superannuation and related benefits for the officers and employees of every council and may approve amendments to such a scheme. The scheme or amendments, when approved, are to be published in the *Gazette* and to be subject to disallowance by either House of Parliament. The proposed new section provides that the superannuation scheme is to be finding on every council. For the purposes of the section, 'council' includes a controlling authority constituted under the principal Act or an authority or body declared by the superannuation scheme to be an authority or body to which the scheme applies; and 'officer' or 'employee' of a council means an officer or employee of a class declared by the superannuation scheme to be officers of employees to whom the scheme applies.

Proposed new section 157b provides for the establishment of a 'Local Government Superannuation Board' to administer the superannuation scheme. The board is to be a body corporate with the usual corporate capacities. The proposed new section goes on to provide that the constitution, powers, functions and duties of the board are to be as set out in the superannuation scheme. Proposed new section 157c requires the investment of funds generated under the superannuation scheme to be carried out on behalf of the board by investment managers appointed by the board with the approval of the Minister. Proposed new section 157d provides for the auditing of the accounts of the board.

Proposed new section 157e requires the board to prepare an annual report for the Minister who is to cause it to be laid before each House of Parliament. The report must incorporate the audited statement of accounts for the financial year to which the report relates. Proposed new section 157f requires the board to obtain within four years after the commencement of the superannuation scheme and at least once in every three years thereafter a report from an actuary on the state and sufficiency of the funds generated under the superannuation scheme. The board is to forward a copy of the report to the Minister together with any recommendations it thinks fit to make as a result of the report. The Minister is in turn required to cause a copy of the report and recommendations (if any) to be laid before each House of Parliament.

The Hon. C.M. Hill secured the adjournment of the dabate.

URBAN LAND TRUST ACT AMENDMENT BILL

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

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

That this Bill be now read a second time.

In view of the lateness of the hour, I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

This Bill proposes a modification to the present Urban Land Trust Act to provide the Urban Land Trust with the power to participate on a joint-venture basis with private developers in urban development. It is proposed to achieve this by insertion of new section 14 (2*a*) into the Urban Land Trust Act. The effect of this is to extend the current

powers, as prescribed in section 14 (2) beyond a land banking role, to one which permits joint-venturing with developers. The Urban Land Trust will not be able to develop land in its own right.

Under the current provisions of the Urban Land Trust Act, 1981, the Trust is confined to a passive land banking role in which it may sell broadacre land parcels to private developers who in turn may subdivide the land for housing and other purposes. The Government considers that the role of the Trust does not enable it to play an effective role in ensuring well-planned urban development, or in ensuring that an adequate supply of affordable residential land is provided in response to community demand.

The Urban Land Trust holds its substantial bank of broadacre land holdings on behalf of the Government and ultimately the whole community. The Government wishes to ensure that this asset is used in the most responsible fashion in the interests of the whole community in terms of: ensuring a stable supply of affordable land to meet market needs; efficient co-ordination of the physical layout and staging of new urban areas; and effective use of related public investment in utilities and service. The Government also believe that sound urban planning and development is an essential prerequisite to successful community development. Accordingly, the design and development of major new urban areas, in addition to normal business requirements, should have regard to Government objectives in ensuring the availablility of well located and reasonably priced home sites. The Urban Land Trust has a key role in this regard.

At the same time the Government recognises the considerable skills and resources of the private development industry. A basic aim of this Bill is that those resources should continue to be utilised. The Government considers that the best means of utilising private sector resources in the development process, whilst at the same time ensuring an adequate Government influence and presence, is to provide for joint-venturing between the Urban Land Trust and private enterprise. However, it is not intended that the Trust would carry out any construction activity on behalf of the various joint-venturers.

In considering its approach to amending the Urban Land Trust Act, the Government was mindful of the need for the joint-venturing power to facilitate a variety of possible arrangements with private companies. The proposed amendments allow the Trust to enter into mutually acceptable arrangements with a wide variety of participants in the land development and housing industry. Having regard to the different circumstances and skills and resources of these different companies, the nature of the various joint-venture arrangements could vary significantly. The proposed amendment will naturally attract the interest of the development industry and other groups. It is a significant proposals which reflects the cumulative experience of Governments operating under private and public sector approaches to urban development.

Clause 1 is formal. Clause 2 amends section 14 of the principal Act which sets out the powers and functions of the Urban Land Trust. The clause adds to the present powers of the Trust a power to engage, with the approval of the Minister, in a project for the division, development and disposal of land for residential, commercial, industrial or community purposes (including division and development beyond the stages presently contemplated by the section) pursuant to an arrangement with some other person or persons under which the parties combine to provide the land, finance and other resources necessary to undertake and complete the project.

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

PLANNING ACT AMENDMENT BILL (1984)

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

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

That this Bill be now read a second time.

In view of the lateness of the hour, I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

This Bill seeks to make a number of different amendments to the Planning Act, 1982. First, the Bill seeks to amend the Act by repealing subsection (3) of section 43 of the Act. This subsection provides that section 43 will expire on 4 November 1984, two years from commencement of the Planning Act. Section 43 provides that where the Governor is of the opinion that it is necessary in the interest of orderly and proper development that an amendment to the Development Plan should come into effect without delay (for example, a zoning change) then he may declare that the amendment shall come into full effect on an interim basis. This action can only be taken concurrently with or after commencement of public exhibition of a proposed amendment to the Development Plan. Section 43 has been used on four occasions since November 1982. Three of these occasions concerned provisions incorporated into the Development Plan as a result of the transition between the now repealed Planning and Development Act and the Planning Act, 1982. The introduction of new provisions under section 43 has occurred only once when the vegetation clearance supplementary development plan was brought into interim effect by the Governor in association with introduction of clearance controls.

Section 43 was enacted to enable an amendment to the Development Plan to be given effect without delay. Section 57 of the Act provides that a planning authority, when considering an application for a planning authorisation, must apply the law as it stood at the time that the application was made. Section 57 therefore prevents a planning authority from considering proposed amendments to the Development Plan which were not in force at the time that the application was made. It is often important, however, that proposed amendments to the Development Plan are considered before planning authorisation is given. Such consideration could, for instance, prevent development undertaken in order to avoid the impending changes to the Development Plan. Section 43 achieves this by bringing a proposed amendment into operation earlier than would otherwise occur. The now repealed Planning and Development Act dealt with this problem by allowing 'all relevant matters' to be considered, with the result that it was possible to prevent development from proceeding on the basis that it would clearly be contrary to draft amendments to either the Development Plans under the repealed Act, or to draft zoning regulation amendments. The repeal of subsection (3) will make section 43 a permanent feature of the Planning Act, 1982.

The Bill seeks to amend the penalty provisions of sections 46 and 51 of the principal Act so as to allow maximum penalties to be calculated on the basis of the length of time a continuing breach of the Act has occurred. In many cases development contrary to the Act may occur and some months may elapse before prosecution proceedings can be put before the courts and determined. In order to discourage

the continuation of an illegal activitiy such as the illegal use of land, or continued clearance of native vegetation, it is proposed to allow a maximum penalty which increases for the length of time a breach of the Act continues. This is particularly important where an illegal activity continues for a lengthy period prior to a court decision, especially where the monetary benefit gained by the defendant from the illegal activity exceeds the maximum penalty of ten thousand dollars currently set by the Act. As the Act already provides a default penalty of one thousand dollars for each day that an illegal activity continues after a conviction, it is appropriate that a similar sum to be adopted as a maximum penalty for every day on which the illegal development continues before conviction.

The Bill also seeks to repeal section 56 (1) *(a)* of the Act. Section 56 (1) *(a)* of the Planning Act, 1982, provides that no provision of the Development Plan under the Act may prevent the continuation of an existing lawful activity. This provision has been incorporated in successive 'planning' Acts to ensure that existing lawful activities cannot be stopped by planning laws. Planning controls are, and have always been, aimed at ensuring that new development is well planned. Section 56 (1) *(a)* of the Act perpetuates the provisions of section 37 of the now repealed Planning and Development Act. Section 36 of the repealed Act provided for the making of regulations to render certain activities illegal in certain zones (for example, industry in residential areas). Many such regulations were made (zoning regulations), so that it was necessary to protect the 'existing use' of 'non-conforming' activities which existed at the time the relevant regulations took effect. This was the purpose of section 37 of the old Act.

However, the philosophy of the Planning Act is different. It seeks to control 'development', which amongst other things, includes changes in the use of land, but not land use *per se*. With the exception of provisions dealing with the removal of unsightly outdoor advertisements, the Planning Act, 1982, does not inhibit existing uses of land but becomes relevant only when it is proposed to undertake new 'development' on land. Accordingly, section 56 (1) *(a)* of the Act is not necessary for the protection of 'existing use rights'.

Section 37 of the repealed Act was the subject of judicial review on a number of occasions. A series of successive judgments hold that section 37 entitled a user of land to some further expansion of an existing use without planning approval. In some cases, it was held that significant extension could occur without approval, even when the existing use was under no legal threat whatever. Since repeal of the old Act and commencement of the Planning Act in November 1982, the Courts have interpreted section 56 (1) *(a)* of the Planning Act in the same manner as its predecessor, section 37 of the old Act. It has been held on a number of occasions that section 56 of the Planning Act allows the erection of new structures without approval, provided no land use change is proposed. In some cases, the new structures have constituted a significnt impairment to the amenity of the locality. Examples of development held to not require planning approval as a result of the existing use provisions are:

(1) the erection of a carport on the street alignment in Woodville;

(2) major new structures associated with an existing slaughterhouse at Summertown in the Adelaide Hills;

(3) erection of a garage and carport in Woodville on the side property boundary.

Other similar proposals have also been held not to require planning approval. While the proposals themselves may not seem major, the precedent and principle could equally apply to developments of unknown proportions and impacts. The same interpretation would apply, for example, to major extensions to existing industrial activities in residential areas.

This problem has been exacerbated by a recent decision relating to the State's vegetation clearance controls under the Planning Act, 1982. The court found that the vegetation clearance controls are valid, but held that the existing use of the subject land was farming, and therefore the clearnace of native vegetation for farming purposes was a continuance for an existing use and did not require planning approval. While this existing determination is the subject of further appeal by the South Australian Planning Commission, it casts great doubts over the effectiveness of the clearance controls while section 56 remains in its present form. As the Planning Act, 1982, does not control 'use of land' but only changes in the use of land, section 56 (1) *(a)* is not necessary to protect 'existing use rights'. To ensure however that existing use rights extend only to the maintenance of existing activities on land, and do not confer a right to undertake further new development, the Bill proposes the repeal of section 56 (1) *(a)*.

The Bill will therefore ensure that any new development associated with an existing activity will require approval and be judged on its merits, thereby protecting the rights of owners of land adjacent to a development site, by ensuring new development is subject to appropriate control. It should also be recognised that the replacement of an existing building by a new building of the same size and appearance is not development, and is therefore not subject to planning control, and that work within an existing building is also not development. Accordingly planning controls do not prevent the upgrading of existing premises, installation of new technology, or alterations to comply with other legislation; it is only extensions to existing activities that should be subject to planning control.

While section 56 could be modified to ensure that existing use guarantees do not apply to applications to clear native vegetation, such an action would no overcome the difficulties associated with the expansion of existing activities which are not of a farming nature. Only comprehensive action will overcome the problems applying to planning control generally. Repeal to section 56 (1) *(a)* is seen to be the most appropriate measure.

Consequential upon repeal of section 56 (1) *(a)* the Bill proposes the repeal of subsections (3) to (7) of section 56 and insertion of new section 4a. Subsections (3) to (7) of section 56 were intended to provide that, where an 'existing use' ceased for a period of six months, or more, the protection afforded to existing uses would no longer apply, thus preventing the re-establishment of that use without planning approval. The current wording of these subsection was drafted on the assumption that the Planning Act would control 'use of land', and therefore that re-establishement of the use would be subject to control. However, the Planning Act controls changes in the use of land, rather than uses *per se*, and the re-establishment of an existing use may not beconsidered by the courts to constitute a 'change of use'. Accordingly, it is proposed to replace subsections (3) to (7) of section 56 with provisions which ensure that a planning authority can declare that an existing use has discontinued once it has ceased for six months, and that re-establishment of that use shall be deemed to be a change of use and therefore subject to control. Where no such declaration is made by a planning authority, the existing use is deemed to be discontinued after two years, thereby preventing the re-establishment of an old activity after many years have passed.

Under the proposed amendments an activity, once discontinued, would be subject to the normal planning controls should it seek to re-establish. If the re-establishment requires consent, that is, the development is not 'permitted' devel-

opment under the Act, re-establishment can be judged on its merits, having regard to the impact of the activity on the area. The new provisions retain a right of appeal against a declaration, thereby enabling disputes between a user of land and planning authorities to be settled, and also provide that a declaration can be made only after an activity has been ceased for six months, or has continued only to a trifling extent for that period.

Clauses 1 and 2 are formal. Clause 3 inserts a new section 4a into the principal Act. A change in the use of land constitutes 'development' for the purposes of the principal Act. Where there has been a period o non-use of land it can be argued, if the original use is revived, that there has in fact been no change in use of the land. This would allow a previous use to be revived after a long period of non-use without planning approval being required and notwithstanding that that use of that land might be contrary to the Development Plan. Subsection (l) *(b)* (i) of the new section provides that where a use has lapsed for two years or more the revival of that use shall be regarded as a change of use and will therefore require approval. Similarly if a planning authority has made a declaration under subsection (2) the revival of the use to which the declaration relates shall constitute a change in use. Subsection (l) *(a)* is a general provision explaining the concept of change of use as it applies in the Act.

Clause 4 repeals subsection (3) of section 43 of the principal Act. Clause 5 amends section 46 of the principal Act. The effect of the amendment is that when a court is sentencing an offender under section 46 it will be able to compute the maximum fine that may be imposed by multiplying the number of days on which the offence has continued before the offender is convicted by $1 000. If that sum is more than $10 000 the court will be able to impose any penalty up to, but not exceeding, that sum. If it is less than $10 000 the court will, if it wishes, be able to impose the existing maximum penalty of $10 000. Clause 6 makes a similar amendment to section 51 of the principal Act. Clause 7 strikes out paragraph *(a)* of subsection (1) of section 56 of the principal Act. As a consequence of the removal of paragraph *(a)* the clause also strikes out subsections (3), (4), (5), (6) and (7) of section 56.

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

CITY OF ADELAIDE DEVELOPMENT CONTROL ACT AMENDMENT BILL

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

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

That this Bill be now read a second time.

In view of the lateness of the hour, I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

The Bill proposes amendments to the City of Adelaide Development Control Act to allow control of development which would impair the heritage value of listed buildings and sites in the City. First, the Bill provides that the Adelaide City Council cannot grant consent to a development proposal affecting an item of the State heritage, as listed under the Heritage Act, without first forwarding the application to the City of Adelaide Planning Commission and seeking the Commission's concurrence to the proposed consent. The Bill requires the Commission, prior to making its decision to have regard to the advice of the Minister responsible to the State Heritage. Should the Commission refuse to grant its concurrence to the proposed consent by the council, an appeal against that refusal lies against the Commission, thereby making the Commission accountable for its decision. This provision will ensure that the views of the Minister responsible for the Heritage Act are considered prior to consent being granted to any development proposal affecting an item of the State heritage within the City of Adelaide.

Secondly, the Bill proposes an amendment to the regulation-making powers of the Act to enable a list of city buildings and sites of local heritage significance to be incorporated into the regulations. Should the Act be amended in such a manner, the development control principles in the City of Adelaide Development Plan will then be amended to enable the Adelaide City Council to have regard to the heritage significance development application affecting that building or site. Such decisions, however, will be sole responsibility of the Adelaide City Council.

Clauses 1 and 2 are formal. Clause 3 inserts a definition of 'item of State heritage' into section 4 of the principal Act. Clause 4 makes a number of amendments to section 24 of the principal Act. New subsection (2a), inserted by paragraph (a) of this clause, requires the council to refer a development that will affect an item of State heritage to the Minister responsible for State heritage. New subsection (5) prevents the council from giving its approval to such a development if the Commission has not concurred in the approval. Paragraph (b) of the clause makes a consequential amendment to subsection (3) of section 24.

Clause 5 inserts new section 24a into the principal Act. This section will require the Commission to delay its decision in relation to a development that affects an item of State heritage until it has received any representations that the Minister wishes to make in relation to the development. In making its decision the Commission must have regard to the Minister's representations as well as to general planning considerations. Clause 6 makes a consequential change to section 25b of the principal Act.

Clause 7 adds a new paragraph to section 28 of the principal Act. This new provision will ensure that an applicant for approval will be able to appeal against the refusal of the Commission to grant its concurrence to a proposed development. Clause 8 makes a consequential amendment to section 32 of the principal Act. Clause 9 amends section 44 of the principal Act. The amendment will give the Governor power to make regulations to provide for the keeping of a register of heritage items that are situated within the municipality of the City of Adelaide.

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

ADJOURNMENT

At 12.35 a.m. the Council adjourned until Wednesday 4 April at 2.15 p.m.