LEGISLATIVE COUNCIL

Thursday 14 February 1985

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

QUESTIONS

BICYCLES

The Hon. M.B. CAMERON: I seek leave to make a statement before asking the Attorney-General a question about the black market for stolen bicycles.

Leave granted.

The Hon. M.B. CAMERON: With the beginning of the school year, many parents have approached me about what appears to be a growth in the number of bicycles that are stolen each year. In an average family this can involve quite an investment for parents, especially when teenage children are involved. The bicycles are now a very expensive item in a family budget and cost up to $400 for a reasonable bicycle. That can involve much money if a bicycle is lost. It appears from the discussions that I have been having that stealing bicycles is a growing industry in the underworld because it is so easy for people to steal bicycles. It is so easy for a thief to pull up in a covered van and steal the bike, especially as no lock is beyond them.

Some locks that cost $50 to $70, I gather, are very difficult to cut, but I understand that that has been overcome by people who appear to have no regard for other people's property. It is one of those things that tend to be pushed aside because each individual item is not so large, although on the overall scale it is obviously a growth industry. I understand that the Attorney will not have the information I want, but I would like him to at least seek it. My questions are as follows:

1. How many reported bicycle thefts have there been in the past five years?
2. How many have been recovered and returned to the owners?
3. What mechanisms presently exist within the Police Department to monitor the illicit sale of stolen bicycles?
4. Is the Government concerned by any role that is played by regularly run 'trash and treasure' type sales in the marketing of stolen bicycles and other goods?
5. Will the Government take steps to instigate a programme aimed at reducing the alarming growth of bicycle thefts?
6. Is there any evidence to suggest that stolen bicycles are being transported interstate for sale?

The Hon. C.J. SUMNER: I will ascertain that information for the honourable member and bring back a reply.

SCHOOL DENTAL SERVICE

The Hon. J.C. BURDETT: I seek leave to make a brief explanation before asking the Minister of Health a question about school dental care for year 8 students.

Leave granted.

The Hon. J.C. BURDETT: In July 1984 the then President of the Australian Dental Association, South Australian branch, wrote to the Minister in regard to school dental care for year 8 students. Referring to recommendations of the Barmes Report, the President said:

> The Australian Dental Association recollects that you intimated you would seek expert advice on this matter and subsequently World Health Organisation expert Dr D. Barmes presented a 'Review of the South Australian School Dental Service 1983'. The Association would like to know why recommendation and option No. 4 in the review that 'Private practitioners be involved in the SDS if possible even in primary school but certainly in secondary school services and in all of the other extensions envisaged' was not accepted by the Government in this proposed extension.

The Minister in his reply stated:

> . . . it is considered that the planned extension of care to year 8 students should be achieved through the use of existing resources. Therefore, it is anticipated that there will not be a requirement for additional time by dentists in this extension.

The President of the ADA also asked, in referring to examinations of a child aged 13, why the examination could not be carried out and the recommended treatment programme provided to parents with the enrolment form for the clinic of their choice. This suggestion is dismissed by saying that it is not practicable.

Finally, the President of the Association asked a question about the responsibility for the safety and well-being of secondary students attending School Dental Service clinics out of school hours. The Minister replied simply that arrangements have already operated satisfactorily with Government assisted secondary students. I believe the Minister's responses to the issues raised by the ADA are unsatisfactory. My questions are:

1. How can the Minister reconcile Dr Barmes's recommendation that provides that practitioners be involved 'certainly in secondary schools' with the Minister's statement that 'it is anticipated that there will not be a requirement for additional time by dentists in this extension'?
2. Why is it not possible for parents to receive the recommended treatment programme for their children so that they may then decide whether work should be done by the School Dental Service or by private practitioners?
3. Will the Minister act to clarify the responsibility of teachers, parents and the School Dental Service when secondary students visit School Dental Service clinics on primary school property outside school hours?

The Hon. J.R. CORNWALL: I must say that in this pre-election year (or is it an election year?) I am amazed, almost dumbfounded, that Mr Burdett continues to attack the School Dental Service.

As a practising politician, I do not mind that, because we know that 96 per cent of the population support the School Dental Service. They do that for a number of reasons. First, it has played a significant part in revolutionising the oral health of this generation of children in this State. It has been a remarkable achievement by any standards. It is one of the finest school dental services in the world, and certainly by far the best school dental service in Australia. Yet, at least once a month, and sometimes more frequently when this Parliament is sitting, the Hon. Mr Burdett gets to his feet and either explicitly or implicitly attacks it. I do not really mind if he does that on a daily basis.

The regrettable thing is that, unfortunately, I do not think that this will be reported, but it really is getting a little bit tiresome. The fact is that since this Government was elected on 6 November 1982 it has reversed the decision of the Tonkin Government to downgrade the School Dental Service. We inherited a situation where the Liberal Government had countermanded the move to extend the School Dental Service to secondary school students. We reversed that decision immediately; in the school year 1983 (within weeks of coming into Government) we extended the service to all secondary school students whose parents had been assessed by means testing through the Education Department to be eligible for the book allowance: in other words, all of those secondary school students from low-income families immediately had the benefit of the School Dental Service made available to them.

About the middle of last year, within existing resources (and this is the remarkable success story of the School Dental Service, because the great majority of these extensions

are occurring within costs savings that are made in the primary area), we commenced to extend the service to make it available to all year 8 students. This year, some time from July on, it will be extended to all year 9 students, and then every year after that until we cover year 11, which is the year in which the majority of students turn 16. So, a clear pre-election promise has been honoured, or is in the process of being honoured by this Government.

As I said before, 96 per cent of South Australian parents applaud this. What we did say before the election, and what I have said consistently since, is that private practitioners will be used in the extension of the school service where it is practicable and cost-effective to do so. I made clear that payment for that service would be on a sessional basis. It was never my intention that that should be done on a fee-for-service basis because that is far more expensive. We are using private dentists in the School Dental Service in some country areas because the criteria of practicality and cost-effectiveness are met in those situations. I am sure that Mr Burdett's colleague, the member for Eyre, could give him a lot more detail about those services than can I, but certainly I repeat that where it is practicable and cost-effective to do so we are using private dentists. We are also using private dentists in the very significant expansion that is occurring within the community dental health programme.

We have been able (and I am not about to make a major announcement at the moment; you may have to wait a little longer) by very significant additional funds that were made available through successive years since we have been back in Government, to meet the undertaking to extend dental services to eventually all low income adults. In other words, pensioners and the long-term unemployed, in particular, but ultimately also to those families one may call the working core—the single income families on a low income with a number of children to care for.

That is being done in most instances through the existing school dental clinics. So, there is a maximum use of school dental clinics in almost every instance right around the State, in addition to the community dental clinic at the Whyalla Hospital, which operates for 10 sessions a week (five full days) and has quite a lengthy waiting period. These sort of facilities are being progressively extended. In fact, it is now literally an outreach service of the Adelaide Dental Hospital for those people who would normally qualify for service there. As a result it has not only been decentralised, but the intolerable waiting lists at the Dental School have been significantly reduced.

I do not think that I have to go into any further detail to reconcile Dr Barmes's recommendations that practitioners be involved. They are being involved where it is practical and cost effective to do so. I have not had one complaint from a parent, and that suggests that they wish to be directly involved in choosing the course of treatment for their children. Not one parent has complained to me about that aspect of the School Dental Service in the two years and three months I have been Minister. There is no demand to be met, so I really do not see that that is an area requiring any further attention. To clarify the legal position about secondary school students attending primary school dental clinics, my advice is that they are in no different a position from secondary school students attending clinics anywhere else, private or otherwise.

The Hon. J.C. BURDETT: I have a supplementary question. How does the Minister say that he is meeting the recommendation of Dr Barmes that practitioners be involved in secondary schools? The Minister explained how they are being involved in other areas. If the Minister is not complying with that recommendation, why not, and will he do so in future?

The Hon. J.R. CORNWALL: I could go through it all again, but I do not believe that most of my colleagues would want me to do that. I explained that private practitioners are being used on a sessional basis in the School Dental Service, and I do not discriminate between primary and secondary school students in that respect. Private practitioners are being used in the School Dental Service and the very much expanded community dental programme where it is practical and cost effective to do so. In both instances they are being used on a sessional basis. I do not believe that there is very much else I can say, suffice to say that I had the very good fortune last Friday week to attend the first graduation of dental therapists in four years. The dental therapists, of course, are an integral part of the school dental programme and their training, which was abandoned during the Tonkin-Adamson regime, was recommenced in 1983.

GRAND PRIX

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

Leave granted.

The Hon. K.T. GRIFFIN: When the Australian Formula One Grand Prix Bill was debated in the Legislative Council, at the beginning of December 1984, the Attorney-General indicated that he expected the agreement between the Government and the Formula One Constructors Association would be ready for signing in the following week. On that occasion the Attorney said that it may be that Mr Ecclestone, who was, I think, the Executive Director of the Association, would come to Adelaide before Christmas to sign the agreement. Every indication was given that the agreement was almost ready for signing.

The agreement was to be the document binding the Association to the holding of the Grand Prix in Adelaide and the terms and conditions of holding the event including sponsorship, profit-sharing and other significant matters. The Public Works Standing Committee Report, which was tabled early this week, states that the final agreement is yet to be signed. It is only eight months before the event is to be held, and at least $9 million is to be spent. I think all members will agree that it is important that this very substantial amount is not spent without a binding legal agreement. First, in light of the fact that the agreement has not been signed—although it was indicated in early December that it was almost ready for signing—why has the agreement not been signed, when the Attorney told the Legislative Council in December that it was almost ready for signing? Secondly, what are the issues holding up the signing of the agreement? Thirdly, when will the agreement be signed?

The Hon. C.J. SUMNER: I believe that the Hon. Mr Griffin must have conferred with his colleagues in another place because, I believe, they have asked a similar question of the Premier and, I understand, he has given a detailed reply. Should he wish to peruse *Hansard* tomorrow, the Hon. Mr Griffin will see what the Premier had to say. It seems that the honourable member is on a campaign to knock the Grand Prix. Anything the Government puts up for the benefit of South Australia—whether it be the ASER project, the Grand Prix, or anything else—the Opposition delights in knocking it.

The Hon. K.T. Griffin: We aren't knocking it.

The Hon. C.J. SUMNER: A good number of members in this Council opposed the regulations relating to the ASER project. Had their disallowance of the regulations passed this Chamber, and they did not—and the Hon. Mr Hill was one member who wanted to knock the ASER project—

The Hon. C.M. Hill interjecting:

The Hon. C.J. SUMNER: The honourable member wanted to close down the ASER project.

The PRESIDENT: Order! As I understand it, the question related to the Grand Prix.

The Hon. C.J. SUMNER: It has everything to do with the Opposition—

The PRESIDENT: Order! It has nothing to do with the ASER project.

The Hon. C.J. SUMNER: No, but it has a lot to do with the Opposition knocking Government initiatives to develop South Australia. If he had had his way, the Hon. Mr Hill would have stopped the ASER project, as would a number of other members opposite. Honourable members will also recall that the Opposition conducted a filibuster in this Council over the issues relating to the Grand Prix.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: Yes, I did; I answered them very carefully and comprehensively. Nevertheless, it seemed that honourable members opposite could not cope with the fact that this project had been secured for Adelaide.

As I understand it, negotiations with the Formula One Constructors Association are proceeding. It obviously would not be commercially appropriate or desirable to reveal publicly those issues that may be holding it up, although I understand that there are no particular difficulties. It is a matter of reaching final agreement on wording as to the agreement. The broad principles have been arrived at, as the honourable member—

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: That is correct, and that was the anticipation at that time. That was the information that I was given. As I said, the major issues have been agreed. It is a matter of getting the detailed documentation ready, and that is proceeding.

The Hon. K.T. GRIFFIN: I ask a supplementary question, Sir.

The PRESIDENT: Order! Could there be a little less audible conversation so that we can at least hear the question?

The Hon. K.T. GRIFFIN: The third question, which has not been answered, was: when will the agreement be signed?

The Hon. C.J. SUMNER: I have not been involved in the detailed negotiations, and I am not in a position to indicate that. I understand that the Premier may have given some information to the House of Assembly on that topic, and if I have anything to add to what he has said I will indicate that to this Council.

SELECT COMMITTEES

The Hon. ANNE LEVY: I seek leave to make a brief explanation before asking you, Mr President, a question about the confidentiality of Select Committees.

Leave granted.

The Hon. ANNE LEVY: Yesterday in the House of Assembly the Deputy Leader of the Opposition raised a matter that was the subject of a memo from the National Parks and Wildlife Service to the Minister for Environment and Planning. This memo had been made available to the Select Committee on Bushfires, of which I was the Chairperson, on a confidential basis. All members of that Select Committee were provided with a copy of this confidential memo. I stress again that it was a confidential document that did not form part of the official evidence to that Select Committee that was tabled in this Council on Tuesday of this week.

For the Select Committee, it fell into the same category as evidence off the record given by a witness appearing before it. I am sure that all members of this Council have been members of Select Committees to which confidential evidence has been given off the record. As Chairperson of that Select Committee, I did not release this material to anyone outside that Committee, nor did I authorise anyone else to do so. It is a matter of grave concern to me if any member of that Committee has passed a copy of that document to any other person. It should be a matter of equal concern to you, Mr President, and to every member of this Council, for it will completely destroy the Select Committee system as we know it and as we have used it so effectively if material that is given in confidence to a Select Committee by anyone does not remain confidential as requested.

I am not aware whether you can take any action under Standing Orders, Mr President, to determine whether any member of the Select Committee has breached this confidentiality, nor whether the Council can take any action against any such member, but I ask you to look into this matter to see whether what is at least a breach of ethics, if not of Standing Orders as well, can be dealt with.

Members interjecting:

The PRESIDENT: Order! It is an important matter: the honourable member has every right to bring it to the Chair. I will make what investigations I can with regard to this matter now that it has been raised. It also provides me with an opportunity to say that I was disturbed yesterday to notice in the newspaper a report of a conference, which must have been leaked long before that conference was finished. The implication within the article was that the information had not gone to the newspaper through any member of Parliament, which I believe was some sort of accusation against those who served on that conference. I regard it as a breach of the true conduct of conferences in this Council.

LYELL McEWIN HOSPITAL

The Hon. DIANA LAIDLAW: Can the Minister of Health say what were the findings of the auditor for the Lyell McEwin Hospital for the year ending 30 June 1984, and what action has the Minister taken on the report?

The Hon. J.R. CORNWALL: I do not have those figures or findings immediately in my head. I can say in general terms that the accounting practices at the Lyell McEwin Hospital two years ago left an enormous amount to be desired. The administration generally at the Lyell McEwin Hospital two years ago left a great deal to be desired. A new and very senior administrator, Dr David Reynolds, was appointed fairly early in my term. The whole administration, including the financial administration, at the Lyell McEwin Hospital has been very substantially upgraded. There was an auditor's report, which I do not have with me, and I do not have the details with me, but I will be very pleased to obtain a full and detailed report, because it is an important question, and bring back a reply as expeditiously as I can. I repeat in general terms that I understand—and I have kept myself reasonably well appraised of this in general terms—that things at the Lyell McEwin Hospital have improved substantially. I repeat 'in general terms': I have not got the details.

The Hon. DIANA LAIDLAW: I ask a supplementary question. I apologise that I was not able to hear all the Minister's response. He indicated that he would be prepared to bring back a detailed reply. Is he also prepared to table the Auditor-General's report, and, if not, why not?

The Hon. J.R. CORNWALL: Without having seen it, I cannot say 'if not, why not'. I will take that question on notice.

ADOLESCENT PSYCHIATRIC SERVICES

The Hon. R.J. RITSON: I seek leave to make a brief explanation before asking the Minister of Health a question about adolescent psychiatric services.

Leave granted.

The Hon. R.J. RITSON: As the Minister is aware, the management of psychiatric problems in adolescence is an area of great difficulty. It is a time of life where stress and neurotic reaction can mimic psychotic illness and when some of the major psychoses such as schizophrenia present. It poses diagnostic problems that are frequently beyond the scope of the general practitioner, and has resulted in some psychiatrists making it a specialty of its own. I have no special knowledge of the quantum of adolescent psychiatric services in South Australia, but I have an impression as a referring practitioner that there is a shortage of people practising this specialty, both in the private and in the public sector.

Of course, without going into detail, there was a resignation of a rather unhappy adolescent psychiatrist not too long ago. How many medical practitioners are specialising in this field in both the private and public sectors? Does the Minister believe that the number of such practitioners fulfils the demand, or does he believe that there is a need for an increase in such services? If the Minister is not satisfied with the level of service, can he tell the Council whether any plans are in hand to attract practitioners to this field?

The Hon. J.R. CORNWALL: I will come to the specific questions in a moment, but it is important that I give the honourable member and the Council some indication of the forward planning undertaken in the area of adolescent mental health generally in the past 12 months.

The Hon. R.J. Ritson: Including the para-medical support area?

The Hon. J.R. CORNWALL: Yes. This is International Youth Year, as I am sure everyone is aware. In adolescent mental health generally we have never got it right in South Australia over the past decade or more, and it has never been got right as far as I can understand anywhere else in the world. It has been a very vexed and difficult area. I have held extensive discussions with a large number of people ranging from those providing general mental health services in the field, through the child adolescent and family health services, to those providing tertiary level services at the Children's Hospital.

We are fortunate indeed in having at the Children's Hospital a child psychiatrist who I believe is in world class. It is intended soon, when the general review of the child adolescent and family health services is completed and the projects that have been conducted in the central sector by Dr Bill McCoy and in the southern and western sectors by the relevant personnel are put together, that a major programme will be consolidated to be put in place during the calendar year 1985 which, as I have said, is International Youth Year.

So, at this stage I cannot give details because they are not available, but within a few months I expect that there will be a major package that will involve delivery of mental health services around the State co-ordinated at primary, secondary and tertiary levels, and tertiary level services will of course be delivered from the Children's Hospital, which will be asked to take up a significantly expanded role in adolescent health. More details of that later; I promise the honourable member that it will be very exciting.

With regard to child psychiatry generally, it is a difficult area. I met with quite a number of child psychiatrists a few months ago. They feel to some extent very much on their own. They tend to feel that they are not in the mainstream with their other psychiatric colleagues and there is a very real sense of isolation. How many we have I really cannot say off the top of my head—not many. Certainly, on the advice that is available to me it is not enough to fulfil the demand. As to the plans in hand, yes, there are specific recommendations that are being acted on to ensure that we do provide for more training within the College of Psychiatrists in South Australia, both in terms of a more useful and perhaps lengthy period spent by trainee psychiatrists in the child and adolescent area, and for those who specialise in the child and adolescent area in particular.

The Hon. R.J. RITSON: I desire to ask a supplementary question. Is the Minister aware of the approximate number of trainees in the mental health services who are displaying an interest in this field? Is he aware of any trends showing whether such training is becoming more or less popular to young post-graduate students?

The Hon. J.R. CORNWALL: I do not have enough accurate information to attempt to answer that at this moment, but I shall be pleased to take those two very constructive questions on notice and bring back a reply next week.

HEALTH PROMOTION UNIT

The Hon. R.I. LUCAS: I seek leave to make a brief explanation before asking the Minister of Health about the Health Promotion Unit.

Leave granted.

The Hon. R.I. LUCAS: On Tuesday the Minister tabled, during his Ministerial statement, the report of the review into health promotion services that was established after a series of questions were asked in August last year. This morning I have been informed that during the process of the review a number of strange incidents occurred within the Health Promotion Unit; for example, I have been informed that a number of sensitive documents were stolen from the files of officers of the Health Promotion Unit. These documents then mysteriously were presented by persons unknown to the review team. The final report of the review team tabled in this Council on Tuesday idicates that some of the information from those stolen files was used in the preparation of the report. My questions are:

1. Is the Minister aware of these allegations? If not, will he conduct an urgent investigation and bring back a report to Parliament?

2. Were details of these allegations made known to the Minister's office or any other senior officer in the Health Commission? If so, what action was taken at that time?

The Hon. J.R. CORNWALL: This is all getting pretty tiresome. Documents stolen; mysteriously; aware of allegations; shock, horror and outrage! Since the allegations were made only three minutes ago it would be very difficult for me to be aware of them. A number of documents came to my office before the review team undertook its work from 18 November. Those documents were drawn to the attention of members of my staff. In my recollection they were photocopies of single documents—certainly, they were not stolen as the Hon. Mr Lucas's source alleges. It is becoming very obvious who his source is at this stage and the honourable member is in pretty bad company. He was fairly well discredited earlier this week, and it might be a good idea if you drop off. Certainly, no details were made known to me of allegations of stolen documents. To the best of my knowledge, there were no stolen documents. It is a bit like saying, 'Why were there leaks to the Minister's office?' It seems to me that it is perfectly reasonable for me as Minister of Health to have access to any document that is in the Health Commission at any time. I am certainly not—

The Hon. R.I. Lucas: How did you get access to them?

The Hon. J.R. CORNWALL: How did I get access to what?

The Hon. R.I. Lucas: How did they get to your office?

The Hon. J.R. CORNWALL: I did not have access to anything. Certainly, photocopies of some documents were passed to members of my staff. They are not stolen documents. That is the sort of thing that these fellows claimed when they were in Government about leaks made to the then Opposition. It is not the same category. To go along with some—

The Hon. R.I. Lucas: But they were never returned to the officer, were they?

The Hon. J.R. CORNWALL: I really do not know what the Hon. Mr Lucas is talking about. Quite frankly, I think that he needs treatment. The whole question of allegations that the Minister of Health stole documents from the Health Commission—and that really is the implication—is so absurd as to not justify a reply.

The Hon. R.I. LUCAS: I wish to ask a supplementary question. I asked the Minister if he was not aware of the allegations (and he has answered that) whether he would conduct an urgent investigation and bring back a report to the Parliament. I asked him whether details of the allegations had been made known, and he said that the dockets are made known to the office. Were the allegations made known to senior officers in the Health Commission? I do not expect the Minister to answer that question straight away and that is why I ask him to go back and consult his senior officers. If allegations were made known to senior officers, what action was taken at the time?

The Hon. J.R. CORNWALL: Let me say first that investigations are continuing. The internal auditor has pursued the whole financial situation within the Health Promotion Unit very diligently, and virtually on a continuous basis (albeit that that has to compete of course with work requirements in one or two other areas) since 1 November or thereabouts. Those investigations are continuing. I have spoken to the Auditor-General and the Crown Solicitor, and I have discussed the matter with senior officers of the Health Commission on numerous occasions and with Health Commissioners on several occasions. It was advice from the Crown Solicitor (and I asked her specifically whether I should call in the Crown Law investigator or the CIB) that there was no evidence of criminality at that time that could be sustained. I do not know what more the Hon. Mr Lucas wants. He is pursuing this matter down every cul-de-sac, but let me assure him that I have been there first. For him to make the outrageous allegation today that by implication the Minister of Health, someone from the Minister of Health's office or a senior member of the Health Commission stole files within our own organisation is really so ludicrous that it does not do him much—

The Hon. R.I. Lucas: You are covering up.

The Hon. J.R. CORNWALL: Oh my God—I am covering up!

The PRESIDENT: Order! The Hon. Mr Lucas has asked a question but continues to talk.

An honourable member interjecting:

The PRESIDENT: I do not intend to have the honourable member tell me what to do.

The Hon. J.R. CORNWALL: I will say it again as often as I have to. On Thursday I made a Ministerial statement in this Council which was remarkable for its length and the amount of detail it contained and which, I might say, was accurate in every detail, to the best of my knowledge at that time. I further made clear that after consultation with the Crown Solicitor, the Auditor-General (personally in both instances, and twice in the case of the Crown Solicitor) and Commissioner Rick Allert further investigations and inquiries were being conducted by our internal auditor with the full support of all those people involved in the discussions. Quite frankly, I cannot remember a case ever where there has been a more full or frank disclosure.

The Hon. Frank Blevins: You even handed him the files.

The Hon. J.R. CORNWALL: I even handed him the files. And there are other files that he can have.

The Hon. C.M. Hill: He brought forward new matter.

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: For the Hon. Mr Lucas to try to push this any further makes it the politics of laughter and stupidity. The Crown Solicitor, the Auditor-General—

The Hon. M.B. Cameron: That is the way you described it last time.

The Hon. J.R. CORNWALL: No.

The Hon. Frank Blevins: Read it out.

The Hon. J.R. CORNWALL: I will. It was not described as a beat-up last year at all. I will tell honourable members precisely what was said. I said:

> He is trying to bask in his former great glory.

I am sure that honourable members would recall a whole series of questions in quite some detail.

The Hon. R.I. Lucas: 'The beaver, I am afraid, has missed out this time.'

The Hon. J.R. CORNWALL: That is right: the beaver is trying to tie me to some great scandal. The fact is, as I said at that time, I did not—

Members interjecting:

The PRESIDENT: Order! I make absolutely clear that I will name the next member who interjects during this very long explanation.

The Hon. J.R. CORNWALL: I made clear at that time (it is on the record, and it is in *Hansard* for all to see) that I did not have the slightest idea what the Hon. Mr Lucas was talking about. I made clear in my Ministerial statement that I had determined in a lengthy memorandum to my personal staff three weeks earlier that the 21st inquiry should be established, and that it should be into the Health Promotion Unit. There had already been extensive discussions about who might conduct that inquiry most effectively prior to Mr Lucas's asking questions. Certainly, Mr Lucas's questions were something of a catalyst but, as I said yesterday, had he had the propriety, the decency, the form, the manners or the maturity to bring those questions and matters directly to my attention or to the attention of the Chairman of the Health Commission, this whole inquiry could have been expedited. In the event, it has been done very diligently.

I must say, incidentally, that I pay a tribute to the very large number of people who still work in the Health Promotion Unit and at whom, presumably, Mr Lucas is having a snide go today. I want to say that their expertise is beyond question, their loyalty throughout these long and difficult months has been beyond question, and I find it most regrettable that the honourable member might be trying to undermine those very good people who are still in that unit and whose work has caused Professor Kerr White to say of it that in some ways it is of world class.

RADIOGRAPHERS

The Hon. R.C. DeGARIS: Will the Minister of Health say whether there is any shortage of radiographers in South Australia? Is it true that some of the health services in South Australia are seeking overseas recruitment of radiographers? Will the Minister inform the Council of the availability of courses in radiography in South Australia?

The Hon. J.R. CORNWALL: To my recollection, there were two courses, which were rationalised into one course probably last year. That was a matter of some contention

at the time. There is always a problem in recruiting allied health professionals in a number of areas in the country, whether physiotherapists (and I am sure that the President knows that from firsthand information), radiographers, occupational therapists or a number of other people.

I do not know the specific situation regarding radiographers in the non-metropolitan area. However, these are good questions, so if the Hon. Mr DeGaris will bear with me I will take his questions on notice and bring back replies as soon as I reasonably can.

POLICE OFFENCES ACT AMENDMENT BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Police Offences Act, 1953; and to make a consequential amendment to the Criminal Law Consolidation Act, 1935. Read a first time.

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

That this Bill be now read a second time.

This Bill to amend the Police Offences Act and to change its name to the Summary Offences Act, is the first major and wholesale change to the Act for 30 years. It is made necessary by outdated provisions, inadequate penalties and provisions which were increasingly irrelevant and antiquated in contemporary circumstances. The Bill is one of a series of measures that have been taken and will be taken by the Government to protect the rights of individuals against lawbreakers, and to ensure that the community can go about its legitimate and lawful business without fear of harassment.

In addition to the major changes being proposed in this Bill to the substantive law, to police powers, and to penalties and offences, there are a series of other measures that have been taken by the Government to protect the community and to improve the quality of policing powers. For example, the Government has acknowledged that criminal activity cannot be confined by State borders, and has become a full and active participant in the National Crime Authority. In addition, the enactment last year of the Criminal Investigation and Extra-territorial Offences Act enabled investigations to be pursued beyond South Australia, and within South Australia when committed elsewhere in Australia.

The South Australian Government, through the Controlled Substances Act of 1984, has attempted to deal with drug abuse, its promotion for profit and the diversion of huge sums of money into organised crime, by:

- increasing to $250 000 and 25 years imprisonment the penalties for the offences of possession and sale of prohibited drugs and drugs of dependence;
- providing powers to enable courts to order the forfeiture of the property of persons convicted of such offences.

South Australia was the first Government in Australia to introduce legislation to prohibit the sale or hire of the extremely violent and sexually violent videos—the so-called video nasties.

In 1983 the Government moved to toughen the laws regarding the distribution and production of child pornography, which are now the most stringent in the Commonwealth. One of the most injurious and humiliating offences on the Statute Book is rape. The Government, while continuing to tackle the evidentiary problems in rape trials through the establishment of an inquiry into the rape laws and penalties, has already moved to reduce the burden of anguish on the victim by amendments to the Evidence Act by restricting the admissibility of irrelevant information about a victim's past sexual history. We also removed the requirement that a judge must as a matter of law warn a jury in sexual cases that it is dangerous to convict an accused on uncorroborated evidence. No distinction is now drawn on this point between sexual and other cases and therefore further protects the victim of sexual assault.

The unsworn statement was reformed to ensure that irrelevant and gratuitously insulting aspersions could not be cast on Crown witnesses. Sexual offences and sexual assault and abuse is not confined to adults. Children are also the unfortunate victims of abuse, and a task force is currently preparing advice for the Government on how to deal with this grave social problem. The successful prosecution of crimes of personal violence and assault was enhanced by action taken by the Government in 1983 through other changes to the Evidence Act. The first dealt with competence and compellability which provided the opportunity for the first time for spouses to give evidence about each other; this was considered to be useful in cases of spouse and child abuse. The second was the Notice of Alibi, which required persons charged with an offence to give notice of any alibi, which they intended to use in their defence prior to the trial proceeding to court. This would allow the prosecution, whether the police or the Crown Prosecutor's office, to investigate the alibi.

In 1979, as Leader of the Opposition in the Legislative Council, I introduced the first Bill in South Australia to give the Crown the right to appeal against lenient sentences. This had been recommended by the Mitchell Committee. This Bill was not proceeded with by the Liberal Government but in November 1980 a similar Bill was finally passed. From December 1980 to the change of Government in November 1982 only 17 Crown appeals had been instituted. Since 1984 the Crown has adopted an active role in appealing against lenient sentences, and for the 1983-84 financial year 44 appeals were instituted by the Crown. Currently before the Parliament is a Bill for a new Bail Act. There has been for some time widespread concern in the community about the granting of bail to persons charged, particularly with assault and sexual offences. The current Bill gives the Crown the right to appeal against the provision of bail where circumstances warrant it.

These measures have been taken in recognition of the concern in the community about violence and the treatment of offenders. Many of the measures deal with matters relating to offences against the person. However, the Police Offences Act was amended last year in recognition of the violation of other persons' property rights which was highlighted in recent cases dealing with squatters and mushroomers. The current Bill then is part of a series of reforms that the Government has undertaken since coming to office, which are designed to find an appropriate balance between the rights of the community to security, protection, and freedom to go about their lawful business on the one hand, and the rights of an accused to a free and unprejudiced trial on the other.

This Bill addresses the substantive law by redefining some offences and abolishing others for which there is no longer a need, as they are dealt with in other Acts (for example, amendments to section 15 of the principal Act delete certain offences relating to drugs as they are now dealt with in more detail under the Controlled Substances Act), or because they cannot be treated as criminal behaviour (for example, vagrancy). The Bill also increases the powers of the police to investigate crime, and increases and rationalises penalties, some of which have not been touched for 30 years. The name of the Act is also to be changed. It will now be called the Summary Offences Act. The distinguishing characteristic of the offences created in the Act is that they are trialable

in courts of summary jurisdiction. The proposed new name reflects that characteristic.

The amendments to the substantive law fall into three categories:

1. Several sections of the Act which penalise behaviour and which subject that behaviour to criminal sanctions in a situation where a person has caused no harm to persons or property, and has no intention to cause such harm, are repealed. These are the offences of having insufficient means of support (section 10); loitering in a place without giving a satisfactory reason (section 18 (1)); being a person suspected by a police officer of being a person who is about to commit an offence (even though the person has not done anything to indicate he or she is about to commit an offence) (section 19); playing games so as to cause annoyance (section 53); and injuring oneself (section 63). The offence of fortunetelling (section 40) has been recast so that the mere telling of fortunes is not an offence. The loitering provisions in section 18 (2) have been retained. These are a useful policing tool and necessary if the police are to be able to deal effectively with a variety of situations where unruly crowds threaten to disturb the peace.

2. Some sections of the Act have been rendered obsolete by changes in Commonwealth and State laws. These are repealed. They include publication of information relating to divorce or similar matters (section 34); use of land for training horses without consent (section 44); the extinguishing of street lamps (section 49); street musicians (section 54); control of dogs (section 55); and part of section 15 (drug offences). The posting of bills (section 48); and false reports to the police (section 62) have been amended to take into account defects in those provisions.

3. Two new offences are created. A new section 11 *(a)* creates the offence of avoiding payment of an entrance fee, and new section 17a (2) *(a)* creates the new offence of behaving in an offensive manner while trespassing. The new trespassing offence, when combined with the recasting of all of section 17, will ensure that landowners can have the quiet enjoyment of their land without undue interference by others.

The second main area dealt with in the Bill is the powers of the police to investigate criminal activities. Police powers to investigate offences are increased in several ways. Section 68 of the Act now empowers a member of the Police Force to stop and search any vehicle upon which there is reasonable cause to suspect that there are any stolen goods. A person suspected of carrying stolen goods can similarly be stopped and searched. Both the Mitchell Committee (in its second report) and the Australian Law Reform Commission in its report on criminal investigations recommended an extension of this power.

The power to stop and search without warrant is extended to the following situations: first, where there is a reasonable cause to suspect that there is an object, the possession of which constitutes an offence; and, secondly, where there is evidence of the commission of an indictable offence. The requirement of 'reasonable cause to suspect' will give sufficient protection against arbitrary and unwarranted interference with the right of the citizen to proceed about his business.

The power of a police officer to require a person to give his name or address is limited, by reason of section 75, to persons found committing or whom he has reasonable cause to suspect of having committed any offence. There are other situations where it is reasonable that a police officer should have power to request a person's name and address. For example, where police wish to interview all those who may have been in the vicinity when a crime has been committed; where police wish to interview witnesses to a suspected crime; or where a police officer suspects a person is about to commit a crime. Section 75 is amended to allow a police officer to request a person's name and address in these circumstances.

Section 75 empowers any member of the Police Force, without a warrant, to apprehend any person whom he finds committing or whom he has reasonable cause to suspect of having committed, or being about to commit, any offence. The arresting officer must then comply with section 78, and the arrested person must be delivered forthwith into the custody of the member of the Police Force who is in charge of the nearest police station. It is well established that it is not permissible to delay the delivery of the arrested person to the officer-in-charge of the police station in order to interrogate him.

The reality of policing is that there must be an opportunity at some stage to question suspects and tie up loose ends that are necessary to bring criminal charges successfully to fruition. Accordingly, section 78 is amended to allow a police officer to delay delivering a person into custody for an initial period of four hours. A magistrate can authorise an extension of this period.

The rights of the person detained for questioning are also protected by giving him, *inter alia,* a right to have a solicitor, friend or relative, and an interpreter present, while he is being questioned. He must be informed of these rights and his right not to answer any questions, and warned that anything he does say may be taken down and used in evidence. It should be noted that the power to detain suspects for questioning only arises once a person has been arrested, that is, the arresting officer must have had reasonable cause to suspect that the person arrested had committed an offence. This is in accordance with the recommendations of the Australian Law Reform Commission.

Fingerprints of a person in custody on a charge of committing an offence can be taken if a police officer considers it is necessary for the identification of that person. It is not clear whether the power is to be exercised solely for the purpose of identifying the suspect with the offence for which he is in custody, or whether the suspect can be connected with other offences which the police are investigating.

Section 81 is amended to make it quite clear that the power to take fingerprints is to establish who the suspect is and for the purpose of identifying the suspect with the offence for which he is in custody. Application can be made to a magistrate for authorisation to take fingerprints in other circumstances.

Scientific techniques have developed since section 81 was initially enacted. Section 81 is amended to recognise these developments by permitting not only fingerprints and photographs to be taken but also prints of hands, feet, voice recordings, handwriting samples, and dental impressions.

Lest it be thought that these extra powers will permit a police officer to act beyond his authority, it should be remembered that the courts expect police officers to comply with the Statute, and have a discretion to exclude any evidence obtained contrary to the provisions.

There are also internal mechanisms for ensuring that the police act in accordance with their powers and regulations set out by the Police Commissioner. In addition, the Police Complaints Bill currently before the Parliament should assuage any lingering fears that any individual might have that these powers would or may be used in other than the community interest.

The third main area dealt with in the Bill is the penalties for offences under the Act. Over 50 penalties are increased. They include an increase from $200 or 12 months, or both, for assaulting police, to $8 000 or two years. The offence of hindering police will now carry a maximum fine of $2 000 or six months imprisonment, rather than the $100 or six months as at present. Disturbing the peace could now attract

a maximum fine of $1 000 or three months imprisonment, which is up from $100.

Indecent behaviour, soliciting for prostitution, fraud, unlawful possession of property believed to have been stolen, wilful damage, along with a host of other offences, have had their penalties increased.

The increases put the offences in line with those in other Acts and in line with contemporary standards. Such dramatic increases are unlikely to occur in the future as the proposal to grade offences into categories and continually review those penalties comes into effect. The Government believes that the proposed increases are justified particularly given that successive Governments have not amended them for 30 years.

One of the most important roles for a Government in a democracy is to provide an environment in which people can go about their daily lives and business in confidence that their person and their property will not be violated. It is an essential freedom that people be secure and protected from lawless and criminal behaviour. But the long tradition of our law in protecting the rights of those suspected of crimes must not be overlooked.

The Bill seeks to achieve a balance. On the one hand the Bill clarifies and expands police powers and increases penalties. On the other it clarifies a suspect's rights, and removes from the Statute book some unnecessary and in some cases quite iniquitous offences such as section 10—being without sufficient means of support—which hitherto had carried a penalty of 12 months imprisonment.

The Government has been conscious of these collective and individual rights to protection in framing this Bill and the other initiatives the Government has taken. It is a comprehensive review and renaming of an Act that forms an important part of ensuring our community's security. The Bill provides protection to the individual, it respects his rights, and provides the police with adequate authority to investigate crime. At the same time, it provides the necessary checks and balances to ensure that ordinary people are neither harassed by the police nor prevented from going about their daily business by people intent on committing crime. I commend the Bill to the House and seek leave to have the clause by clause description, together with the schedule of the penalty amendments, inserted in *Hansard* without my reading it.

Explanation of Clauses

Clause 1 is the short title. Clause 2 provides for the commencement of the measure. Clause 3 changes the short title of the Act to the 'Summary Offences Act'. Clause 4 inserts two new definitions into the Act, one being a definition of 'place of public entertainment' and the other a definition of 'telephone'.

Clause 5 proposes an amendment to section 6 of the Act by striking out subsection (6). This subsection relates to the use of offensive or abusive language in the hearing of a member of the Police Force. The Mitchell Committee recommended its repeal. Clause 6 provides for the repeal of section 8 (3). This section makes it an offence to send or accept any challenge to fight for money, or to engage in a prize fight. Subsection (3) empowers a court to order an offender to find sureties to keep the peace. The Mitchell Committee recommended that the subsection be deleted.

Clause 7 proposes an amendment to section 9a of the Act by striking out subsection (5). This subsection makes it an offence for a person, other than a registered pharmaceutical chemist, to sell or supply methylated spirits between 6 p.m. on Saturday and 9 a.m. on Monday, or on public holidays. The offence no longer has relevance in the context of this Act.

Clause 8 provides for the repeal of section 10. This section makes it an offence for a person to have no lawful or apparent means of support or insufficient means of support, punishable by 12 months imprisonment. The Mitchell Committee recommended the repeal of the section. It may be submitted that the section applies to people who are not only innocent of any antisocial behaviour but who need assistance and not prosecution.

Clause 9 proposes the insertion of new section 11a. This section would make it an offence to gain admission dishonestly to a place of public entertainment without paying a fee knowing that a fee is payable. It would apply to a situation such as where a person attempts to sneak into a drive-in picture theatre. Clause 10 proposes amendments to section 15 of the principal Act to delete certain offences relating to drugs. These matters are now provided for by other legislation.

Clause 11 proposes the insertion of a new section 17, which will be a rationalisation of present sections 17 and 17b. Clause 12 provides for amendments to section 17a so as to include a new offence of behaving in an offensive manner while trespassing on premises. This offence will enhance the associated provisions relating to being on premises without authority.

Clause 13 repeals section 17b, which is now to be included in new section 17. Clause 14 provides for the repeal of section 18 (1). This provision relates to loitering without a proper reason in a public place. The Mitchell Committee recommended its repeal, stating in relation to the provision that at best it allows for unwarranted interference with liberty.

Clause 15 provides for the repeal of section 19. This section makes it an offence for a suspected person or reputed thief to be in a public place or a place adjacent to a public place with intent to commit an indictable offence. Clause 16 provides for the repeal of section 34. This section restricts the publication of particulars of judicial proceedings for divorce, dissolution of marriage or other similar matters. The section has been rendered superfluous by Commonwealth legislation and can be repealed.

Clause 17 is an amendment to section 35 of the Act that, coupled with the repeal of section 36, is consequential upon the repeal of section 34. Clause 18 provides for the repeal of section 36 by reason of the amendment of section 35. Clause 19 provides for the repeal of section 40. This section makes it an offence to pretend to tell fortunes or to use palmistry or other subtle craft, means or device to deceive a person. The Mitchell Committee recommended the repeal of this section and the insertion of a new provision in the Criminal Law Consolidation Act to make it an offence to act for reward as a spiritualist or medium, or to exercise powers of telepathy, clairvoyance or similar powers with an intent to deceive. The Government has decided to act upon the Mitchell Committee recommendation, the amendment to the Criminal Law Consolidation Act being included in a later provision of this Bill.

Clause 20 provides for the repeal of section 44. This section makes it an offence to use land to train or exercise horses without the consent of the owner or occupier. The provisions of the Act relating to trespass can deal with this type of conduct and so section 44 can be repealed.

Clause 21 proposes an amendment to section 48. This section makes it an offence to affix bills, posters, etc., on any building or structure or to write upon walls, footpaths, etc. The section further provides that the court may order a person found guilty of an offence to restore damaged or defaced property. However, often damage has been repaired prior to the court proceedings. Accordingly, it is proposed

to revise the existing subsections (2) and (3) and provide simply that a person convicted of an offence may be ordered to compensate the owner or occupier of property for the damage that has been caused.

Clause 22 provides for the repeal of section 49. This section makes it an offence to extinguish street lamps. The Mitchell Committee recommended that this obsolete provision be repealed. Clause 23 provides for the amendment of section 53. This section makes it an offence to play games in or adjacent to a public place so as to cause damage or annoy or cause annoyance. The amendment implements a Mitchell Committee recommendation to delete reference to conduct which annoys or is likely to annoy a person.

Clause 24 provides for the repeal of section 54. This section relates to the power of a householder to request a street musician to depart from the neighbourhood and makes it an offence to fail to comply with such a request. Its repeal was recommended by the Mitchell Committee. Clause 25 provides for the repeal of section 55. This section makes it an offence to allow unmuzzled ferocious dogs to be at large. The provisions of the Dog Control Act makes this offence superfluous and the section can be repealed.

Clause 26 proposes in effect two amendments to section 62, which is a section dealing with false reports to the police. Civilian employees are increasingly undertaking duties in police stations and a false report to such a person would not be within the purview of the section. It is therefore proposed to extend the operation of the section to include a false representation made to a person who is not a member of the police force where the person making the representation knows that it is likely that the representation will be communicated to a member of the police force. Furthermore, it is intended to strike out subsection (la). This subsection provides that where a representation concerns a member of a police force, a person may not be convicted under the section on the uncorroborated evidence of members of the police force. The issues raised by this subsection are to be addressed by new legislation dealing with a Police Complaints Authority.

Clause 27 provides for the repeal of section 63 of the Act. This section relates to causing injuries to oneself. Recent reforms to the law relating to suicide and reasons of public policy make it appropriate to remove this offence from the Act. Clause 28 proposes amendments to section 68. This section relates to the power of police to search vehicles where there is reasonable cause to suspect that they contain stolen goods, and to search people reasonably suspected of carrying stolen goods. However, the section is limited to search for stolen goods and it is proposed to expand the provisions to include searches for objects that are illegal to possess and for evidence of the commission of serious offences (being indictable offences). Clause 29 is a consequential amendment to section 73, deleting the definition of 'place of public entertainment', which is now to be defined in the main interpretative provision (see clause 4).

Clauses 30 and 31 relate to amendments concerning the powers of police to take names and addresses. Section 75 (2) and (3) enable a police officer to require a person found committing an offence, or whom he has reasonable cause to suspect of having committed any offence, to state his name and address. Refusal to state a name and address or the giving of a false name and address is an offence. However, the police may need to take names and addresses in other cases. For example, they may want to know the names of potential witnesses to the commission of a crime, or may, suspecting that a person intends to commit a crime, want to know his name in order to warn him off. The proposed new section 75a would allow the police to act in such situations.

Under subsection (1), a policeman could ask a person to state his name and address if he had reasonable cause to suspect that the person has committed, was committing, or was about to commit, an offence, or that the person might be able to assist in the investigation of an offence or a suspected offence. Where the policeman believed that a false name or address had been given, he could, under subsection (2), require the production of evidence to prove identity. A penalty of $1 000 or imprisonment for six months for non-compliance is proposed. Furthermore, it is proposed that where a person is required to give his name and address under this section, that he be able to request the police officer involved to state his surname and rank.

Clause 32 provides for the reform of section 78 and the procedures to be observed on the arrest of a person without a warrant. It is well established under the present section 78 that it is not permissible to delay the delivery of an arrested person to the officer in charge of a police station in order to interrogate him. It is sometimes the case that police are severely hampered by not being able to interview people immediately upon taking them into custody without warrant (especially in relation to serious crimes). It is therefore proposed to insert a new section 78 which will allow police to delay delivering the person into the custody of an officer in charge of a station for so long as is necessary to complete the investigation of the alleged offence, or a period of four hours, whichever is the lesser.

The police will be allowed to take the person to places relevant to their investigations, and a magistrate will be able to extend the four hour period (by another four hours) in appropriate cases. It is also proposed that the police be able, with the consent of a magistrate, to remove temporarily a person from a police station for a purpose related to their investigations. Applications to a magistrate under this section will be able to be made by telephone. Delays occasioned by a person requesting that a solicitor or other person be present shall not be taken into account in determining the four hour period. Other provisions in section 78 relating to police bail will be rendered superfluous by other proposed legislation on bail and may therefore be repealed.

Clause 33 amends section 78a so as to clarify that a person arrested under that section may be detained under section 78. Clause 34 provides for a new section 79a that would prescribe a person's rights upon arrest. A person would be entitled to have his solicitor, or a relative or friend, present during any interrogation and, if English were not his native language, would be entitled to the use of an interpreter. Furthermore, the provision allows a person to make one telephone call to a nominated person to inform him of his whereabouts. To avoid misuse of these rights, the police would be empowered to object to a particular relative or friend being present or being telephoned if there was reasonable cause to suspect that communication with that relative or friend would lead to the destruction or fabrication of evidence or to an accomplice taking steps to avoid apprehension.

The new provision would also statutorily require a policeman, upon arresting a person, to inform the person of his rights under the section and to warn him that anything that he might say could be taken down and used in evidence. It is also intended to insert a new section 79b. This provision would empower a policeman to arrange for the removal and storage of a vehicle upon the arrest of its driver. There are numerous situations where to be able to move the vehicle of an arrested person would be of benefit to its owner, the police and the public generally. However, the police would not be able to move the vehicle if the arrested person was accompanied by a person who was willing and able to move it instead. Police would not be liable for any damage occasioned to a vehicle being removed and stored

under this section. A person would be able to recover his vehicle upon the payment of the reasonable costs of the Police Department. Vehicles left with the police for more than six weeks could be dealt with as unclaimed property.

Clause 35 proposes amendments to section 81 dealing with the power of the police to search, examine and take particulars of persons in custody on a charge of committing an offence. It is intended to extend the power to search a person to all persons in custody, not just those who have been charged. This will enable police to search for weapons, etc. Furthermore, it is proposed to amend the section to include a power, in relation to a person who has been charged, to take prints of hands, fingers, feet or toes, to take impressions of teeth, to take voice recordings and to take samples of handwriting. However, the power would only be available to connect a person with the commission of a particular offence if the police had charged him with the offence or had obtained the authorisation of a magistrate. Material obtained under the new provision would have to be destroyed if the person was subsequently acquitted.

Clause 36 provides for the inclusion of a schedule that will amend various penalties in the Act. Clause 37 effects an amendment to the Criminal Law Consolidation Act, 1935, relating to acting as a spiritualist, medium, etc. This reform was prompted by a Mitchell Committee recommendation and is specifically intended to relate to people who act with intent to defraud.

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

STATE DISASTER ACT AMENDMENT BILL

Second reading.

The Hon. J.R. CORNWALL (Minister of Health): I move

That this Bill be now read a second time.

The State Disaster Act provision for the declaration of a 'state of disaster' has been used only once—on Ash Wednesday, 16 February 1983. Subsequently there were, *inter alia*, special inquiries by a review team comprising Brigadier L.J. Lewis and Mr W.M. Scriven and by a working party established as a subcommittee by the State Disaster Committee. Their recommendations and those of others were discussed at a seminar in November 1983, when it was accepted that the Act, regulations, and State Disaster Plan needed amendment. The subcommittee of the State Disaster Committee made recommendations recently regarding the Act and regulations and, following revision of their suggestions by the State Disaster Committee, this Bill was drafted. Regulations are in preparation and recommendations concerning the plan are currently before the State Disaster Committee.

The subcommittee consisted of representatives of police, Country Fire Service, Metropolitan Fire Service, Department for Community Welfare, local government, and State Emergency Service, and the suggested amendments have the support of those bodies as well as the State Disaster Committee. Over the past 18 months much work has been done to improve State disaster preparedness. Representation at State Disaster Committee meetings has been extended by the representatives of certain functional services acting as *de facto* members or observers, and co-operation between services has been enhanced.

Communications have been and are being improved; common maps have been issued; the committee to look at C.F.S./M.F.S. co-operation has arranged a common emergency centre (in the new M.F.S. Building) which will be manned on dangerous days; seven regional S.E.S. officers are being recruited; arrangements in the State Emergency Operations Centre have been improved; and Exercise Shakeup II has tested the centre and the functional service headquarters. Further improvement is continuing, particularly in the area of regional disaster plans. These amendments to the Act are put forward in association with these activities.

The explanations of the clauses as set out below do not generally need amplification, but there are two new concepts. Lack of worker's compensation cover is something which worries volunteers engaging in the often hazardous work of combating disasters and clearing up afterwards. Whilst there is cover during a declared state of disaster, it became apparent after Ash Wednesday II that clearing up operations continued for some time after the expiration of the declared period of disaster.

From a drafting viewpoint the best method of overcoming this was to include provision for the Governor to declare also a 'post-disaster period' of up to seven days which would relate to the provision of worker's compensation cover only. This period will not afford any extra powers to authorised officers except that they may be directed to assist the owners of property. No post-disaster operation may be carried out except at the request of the owner. The other entirely new feature is the proposed establishment of a 'State Disaster Fund' with provision for a committee to administer it subject to directions of the Governor as to principles. This formalises the type of arrangement used after Ash Wednesday II when so much private money was generously donated from sources throughout Australia. I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clauses 1 and 2 are formal. Clause 3 amends the arrangement of the Act. Clause 4 amends various definitions. It is made clear that the meaning of 'disaster' includes epidemics of disease. It is also made clear that 'disaster area' can clearly mean either the whole, or a part, of the State, depending on the terms of the declaration. New definitions of 'post-disaster operations' and 'post-disaster period' are provided.

Clause 5 enlarges the State Disaster Committee to include nominees from the State Emergency Service, the Metropolitan Fire Service, the Country Fire Service, the Local Government Association, and the Minister of Community Welfare. Clause 6 provides that the State Disaster Committee must monitor the standard operating procedures for handling fires, floods, for example, of those organisations that play a role in the State Disaster Plan. Clause 7 makes it clear that a state of disaster declared by the Governor last for 96 hours from the time of the making of the declaration. Clause 8 restates the various measures that can be taken during the continuance of a state of disaster, in a form that empowers both the State Co-ordinator and any authorised officer to do, or cause to be done, any of those things. It is made clear that animals can be destroyed. It is also made clear that the movement of persons, vehicles, for example, can not only be prohibited but also be directed.

Clause 9 inserts a new Part that deals with post-disaster operations. New section 16a provides that the Governor may declare a post-disaster period for a specified number of hours running on from the end of the state of disaster, but being no more than 168 hours (that is, seven days). This period cannot be extended or renewed. Financial provisions similar to those in section 14 of the Act are provided. New section 16b spells out the measures that an authorised officer may take, at the request of an owner of property, during a post-disaster period. Basically the measures are in the nature of assistance in 'mopping-up' operations and

action to prevent further loss or injury. Such measures may of course only be taken within the disaster area. Volunteers may assist an authorised officer in this work.

Clause 10 extends the protection provided by this section in respect of absence from employment to authorised officers involved in post-disaster operations. Clause 11 extends the workers compensation cover provided by this section to authorised officers and volunteers who assist them in carrying out post-disaster operations. Clause 12 is a consequential amendment. Clause 13 provides for the establishment and administration of a fund into which donations for disaster relief may be paid. The fund will be administered by a committee subject to directions from the Governor. Clause 14 removes a provision that empowered the Governor to promulgate the State Disaster Plan by regulation.

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

POLICE REGULATION ACT AMENDMENT BILL (No. 2)

Second reading.

The Hon. J.R. CORNWALL (Minister of Health): I move:

That this Bill be now read a second time.

It is the culmination of a lengthy process of consultation and is primarily concerned with the appointment of police aides. The measure will have particular importance in relation to the use of police aides on Aboriginal lands. In the month of January 1984, the Commissioner of Police initiated a review of the relationship between the police and the Aboriginal people of the State. Various proposals emerged, including a suggestion that the relationship with the Pitjantjatjara people could be improved by implementing a police aide scheme. Other suggested initiatives included the implementation of teaching programmes to increase the understanding of Aboriginal people by the police, and vice versa, and programmes aimed at recruiting Aborigines into the Police Department.

Following lengthy consultation with Aboriginal leaders and their communities, it appeared that the police aide concept was indeed worth considering. The Government has decided to facilitate the implementation of this concept by the introduction of this legislation. At the present time, it is envisaged that Aboriginal police aides will be selected from the various communities and especially trained to perform the duties of a police aide. The aide's duties would be limited to duties specified in his instrument of appointment. These duties could be varied as experience was gained and further training undertaken. It is intended that any programme be the subject of constant monitoring and re-evaluation.

When the Government decided to put this proposal forward, it appeared that an efficacious means of achieving the desired end was to appoint the police aides as special constables under the Police Regulation Act, 1952. However, to do so requires amendment to the relevant provisions so that the Commissioner can limit the duties and powers that may be exercised by the police aides. Indeed, the power to limit the powers of special constables of particular classes seemed desirable in any event. This Bill therefore includes various measures that will improve the operation of the provisions of the principal Act dealing with special constables. It includes worthwhile reforms that deserve support. I seek leave to have the detailed explanation of the clauses of the Bill inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

Clause 1 is formal. Clause 2 provides for the commencement of the measure. Clause 3 has the effect of limiting the authority to appoint a special constable to the Commissioner of Police. Section 30 of the principal Act presently authorises special magistrates, in addition to the Commissioner, to appoint a special constable. The power vested in special magistrates derives from earlier times when judicial officers were involved in administering the law. This is no longer the case. Furthermore, amendments to the Law Courts (Maintenance of Order) Act have ensured that orderlies are always available to magistrates, as they are needed. Magistrates hardly ever now exercise this power and advise that the Act can be amended to restrict the power to appoint special constables to the Commissioner of Police.

Clause 4 effects a consequential amendment to the form of oath that is to be taken by a special constable upon his appointment. The oath, as it presently stands, envisages that special constables always possess the full powers of a police officer but this may not now be the case in relation to some constables.

Clause 5 provides for the enactment of a new section 32. The new provision will allow the Commissioner, or the regulations, to specify the duties that a particular special constable is to have and to limit the powers that he may exercise. This reform provides a useful alteration to the existing provisions as it may often be the case that special constables are appointed to deal with particular situations or to work in defined areas. The Commissioner will be able to vary or revoke limitations on the powers of a special constable as particular circumstances change. Clause 6 effects an amendment to the regulation-making section to provide that regulations may be of general or limited application and may vary according to particular classes of special constables. Again, this will allow for greater tailoring in relation to the various classes of constable.

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

[*Sitting suspended from 3.42 to 4.10 p.m.*]

LOCAL AND DISTRICT CRIMINAL COURTS ACT AMENDMENT BILL

In Committee.

(Continued from 13 February. Page 2436.)

Clauses 2 to 6 passed.

Clause 7—'Plaintiff to furnish names and particulars.'

The Hon. K.T. GRIFFIN: I draw attention to the fact that the penalty that is provided is only $80 for a plaintiff who furnishes a clerk with a memorandum, knowing that the address in the memorandum is incorrect or being recklessly indifferent as to whether such an address is correct. I wonder why the Attorney-General has fixed the penalty at only $80. If it is a deliberate act to include a false address, designed to achieve service against the interests of a litigant, which may well create considerable problems for the litigant, we have a penalty of only $80. I have not an amendment on file mainly because I wanted to see what sort of reason there was for such a low penalty.

The Hon. C.J. SUMNER: The honourable member is probably right. If he wishes to give consideration to some appropriate increase I would be amenable to that. It could potentially be serious for the recipient of the summons.

Consideration of clause 7 deferred.

Clauses 8 to 11 passed.

Clause 12—'Record of service.'

The Hon. K.T. GRIFFIN: New clause 95a provides that where a summons is served personally by a person other than a bailiff of the court the person serving the summons shall endorse on the duplicate the date of service, and shall as soon as practicable after service swear an affidavit of service and file it in the court. It is some time since I looked at this, but I recollect being concerned to know why everybody other than a bailiff of the court had to file an affidavit of service. My understanding of the present law is that even a bailiff appointed by the court is required to file an affidavit of service. I recognise that in terms of service by post the procedure envisaged is merely to record or to note in the process book or on the summons the date of posting, and that is deemed to be the date of service. It seems rather curious that a person who is a bailiff appointed by the court should not have to file an affidavit of service. I wonder whether the Attorney could give an answer to that.

The Hon. C.J. SUMNER: I cannot, but the matter that the honourable member raised is reasonable, and I am checking with Parliamentary Counsel to see whether that needs some correction.

Consideration of clause 12 deferred.

Clause 13 passed.

Clause 14—'Period allowed for appearance.'

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

Page 6—

Line 25—After 'amended' insert—

'—

(a)'.

Line 26—Leave out 'subsection' and insert 'subsections'.

After line 29—Insert the following:

'(1a) Where—

(a) a summons is to be served by post;

and

(b) the address for service of the summons is within a proclaimed area,

the period to be allowed to a defendent to appear to the summons shall be a period exceeding 21 days but not exceeding 35 days, as may be declared in relation to that area by proclamation;

and

(b) by inserting after subsection (2) the following subsections:

(3) In this section—

'proclaimed area' means an area declared by proclamation to be a proclaimed area for the purposes of this section.

(4) The Governor may, if he thinks it appropriate to do so having regard to the infrequency of postal services in a particular area of the State, by proclamation—

(a) declare that area to be a proclaimed area;

and

(b) declare in accordance with subsection (1a) a period which is to be allowed to a defendant to appear to a summons that is served by post at an address within that area,

and may, by subsequent proclamation, vary or revoke any such declarations.'

This amendment is designed to deal with the problem of service by post in outlying areas of the State or in those areas where there is other than a daily postal service. The amendment allows a proclamation to be made that identifies a particular area within which service may be effected by post, where the time for entry of an appearance is extended from some time fixed by proclamation between 21 and 35 days. A maximum of 35 days is reasonable enough, but the proclamation will fix both the area and the extended period of service. It is by proclamation: it is not appropriate to do this by regulation, and it gives a flexibility that will be in the interests of the defendant. I hope that the Government will support it.

The Hon. C.J. SUMNER: I am pleased to say that the Government is prepared to support that very sensible amendment.

Amendments carried; clause as amended passed.

Clauses 15 to 19 passed.

Clause 7—'Plaintiff to furnish names and particulars.'

The Hon. C.J. SUMNER: Perhaps the honourable member should give some indication of what he thinks is an appropriate penalty. The Government has in mind two categories of penalties; that is a proposal before us at the moment. It runs into 10 or so categories, ranging from a minimum of $200 up to life imprisonment. It is a matter of finding what may be appropriate; I do not think that life imprisonment is appropriate for this one. The other question that the honourable member may wish to consider is whether or not he wants a potential penalty of imprisonment.

The Hon. K.T. GRIFFIN: I apologise for the delay. I deliberately did not put an amendment on file, because there may have been some reason for it. I am sorry that I did not pursue it with anyone informally. It appears that the range of penalties within the Local and District Criminal Courts Act is about $40 to $80, so in some respects it falls into that pattern. Giving a false address at which service may be effected is a serious offence, and it would seem that, until there is a general review of the penalties in the Local and District Criminal Courts Act, it would be appropriate to fix a penalty of, say, $500 maximum, and then the Government and its advisers can undertake a comprehensive review so that over the next few months it may be appropriate to bring back a comprehensive Bill dealing with penalties. This could be one of those that is reviewed, although $500 may take the penalty outside the range of other penalties for different offences established by the Act. It seems to me that that would be an appropriate figure. As there seems to be general agreement, although I have not put it in writing, I move:

Page 3, line 44—Delete eighty dollars and insert five hundred dollars.

The Hon. C.J. SUMNER: The amendment is acceptable. I agree that potentially it is a serious matter, and it may be that on a general review of penalties some other amount may be decided upon. For the moment, what the honourable member suggests is satisfactory. The point was well made that it is potentially a serious matter for a defendant, and the penalty should be commensurate with the seriousness of giving a false address. I indicate that perhaps we ought to have some look at least at the other penalties and perhaps subsequently, if we think that this should be increased or changed, we can look at it again. I appreciate the honourable member's raising the point, and I am happy to accept the suggested penalty.

Amendment carried; clause as amended passed.

Clause 12—'Record of service.'

The Hon. C.J. SUMNER: The honourable member raised the question of new section 95a, which he said indicated that a bailiff of the court did not have to fill an affidavit of service. That is not the situation. A bailiff does have to under the present Act, and will have to under this Bill: the other provision is in section 27 (2) of the principal Act. The bailiff is picked up. In section 27 (2) of the principal Act a specific provision deals with a bailiff making out an affidavit of service. This deals with the non-bailiff situation.

The Hon. K.T. GRIFFIN: I appreciate that information, and I am pleased that what I drew attention to does not require amendment.

Clause passed.

Title passed.

Bill read a third time and passed.

STATUTES AMENDMENT (COMMERCIAL TENANCIES) BILL

In Committee.

(Continued from 4 December. Page 2015.)

Clauses 2 to 7 passed.

Clause 8—'Insertion of new Part IV.'

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

Page 2, after line 25—Insert new definition as follows: "office premises" means business premises that are used solely as offices:

This amendment simply provides a definition. It relates to the prescribed limit that is the subject of subsequent amendments. It is necessary in explaining this amendment to refer to other amendments relating to the prescribed limit, although those amendments will be considered later. It is some time since this Bill was before the Committee, but honourable members will recall that the Government and the Opposition agreed that some small businesses and professional groups that are tenants of large shopping centres or places of that kind are not in an equal bargaining position with their landlords and need some measure of protection. It was recognised by both the Government and the Opposition that that protection should not extend to larger organisations which were tenants and which were quite capable of engaging counsel and bargaining on an equal footing with the shopping centres.

Therefore, the Government proposed a prescribed upper limit on rentals, above which the protection of the Bill should not apply because that would not be necessary and it would be an imposition on everyone concerned. The parties in that case would be able to bargain in the ordinary way on their own terms. The Government proposed that the prescribed limit be fixed by regulation. We believe that that is not appropriate and that the limit should be set out in the Bill. Whether or not particular premises are provided protection under this Bill is an important matter, and therefore we believe that the limit should be written into the Bill.

We propose to separate office premises from other business premises, and that is the point of the amendment—to define office premises as business premises that are used solely as offices. We make the distinction between office premises and other business premises because the area of office premises is usually less and the rental is usually lower. We propose that the prescribed limit for office premises be $25 000 rental per annum. It is my advice that a fairly common rental in this area is $15 000. Such tenants would be small professional groups, for example, lawyers, accountants and people of that sort. Above the $25 000 limit there would be bank premises, corporate premises and tenants of that kind, who are quite capable of looking after themselves and dealing on an equal footing with shopping centres.

So in regard to rental accommodation, we believe that $25 000 indexed is a reasonable figure for office premises. In regard to other business premises (that is, in the main retail premises) we believe that the appropriate figure is $60 000, also indexed. The area for those premises is usually larger than the area for office premises and there are not many business premises apart from office premises that are let at less than $60 000 per annum. There is likely to be a much larger range of rentals. For these reasons we propose to write the limit into the Bill, believing that that is appropriate rather than leaving it to regulation. We propose that the upper limits be $25 000 per annum indexed in the case of office premises and $60 000 indexed for other business premises.

The Hon. C.J. SUMNER: I oppose this amendment: it seems to be quite unreasonable and unnecessary. The prescribed limit should be determined by regulation. It seems absurd that we should be bound in perpetuity to a figure, even though it is adjusted, that may through experience prove to be unsatisfactory or even unrealistic.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: That may be. The honourable member can say that we can come back to Parliament: that is always possible, but I do not believe that it should be necessary to come back to Parliament in this case. The matter will come before Parliament in any event by way of regulation, and the honourable member's proposition merely enshrines in legislation a complicated formula to adjust the amounts that determine whether or not the Act applies and the sorts of tenancies to which it applies. He has arbitrarily picked out of the air the figure of $25 000 in relation to office premises and $60 000 for other premises. I have no idea what is the basis of that distinction.

The Hon. J.C. Burdett: $60 000 was your figure.

The Hon. C.J. SUMNER: I did not say that it was not.

The Hon. J.C. Burdett: You arbitrarily picked out—

The Hon. C.J. SUMNER: The honourable member has arbitrarily divided them up between offices and others—that is the point I was making. The best way to resolve the problem is to leave it as it is provided in the Bill and to have the matter determined by regulation. That gives Parliament scrutiny of what happens and ensures that the members of the Subordinate Legislation Committee can take up the matter in Parliamentary forums and disallow regulations if they are unsatisfied with them. To enshrine the provision in legislation seems to me to be quite unnecessary.

The Hon. J.C. BURDETT: Parliamentary scrutiny of regulations is limited, as everyone knows. If regulations are made, all the Parliament can do is to disallow them: it cannot amend them, and that may prove to be quite unsatisfactory. It seems to be perfectly reasonable to set out the limits. The Attorney talked about arbitrary limits, but the limit in the regulations would be arbitrary as well. Someone has to determine what the limits shall be whether they are written into the legislation or determined by regulation.

Whether or not business tenants are governed by these quite severe controls is an important matter, and to me it is properly a matter for Parliament to decide. As even the Attorney has admitted, the limits are indexed. I believe that the amendment is perfectly reasonable and necessary. It would be very arbitrary indeed to leave it to the Government from time to time to set the limits by regulation, which is subject not to amendment by Parliament but only to disallowance.

The Hon. I. GILFILLAN: We have not had time to consider the significance of this amendment. I say without any apology that this is an area in which I have no particular experience or expertise. My colleague, the Hon. Lance Milne, from his experience is in a better position to contribute more substantially than I can to this matter. Therefore, I am appealing to members on both sides to recognise that it is awkward for me to consider the significance of this amendment. As I have said in my comments to both the Attorney-General and the shadow Minister, if there were a consensus between the Opposition and the Government there would be no reason for me to ask for more time for this matter to be considered.

As it has transpired that there is obviously a diametric difference of opinion on this point, I feel that I am not able to vote on this matter. I appeal to the Attorney to recognise that and to allow me a chance to discuss this matter with the Hon. Lance Milne on his return. After that we will proceed as rapidly and efficiently as we can and be ready to continue this discussion on the next day of sitting.

The Hon. C.J. SUMNER: I am not prepared to do that, and if that means that the honourable member has to take the line of voting against the Government, so be it. The fact of the matter is that the Parliament cannot be held up because the Hon. Lance Milne is on holidays, and has been on holidays for the past 2½ months.

An honourable member interjecting:

The Hon. C.J. SUMNER: Whatever he is on, he is not here. I understand that he is in Austria—good luck to him! The fact is that the rest of us are here working; the Government has a legislative programme to deal with; the House of Assembly has programmed certain Bills to work on; and honourable members have had since early December to deal with this programme—over two months. They have had over two months to consider the large number of matters on the Notice Paper. To come along now and say that they cannot consider a Bill because a certain honourable member is overseas, or that they have not had time to consider it, makes a farce of the legislative programme.

With respect to some matters, we have obviously taken the view that without the honourable absent member Milne we cannot proceed very far. That, I suppose, is reasonable enough on major issues, but there is general agreement on this matter. The issue raised by the Hon. Mr Burdett has no merit whatever, does not go to the centre of the Bill at all and goes to a particular clause. It is an irrelevancy, a nit-picking nonsense that the honourable member has raised at this point of the debate. Quite frankly, it is not acceptable to the Government, and if the honourable member wants to put the Bill in jeopardy he can proceed with his amendment.

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

That progress be reported and the Committee have leave to sit again.

I do this because of the matters raised by the Hon. Mr Gilfillan. They are perfectly reasonable. If I should put this motion in some other form, I seek your guidance about that, Mr President.

The CHAIRMAN: With the motion put, I will act on it immediately according to Standing Order 371.

The Hon. J.C. BURDETT: I have moved the motion for the reasons set out by the Hon. Mr Gilfillan. It is well known that the Hon. Mr Milne has been the spokesperson for the Australian Democrats on similar matters in the past. It was known that he was going away.

The Hon. C.J. Sumner: He also knew the time of the Parliamentary sittings.

The Hon. J.C. BURDETT: It is not the fault of either the Opposition or the Democrats that the Government has not been able to manage its business before the Parliament.

The Hon. C.J. Sumner: That is outrageous.

The Hon. J.C. BURDETT: It is not outrageous.

The Hon. C.J. Sumner: Absolutely outrageous!

The CHAIRMAN: Order! The motion should be put without any discussion whatever.

The Hon. C.J. SUMNER: I wish to debate the substance of the Bill before the Committee.

The CHAIRMAN: I do not have any option but to say that the Attorney cannot discuss it. The motion must be put and voted on.

The Hon. C.J. Sumner: This is an outrageous attempt at blocking Government business! They have had 2½ months to get on with this business! Milne has gone on holidays for 2½ months.

The CHAIRMAN: Order!

The Hon. C.J. Sumner: You're obstructing Government business.

The CHAIRMAN: Order! Do not go on with this conduct. I put the motion.

The Committee divided on the motion:

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

Noes (8)—The Hons Frank Blevins, G.L. Bruce, J.R. Cornwall, C.W. Creedon, M.S. Feleppa, Anne Levy, C.J. Sumner (teller), and Barbara Wiese.

Pair—Aye—The Hon. K.L. Milne. No—The Hon. B.A. Chatterton.

Majority of 2 for the Ayes.

Motion thus carried.

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

That the report be adopted.

The CHAIRMAN: For the question say 'Aye'. Against 'No'. I think the Noes have it.

The Hon. J.C. Burdett: Divide!

The Hon. C.J. SUMNER: I take a point of order. There was no calling on the Aye side. Therefore, they cannot call 'Divide'.

The CHAIRMAN: Ring the bells.

The Hon. C.J. SUMNER: A point of order. No-one called Aye on the Opposition side.

The CHAIRMAN: I definitely heard voices call for the Ayes.

The Hon. C.J. Sumner: You are biased.

The CHAIRMAN: You are behaving stupidly.

The Hon. C.J. Sumner: You let them interject. There was not one call on that side of the Chamber, and you know it.

The CHAIRMAN: I do not know it, and I will not stand that accusation from you. You will withdraw that or I will take this matter further.

The Hon. C.J. SUMNER: I will withdraw, but I think the behaviour of the Opposition and the Democrats in this instance is absolutely outrageous, and it is about time some fairness and reasonableness came into this Chamber on everyone's part.

The CHAIRMAN: You cannot blame me for the proceedings—

The Hon. C.J. Sumner: I blame you for the fact that there was no call over there.

The CHAIRMAN: That is not so.

The Hon. M.B. CAMERON: A point of order. I clearly indicate that all we are doing is protecting the right of members—

The Hon. C.J. Sumner: To have a holiday for 2½ months.

The CHAIRMAN: Order! Order! No further discussion.

The Committee divided on the motion.

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

Noes (8)—The Hons Frank Blevins, G.L. Bruce, J.R. Cornwall, C.W. Creedon, M.S. Feleppa, Anne Levy, C.J. Sumner (teller), and Barbara Wiese.

Pair—Aye—The Hon. K.L. Milne. No—The Hon. B.A. Chatterton.

Majority of 2 for the Ayes.

Motion thus carried.

LEGAL PRACTITIONERS ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 4 December. Page 2016.)

The Hon. C.J. SUMNER (Attorney-General): A number of issues were raised by the Hon. Mr Griffin during the debate and I respond as follows: interest from solicitors' trust accounts paid to the Legal Services Commission last year was not $350 000, as mentioned by the honourable member; it was, in fact, $119 957, details of which are contained on page 31 of the Legal Services Commission Annual Report. The commission expected to receive $400 000 for a full year to the end of October 1984 and had received $220 218.

Regarding community legal centres, the position is as follows: first, $35 000 was previously appropriated to the

Parks Community legal service from an appropriation under the Minister of Local Government; secondly, in the 1983-84 Budget papers the Government created a new Treasury line under Attorney-General and placed in that line the money previously allocated to the Parks under Local Government plus $60 000; and, thirdly, the Government then reduced the allocation normally paid to the Legal Services Commission by the $60 000. Moneys paid to community legal services are disbursed through the Legal Services Commission. It is intended that this method of funding community legal centres will continue.

The money made available for legal aid purposes from the interest payments on solicitors' trust accounts is in addition to State funds for legal aid. At this stage there will be no other guidelines as to the use of the money from interest on solicitors' trust accounts. The honourable member also made comment on the power to be given to the Registrar of the Supreme Court, subject to rules of the court, to tax costs. Justice Mitchell, when Acting Chief Justice, agreed that it would be appropriate for the Registrar to exercise certain powers and functions under the Legal Practitioners Act. The power to tax costs is to be exercised subject to the rules of court and is, of course, subject to appeal to a judge. The honourable member may care to note that the Clerks of Court in the local courts have power to tax certain bills of costs. I trust that that answers the honourable member's queries.

Bill read a second time.

In Committee.

Clauses 1 to 7 passed.

Clause 8—'Taxation of legal costs.'

The Hon. K.T. GRIFFIN: I thank the Attorney-General for answering the queries that I raised during the second reading debate. During that debate I drew attention to the fact that it was a little curious that the Registrar was to be given some judicial responsibility. When the Courts Department was established and the position of Registrar was created, the Chief Justice was adamant that the Registrar would be a purely administrative officer and that the Masters would be part of the court and would exercise judicial responsibility. Admittedly, the Registrar is undertaking only a few functions which were previously the responsibility of the Masters. Is the present Chief Justice happy with the Registrar undertaking this function, and does it signal a departure from the general principle that the Registrar is to be an administrator only and should not exercise judicial responsibility?

The Hon. C.J. SUMNER: There has been no indication from the present Chief Justice. However, the Acting Chief Justice corresponded with us to that effect on 25 August 1983. I have received nothing from the present Chief Justice which countermands or complains of the proposition. The Acting Chief Justice stated that she had perused amendments to the Legal Practitioners Act and said that she agreed with the suggestions. I can only assume from that that the present Chief Justice does agree. I suppose it is some blurring of the lines between judicial responsibilities and administrative responsibilities. I emphasise that the power to tax costs is only to be undertaken at the direction of judicial officers: that is, it is subject to the rules of court, which are made by judicial officers. There is an appeal to a judge of the Supreme Court against any decision that is made. I indicate that there is already a blurring of that distinction in the local court jurisdiction.

The Hon. K.T. GRIFFIN: I know that there is a blurring in the local court. There always has been: clerks have always taxed bills of costs. The point I was making is that the office of Registrar has only existed for three or four years in the Supreme Court. Previously, the Masters did all of that sort of work and there was no clear division between the Masters' judicial and administrative responsibilities. The Masters became judicial officers very largely because the Chief Justice wanted to ensure that there was a second tier of judicial officers within the court that would not blur the distinction between judicial and administrative functions.

I do not want to pursue this matter too far because it is relatively minor. However, I want it placed on the record that we will have to watch very carefully that more judicial powers are not vested in the Registrar, even at the direction of the judges, if we are to maintain what I think is a proper division between administrative and judicial responsibilities. I do not think we want to get back to the point we had before the Courts Department was established where the Registrar becomes a *de facto* Master exercising both judicial and administrative responsibilities. I think there must be a clear distinction, even though the Registrar is a legal practitioner. I hope this is not the start of a much greater blurring of that division of responsibilities.

Clause passed.

Remaining clauses (9 to 14) and title passed.

Bill read a third time and passed.

BAIL BILL

In Committee.

(Continued from 13 February. Page 2 446.)

Clause 2 passed.

Clause 3—'Interpretation.'

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

Page 1, after line 27—Insert new definition as follows:

'victim', in relation to an offence, means a person who suffers injury in consequence of the commission of the offence:.

My amendment seeks to define 'victim'. During the second reading debate I made the point that the submission that I received (and I understand the Attorney-General also received) from the Victims of Crime Service desired to place a greater emphasis on the alleged victim, not to the exclusion of all other factors that are to be taken into consideration in determining whether or not bail should be granted and, if it is granted, the terms and conditions of granting bail, but to ensure that the interests of the victim are considered by the bail authority.

The proposal that I have is that 'victim' be specifically defined in the Bill and that certain subsequent amendments, particularly to clause 10, be made, which give a greater emphasis to the interests of the victim. That would then coincide with a fairly high level of concern in the community about the interests of victims. The Attorney-General will know as well as I do that in the community there is a great level of concern to see that while the rights of the defendant are fully protected and preserved the alleged victim, or the victim if a conviction is recorded, is not overlooked in the judicial system. I hope that the Attorney-General will be able to accept this and the subsequent amendments, which seek to give a greater recognition to the interests of the victim. If the Attorney wants an explanation of those other amendments that are dependent on the definition of 'victim' I am prepared to give that, but a lot of it should be self-evident from the sorts of amendments that follow. I hope that there is no disagreement on giving greater recognition to the interests of those victims.

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

The Hon. K.T. GRIFFIN: I am moving my first definition first but, if the Attorney-General wants me to deal with the whole lot, I will.

The Hon. C.J. Sumner: It would be easier.

The Hon. K.T. GRIFFIN: In view of that indication of the Attorney-General that he would be happier at least for me to highlight the amendments that depend on the definition of 'victim', I will proceed to do so. 'Victim' is defined in relation to an offence as a person who suffers injury in consequence of the commission of the offence. I do not think that there can be much disagreement about that definition. Clause 10 of the Bill, which deals with the matters to which the bail authority must have regard in determining whether or not bail is granted and, if it is granted, the terms and conditions of that bail, sets out certain matters that are relevant.

I want to insert in that clause some additional matters, particularly the amendment to clause 10 (page 4, after line 35) to provide that the bail authority must have regard, where there is a victim of the offence, to any need that the victim may have or perceive for physical protection from the applicant. I want later, also, to move an additional subclause to clause 10—the additional subclause after line 43—so that, where an application for bail is made and there is a victim of the offence in respect of which the applicant has been taken into custody, a bail authority should as far as may be reasonable in the circumstances of a particular case allow the victim or his legal representative the opportunity to make submissions in relation to the application for bail and, if the bail authority decides to release the applicant on bail, inform the victim of that decision.

Frequently, if not in most cases, the victim or alleged victim is not even consulted about the question of bail; yet that person is probably the most critical person in those proceedings, particularly in the context of an offence of violence. It is appropriate to allow the victim or, if the victim is inarticulate, lacking confidence or for some other reason unable to make a submission to the bail authority, a legal representative to draw to the attention of the bail authority matters relevant to the consideration of whether or not bail should be granted and, if it is, the conditions on which it is granted.

The second part of that subclause requires the victim to be informed of the decision on any application for bail. Some instances have been drawn to my attention where a victim of a crime of violence has been allowed to go home after receiving some treatment, and statements have been taken, only to find in the case of a domestic incident that the accused has been released on bail and has arrived home before her. The victim has had no knowledge of the release on bail and has found that a rather terrifying experience. If there is a conscious effort by bail authorities to require the information of release on bail to be communicated to the victim, that would overcome a lot of the concern presently felt by victims, particularly women, in the way in which their interests are presently not taken into consideration in determining questions of bail.

It is important to recognise that in this subclause there are qualifications, so that it is not mandatory: the bail authority must do it as far as it may be reasonable in the circumstances of the particular case. So, if there are matters that make it unreasonable—unavailability of the victim or some other reason—the bail authority is not required to give the information to the victim or to hear the victim on the question of bail.

To clause 11 I will seek to move another amendment: that where there is a victim of an offence the conditions of bail may include a requirement to comply with such conditions relating to the physical protection of the victim that the bail authority considers ought to apply. Again, that is reasonable. It may be that, incidentally, these sorts of issues can be picked up in the terminology already used, but I prefer to see it used expressly because concerns of victims need to be emphasised because of some of the difficulties that have certainly come to my attention in the way in which the victims' interests have not been appropriately considered in matters of bail.

That is the general outline of the sorts of issues that I would like to include in the Bill with a view to recognising that victims, particularly—not just witnesses for the prosecution—need to have any matters that affect them in relation to bail brought to the attention of the bail authority. That is the context, and I hope that the Attorney may be persuaded to favourably consider those amendments.

The Hon. C.J. SUMNER: The Government is not able to accept all the propositions put forward by the honourable member. The definition of 'victim', because we are able to accept one of his propositions, would be accepted. We are prepared to accept the proposition that, in considering a bail application where there is a victim of the offence, any need that that victim may perceive to have for physical protection from the applicant is a matter that can be considered in granting bail.

However, in particular the proposition that before any bail application is granted a victim has to be notified would really be quite a difficult situation for the courts to cope with. In fact, I think it would be an impossible situation for them to cope with administratively if, in every circumstance where bail were to be granted, a victim had to be notified. That could take some days or even weeks.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: That may well be, but then there is an argument about what that means. The accused person could remain in custody while these inquiries are being made which would potentially clog up the system and make it even more difficult than it is at present. South Australia already has one of the highest rates of people on remand in prison rather than being on bail—quite a substantially higher rate than in the other States. The purpose of this Bill is to ensure that those people who should not be remanded in custody because there is no good reason are released on bail and, where there is a good reason for keeping people in custody on remand, that should occur.

Of course, good reason applies in particular cases where there is the potential for renewed physical violence and in the most serious of cases. The proposition advanced by the honourable member would really render the new Bail Act quite unworkable. That is not to say that administratively we could not take some steps to overcome the problems of victims, with whom I fully sympathise. In fact, a major review is going on within the Attorney-General's Department at the moment of legislation relating to victims of crime, and I expect to be able to provide some further information about that during the year.

I should point out that some of the issues raised by the honourable member can be looked at in the context of that overall review but, while we can accept some aspects of the honourable member's amendment, in particular, the one relating to giving notice to a victim on every occasion when a bail application is made would cause substantial disruption to the judicial process. Indeed, I understand that the Chief Justice is not keen about such a proposition. It might well require a hearing before a hearing, and that is probably undesirable. It could constitute an examination of the merits almost of the matter of which the person is accused.

With the potential for disruption to the system and the possibility that we could end up having a pre-trial trial on the question of bail, the amendment, if it ever was to be introduced, requires more thought than has been given to it to date.

The police and the Crown will in appropriate cases acquaint a bail authority with the existence and plight of a victim, as is the present practice. At the moment I am having drafted by the Crown Prosecutor in conjunction with

the Director of Policy and Research in the Attorney-General's Department a list of standing instructions for both Crown and police prosecutors indicating the attitude that should be taken by them to victims. Obviously, one of the things that could be included would be a direction that in appropriate cases the plight of a victim should be brought to the attention of the bail authority. Also, the honourable member's amendment confuses the function of a bail application. The views of a victim may tend to go to the evidence to be advanced at the hearing of the actual charge but, as I have said before, one could imagine the bail application becoming a hearing before a hearing, and I think that is undesirable and inconsistent with the presumption of innocence which, after all, is the reason for bail procedures, anyhow. Until convicted a person is presumed innocent, and that includes the period after arrest and until the moment of the verdict. To some extent that presumption would be undermined if there were to be a hearing before the hearing, a trial before a trial.

The victim's need for protection in any event is considered in the exercise of discretion of the bail authority. It is included in clauses 10 (1) *(b)*, 10 (2) (3) and 10 (1) *(f)*. With respect to informing victims of bail that has been granted, again, that is a matter that could be dealt with administratively. To have an absolute obligation in all cases could be very difficult to make work. Where a victim has a particular concern and where there is a matter that has been drawn to the attention of the prosecutors and where the prosecutors have opposed bail on the basis that there may be some difficulty in regard to the victim, in those circumstances the prosecuting authorities ought to ring up the victim and advise him that bail has been granted.

That could be included in the guidelines that I have indicated are being prepared by the Crown Prosecutor in conjunction with the Director of Policy and Research for distribution to all Crown and police prosecutors. I have some sympathy with the views put by the honourable member with regard to victims. In fact, the previous Labor Government before 1979, when I was Attorney-General, proposed the establishment of the first inquiry into victims of crime and their particular concerns and needs. Subsequently, that was revamped and a report was produced and acted on in some respects. Certainly I am aware of the problems and I have a full sympathy and appreciation of the problems of victims. I believe that their position to some extent has been ignored in the past in the judicial process.

However, as I said, I am having conducted in the Department a major review of legislation relating to victims of crime and the Criminal Injuries Compensation Act, and of the report that was produced as a result of that committee, to see whether any further action needs to be taken with regard to it. I have been active in promoting a draft United Nations declaration on the rights of victims of crime and, as I have said, I am preparing these guidelines for use by Crown and police prosecutors. In the light of that the propositions put by the honourable member could be considered as part of that general review, although I can see some fairly big problems in terms of the administration of the law with some of the propositions that he has advanced. Also, I point out to the honourable member the possibility for the bail authority as it is at present to allow input from victims. That is included in clause 9 (1) *(a)*.

It is not that the problems of the eventual plight of victims are ignored by the legislation: there is capacity for that to be taken into account. I expect that in some cases the victims would be and should be notified and I anticipated that in the proposed guidelines. For that reason, I am in a position to support the first amendment to clause 3, page 1 after line 27, which includes the definition; the second amendment to clause 10, page 4 after line 35; and the amendments to clause 11, page 5 after line 8 and line 13. They all deal with the honourable member's victims package. However, I do not propose to support the other amendments at this stage.

The Hon. K.T. GRIFFIN: I am pleased that I have made some progress. I do not agree that there will be a significant administrative problem in adopting all the amendments I propose in relation to victims, because the proposal is more in the form of an expression of principle that the bail authority should, as far as may be reasonable in the circumstancess of a particular case, allow a victim or representative to make submissions in relation to the application for bail and, if it is granted, to inform the victim of that decision. I would much rather see that expressed in the Statute than in administrative instructions, because from my experience however much we put things in notices or instructions, whether in the Public Service or otherwise, they tend to be lost or put into the bottom drawer. Over a period the instructions seem to be more honoured in the breach than in the observance. However, if the principles are expressed in the Statute, that Statute is the constant working document to which in this instance prosecutors and bail authorities will refer and it will be constantly before them that they are required to do certain things in relation to victims where practicable.

I am disappointed that the Attorney is not able at this stage to support some parts of the package relating to victims. I am pleased, however, that he is supporting other parts and at least to that extent I should be grateful that there will be some specific reference to victims in the Bill. I regard the amendments as fairly important and I will consider calling for a division on those amendments that the Attorney is not able to support where they relate to victims.

Amendment carried; clause as amended passed.

Clause 4 passed.

Clause 5—'Bail authorities.'

The Hon. K.T. GRIFFIN: In regard to subclause (2), I am curious to know why a bail authority may authorise by endorsement on a warrant a person who may not necessarily be a bail authority to release the arrested person on bail.

The Hon. C.J. SUMNER: The purpose of clause 5 (2) is to delegate responsibility to someone to actually release the arrested person on bail. The judicial decision to release on bail is made and the court can then, in effect, delegate that responsibility for release of a person. This is a similar provision to that contained in section 21 of the Justices Act, which allows that to happen.

The Hon. K.T. GRIFFIN: I thank the Attorney for that explanation. Without debating, I just mention that clause 14 contains provision for review of a decision by a bail authority, not being the Supreme Court. It may be that those who are referred to in clause 5 (2) are not, in fact, bail authorities. Perhaps the Attorney could consider that in advance of discussion on clause 14.

The Hon. C.J. SUMNER: Clause 5 (1) *(f)* provides that a bail authority is constituted apart from the Supreme Court and the other persons mentioned as a person authorised or required to release the eligible person on bail under subsection (2). That being the case, even a person who has the delegated authority, in effect, to release on bail would be covered by the rights of review of the decision.

Clause passed.

Clauses 6 and 7 passed.

Clause 8—'Form of application.'

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

Page 3, line 41—Leave out 'An' and insert 'Unless a bail authority otherwise directs, an'.

Page 4, line 2—Leave out 'an' and insert 'a written'.

I have two related amendments on file. They have been prepared in response to a suggestion by the working party that was established by the Government to examine and report on the procedures necessary to ensure the smooth introduction of this legislation.

As the Bill presently stands, all applications for bail will have to be initiated by completing a printed application form. However, in some situations it might be appropriate to allow an application for bail to be made without the need to complete a form such as where the bail authority is the officer in charge of a police station and there is no doubt that bail will be granted, or where the eligible person is in need of medical treatment or is illiterate. The amendments accordingly provide that a bail authority may in appropriate cases waive the requirement of a written application.

Amendments carried; clause as amended passed.

Clause 9 passed.

Clause 10—'Discretion exercisable by bail authority.'

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

Page 4, after line 35—Insert new paragraph as follows:
(ba) where there is a victim of the offence—any need that the victim may have, or perceive, for physical protection from the applicant;.

I have a number of amendments to this clause. I will deal first with the amendment just put to insert a new paragraph *(ba)*. This is part of the package in relation to victims. I understand that the Attorney has indicated that he will be accepting this amendment.

Amendment carried.

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

Page 4, after line 37—Insert new paragraphs as follows:
(da) any psychiatric treatment that the applicant may have received or may require;
(db) any previous conviction of the applicant for an offence;.

These are two new paragraphs that I desire to be inserted. It seems to me to be relevant that, in considering a bail application, the bail authority should also take into account any psychiatric treatment that an applicant may have received or require. Again, this is relevant in a number of instances, particularly of crimes of violence and, if it is known to the police prosecutor, it ought to be brought to the attention of the court and be relevant in determining whether or not bail should be granted and upon what conditions. I think, also, that any previous conviction of an applicant for an offence is relevant, not with a view to prejudging the outcome of the charge upon which the application for bail is being sought but to determine whether or not there is a history of violence or other similar sorts of criminal activity that might require a more stringent set of conditions to be attached to any bail application.

The Hon. C.J. SUMNER: The Government opposes the amendment for the reasons that I outlined previously. I think that this would constitute, if formally included in the matters to which the bail authority should have regard, such as the pretrial before the trial, an analysis of the issues and whether or not a person is fit to plead, all of which should be left to the trial court. Including this sort of requirement in the criteria that the bail authority must consider could result in our ending up with long, protracted hearings before bail authorities inquiring into what is often a complex medical condition involving a psychiatric condition. Obviously, if there is any clear evidence of that sort of instability, the bail authority could consider that in relation to any other relevant matter. I think that to specifically provide for it as one of the criteria really opens up the situation to inquiries which could be lengthy and which could initially prejudge the trial.

The Committee divided on the amendment:

Ayes—(8)—The Hons J.C. Burdett, M.B. Cameron, R.C. DeGaris, Peter Dunn, K.T. Griffin (teller), C.M. Hill, Diana Laidlaw, and R.J. Ritson.

Noes—(9)—The Hons Frank Blevins, G.L. Bruce, J.R. Cornwall, C.W. Creedon, M.S. Feleppa, I. Gilfillan, Anne Levy, C.J. Sumner (teller), and Barbara Wiese.

Pairs—Ayes—The Hons L.H. Davis and R.I. Lucas. Noes—The Hons B.A. Chatterton and K.L. Milne.

Majority of 1 for the Noes.

Amendment thus negatived.

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

Clause 10, page 4, after line 40—Insert new paragraph as follows:
(ea) any addiction of the applicant to a drug;.

This is really picking up what I indicated in the second reading, as suggested by the Victims of Crime Service, because it is particularly relevant to consideration of whether or not there is a need to make particular conditions applicable to the bail or even to grant bail. The Victims of Crime Service indicated that from its experience frequently those who are accused of crimes and are addicted to drugs when released on bail commit further offences in order to support their habit.

I think it is an important amendment which ought to be included. It does not require a hearing within a hearing or a preliminary hearing, because that may be known to the police or to the applicant, or it can be drawn to the attention of the court. It does not mean that there must be investigations to ascertain whether or not that is in fact the case. It is only if there is an addiction to a drug that it becomes relevant for the court or other bail authority to consider it.

The Hon. C.J. SUMNER: I oppose this amendment. It falls for the same reason as the previous amendments that I have opposed. It would require a trial within a trial, because the police may make an assertion that a particular accused is a drug addict and the accused may deny it.

To determine whether or not a person is addicted to drugs could involve a lengthy hearing. It is a complex medical question. A person may deny it and one is then back into the same problem of a trial before a trial. The existing provisions of the Act are sufficient. If, as a result of a person's addiction to drugs, there is in the bail authority's view a relationship between that addiction and the likelihood of reoffending, that can be taken into account by the bail authority. In other words, there is no need for specific references with all the problems of possible proof as to whether a person is addicted to drugs. In fact, if that information is put before the court and if the bail authority feels that as a result of any addiction there is the potential for reoffending, that is a factor that can already be taken into consideration under the criteria in clause 10. I think that this particular addition to the criteria falls for the same reasons as the others we have just voted against.

The Hon. K.T. GRIFFIN: I do not accept that. The Attorney-General is talking about hearings within hearings. If one looks at the provisions of clause 10, the bail authority is to grant bail unless, having regard to certain matters, it considers that the applicant should not be released on bail. It can take into account a whole range of matters: whether or not the accused is likely to abscond, offend again, interfere with evidence, intimidate or suborn witnesses or hinder police inquiries. There is already going to be a hearing in relation to an application for bail. All I am seeking to do is to include a provision that would allow the bail authority to consider this specifically. I do not accept that it is going to create any more difficulty than the present matters which the court has to take into account in determining whether or not bail should be granted.

The Hon. I. GILFILLAN: I indicate that the Democrats will oppose the amendment.

The Hon. K.T. GRIFFIN: Obviously I can count the numbers and in that event I will certainly call in favour of the amendment but if it is lost on the voices I will not be calling for a division.

Amendment negatived.

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

After line 43—Insert new subsection as follows:

(1a) Where an application for bail is made under subsection (1) and there is a victim of the offence in respect of which the applicant has been taken into custody, a bail authority should, as far as may be reasonable in the circumstances of the particular case—

(a) allow the victim or his legal representative the opportunity to make submissions in relation to the application for bail;

and

(b) if the bail authority decides to release the applicant on bail—inform the victim of that decision.

This amendment does two things, as I have already indicated. First, it allows the victim to make submissions in relation to an application for bail and, secondly, if bail is granted, for the bail authority to inform the victim of that decision. Both are qualified by the preamble to the subsection, that the bail authority should, as far as may be reasonable in the circumstances of a particular case, do this. I regard this as a very important part of my package relating to victims, and I will be dividing on it.

The Hon. C.J. SUMNER: For the reasons I outlined earlier I oppose the amendment. I think that something may be able to be done administratively. I am examining that and would certainly undertake to examine this particular proposition. But, I believe as it is outlined here at the moment it is too rigid and could lead to problems of quite a severe kind in the administration of the Bill.

The Committee divided on the amendment:

Ayes (8)—The Hons. M.B. Cameron, R.C. DeGaris, Peter Dunn, K.T. Griffin (teller), C.M. Hill, Diana Laidlaw, R.I. Lucas, and R.J. Ritson.

Noes (9)—The Hons. Frank Blevins, G.L. Bruce, J.R. Cornwall, C.W. Creedon, M.S. Feleppa, I. Gilfillan, Anne Levy, C.J. Sumner (teller), and Barbara Wiese.

Pairs—Aye—The Hons. L.H. Davis and J.C. Burdett. No—The Hons. B.A. Chatterton and K.L. Milne.

Majority of 1 for the Noes.

Amendment thus negatived.

[*Sitting suspended from 6 to 7.45 p.m.*]

Clause as amended passed.

Clause 11—'Conditions of bail.'

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

Page 5, after line 8—Insert new subparagraph as follows:

(1a) Where there is a victim of offence in respect of which the applicant has been charged—to comply with such conditions relating to the physical protection of the victim that the authority considers should apply to him while he is on bail;.

The amendment provides that, where there is a victim of an offence, the bail authority can impose conditions in the granting of bail requiring the accused to comply with those conditions in so far as they relate to the physical protection of a victim. I understand that the Attorney-General indicated earlier that he was prepared to accept this as part of the recognition of the victim in this Bill.

The Hon. C.J. SUMNER: The amendment is acceptable. I think it is one of those things we can agree to with respect to the rights of victims. As I said before, we will examine some of the other proposals that the honourable member has put forward but which we have not been able to agree to at this stage.

Amendment carried.

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

Page 5, after line 13—Insert new subparagraph as follows:

(iiia) to surrender any passport that he may possess;.

This amendment relates to the surrender of any passport that an accused may possess. A variety of conditions are set out in clause 11 which the bail authority may impose. The surrender of any passport did not appear to me to be adequately covered in the clause. Therefore, as I believe that in many instances it is important that a person's passport be surrendered as a condition of bail, it is important to express it in these terms, so I have moved my amendment accordingly.

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

Amendment carried.

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

Page 5, after line 46—Insert new subsection as follows:

(5a) It shall be a condition of every bail agreement that the person released in pursuance of the agreement will not leave the State for any reason without the permission of the court or justice before which the person is bound to appear.

During the second reading debate I indicated that I had a concern, and thought it inappropriate, that an officer of the Department of Correctional Services, who may be a person referred to in the bail agreement as providing supervision to an accused person, should be able to determine whether or not an accused person could leave the State. I believe that it is inappropriate for a departmental officer to make a decision about the departure from the jurisdiction of a person accused of an offence.

In the other parts of the Bill it is the bail authority who makes decisions about conditions attaching to bail. However, here we have an expressed statutory provision that a Department of Correctional Services officer has the authority to allow a person to depart from the jurisdiction if a condition of the bail agreement is that such an officer exercises supervision. I think that it is important to ensure that the decision about leaving the jurisdiction be made by a court or justice before which the accused person is bound to appear. My amendment seeks to do that.

The Hon. C.J. SUMNER: My only concern is that this provision, dealing with the possibility of a bailee leaving the State, is based on section 7 (1) of the Offenders Probation Act, which was amended in 1981 and which gave a person who was under a bond under that Act the right to apply to leave the State. It also provides power for permission to leave the State to be granted by an administrative officer.

The Hon. K.T. Griffin: That is a bond after conviction, though.

The Hon. C.J. SUMNER: After conviction or after having been dealt with by the courts—that is true. However, it was put in this Bill on the basis that there was some correlation between this Bill and the Offenders Probation Act which, as I say, was amended in 1981 when the honourable member was Attorney-General and which contains a similar provision. In fact, I understand that it is identical in its wording to the Offenders Probation Act, so it is not something on which I am prepared to go to barricades. However, it seemed to me that for consistency's sake the provision in the Bill is satisfactory. Perhaps the honourable member may have some argument to the contrary that I can consider.

The Hon. K.T. GRIFFIN: I can appreciate that, in relation to a bond where the court has dealt with the offender, some administrative mechanism may be appropriate, and it obviously is appropriate under the Offenders Probation Act to determine whether or not the person on the bond should be able to leave South Australia. Of course, we have made other provisions in the interstate transfer of prisoners legislation and the interstate transfer of parole orders where there is a facility for transferring prisoners and parole orders between the States by administrative act of the relevant Minister.

But that is all after the person has appeared before the court and been convicted or otherwise dealt with and is

thereafter under the supervision of a departmental officer. That is quite different from a bail order, where the person who is the subject of the bail order is still required to appear before the court for the determination of innocence or guilt and, if guilty, is subject to a penalty, which may be a custodial sentence, a bond or some other order.

If there is a requirement to appear before the court so that the charge may be dealt with and sentence imposed if guilt is established, it is wrong for a departmental administrative officer to make a decision as to whether or not that person should go out of the jurisdiction. That person has been apprehended, charged and released on bail and is due to appear before a court to be dealt with. So, there is quite a distinction between the two: one before the conviction or other dealing by the court with the accused, including sentence, and the other after the sentence has been imposed. There is a significant distinction, and I hope that the amendment that I am moving could be adopted. If the Attorney-General then wants to give further consideration to it before it passes the Parliament, to deal with any matter that I may have overlooked, that would seem a suitable course to follow.

The Hon. C.J. SUMNER: The merits of the argument in relation to this amendment are finely balanced. It could be argued that, as the Offenders Probation Act allows that decision about leaving the State to be made by a departmental officer and that occurs only after conviction, with respect to a person who wishes to leave the State before a conviction there is a stronger argument to say that a departmental officer should be allowed to permit that person to leave the State because he has not yet been convicted. If one places weight on the presumption of innocence, there would seem to be stronger reasons for saying that a departmental person administratively could allow a person to leave the State prior to the conviction than would apply after the conviction, but the overriding consideration with respect to bail is to secure the attendance of the accused before the court when the charge comes up.

It could be argued that, if by administrative decision one allows a person to leave the State, that undercuts the philosophy that would require an accused person to attend. So, in terms of the merits of the argument, the matter weighs fairly evenly in the balance, but I can concede some merit in what the honourable member says. Of course, he is not saying that a person cannot under any circumstances leave the State: all that he is saying is that the terms and circumstances under which an accused person leaves the State should be decided judicially rather than administratively.

If you take that into consideration with the principle that bail ought to act to secure the attendance of an accused before the court when the charge is heard, the proposition put by the honourable member is not unreasonable. In the light of his persuasive arguments, I will not oppose the amendment.

Amendment carried.

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

Page 6, lines 11 and 12—Leave out paragraph *(c)*.

In the light of the Attorney-General's indication about the new subsection, it seems to me this amendment is consequential upon that.

Amendment carried; clause as amended passed.

Clauses 12 to 14 passed.

Clause 15—'Telephone review.'

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

Page 7, line 35—After 'shall' insert ', on the written application of the applicant,'.

My amendment seeks not to make any substantial changes but to ensure that, if there is to be a review by telephone of a bail decision, there is a written record of it. The bail authority has responsibilities under this clause, and it seems to me appropriate that those responsibilities ought to be exercised upon the written application of the accused person and not merely orally. The application having been made in writing, it is dealt with verbally. I think there is good reason to ensure that, as with other applications for bail having to be in writing, this is as important.

The Hon. C.J. SUMNER: It seems a reasonable proposition and is acceptable.

Amendment carried; clause as amended passed.

Clause 16 passed.

Clause 17—'Non-compliance with bail agreement constitutes offence.'

The Hon. K.T. GRIFFIN: During the second reading debate, I made a point about this clause, but upon rereading it I find that I misunderstood its import. I was concerned that the reference to pecuniary forfeiture being in addition to any penalty imposed for breach of a bail bond signified that the penal sanction which might be imposed for the original offence and for the breach of bail condition would be required to be served concurrently and not cumulatively. I have had another look at it and am satisfied that the reference to pecuniary forfeiture is to the actual security for the bail bond, and to that extent I am satisfied that there is now no difficulty with the clause.

Clause passed.

Clauses 18 and 19 passed.

Clause 20—'Termination of bail by conviction.'

The Hon. K.T. GRIFFIN: I sent the Bill to the Australian Crime Prevention Council for comment, and the response which I received from its Chairman was that it had already been in close consultation with the Government in drafting the Bill, but the Chairman did indicate that in clause 20 (3) he was somewhat concerned about the word 'prejudice'. I will read what he said and perhaps the Attorney-General will respond to that comment, which is as follows:

> Although this clause is not now in the terms originally drafted and our original comment upon it has been met, we would think that the word 'preclude' would be preferable to the word 'prejudice' in subclause (3). The word 'prejudice' might imply contrary to section 10 some restriction upon the court's unfettered discretion in the case of a convicted person.

There may be some substance in that comment from the Australian Crime Prevention Council. Can the Attorney indicate whether or not he has the same sort of concern as expressed by the Chairman of the Australian Crime Prevention Council?

The Hon. C.J. SUMNER: I believe that 'prejudice' is the more appropriate word. I have not given detailed consideration to it but, if one merely said 'preclude', that in a sense is narrower than the word 'prejudice', which is there to indicate that whatever has happened previously cannot in any way be used to prejudge what might be the decision on a subsequent application. That is the view of the Parliamentary Counsel on the wording. If one says that it does not preclude then obviously a person may apply for release on bail, but it may be that that is all it says whereas, to say 'prejudice', is to say it does not prejudge in terms of what has gone before the application that is made by an eligible person. It is a fairly fine point.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: That is probably an option. The point made by the honourable member and the Australian Crime Prevention Council is fairly fine. I am advised by Parliamentary Counsel that prejudice is probably the broader expression in terms of protecting the position of someone who might apply for bail.

The Hon. K.T. GRIFFIN: Perhaps the Attorney would consider the phrase 'prejudice or preclude'.

The Hon. C.J. Sumner: Yes.

The Hon. K.T. GRIFFIN: As that would put the matter finally beyond doubt, I move:

Page 10, line 10—After the words 'does not' insert the words 'preclude or'.

Amendment carried; clause as amended passed.

Remaining clauses (21 to 26) and title passed.

Bill read a third time and passed.

STATUTES AMENDMENT (BAIL) BILL

In Committee.

(Continued from 13 February. Page 2446.)

Clauses 2 to 6 passed.

Clause 7—'Guarantee of bail.'

The Hon. K.T. GRIFFIN: I placed on file an amendment to clause 7 because that relates to section 78 of the Police Offences Act which deals with arrest by police officers. The amendment that I have on file relates to a matter that I can now raise more effectively under the Police Offences Act Amendment Bill, which deals fairly and squarely with a wide range of police powers. Therefore, I will not proceed with my amendment to this clause on the basis that there will be an opportunity to debate the issues more fully on that other Bill.

Although the Attorney-General indicated yesterday that the Bill to amend the Police Offences Act would be introduced today or next Tuesday, I placed the amendment on file because there are always things that can go wrong, and I did not want to lose an opportunity to raise during the course of this part of the Parliamentary session that very important issue of police powers. Therefore, I will not proceed with the amendment pertaining to section 78 of the Police Offences Act. All matters in this clause and in the next clauses, as with the earlier clauses, are consequential upon the passing of the Bail Bill.

Clause passed.

Clause 8 and title passed.

Bill reported without amendment. Committee's report adopted.

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

That this Bill be now read a third time.

It is a significant reform of the law and contains a number of new provisions that should be of benefit to people who may feel aggrieved by a particular bail decision by providing for review, and I hope that the measure will facilitate the granting of bail where it is clear that people should not be in prison pending trial. As I said in the debate, South Australia for some reason has a much higher rate of prisoners remanded in custody than any other State or the Northern Territory, and the object of the exercise is to ensure that those accused persons who should not be on bail because of the nature of the offence, the likelihood of their reoffending or the potential for future violence should be remanded in custody but that those accused persons who will attend at their trial and whom there is no reason whatsoever to remand in custody will be granted bail.

A lot of work has gone into this Bill and I would like to compliment the officers who have worked on it, the community groups that made submissions and the Opposition for its support of what I believe will be a significant measure. An implementation committee has been established by the Government to try to ensure that the initial intentions of the Legislature in regard to this Bill are carried out, because what happens here will, to a considerable extent, depend on how the Act is administered. I appreciate the points made by the Hon. Mr Griffin about victims of crime, and we will certainly examine those issues as part of a general review. I am very mindful indeed that the rights of victims in the justice system must not only be protected but also be seen to be protected to ensure that people who are aggrieved by acts of personal violence or some other criminal act feel that the system and the community is supporting them in their plight. I believe that this is a significant measure and I hope that it works in the way in which Parliament and the Government intend it to work. I thank the Opposition for its support and constructive comments.

The Hon. K.T. GRIFFIN: I acknowledge that this is an important Bill. The Liberal Party has a policy of review of the laws relating to bail, and I am pleased that on this occasion both the Government and the Opposition have been able to work generally towards the same objective. There are a number of deficiencies in the present law relating to bail applications, not the least of which is that there is no right of the Crown to appeal against the decision of a court to grant bail. That is a significant deficiency.

The other area to which I have already referred in the debate is the need to place a greater emphasis on the interests and rights of victims and those who are alleged to be victims without prejudicing the principle that an accused person is innocent until proved guilty. The only disappointment I have is that the Government was not prepared to adopt some aspects of my amendments relating to information to victims and submissions by victims to bail authorities.

I note that the Attorney-General has an implementation committee which will oversee the implementation of this legislation when it passes, and I am pleased that at least that committee will look carefully at the appropriate mechanism for ensuring that victims' interests are given a higher profile in the justice system. It is a matter of concern, not just to the Victims of Crime Service, which has made an extensive submission on the Bill, but also to many members in the community who believe that in many instances of crimes of violence, and particularly domestic violence, the interests of victims are not adequately recognised in the justice system—not just in relation to bail.

I hope that the Attorney-General and his committee will look carefully at the possibility of being able to give greater information to victims about bail applications and the granting of bail, and that victims will be able to be consulted much more effectively as to the conditions, if any, which ought to be attached to any bail that may be granted and to the principal question whether or not bail ought to be granted at all. So, I hope that the legislation is effective in achieving those sorts of objectives as well as ensuring that those accused persons who are no risk to the community between arrest and hearing in court will not be unnecessarily incarcerated. I support the third reading of the Bill.

Bill read a third time and passed.

LONG SERVICE LEAVE (BUILDING INDUSTRY) ACT AMENDMENT BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

The Long Service Leave (Building Industry) Act, which came into operation on 1 April 1977, provides long service leave for workers in the building industry who, because of the itinerant nature of the industry, are generally not able

to accrue an entitlement to leave under the Long Service Leave Act. The Act has been amended several times in the light of administrative experience, and certain other matters deserving legislative attention have now become apparent. This Bill then is principally aimed at introducing a desirable element of flexibility into the Act to enable the spirit of the Act to be put into practice.

In the first instance, the Bill seeks to amend the definition of 'employer' in the Act to give a wider coverage to building industry workers. At present, the definition excludes from the definition of 'employer' any person engaged in activities which would normally be encompassed by the Act, but which are subsidiary to other activities undertaken.

For example, a quarrying company that employs a builders' labourer who goes on to a building site will now have to register and pay contributions for that worker, which was the initial intent of the Act. Currently quarrying companies are exempted through the operation of section 4 *(i)* of the Act.

The Government believes that it is fundamentally unfair for workers engaged in building and construction activities to be barred from entitlement under the Act solely because those activities do not constitute the major thrust of the employers' work. Accordingly, it is proposed to repeal this exemption and its associated provisions to enable the Act to apply to a wider range of building industry workers. However, this extension will not affect the current situation in respect of electricians and others paid under a Federal Metal Industries Award which has its own long service leave provisions and the Furnishing Trades Award because it covers workers outside the scope of the Act. Nor will the Act be extended to cover off-site workers, such as maintenance carpenters working for a retail store or joinery shop, who never go on to a building site, or local government construction work which is exempt from the provisions of the Act.

Long service leave legislation is based upon the notion of continuous service, whether with one employer, or in the case of the building industry, in the one industry. The Act acknowledges, however, that through the very nature of the industry, some interruption to service is the normal pattern of events, and should not be regarded as terminating an accumulation of effective service to date. To this end, in cases where the worker has not yet qualified for a pro rata payment, section 28 (5) *(c)* allows an absence from the industry of up to 18 months (other than on account of illness or injury) before effective service is lost.

Given the somewhat fluctuating nature of the industry, current employment patterns have revealed that this period of 18 months may not be sufficient. A building worker may easily be absent from operating in the industry in the sense required by the Act for a longer period of time, particularly, say, where he is engaged on a job creation project. In this instance, cases have been brought to the Government's attention where a worker has accumulated a substantial period of service in the industry and has followed that employment with a period of work on long-term job creation projects extending beyond the 18 months time limit allowed by section 28 (5) *(c)*. In these cases, the worker has lost his former service, and on returning to the industry has had to recommence his accumulation of service from scratch.

The Government believes that, in limited circumstances, generally beyond the control of the worker, it is unreasonable to penalise the worker in this way for the current industrial climate. Thus, the Bill provides that, where the worker has followed a period of service under the Act with employment pursuant to a prescribed job creation arrangement (whether before or after the amending Act), then he shall be regarded as having been continuously employed in the building industry for the entire period. This will mean that the service accrued prior to the commencement of work on the job creation project will still be current once the latter term is completed. However, no effective service will accrue during the period on the job creation project and a period of absence from the industry will recommence at the completion of that project.

As a result, no contributions to the Long Service Leave (Building Industry) Fund will be payable in respect of service on, say, a Community Employment Programme project, even where that project covers work within the scope of the Act. This will then not impose any additional burden on the cost of the project, thus enabling funds to be available for more unemployment projects.

As is usual with legislation relating to length of service, the Act makes a number of references to qualifying periods of service or disqualifying periods of absence which are relevant to the various calculations made in the Act. The basic thrust of the Act is the creation of an entitlement to a long service leave payment for a worker who has completed 120 months effective service (equivalent to 10 years). However, to be consistent with the general Long Service Leave Act, a building industry worker or his personal representative can become eligible for a payment in respect of a lesser period of service where the worker has accrued either 84 months effective service or a lesser period combined with service under the general Long Service Leave Act and he fulfils certain other qualifications. These qualifications are death, retirement at the prescribed retiring age, retirement on the grounds of invalidity so that he will be unable to work as a building worker for a continuous period of 12 months or more, and absence from the industry for 12 months or more. This latter ground has created some difficulties, as in some cases it is quite obvious for one reason or another that a worker will not return to the industry within the stipulated period, but a payment cannot be made by the Long Service Leave (Building Industry) Board until that period has been observed. In this respect, cases of extreme hardship have been brought to the notice of the Board where workers intend to move abroad permanently, and cannot settle their financial affairs as they cannot have access to their long service leave payments for 12 months.

The Government believes that there may be special circumstances in which it should not be necessary for the full 12 months period to expire before a pro rata payment is made to a former building industry worker. Indeed, even an enforced delay is not required if the worker retires on the grounds of physical or mental incapacity. Accordingly, the Bill gives the Board a discretion to make a pro rata long service leave payment prior to the expiration of the 12 months period of absence where it believes the former worker will not be working in the industry for 12 months.

As mentioned earlier, one of the special features of this Act is that it allows for portability of service between employers, so long as the worker remains in the building industry. While this principle operates successfully when the employment is confined within the borders of the State, problems arise in respect of employees of national companies who are transferred from State to State on construction projects, or indeed in respect of workers moving between States in search of employment. At present, workers such as those are not entitled to have service in other States recognised for leave purposes in South Australia, although provisions for reciprocity exist in Victoria, New South Wales and the Australian Capital Territory.

It is proposed that an agreement to give portability of service be made between those States and South Australia. As a first step, however, it is necessary that the Act be amended to enable effect to be given to the proposed agreement. To this end, the Bill allows the Minister of Labour to enter into a reciprocal arrangement with the relevant

Minister of another State having similar long service leave legislation in respect of long service leave payments, the exchange of information concerning credits and entitlements and any other matters relating to long service leave.

Two other administrative amendments have been included in the Bill. When the Act came into operation and to the present time, the collection of contributions has been a function of the Commissioner of Stamps in order to make the task of calculating payroll tax and the long service leave levy, both of which are based on gross monthly wages, easier for employers. Since that time, however, the base of gross wages has changed to the current monthly award rate paid to the worker excluding special rates or allowances such as overtime, annual leave loading, travelling allowances, bonuses, site allowances, dirty work, hot work, cleaning down brickwork allowances, etc.

A number of incompatibilities and problems have arisen in the vesting of the required functions by the Act in two distinct bodies, the Commissioner of Stamps and the Long Service Leave (Building Industry) Board. These difficulties were highlighted in a report by the Auditor-General which pointed to the lack of control and the confusion caused for employers by the existing division of responsibility. In his report, the Auditor-General said:

> ... audit examinations revealed inconsistencies between numbers of workers registered with the Board and those advised by employers to the Commissioner of Stamps for contribution purposes.
>
> The need for implementation of measures to provide greater assurance that all employees are registered and contributions receivable from employers are collected, was raised with the Board.

As a result, the Bill proposes to vest the functions carried out by the Commissioner of Stamps under the control of the Long Service Leave (Building Industry) Board. This change would centralise the contribution, collection and control functions in the Board itself and will significantly improve not only the administration of the Act, but also the position for employers and workers. It also reflects the stance taken in the legislation of other States where similar schemes have been established.

Finally, to further streamline the administration of the Act, the Bill includes the standard clause to enable the delegation of powers or functions from the Board to individual members of the Board or any other person engaged in the administration of the Act. This will ensure that decision can be made speedily by appropriate and responsible officers, and will assist in improving the efficiency of the Act's administration. In accordance with the normal procedure, the Bill has been the subject of consultation with relevant bodies including the tripartite Long Service Leave (Building Industry) Board and the Industrial Relations Advisory Council. Useful discussions have been forthcoming and both organisations have indicated their support for the proposals contained in the Bill.

Clause 1 is formal. Clause 2 provides for the commencement of the measure. Clause 3 amends certain definitions contained in the definition section, section 4 of the principal Act. The clause makes amendments that are consequential on the proposal to have employers' contributions in respect of long service leave collected by the Long Service Leave (Building Industry) Board rather than, as at present, the Commissioner of Stamps. 'Employer' is presently defined under the section as a person or body that employs a person under a contract of employment as a building worker for the purpose of certain listed building industry activities. Paragraph *(i)* of the definition excludes any person or body where the building industry activities engaged in by that person or body are (taken together) subsidiary to other activities engaged in by the person or body. Subsection (3) provides the criteria according to which activities are determined to be subsidiary or not to other activities. The clause deletes paragraph *(i)* and subsection (3) and instead makes a provision the effect of which is that a person or body will not be an employer for the purposes of the Act if the person or body only engages in the construction, improvement, alteration, maintenance, repair or demolition of a building or a structure that is to be in continuing occupation or use by that person or body.

Clause 4 inserts in the principal Act a new section 15a enabling the Long Service Leave (Building Industry) Board to delegate to a member of the Board or any other person engaged in the administration of the Act any of its powers or functions under the Act. Clauses 5 to 11 (inclusive) make amendments substituting for references to the Commissioner of Stamps references to the Long Service Leave (Building Industry) Board. The amendments give effect to the proposed rearrangement under which the Board is to take over from the Commissioner of Stamps responsibility for the collection of employers' contributions in respect of building industry long service leave payments.

Clause 12 amends section 28 of the principal Act. Subsection (5) of that section provides that a building worker who has not qualified for a pro rata payment or long service leave under the Act shall cease to be credited with an effective service entitlement in respect of service as building worker if he is not employed as a building worker for 18 months otherwise than on account of illness or injury. The clause amends this provision so that the period of such absence from the building industry is increased to 36 months. The clause also inserts a new subsection providing that a person shall be deemed to have been employed as a building worker for any period for which he has been employed to perform building work under a job creation scheme. This provision is to apply in relation to any such employment whether occurring before or after the commencement of the proposed new subsection. The provision is not to give rise to any liability to pay contributions, or any entitlement to be credited with effective service, in respect of any such period of employment. 'Job creation scheme' is defined as meaning a prescribed scheme for the provision of employment to persons otherwise unable to secure employment.

Clause 13 amends section 34 of the principal Act which provides for a pro rata payment where the Board is satisfied that a building worker has an effective service entitlement of not less than 84 months and—

(i) has died;

(ii) has ceased to be a building worker having attained the prescribed retiring age;

(iii) has ceased to be a building worker and will be unable to work for 12 months or more due to physical or mental disability;

or

(iv) has ceased to be a building worker and has not worked as a building worker for a continuous period of 12 months or more.

The clause amends (iv) so that, in addition, a pro rata payment will be payable if the Board is satisfied that a building worker (with an effective service entitlement of not less than 84 months) has ceased to be a building worker and will not be working as a building worker for a continuous period of 12 months or more.

Clauses 14 and 15 make amendments deleting references to the Commissioner and substituting references to the Board. Clause 16 inserts a new section 36e providing for reciprocal arrangements with other States or Territories where similar schemes for the provision of long service leave to building workers are in operation. The proposed new section authorises the Minister to enter into a reciprocal arrangement with the Minister responsible for administering a corresponding law in another State or Territory, being an arrangement relating to long service leave payments, the exchange of

information concerning service credits and entitlements to long service leave payments and any other relevant matters. Where a reciprocal arrangement is in force, the Board is empowered to pay to the authority that is its counterpart under the corresponding law an amount towards a long service leave payment made by that authority that is based upon the relative periods of the building worker's service in South Australia and in the other State or Territory. Where reciprocal arrangement is entered into, the provisions of the Act are, under the proposed new section, to be construed as applying with such modifications as are necessary to enable the Board to give effect to and comply with the terms of the arrangement. Clauses 17 and 21 (inclusive) each substitute for references to the Commissioner references to the Board.

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

SELECT COMMITTEE ON BUSHFIRES IN SOUTH AUSTRALIA

The Hon. ANNE LEVY: I move:

That the report be noted.

This is a formal motion to enable some comments to be made on the report of the Select Committee, which was tabled in Parliament two days ago. When Select Committees result from a Bill there is a chance to comment when the report is tabled and proceeded with, but in this case as it was a Select Committee without a Bill being part of its terms of reference, there is no such occasion. I do not wish to speak long except to make a few comments regarding the very hard work that the committee put in and to commend all members for being amicable and hard working.

We met, as the report says, on 19 different occasions. We visited Mount Remarkable and took evidence in Melrose; we visited the Cleland National Park; we went through the East Torrens District Council; we visited the National Parks and Wildlife Service headquarters; and examined the fire tower on Mount Lofty. These visits added to the material that was presented by witnesses, either in writing or orally. We took particular note of the report on bushfires from the House of Representatives Standing Committee on Environment and Conservation. The report of this committee appeared during our deliberations. That committee had much wider terms of reference than those of our committee, but they encompassed all the matters which we were looking at but on an Australia-wide basis. The committee had obviously done a very thorough study of all aspects of bushfires.

We took note of this in that the committee's arguments were persuasive and we also felt that it would be rather foolish if any of our recommendations were in conflict with any of theirs. Not that this would have prevented us making such recommendations if we felt them really necessary, but where there was no fundamental disagreement we certainly took note of their arguments and recommendations. As one can see in our report, we give numerous quotations from the Federal committee's report.

The evidence presented to the committee covered a wide range of matters. We received 26 written submissions and had 35 people come to give evidence, some of them on more than one occasion. Although we have called this a Select Committee on Bushfires, the topics people dealt with in evidence certainly covered a wide range of matters—frequency and cause of fires, how to fight them, how to organise firefighting, fire protection measures to be taken, fire management plans, training of fire fighters and many other matters connected with bushfires. It is obviously a topic of very great importance and interest in the community and many aspects of it were certainly drawn to our attention.

I draw members' attention to some of the appendices to our report which provide statistical data on the frequency and causes of bushfires both in national parks and other Government reserves and generally throughout rural areas. In brief summary, over the past 10 years 65 fires burned into national parks from outside and only 14 fires escaped from national parks to outside areas. The 65 which burned in resulted in the destruction of 120 000 hectares of Government reserve, whereas the 14 that escaped resulted in the destruction of 6 500 hectares of neighbouring property—only about one-twentieth of the area of national parks destroyed by fires burning in. In the same period 217 fires started in Government reserves and were contained within these reserves, although they did burn over 40 000 hectares of reserve. The damage caused by fires is obviously of great concern to landholders, national parks officers, other guardians of our Government reserves, and members of the community as a whole.

The committee certainly shared the concern about the damage caused by the fires. A considerable amount of time is spent in fire fighting—not just management techniques to minimise fire damage should fires occur. In the 1983-84 fire season the National Parks and Wildlife staff spent over 8 000 hours fighting fires. The CFS spent 3 500 hours helping them fight those fires. Members might be interested in a brief summary of some of the causes of fires in national parks and other Government reserves. In the 1983-84 season there were 13 such fires, one being caused by lightning, seven by arson (that is more than half), two by landowners burning off (with so-called controlled burns becoming uncontrolled and spreading) and three from unknown causes.

The data from the CFS, which listed the causes of all rural fires over the past five years, indicated that the greatest cause of fire is unknown. There were over 1 700 fires of unknown origin. However, of those fires with a known origin the most frequent cause was burning off getting out of control, comprising 813 fires; 560 fires were caused by children using matches in some way; and vehicles of different types caused 544 fires throughout the State in this five-year period. On the other hand, lightning caused only 213 fires. The CFS listed all the other known causes of fires with their frequencies, ending up with glass causing five fires—hardly a very serious problem.

The most frequent causes of fires after 'unknown' were burnoffs out of control, children and vehicles, which were all well ahead of lightning. In some respects it is discouraging that these preventable causes of fire should be so common. Our recommendations are aimed to try to reduce the frequency of preventable fires. In other ways it is encouraging that the cause of fire in the form of lightning is not that frequent because, obviously, this is a cause about which we can do nothing.

The witnesses who came before the Select Committee gave conflicting evidence in some cases in areas such as the best fuel reduction methods, the best methods of fire protection, the best methods of fire management, the control of bushfire fighting, and the general strategies. We received conflicting evidence from different sources. In no way do I question the integrity of any of the people who gave the committee their advice, but the very fact that there was such contradictory advice indicates the uncertainty and lack of scientifically based knowledge on which people formed judgments. We hope that further research and further work will clarify some of this information so that there can be a more uniform acceptance of opinion on the best method to proceed in these matters. I have seen one comment so far on the report which claims that it is a trendy conservation approach. I deny this.

In our report we tried very hard to summarise all the evidence that had been before us to give the pros and cons of any argument. Of course, we had to justify recommendations made; so, in some instances there is an elaboration of the detailed discussion of evidence that we received. However, there was certainly no intention of stressing one argument as opposed to its counter argument presented to us in evidence. The report obviously is a compromise among the views of all the members of the committee. One cannot say that there was a Government majority steamrolling through a view. I think that every recommendation received the support, if not of every member of the committee, certainly of every member except perhaps one. It was never a question of a three-to-two decision.

The Hon. R.C. DeGaris: Four to two.

The Hon. ANNE LEVY: There were six members on the committee, but one member was absent for most of the discussion on what recommendations should be put forward; so, in effect five of us were discussing the bulk of the evidence. Certainly, an attempt was made to accommodate the views of all members of the committee. I should add that our first recommendation, which refers to the creation of a central fire authority with regional committees and regional fire officers, is one that we feel could solve many of the problems that were brought to our attention. We did not, however, cost this suggestion, as we had no evidence on its financial implications and we lacked the expertise to cost it out ourselves. This obviously will be a matter for the Government to consider.

The great fire danger in the Adelaide Hills area was obvious to all members of the committee and our visits to that area reinforced our previous opinions. The greater the population density in areas such as the Adelaide Hills the greater the risk to life from fires and the greater the value of property at risk. It is from these observations that we make our recommendations regarding further subdivision in high fire risk areas, the building, construction and design standards that should apply, the reinforcement of the view expressed in the Scott Report regarding putting electric wires underground, and so on.

With regard to techniques for fire fighting, evidence was presented to us on a wide variety of methods—everything from large amphibious aeroplanes to a stick in a wet sack. Our committee was, of course, very mindful of the one member who had considerable experience in fire fighting and who was able to guide the rest of us who did not have such detailed experience. However, we felt that in this area as in other areas there is a need for far more research and investigation to be done and that in fact there probably is no one perfect method of fire fighting: every fire may have a different best method appropriate to that terrain, type of vegetation and the particular circumstances of that fire.

Our recommendations with regard to fire management plans, training for fire fighting and research into such methods are all very obvious and I doubt whether anyone would quarrel with them.

Despite the differences of opinion that were brought to our attention, it is apparent that the vast majority of those involved in fire protection and fire fighting in this State cooperate magnificently, be they from Woods and Forests Department, National Parks and Wildlife Department, or the CFS, and that everyone in this State owes them a great debt of gratitude. I very much hope that such co-operation will continue and that if our recommendations are adopted they will have to fight fewer fires, although I realise that it would be foolish to pretend that one could ever eliminate entirely the risk of fires.

I thank all members of the Select Committee, its secretary and the research officer for the many long hours of hard work that they have put in. I hope for their sakes, and for the sake of the whole community of South Australia, that our report will bear fruit.

The Hon. PETER DUNN: In response to the motion by the Hon. Anne Levy to note the Select Committee's report I will make a few comments, although I do not wish to take up very much time. I again thank those people whom she thanked. I also again thank the chairperson of that committee for the manner in which she conducted the committee (she conducted it extremely well) and those people who travelled long distances to come and give evidence.

This problem has been highlighted throughout the State even more this year than in any other year. We have seen the most unfortunate destruction of the Black Hill Conservation Park. We have seen extremely serious fires in the Ngarkat National Park and in the Danggali Conservation Park. We have also seen fires that have either got into or out of other areas. That was most unfortunate. We all would rather those fires had not occurred, but we must be honest with ourselves and admit that there will always be fires in this State: this is part of our very existence and, unfortunately, they do get away. Fire, as we are all aware, is excellent to use, but is a terrible enemy when it gets away. We have to address this problem in a very serious manner. I hope that the people who review this report will take that into consideration when looking at its recommendations.

I was a little disappointed that we did not go further afield and look at what other States were doing, but I am not one for wanting to junket around: I travel enough as it is and did not want to do that. Perhaps we should have looked at what Victoria was doing. The committee members did go to Alligator Gorge, but unfortunately I did not get there because of inclement weather. I travelled through the Adelaide Hills, which is probably the most affected area and which we had to address urgently because we have seen some terrible fires there, excluding the two Ash Wednesday fires, which were unique in their effect, as were the days on which they burned.

As the Hon. Anne Levy said, we met on 19 occasions and took evidence from members of three Government departments: from the CFS, Woods and Forests and National Parks. We did not take evidence from representatives of Australian National, which has a limited number of reserves in this State. We also took evidence from private individuals who were most concerned about fires. I believe that it was the concern expressed by these people that brought us to the realisation that we should have a Select committee investigate this problem of fires in Government reserves.

To me the most disturbing fact, having listened to the evidence, was the rise in pyromania and arson in our community. It is an indictment on what we are doing with education and, more so, with our appreciation of the world around us that people wish to burn it down: this saddens me enormously. The Adelaide Hills, by their very nature and the way they were created, are a very high fire risk. There are steep areas and areas of dense vegetation with big trees with more of the sclerophyll type forest further to the east. It presents a multitude of problems. Fortunately, our forebearers were wise enough to put some parks in that area and it is up to all of us to try to protect them if they are to be used and enjoyed by the public.

By the same token, we have to protect the people around those parks and it is made clear in the report of the Standing Committee to the House of Representatives that, if there is high density population around those areas, the people must come first, and that the areas adjoining these parks must be handled differently from the big parks that we spoke of earlier (Danggali, Ngarkat, Hincks, Hambidge, or any of the other big parks).

I come to the recommendations of the committee. I, in general, agree with the major points in them. Some of the minor points are fairly minor, to say the least, but the major points are significant. The first point involved the Central Fire Authority and the appointment of a regional director from a committee within the areas that that director will control. That will be one of the major things to happen within fire fighting in the country—not in the metropolitan area—because if there is a single authority that surely must be of benefit to the whole of the fire fighting organisation.

The complaints that we heard in the House about, for example, the Alligator Gorge fire, were to do with the chains of command. Nobody seemed to be in direct control and this appointment will probably help that situation, if the Government can get it into place. The fact that the person involved will be selected from a committee set up within the area means that there will not be outside direction, which is a very important factor. When one is dealing with people who have lived in an area for long periods, for example farmers and those dealing with parks, woods and forests and so on, one finds that people who come in from the outside giving directions are viewed with some scepticism. I am pleased to see that all factions have an input here and that whoever is selected will have control of the fire.

I highlight one example. The President and I looked at the effects of the Terowie fire. It was pointed out to us that the fire passed from the national park into a Woods and Forests Department area and then a local government area within a matter of 10 minutes. That is difficult when changing command, but having had the experience of the fire in Alligator Gorge some 12 or 18 months beforehand, they were wise enough—

The Hon. R.C. DeGaris: It is still the same fire.

The Hon. PETER DUNN: No, it had gone out. We had a wet winter in between.

The Hon. R.C. DeGaris: In that 10 minute period, I am talking about.

The Hon. PETER DUNN: Yes, it was still the same fire, my word it was. They were wise enough to make sure they did not get confused with their command and I believe they fought that fire with considerable skill, skill which should be used in the future.

The terrain was quite horrendous, steep, rocky and included big timber. Certainly, it was difficult terrain in which to fight a fire. Fortunately, the fire was contained both in the pine forest and out of it and that is significant. I believe that we have addressed the situation of a more equitable means of raising fire-fighting funds. Indeed, this has been a problem for many years. In the country, 3 per cent of the fire-fighting levy is paid to the CFS, while in the city there is a levy of 6 per cent and insurance agents are really acting for the Government in collecting such funds. It means that people who insure pay twice for their fire protection. However, a person who is uninsured and who is burnt out often gets away with it by receiving public sympathy and public funds resulting from that sympathy, without contributing towards the cost of the fire-fighting authorities protecting the area.

The seventh recommendation, involving planning by the Regional Director, the committee and the fire strategies, is probably the most significant recommendation because it includes protection measures of fire breaking, hazard reduction, mosaic and strip burning of fire breaks, fire tracks and other fundamental fire-fighting techniques. True, the recommendation does not spell that out, but obviously that is what will be its aim. If the committee set up in each area goes about its task in the manner envisaged, then I can see extensive plans drawn up and extensive changes made in the methods of controlling fires in Government reserves, whether they be reserves controlled by the Woods and Forests Department, the National Parks and Wildlife Service or Australian National. That is probably the most significant of the recommendations. Another important matter is the control and planning of dwellings in the Adelaide Hills. The the Hon. Anne Levy said that as the population density increases so does the fire risk. That is true to a point, although the risk peaks and then falls rapidly when the population density becomes very high. One cannot say absolutely that the increase in population density will increase the number of fires because a peak is reached.

I believe it is the medium to high density areas where the fire risk is greatest and control of the location of houses to be built is important. I refer to the top of ridges in the Adelaide Hills, especially areas such as Yarrabee Road, where the homes are atop of a ridge. Whichever way a fire comes, whether it be from the south-west, the north or the north-east, they are at extreme risk. Therefore, through careful planning, if development is restricted in those areas and not encouraged, it would be of great benefit to all. If houses are rebuilt after a fire they will obviously be burnt out again in the future.

Recommendation 15 involves the loosening up procedures and training of the armed forces for firefighting purposes. The loosening up involves obtaining the use of the armed forces and is a sensible recommendation, because it will give us a big force of persons in areas difficult to traverse, particularly in the Adelaide Hills and in other hilly areas. Some work can be done only on foot and a large, trained, skilled and fit body of people could do a good job in such areas. The army is an obvious choice for that role.

The rest of the recommendations strengthen what we have said in that case and back up most of those primary recommendations that I have pointed out. Those recommendations ensure that someone is responsible for the fires. It ensures that these plans and changes of command and/or authority are there and in place when the fire starts and that they are not *ad hoc.*

I have some criticisms of the preamble to these recommendations. There is definitely a heavy bias to the point of view of the National Parks and Wildlife Service. After reading the report, I do not think anyone could deny that. The report is very anti fire breaks; it is anti burning, either strip or mosaic. It is biased in its reporting even in regard to people who live on the border of the reserves. However, I must say that the recommendations do not entirely reflect the preamble. The research officer for the committee was from the National Parks and Wildlife Service and, because he was very close to the coal face, as it were, I suppose that, naturally he would have that care and concern about national parks. However, for unbiased reporting we should have independent people. It is important that we have input from all areas, but it is also important that we should have independent people to help us write the report. I have served on only one other select committee, and we were given a totally different point of view from our research officer.

I found that I spent a lot of time justifying my position to the research officer when maybe I, as well as he, had something to give. But I felt that I was unduly put under strain in doing so, and spent a long time coming to our conclusions and recommendations because of that. In fact, we spent over four hours during our second to last meeting endeavouring to come to a conclusion, and I am sure that we could have done it more quickly had we not had that pressure. I believe that he did what he thought was correct, but it is a fact that due to his background his opinion was biased.

The Hon. G.L. Bruce: He would have been an excellent witness.

The Hon. PETER DUNN: He would have been an excellent witness for the National Parks. I do not deny that he did an excellent job, and I think the report reflects that. The other point I want to make is that for much of the time we worked without a full committee. I believe that Standing Orders do provide that if a person cannot serve on a committee that person can be discharged or can discharge himself and be replaced. I was disappointed that the committee was not attended more regularly by the Democrat in this place. I am sorry that he was not there, because he had a lot to contribute when he did come. The fact that he attended only six or seven meetings out of 19 was a disappointment.

In conclusion, I believe that recommendations 1, 3, 5, 12 and 15 are significant and will facilitate improvements on what we have at the moment. They are not the final conclusions and in the not too distant future I think there will be changes. However, we should see if the present recommendations work and, if after having given them every opportunity to work and they work well, maybe we will not have to change the system recommended in the report. I emphasise the significance of the recommendations. I thank all those who served on the committee. I have much pleasure in seconding the report.

Motion carried.

LAND AND BUSINESS AGENTS ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 4 December. Page 2013.)

The Hon. C.J. SUMNER (Minister of Consumer Affairs): I thank honourable members for their support for this Bill. The only matter in dispute is that raised by the Hon. Mr Griffin dealing with the qualifications of directors of a company registered under the Act. The proposal put forward by the Hon. Mr Griffin is to amend the Act to permit a proprietary company to be licensed as an agent under the Act notwithstanding the general requirement in section 16 that all prescribed officers, directors, principal officers and any other person capable of controlling the affairs of the corporation or the company are licensed agents or registered managers when one of its two directors is licensed or registered but the other, being the spouse of the first, is unqualified. The honourable member's proposal would permit the unqualified spouse to actively—

The Hon. K.T. Griffin: That is in the Act already.

The Hon. C.J. SUMNER: What is?

The Hon. K.T. Griffin: The unqualified spouse.

The Hon. C.J. SUMNER:—and fully participate in the conduct of a business pursuant to the agent's licence. This is contrary to the basic thrust of the Act, which is to ensure that only qualified people are involved in the real estate sales industry. The thrust of the Act clearly was to signal that the small husband/wife family company where an unqualified spouse was a director should not be permitted except those in existence when the Act was first proclaimed (section 18 (4) (d)).

I understand that the Real Estate Institute does not support the philosophy behind the honourable member's proposal. It has always supported the proposition that only qualified people should be involved in the industry. It may be that there are some cases that require an exception. Clause 9 of the Bill inserts new section 7, which enables the making of proclamations to exempt particular persons from compliance with the Act. Such exemptions may be granted conditionally. An application for an exemption may be made to the Minister and he may refer such an application for inquiry and recommendation to the Commercial Tribunal. Therefore, there is already provision for an exemption from the strict requirements of the Act.

I believe that the amendment moved by the honourable member would be contrary to the fundamental philosophy of the Act that only qualified people be involved in the real estate industry. The Act as amended will enable the Minister to entertain an application for exemption, but the applicant must put his or her case to the Tribunal to justify a departure from the philosophy.

When this Act first came into being in 1973, the basic thrust of it was to require qualified people to be the active participants in the real estate industry. Exemptions have been granted by the Land and Business Agents Board for spouses, but I understand that those people for whom exemptions have been granted have been told that they should ensure that within a certain period of time they are qualified to participate fully in the business of the company.

That is the fundamental philosophy—to enable a spouse to participate. An unqualified spouse would undermine the philosophy of professionalism that the Real Estate Institute has certainly been trying to promote in this industry. Therefore, I do not believe that the honourable member's amendment can be supported. There is power and some flexibility for exemption by the Minister after reference to the Commercial Tribunal.

The only matter in dispute, I believe, is that question. The general thrust of the Bill has been supported and it, of course, is another step in the process of constituting the Commercial Tribunal as the occupational licensing authority in the State, a process which was originally proposed in 1979, which started to be put into effect by the former Liberal Government, and which has been continued by this Government. I thank honourable members for their support of the general thrust of the Bill, but at this stage, unless the Hon. Mr Griffin is able to adduce further evidence to justify his position, I do not feel that I can support his amendment.

Bill read a second time.

In Committee.

Clauses 1 to 12 passed.

Clause 13—'Entitlement of Corporation to licence.'

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

Page 6, after line 41—insert paragraph as follows:

(ab) by striking out paragraph *(d)* of subsection (4) and substituting the following paragraph:

(d) a corporation is a proprietary company having as its directors a person who is licensed or registered as a manager under this Act and the spouse of that person (whether or not being licensed or registered as a manager or salesman under this Act), and the Board is satisfied that no prescribed officer of the corporation, other than its two directors, who is not licensed or registered as a manager, will actively participate in the business conducted in pursuance of the licence;

I do not follow the response which the Attorney-General gave in replying at the second reading stage. Perhaps if I run through the concern he might have a different appreciation of it. If I misunderstand the whole thrust of the legislation, perhaps he will be able to tell me where I am wrong. The amendment which I have on file seeks to deal with clause 13, which deals with section 16 of the Act. That section deals with the entitlement of a corporation to hold a licence. Section 16 was amended in 1982 by the Liberal Government to make some important changes to the qualifications of directors before a corporation could be licensed. Section 16 (1) of the Act states:

(1) Subject to this Act, a corporation shall be entitled to hold a licence if it has proved to the satisfaction of the Board that—

(a) the general manager or other principal officer of the corporation;

(b) the directors of the corporation;

and

(c) any other person who in the opinion of the Board substantially controls, or could substantially control, the affairs of the corporation,

are fit and proper persons to manage, direct or control the affairs of a corporation licensed under this Act.

That subsection was passed in 1973, when the Act was enacted. At that time a uniform Companies Act allowed only one person to be a director. Of course, there could be more, but only one was necessary. So, a number of companies were incorporated to carry on business as real estate agents where there was only one director, and that director was the person who was qualified under section 16. But, in 1979 the Companies Act was amended to require all companies to have two directors. That was the origin of the problem to which I referred before Christmas in my speech at the second reading stage of the Bill.

It meant that, even though it was a family company with one director, after the amendments to the Companies Act thereafter requiring two directors, the small family company carrying on a real estate business would have to bring in a qualified person. For a family business, that was just not really good sense, because it would bring a stranger into the operation. So, the board granted to spouses a series of exemptions which were generally for a period of five years. (I recollect that they expired in about November last year). At the expiration of that five years the board said that it would not renew the exemptions.

So, where previously a husband or wife—the principal director in the real estate business—had a manager's licence, the company was registered as a real estate agent, and the board granted an exemption to an unqualified spouse to be a director also, hereafter the spouse was not entitled to continue as a director. This meant that that small family business had to conscript, cajole, encourage or exhort some other stranger—

The Hon. C.J. Sumner: Or the director had to get qualified.

The Hon. K.T. GRIFFIN: Or the director had to get qualified as a manager. So, it was either 'gain qualification or get out and bring in another director'.

The Hon. C.M. Hill: In most cases she is at home looking after the kids and you are wanting her to get qualified.

The Hon. K.T. GRIFFIN: In some instances, yes. To continue, it would really mean that someone who had no connection with the family would have to be a director, assuming all the responsibilities under the Companies Code of a director of that company.

The Hon. C.J. Sumner: Everyone knew that in 1979.

The Hon. K.T. GRIFFIN: The problem with 1979 was that there was just one director, but the amendments to the Companies Act required two directors, and they were small family companies. Those small family companies with one qualified and one unqualified director, who is the spouse, will now have to import into the business someone who is unrelated and who assumes all the responsibilities and obligations of a director, who would require full cognizance of what is occurring in the business, and be a full partner, in a sense, with the person who is the principal of that business.

I am having difficulty accepting that. In the amendments made in 1982, subsection (4) was amended to provide a number of things, as follows:

If—

(a) a corporation is, in the opinion of the Board, carrying on business as a stock and station agent, or is listed upon a Stock Exchange in Australia or is the subsidiary of a corporation so listed and the person who is, or will be, in control of the business conducted, or to be conducted, in pursuance of the licence, is licensed or registered as a manager under this Act;

(b) the Board is satisfied that the business conducted or to be conducted in pursuance of a licence forms an inconsiderable part of the whole of the business of a corporation and no director or other prescribed officer of the corporation who is not licensed or registered as a manager under this Act will actively participate in the business conducted in pursuance of the licence;

(c) a corporation is a proprietary company with not more than two directors, one of whom is licensed or registered as a manager under this Act, and the Board is satisfied that neither the other director nor any other prescribed officer of the corporation who is not so licensed or registered will actively participate (otherwise than in a clerical or secretarial capacity) in the business conducted in pursuance of the licence;

(d) a corporation held a licence at the commencement of this Act and the directors were then, and are, husband and wife, one of whom is licensed or registered as a manager under this Act;

or

(e) a corporation is entitled, in pursuance of the regulations, to be exempted from the provisions of subsection (2),

then, subject to subsection (7), the Board shall, upon application by the corporation, grant an exemption from the provisions of subsection (2).

That is the requirement to hold licences as registered managers. My amendment seeks to add a provision that an exemption shall be granted if a corporation is a proprietary company, having as its directors a person who is licensed or registered as a manager under this Act and the spouse of that person (whether or not being licensed or registered as a manager or salesman under this Act), and the Board is satisfied that no prescribed officer of the corporation, other than its two directors, who is not licensed or registered as a manager, will actively participate in the business conducted in pursuance of the licence.

There is a situation where a small family company (and there are a number of them) has a principal director who is registered as a manager, a spouse who is licensed as a salesperson—something which is subsidiary to the registration as a manager. That set of circumstances is not presently recognised in the exemptions under subsection (4).

It seems to me that there is no compromise to any principle or ethics, and no denigration of the real estate industry if, in the circumstances which I have outlined, the company can be registered and continue to hold its licence. It is not open slather but preservation of small family businesses carried on under the structure of a body corporate. I do not see why the Government should object to that. As I understand it, it really affects only a mere handful of companies.

If it only affects a handful of companies which are presently carrying on business and presently have exemptions, what is the evil in recognising it under the Statute and giving the Board the necessary power to grant the exemption? As I understand it, the Board says 'You have had long enough and there is no other power in the Act for us to allow you to continue to carry on business in the way that you have been carrying on business since the amendments to the Companies Act came into operation in 1979.

The Hon. C.J. Sumner: Isn't your amendment allowing spouses to actively participate in the business, whether or not they are qualified? That is an alteration of policy from that which your Government put in 1982.

The Hon. K.T. GRIFFIN: Paragraph *(d)* already does that.

The Hon. C. J. Sumner: That is only a grandfather clause from the pre-1973 situation.

The Hon. K.T. GRIFFIN: We really need to have a grandfather clause for the pre-1979 position.

The Hon. C.J. Sumner: That is paragraph *(c),* in effect.

The Hon. K.T. GRIFFIN: No, it is not.

The Hon. C.J. Sumner: Paragraph *(c)* provides that the other director can participate in the affairs.

The Hon. K.T. GRIFFIN: Only in a clerical or secretarial capacity.

The Hon. C.J. Sumner: Yes, but cannot participate as a full land salesman or manager of a business.

The Hon. K.T. GRIFFIN: If the spouse was a registered manager, I do not think there would be any difficulty because all the directors would then be qualified.

The Hon. C.M. Hill: They just keep the books.

The Hon. K.T. GRIFFIN: They either keep the books or act as a licensed land salesman. I do not see any evil in allowing a spouse who has been a director now for five years under the other exemption provisions of the Act to be able to carry on business without having to go back to school and undertaking all of the studies—

The Hon. C.J. Sumner: Your amendment goes further than that: In effect, your amendment provides that one can have an unqualified director in a real estate company.

The Hon. K.T. GRIFFIN: As a spouse.

The Hon. C.J. Sumner: A director who is a spouse but who is unqualified and who as an unqualified person can fully participate in the business of being a manager of a real estate company and a salesperson of that real estate company. We would argue that since 1973 that has been contrary to the philosophy of the Act.

The Hon. K.T. GRIFFIN: If the amendment is defective, I would need to have another look at it. I want merely to ensure—

The Hon. C.M. Hill: If she is selling without a licence—

The Hon. K.T. GRIFFIN: No, she is selling with a licence, but she is not entitled to continue as a director unless there is something similar to my amendment.

The Hon. C.J. Sumner: That's not what your amendment does.

The Hon. K.T. GRIFFIN: Having debated that, if the Attorney is sympathetic to what I am putting, I am happy to have a further look at the drafting. I want to ensure that the Board grants an exemption to those small family companies where the principal director is a registered manager and the other director is a spouse and is licensed but is not a manager and would not otherwise be qualified. If that principle can be acknowledged, I would ask the Attorney to facilitate further consideration of the drafting to enable that problem to be addressed and to ensure that it is accurately reflected in the amendment.

The Hon. C.M. HILL: I know that—

The Hon. C.J. Sumner: Here he is: someone with a lot of experience.

The Hon. C.M. HILL: That is true; I had 20 years in the real estate industry. I know that one of the trends in the past 10 years or so has been that a great number of men who were licensed salesmen have gone out on their own into their own respective real estate businesses. We know that if we look through suburban shopping centres today and see the number of small shops occupied by real estate agents. That was not the case 15 to 20 years ago.

The Hon. C.J. Sumner: They are all doing very well under the policies of this Government, too.

The Hon. C.M. HILL: They are all doing very well because of the general economic position.

The Hon. K.T. Griffin: There is a lack of serviced blocks.

The Hon. C.M. HILL: Yes, that is right. They are scratching around and trying to find land, and that has all happened during the present Government's reign and under the present Government's policy. However, I am making the point that this is a problem that has increased over the last, say, 10 to 15 years considerably and these men, on advice from their accountants, and so forth, when they set up their own businesses, formed their own small proprietary companies. Many of them even operate from their home and do not even have shopfronts in the suburbs. There are a lot of them operating from their home and their home is the base of their operations. They have relatively small operations, but they live very independently and happily under these situations.

The wife, in the cases to which I am referring, has not any direct active involvement in the business, but she has had to become a director of the company because of the requirements under the Companies Act and she has had exemption so that the company can retain its licence as an agent; the husband, of course, is registered as a manager of that company. I can understand other situations where there are two men going into partnership and the second man should be qualified, and we cannot have any silent partners in real estate operations where those silent partners are active in the business of real estate. Everyone accepts that, but where there is a wife who simply has an office in the company because of the requirements of the Companies Act that there must be two directors, she should be given exemption under the legislation being considered now so that that company is not in danger of losing its licence owing to the fact that it has a director who is unqualified or not involved in the business. She has no interest in going to school and learning the qualifications to become a manager—no interest at all in that. She is placed in the position—

The Hon. C.J. Sumner: She is all right.

The Hon. C.M. HILL: Apparently from 1985 she is not going to be. That exemption will not be continued.

The Hon. C.J. Sumner: It is still in there. Provided she does not actively participate except as a secretary or in a clerical capacity, she is still all right.

The Hon. C.M. HILL: I understand that. What is she going to do? Is she going to be exempted periodically?

The Hon. C.J. Sumner: No, she is exempted by the Bill.

The Hon. C.M. HILL: Is the Minister saying that the woman being a director of that family company in the circumstances that I have explained is assured that she is exempted from the provisions under debate? The Minister is referring to his—

The Hon. C.J. Sumner: No, I understand—keep going.

The Hon. C.M. HILL: I am wanting that assurance from you that that woman in that situation is going to be exempted, because, as I understand it and as the Hon. Mr Griffin explained it, her situation must be reviewed after five years from 1979 and, therefore, in this year, as I understood the debate, her situation would be endangered. That is the point on which I want to be absolutely sure.

The Hon. C.J. SUMNER: Honourable members are confused. As a result of the amendment in 1982 put forward by the previous Government, an exemption shall be granted by the Land and Business Agents Board where there is a corporation, which is a proprietary company, with not more than two directors, one of whom is licensed or registered as a manager, and the Board is satisfied that the other will not actively participate in the business otherwise than in a clerical or secretarial capacity.

Then the exemption is granted. So, exemptions have already been granted under the existing legislation in those circumstances. Going back to 1973, the philosophy of the Act was to have qualified people managing and being directors of real estate companies. A single director was all that was needed for a proprietary company: so, all that one had to have was one qualified person to establish and operate a company as a proprietary real estate company.

In 1979 amendments to the companies legislation required two directors. Where the single person still wanted to operate, basically, but wanted to bring his or her spouse into the business, then an exemption would be granted to that company, with two provisos: that one person was qualified to be a manager and the other (the spouse) did not participate actively in the business except in a clerical or secretarial capacity. That provision was enshrined in the legislation in 1982, and continuous exemptions can still be granted under that 1982 amendment. That will still be in the new Land and Business Agents Act.

Pursuant to clause 7, which deals with section 5 of the principal Act:

An exemption, consent or approval granted, or a condition imposed, by the Land and Business Agents Board or the Land Brokers Licensing Board and in force immediately before the commencement of the 1984 amending Act—

1985 amending Act, I suppose it will be—

shall be deemed to be an exemption, consent or approval granted, or condition imposed, by the Tribunal under the provisions of the Act...

So, any existing exemptions that have been granted will continue. That is not the situation being postulated by the Hon. Mr Griffin in his amendment. As it is now drafted, he is saying that, contrary to the philosophy of 1973, which said that all people actively engaged in the real estate industry should be qualified, one can have a proprietary company in which one person is qualified and the other person, being a spouse, is not qualified, but that spouse can actively participate in the business, including the selling of real estate and engaging in all the other activities of a real estate agent.

The Hon. C.M. Hill: Without a licence, as a salesman, or a general manager.

The Hon.C.J. SUMNER: That is right. That is the extent of the amendment drafted by the honourable member, or drafted on his behalf. If the honourable member has a different intention—and that is only to pick up qualified people: one spouse might be a qualified manager and the other spouse a qualified salesman—that is perhaps something that we can look at. If that is what the honourable member intends I would be prepared to report progress to enable some discussions to be held on that point to see whether there is any objection to it. On the face of it, that does not seem to be unreasonable, but the original amendment proposed by the honourable member was broader than that.

That was where we were saying it should not be accepted because it would run contrary to the philosophy which was established in 1973 and which has been affirmed since by successive Governments. Indeed, it could have been that in 1982 the previous Government could have amended the legislation to provide for that to occur but the Parliament did not do so and the previous Government did not do so. That explains the position; the honourable member may wish to indicate his intention.

The Hon. K.T. GRIFFIN: I do not blame anybody for the drafting; I should have looked carefully at it to see that it reflected what I was seeking to achieve, and in the mass of amendments of other Bills I confess there is difficulty with the amendment which I have moved in that it is wider than I expected. It may be that we need to add a new paragraph rather than delete the present paragraph *(d)*, which is in a sense a grandfather or grandmother provision. An additional paragraph would allow those companies which presently have a husband and wife as directors, where one is a fully qualified manager and the other qualified only as a licensed salesperson, to continue to carry on business without the need for the spouse who is the licensed salesperson to retire as a director to appoint a stranger to satisfy the provisions of the Act. That seems to me to enable the present exemptions granted by the board in 1979 to continue.

It may be even that is too narrow in respect of future companies where one spouse is qualified as manager and the other is not qualified at all. I am essentially interested to enable those small family companies carrying on business, with one spouse as manager and the other a licensed salesperson, to continue without the threat that the board will remove the exemption granted and require the spouse who is the licensed salesperson to retire as a director and for a stranger to be appointed. That is reasonable and I would hope, if the Attorney-General is sympathetic to the objective which I am seeking to achieve, we might be able to report progress to consider the drafting further.

The Hon. C.J. SUMNER: I understand the position the honourable member is putting. I think it would be covered by the general exemption clause which will be new section 7, currently dealt with by clause 9. The Minister can give an exemption, having referred a matter to the Commercial Tribunal for consideration. That would depend upon the discretion of the Tribunal. The honourable member says that is not satisfactory and he would prefer to see a specific provision along with the other provisions dealing with exemptions in section 16. All I can say is that I am happy to move that progress be reported to enable me to seek the views of industry and other people interested in this proposal, and if it is satisfactory I will let the honourable member know and we can draft an appropriate compromise amendment for consideration next week.

Progress reported; Committee to sit again.

ADJOURNMENT

At 9.48 p.m. the Council adjourned until Tuesday 19 February at 2.15 p.m.