## LEGISLATIVE COUNCIL

Wednesday 13 March 1985

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

## PETITION: CONSTITUTION ACT AMENDMENT BILL (No. 2)

A petition signed by 299 residents of South Australia praying that the Council amend the Constitution Act Amendment Bill (No. 2) to provide for a referendum on the issues of a fixed term for the House of Assembly and extension of the life of Parliament from three to four years was presented by the Hon. R.J. Ritson.

Petition received.

## STATE AQUATIC CENTRE

**The Hon. M.B. CAMERON (Leader of the Opposition):** I move:

That this Council call upon the Auditor-General to exercise his powers under section 12 (1) of the Audit Act to investigate all of the circumstances surrounding the escalation in the costs of, and delays in completing, the State Aquatic Centre project and to make a report to the Treasurer.

Construction of the State Aquatic Centre at North Adelaide has been dogged by delays, uncertainty and escalating costs which should give rise to concern by all members of Parliament. These problems have been recognised for some time but it was only 24 hours ago that the Goverment was prepared to fully concede the difficulties that have arisen. I have no wish in this debate to deal in detail with the performance of the Ministers responsible for what we can only conclude to be a major bungle with this project. Both Ministers (the Minister of Recreation and Sport and the Minister of Public Works) have, in my view, been negligent in the handling of this important community project. However, both Ministers are members of another place and I leave it to that House to express its opinion of them.

Nevertheless, the important issue of expenditure of public moneys is involved and this Council has an obligation to ensure that, where substantial amounts of public expenditure are involved and there is doubt about the efficiency and effectiveness of that expenditure, answers are sought and obtained as to what is really going on. Under section 12 (1) of the Audit Act the Auditor-General is given clear powers that he can exercise when matters such as this relating to the expenditure of public moneys are involved. Those powers are expressed in the following terms:

Whenever in the course of the Auditor-General's duties any matter relating to the collection, receipt, issue or expenditure of public moneys comes to his notice and he considers that action by the Government may be necessary or desirable in connection with such matter, or that in the public interest the matter should be reported to the Government, he shall make a report on it to the Treasurer with any recommendations for action which he considers necessary.

Clearly, the delays and increasing costs associated with the swimming centre project give rise to grave concerns. The Government has consistently claimed that this State has, for the past few years, experienced some difficult economic times. A project such as this with its significant economic implications could have an important impact on the State's financial position. For this reason it demands detailed scrutiny. Such scrutiny should be carried out by an appropriate official, namely, the Auditor-General. Persistent questioning by the Opposition in another place has failed to solicit truthful answers on a project that we now discover has been escalating in costs at the rate of $50 000 a day since it was announced in July 1983. The Opposition has been reliably informed that documents relating to the cost of this project have been removed from departmental files. That is why it is important for the Auditor-General to investigate the matter now before there is further action to hide the reasons for the rising costs from the people who have to pay, that is, the taxpayers. The Auditor-General must respond to a call from the Parliament to investigate this matter if that call comes from all sides of the Council.

Let us consider the record on this matter. It is a project for which five different completion costs and six different completion dates have been given in less than two years. The completion costs may now be 90 per cent or more of the original estimated cost. The completion date is now almost a year behind schedule. The facility is not the world standard swimming centre promised by the Minister of Recreation and Sport. The ongoing costs that the Government will have to meet over a 10 year period to run the centre were not quantified before the project was announced and remain uncertain.

Despite all the questions asked over the past year expressing concern about the mounting problems associated with the project, we find that it was only last Thursday that the Minister of Recreation and Sport, according to his statement yesterday, sought from the Minister of Public Works the true reasons for the delays and cost escalation in this project. It is extraordinary that the Minister of Public Works and his Department had not regularly informed the Minister responsible for the Aquatic Centre of its progress.

Parliament has a right to expect that every major item of expenditure is subject to the utmost scrutiny and constant review. It appears that the Public Buildings Department has different views. If this project was instigated by private entrepreneurs they would have gone bust by now had they operated at the same level of efficiency as that Department. Before establishing the reason for referring this matter to the Auditor-General, I make it clear that my Party recognises the need South Australia has for an Aquatic Centre. The Liberal Party, while in Government, obtained Commonwealth funds which are now helping to finance the building of the centre.

So, this motion is not about the desirability of having an aquatic centre: both major Parties have taken action to develop one. This is a matter of public record. Nor is this motion directed at contractors working on the project, principally A.W. Baulderstone. While the Government has attempted to deflect criticism in that direction, the Opposition has never publicly named any company associated with this project. Whenever company names have been mentioned, that has been the Government's doing trying to deflect attention. Nor, from the information revealed in another place yesterday, is any criticism justified of contractors. The blame lies entirely with the Government.

Let me first recall some of the history of this project. In February 1981, the former State Liberal Government obtained from the Fraser Government a commitment to fund an aquatic centre in Adelaide on a dollar-for-dollar basis. The project was to be the first major facility to be funded in Australia under a programme designed to provide international standard sports facilities in all States. The former Government initiated a feasibility study to determine the most suitable site. That study paid particular attention to all aspects of converting the Adelaide Swimming Centre in the north parklands to an indoor facility.

While some advantages were established for this proposal, the disadvantages considerably outweighed those advantages. The disadvantages included the general arrangement of the pools, which was found to be poor for an enclosed complex and would involve substantial costs to upgrade, in addition

to the cost of the enclosure. The former Government was significantly guided by those findings in determining that the most appropriate site for the centre would be the West End brewery site in Hindley Street. It is important to realise that the design approved by the former Government for this site would have been up to recognised international standards. The Government has acknowledged this.

There would have been an additional community pool as well as the Olympic size main pool and diving pool, and other facilities including a gymnasium, weight training, health and fitness centre, and catering and administration facilities. In addition, of course, the development of this proposal would have provided two centres for specific user groups and general community use—Hindley Street and the north parklands. On the basis of all we now know about the cost of the conversion of the north parklands centre, it appears that the Government and the community may well have received better value for money, both now and in the longer term, from the development of the Hindley Street proposal.

The Minister also referred yesterday to the cost of the Hindley Street proposal and action taken by the former Government to seek additional funds. Quite clearly, the former Government took a responsible approach to that matter. When the possibility of cost escalation arose, immediate action was taken to limit any impact on South Australian taxpayers by application to the Commonwealth for further funding. The Council also needs to recall that the former Government did not push the aquatic centre during the election campaign in 1982. We had a model of the centre, but we did not unveil it while there was uncertainty about the cost.

The Minister of Recreation and Sport has tried to make much of that cost. I understand the tender price he received for the Hindley Street proposal in January 1983 was $9.2 million—22.7 per cent escalation compared with the 90 per cent escalation in the cost of the North Adelaide centre. Of course, the Labor Party was always jaundiced in its approach to the Hindley Street proposal. In a statement in the *Advertiser* of 10 March 1982, the Premier, as Leader of the Opposition, said:

> There was a strong argument for using the money instead for covering and otherwise improving the existing north parklands pool.

On three separate occasions—on 3 October 1984, 5 December 1984 and, most recently, on 27 February this year—the Minister referred specifically to delay caused by the weather as a major reason for the cost escalation.

That was completely untrue. In his statement yesterday the Minister of Recreation and Sport confirmed that the reasons he gave yesterday for the escalation in the cost of the project to $7.2 million before the tender was let and before the work started made no reference whatsoever to the weather. They related instead exclusively to design and cost matters within the responsibility of the Minister of Public Works and his Department, matters which indicate gross incompetence.

In relation to claims that the weather has caused delays that have added to cost, there is very interesting information in the January issue of the magazine *Steel Profile* published by BHP It includes an article giving details of the steel input for this project. That article makes the following statement:

> Welding was critical and subject to the vagaries of weather. Perfect conditions were essential. Fortunately, Adelaide enjoyed a mild winter without too many sudden downpours, and work progressed on schedule.

This question deserves and demands more answers than Parliament has so far been given.

It is vital that an independent authority can see at the earliest possible opportunity all the Government documents relating to the cost of this project and the reasons for the escalation. The public must be given all the truthful answers. As a responsible Parliament we must know why a large project has got so far off the rails and why a project originally costed at $4.2 million may end up costing more than twice as much, for let the Council not forget that yesterday's statement by the Minister of Recreation and Sport was completely equivocal about the final cost of the project.

I turn now to the question of the completion date for the project. Originally, it was October 1984, to allow it to open for last summer. That was the Minister's commitment up to the end of 1983, but in May 1984, in the statement announcing the cost escalation, the Minister revised the completion date to Christmas last year. Then, in a statement on 24 August the Premier put the date back a little further, to 'early in 1985'. There was a further advance on that when, on 29 October, the Minister of Recreation and Sport said 'about March'. He said the same in another place on 5 December last year, but 15 days later, in a statement reported in the *Advertiser*, the date went back further to 'April or May'. During the last sitting week, the Minister stuck to the May date. He said:

> As I have said, members opposite are playing politics with the Aquatic Centre.

He went on in response to interjections, to say:

> No, we will not see you at the opening in May. However, we may see a few of them—those members who are worthy of an invitation.

That was 27 February, in Parliament. In the *News* on 28 February, he was quoted as saying that he expected the pool to be open by the end of May. However, later that very same day, in the House of Assembly, the story began to change yet again. The Minister now said:

> I understand that there is a line of problems that may cause delay.

So, within 24 hours, the dates, if there ever were invitations, had to be changed.

Within five days of that answer, the Director of the Minister's Department advised the Swimming Association by letter that the Centre was unlikely to be finished before September. That was a matter of only six or seven days. If the Minister's departmental head was able to tell the Swimming Association that on 5 March, surely Parliament should have been able to receive the same information five days earlier. This meant that the delay was now almost a year and that, as a result, the National Winter Swimming Championships scheduled for late August would be lost to New South Wales. The Swimming Association had to make that unfortunate announcement last week.

The public was told that millions of its dollars were being spent so as to get a world standard Aquatic Centre. That was clear in the statement by the Minister. I am sure that all members would recall his words about its being a world standard centre, putting Adelaide well and truly on the international swimming map. Those words have been repeated in many statements, and I can give the Council their source, if it requires it. The facts on this issue as well have been misrepresented by the Government.

Evidence on the standard of the Centre was given to the Public Works Committee when it investigated this proposal late in 1983. That investigation led the committee to conclude that the Centre could be upgraded to one of full world standard, that is, to FINA criteria—at an additional cost of about $2.5 million. However, the Government accepted the Public Works Committee's recommendation that this additional cost could not be justified either at the present time or in the foreseeable future. Of course, the Minister did not make any announcement about that. The world standard centre that the Government had promised would now be something else.

A further report prepared by the committee appointed by the Minister has established that the Aquatic Centre we are now getting will not be capable of upgrading to FINA standards; that is, if we want a Centre of that standard to stage the Commonwealth Games we will have to build another Aquatic Centre at a further cost of $14 million. It is no use now trying to say that the Centre now being built was never intended to be of that standard. The whole justification for this project, for the change from the original plans of the former Liberal Government, was based on the fact that it would be to world standard.

When the member for Torrens in another place asked the Minister on 28 February whether the Centre would be up to FINA standards, the Minister said that he did not know. Yet in his statement yesterday the Minister claimed that he had made it clear to Cabinet in his initial submission on the project that it would not meet those standards. In this whole sorry affair the Minister of Public Works has to accept some responsibility—and I emphasise this for the benefit of the Attorney-General—for his department, which has been the project manager. Being the project manager means just that—the project manager makes the decisions. The statement made yesterday by the Minister of Recreation and Sport makes clear that all the major factors relating to the cost escalation and delays come within the responsibility of the Minister of Public Works.

**The Hon. C.J. Sumner:** Like what?

**The Hon. M.B. CAMERON:** In this respect the former Government adopted a procedure under which the Public Buildings Department made monthly reports to client departments—which obviously has not occurred in this case, because the Minister did not know from one day to the next what was occurring in regard to the progress of major construction projects—so that any problems and cost overruns were quickly recognised and corrective action taken.

It is quite clear that there needs to be some new system worked out to allow for that. It will make sure that that occurs, and the person most appropriate to do that is the Auditor-General. Obviously, the Government is incapable of working out a system to bring this about. The PBD increasingly took on a watchdog role under the former Government, utilising the considerable experience of its staff to ensure that the specifications of client departments were met, within the bounds of economic responsibility. However, this system has now broken down—perhaps abandoned under this Government—to the extent that this project has been hopelessly mismanaged by the Government.

The original costs got out of control and no action was taken to contain them. Instead, Parliament and the public have been misled about the reasons for the escalation. On at least three occasions the weather was blamed for the cost escalations of this project.

Then yesterday the Government admitted that the weather had virtually nothing to do with it. The Minister of Recreation and Sport promised publicly and repeatedly that this Centre would be of world standard, yet he claims he told his Cabinet that it would be something less. On 27 February the Minister told Parliament that the Centre would open in May, and then his Department told the Swimming Association five days later that the opening would be delayed until September, forcing the cancellation of State and National championships.

Following criticism in the 1984 Auditor-General's report that the Government had made no attempt to quantify the operating costs it will have to meet over a 10-year period for this project, the Government has not yet outlined action to be taken to quantify those costs or to control their escalation. More importantly, the Minister of Public Works appears to have no effective way of keeping client departments informed on the progress of projects—and particularly this project—their cost and has discontinued or rendered ineffective the procedures used by the former Government for providing monthly reports to client departments.

Governments must account for the expenditure of public moneys. Based on all the evidence, there is a clear need for an independent investigation into the Aquatic Centre project so that not only the funds involved in the project but also the future expenditure of public moneys on this and other projects can be better monitored and controlled. I repeat: this project has escalated at a rate of $50 000 a day, which is obviously out of control. Therefore, I urge the Council to support my motion.

**The Hon. C.M. HILL:** I have the pleasure of seconding the motion, and I will speak briefly to it. I hope the whole Council will support it, because there is a need in circumstances such as this for Parliament to express its grave concern, and to seek some investigation into matters of this kind.

The proper method to use for that investigation is for it to be conducted by the Auditor-General. I live near this development, and must reflect the views that I have heard expressed in the locality by citizens about their grave concern relating to the delays occurring and the estimated cost increase. People are very upset that the State winter championships and the National short course championships cannot be held at this pool this year when it was expected that they would be. Another disappointment that the public is voicing is that now the total cost is reaching the quite staggering figure of $7.6 million, yet when the project is completed it will not provide a venue for the Commonwealth Games because it is not of the required specifications. Olympic swimming events will not be able to be held at the Centre because of the specifications of the pool. Also, the official world championships cannot be held there.

**The Hon. C.J. Sumner:** You're on the Public Works Committee.

**The Hon. C.M. HILL:** The Leader of the House reminds me that I am on the Public Works Committee.

**The Hon. G.L. Bruce:** He needs reminding, too.

**The Hon. C.M. HILL:** Another members says that I need reminding of that.

**The Hon. C.J. Sumner:** You don't go anymore, do you?

**The Hon. C.M. HILL:** I was there this morning. Let me remind the interjector of that. I will come back to that point in a moment. The issues that must be considered by the Auditor-General relate to the fact that, when the Public Works Standing Committee investigated this scheme in December 1983, the estimated cost approved by that committee was $4.85 million rising to a possible $5.1 million. Upon receiving tenders the relevant department increased the estimate to $7.2 million, and the tender for the development was accepted on 3 May 1984 with an estimated date of conclusion of 12 December 1984. The latest figure, according to the Minister's statement made in another place yesterday, is an estimated cost of $7.6 million and a completion date at the end of August 1985.

This means that on present figures the costs have risen from $4.85 million to $7.6 million, an increase of $2.75 million, or an increase in the expenditure of public funds of nearly 60 per cent over estimate. The estimated completion date has shifted from 12 December 1984 to the end August 1985. I do not think that any Parliament can stand public funds being spent in that fashion and with such an increase without some close investigation of the whole matter. That is what this motion seeks through the proper authority, namely, the Auditor-General.

I return for a moment to the interjections that came from the other side of the Council a moment ago in relation to the Public Works Committee. I say that the Government

has made a mockery of that committee regarding this issue. It has made a mockery of that committee for the reason that it gave the project to the committee for investigation. An estimate of $4.85 million was reached by the committee, which went out to the site, did everything it should do, and then reported to the Parliament. I again remind members that the figure reached was $4.85 million.

**The Hon. C.J. Sumner:** You couldn't have investigated it very well.

**The Hon. C.M. HILL:** We investigated it quite properly. When tenders were called, the relevant department, without referring back to the committee, imposed a new estimate of $7.2 million; went to the Government for approval of that figure; and the Government gave its approval without telling the Public Works Committee about that approval being given at that time. Just where are we going with this system of the Public Works Committee when Governments get up to tricks like that.

**The Hon. Diana Laidlaw:** It involves accountability in general.

**The Hon. C.M. HILL:** It does involve accountability in general. The Government cannot have any trust, faith, or respect for the Public Works Committee at all.

**The Hon. C.J. Sumner:** You didn't investigate it properly.

**The Hon. C.M. HILL:** We did investigate it properly.

**The Hon. C.J. Sumner:** Why didn't you pick up the increased costs?

**The Hon. C.M. HILL:** The Minister yesterday gave all the reasons for the increases, but none of those reasons included the fact that the Public Works Committee missed something. I will read the Attorney the reasons if he wants me to, but I do not want to do that. The point I make is that this Government stands condemned because it gave the project to the Public Works Committee, approval was given at $4.85 million, and when the tender envelopes were opened and somebody said, 'There has been a tremendous mistake here, we have got to alter the Government's estimate to $7.2 million,' the Cabinet approved that without any reference back to the Public Works Committee, for which the Government must be condemned. That is only an aside drawn from me because of the Attorney-General's interjection about the Public Works Committee. I come back to my seconding of this motion, which is a responsible one and which simply seeks a proper investigation into this whole unfortunate matter. I hope all members of the Council support this motion unanimously.

**The Hon. K.L. MILNE:** We must be careful at this stage about what we are trying to investigate. I think that we ought to isolate the problem. We are looking at what the project managers have done. They are the people who control the contractors. The project manager is the Public Buildings Department. We must look at where it has gone wrong, because if I am any judge it may prove that the Public Buildings Department was not an appropriate project manager of this project. We do not know at this stage whether the Public Buildings Department, or the contractors, Baulderstones, or both, are to blame.

**The Hon. C.J. Sumner:** They said that it wasn't Baulderstones or the contractors but was the Public Buildings Department.

**The Hon. K.L. MILNE:** Once such an accusation is made we have to find out about the matter, and that is reasonable. I think that an inquiry by the Auditor-General is a sensible way of doing this in the first instance. I do not think that it is right to say that the Government is to blame. It is to blame to a certain extent, but let us pin this first of all where the blame really lies. I want to know not only if it is the Public Buildings Department that is at fault but also want to know the names of the people responsible for the calculations, administration, and these incorrect statements. I want to know who they are, and I do not want them sheltering behind the fact that there is a great machine called the Public Buildings Department. Somebody has to take the blame. The Auditor-General, as a servant of Parliament, is the correct person to conduct the investigation. I want everybody to realise, however, that this will be the first step. If the accusations levelled at the Public Buildings Department by the Opposition are proved to be correct, then there must be a Royal Commission.

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. K.L. MILNE:** There was a suggestion that information has been removed from certain files. If that is proved to be the case, some heads have to roll. Of course, we do not know whether or not it is the case. The Auditor-General should make quite sure that he investigates that point. The inquiry should be carried out quickly; that should not be all that difficult. This will enable remedial action of some sort or another to be taken as soon as possible before the situation gets any worse. I move to add these words to the end of the motion:

And that this investigation be completed by 1 September 1985.

**The Hon. C.J. SUMNER (Attorney-General):** It is interesting to know that the Opposition wishes to give up Question Time to bring forward a motion of this kind which, of course, is completely unnecessary. It obviously arises out of a misunderstanding of the role of the Auditor-General. It is clear that the Auditor-General has the power to investigate overruns and inefficiencies in Government departments. It is further clear that the Auditor-General will, as a matter of course, conduct such an investigation, whether it be into the Public Buildings Department or any other department.

The first inquiry that the Auditor-General should conduct is into the Hon. Martin Cameron and his mathematics. The honourable member alleged that there is a cost overrun of $50 000 per day which, with a commencement date of July 1983, on my calculation gives an overrun of $28 million. That is hyperbole at its worst. The cost overrun is only some $3 million or $4 million, which is certainly not $50 000 per day. Apparently that is the sort of accusation that the Hon. Mr Cameron is prepared to come into this Council and make.

The first thing that the Auditor-General should do is investigate the Hon. Martin Cameron, in particular, his calculations. The other thing that the Auditor-General could do during his investigation into the matter—and I am sure that he would do this as a result of his normal scrutiny of Government expenditure—is to examine the proposal of the Opposition when it was in Government for the so-called Hindley Street swimming centre.

**The PRESIDENT:** Order! I ask that the conversation be toned down so that we can hear the member with the call.

**The Hon. C.J. SUMNER:** This project was announced with great fanfare by the previous Government in March 1982. The announcement was an intention to construct an Aquatic Centre on the West End Brewery site which would include an eight lane pool, etc. At the time of the announcement the estimated cost was $7.5 million.

Then we find on 13 October 1982, some three or four weeks before an election, Dr Tonkin, the then Premier, writing to the Prime Minister indicating that the April 1982 price had risen to $10.3 million, and that, in fact, it would be $12.2 million by the time it was completed in June 1984. In other words, the project proposed in Hindley Street by members opposite when they were in Government, before construction had even started, had seen an estimated cost escalation from $7.5 million to $12.2 million—a 63 per cent increase.

Honourable members have decided that this is their issue for the week. Even under the previous Government's proposal there was a cost escalation in that short time during 1982. It is interesting to note that, although it was cranked up again by Dr Tonkin with a letter to the Prime Minister in October 1982, the previous Government took a decision to defer the whole project. In the Budget review, the slashing gang (the Hon. Mr Griffin, the Hon. Mr Goldsworthy and the Hon. Dean Brown), who used to march around the Government and get stuck into departments, particularly the Hon. Mr Burdett's department—

**The Hon. J.C. Burdett:** No, they didn't.

**The Hon. C.J. SUMNER:** Well, the honourable member's department was slashed unmercifully during the previous—

**The Hon. J.C. Burdett:** You have not put it back.

**The Hon. C.J. SUMNER:** That is not true. There has been a significant reinstatement in the Department of Public and Consumer Affairs. Some 50 or 60 full-time equivalents were slashed from the Department of Public and Consumer Affairs by the Budget Review Committee.

*Members interjecting:*

**The PRESIDENT:** Order! I cannot get a word in. I want members to stop interjecting. It was their suggestion that the motion be put, and I think that they should listen to the reply.

**The Hon. C.J. SUMNER:** The fact is that the Budget Review Committee—

*An honourable member interjecting:*

**The PRESIDENT:** Order! Honourable members will listen and if I ask them to desist from interjecting I expect them to do so.

**The Hon. C.J. SUMNER:** With respect to the Liberal Party's project there was a fanfare announcement in March 1982 of an Aquatic Centre costing $7.5 million. The Budget Review Committee in the middle of 1982 deferred the decision. We then had Dr Tonkin cranking up the proposal for the purposes of the election by writing a letter to Prime Minister Fraser when the price had escalated to $10.2 million. First, under the previous Government there would not have been an Aquatic Centre in all probability, because the decision to proceed with it had been deferred. Secondly, it would have been a much more expensive project, to the extent of $4 million or $5 million, and that is conservatively more expensive than the project now being undertaken in the north parklands.

Obviously, there have been delays in the north parklands project, and those delays will no doubt be examined by the Auditor-General in the normal course of his investigations and inquiry into the accounts of the State. Therefore, there is no need for the motion moved by the honourable member. I am surprised that the Democrats are supporting such a blatant exercise, which is attempting to extract some political capital for the Opposition out of this project. The fact is that an international standard aquatic centre will be available for the people of South Australia in the north parklands.

**The Hon. J.C. Burdett:** It is not of international standard.

**The Hon. C.J. SUMNER:** It is an international standard aquatic centre.

*Members interjecting:*

**The Hon. C.J. SUMNER:** The Hon. Mr Hill knows that the Olympic Games cannot be held there. The Hon. Mr Hill knew that as a member of the Public Works Standing Committee.

**The Hon. C.M. Hill:** That's right!

**The Hon. C.J. SUMNER:** That is right. So there we are—he knew it. The Hon. Mr Hill, as a member of the Public Works Standing Committee, participated in an investigation into this project, he knew the nature of the project, and approved it. The Hon. Mr Hill knew that it was going to cost—

*Members interjecting:*

**The PRESIDENT:** Order! If honourable members keep up that tone, no one will understand what the debate is all about.

**The Hon. C.J. SUMNER:** As I said before, in response to an interjection about whether or not it was an international standard aquatic centre, the Hon. Mr Hill knows that it is. The Hon. Mr Hill was told, and the Public Works Standing Committee was told, that it would not be of sufficient standard for the Olympic or Commonwealth Games. The Hon. Mr Hill knew that when he participated in the investigation, which assessed its cost at $4.85 million. Subsequently, when the tenders came in, it was a higher amount. All I can say is that the diligent inquiry conducted by the Hon. Mr Hill obviously contained some defects, because one would have expected that an inquiry involving the diligent former property developer—

*Members interjecting:*

**The Hon. C.J. SUMNER:** I do not say that in any disparaging manner. The Hon. Mr Hill was very successful, and I commend him for it.

*Members interjecting:*

**The Hon. C.J. SUMNER:** I say that in a commendatory manner.

*Members interjecting:*

**The Hon. C.J. SUMNER:** No, I do not. I say it in a commendatory manner. The Hon. Mr Hill was a very good property developer. In fact, one would have expected him to understand the cost of construction, the details of building and the pitfalls and possible escalation in costs that might exist.

*The Hon. C.M. Hill interjecting:*

**The Hon. C.J. SUMNER:** As well as being a property developer of some note, the Hon. Mr Hill was an innovator on the Public Works Committee. He approved this innovative design for a roof on the centre.

*The Hon. L.H. Davis interjecting:*

**The Hon. C.J. SUMNER:** No, but I will bet that he thought of it.

**The Hon. R.I. Lucas:** Does he chair the committee?

**The Hon. C.J. SUMNER:** No, he does not chair the committee, but he is a very diligent member of the committee. All I say about the Hon. Mr Hill's investigations as part of that committee is that, having assessed it, approved it and knowing all the facts that I have indicated to the Council today, he did not— despite those investigations— ascertain that there would be that sort of escalation in the costs when the tenders came in. One would have thought that, as a diligent and competent professional property developer (as I have said before), the Hon. Mr Hill would ascertain—

**The Hon. R.C. DeGaris:** What was the reason for the escalation?

**The Hon. C.J. SUMNER:** I do not have those details before me at the moment. There were a number of reasons, which I think have been outlined on previous occasions by the Minister of Water Resources. The first point I make is that the project was approved by the Public Works Standing Committee; secondly, it is a more economical project than the project that was proposed by the previous Government but which in fact was deferred and which showed an escalation in cost of some $5 million in six months; and, finally, the Leader of the Opposition, quite wrongly and quite unjustly, I believe, has attempted to place all the blame for any delay in this project and any escalation in the cost at the feet of the Public Buildings Department.

Throughout his speech—and I think this indicates that he was being less than frank in his approach to the problem— the Leader made the point that it was the Public Buildings Department that was responsible for any delays or any

escalation in cost. The Leader very carefully refrained from making any criticism of the private contractors involved in this project—Baulderstones and the other people involved in the design of the centre. The Leader should have been straightforward and honest about this matter; at least the Hon. Mr Milne was honest to a much greater extent, because he was at least prepared to say that it might not be the Public Buildings Department's fault but that it might be that the private contractors are to blame. The Hon. Mr Cameron, on the other hand—and I think this highlights the political nature of this exercise— wanted to use the motion to have a go at the public sector (in particular, the Public Buildings Department), despite the fact that the work was let out by the Public Buildings Department to private tender; and despite the fact that most of the money for the project is going into private sector pockets.

The Leader refused even to consider or countenance the possibility that the escalation and delay had anything to do with Baulderstones or any other private contractor. I find that incredible. I also find that that attitude indicates that the Leader has used the motion in an attempt to blame the public sector and, in particular, the Public Buildings Department. I would not be surprised if a substantial part of the delay (as I imagine is the case when there are delays) is the responsibility of the private contractor; it may well be the responsibility of the people who designed it—I do not know, because I do not have those details before me at the moment.

**The Hon. R.I. Lucas:** Why not?

**The Hon. C.J. SUMNER:** Because I was not told about the motion until 1.30 pm—that is why. If the honourable member wants to be fair dinkum and honest about it, he could at least have been as honest as the Hon. Mr Milne has been. While the Public Buildings Department has been the project manager, the bulk of the funds for the operation have gone to the private sector— to private contractors who tendered for this job and to private designers who designed the roof and the structure. It is quite wrong and quite dishonest for the Leader to come into this place and say that the Auditor-General should just investigate the Public Buildings Department and, at the same time, protect his friends who are providing him with the information on this project.

In summary, the motion is not necessary because the Auditor-General, when there is an overrun of this kind (as there were in projects under the previous Government—including a water filtration plant in South Para which was well over the estimated cost), will no doubt look at it in the ordinary course of his audit of the public accounts. Secondly, it is quite wrong and dishonest for the Hon. Mr Cameron to try to blame the Public Buildings Department as project manager without even mentioning the private sector as perhaps having some responsibility for the delays and the escalation in costs, because the private sector is doing virtually all the work on the project. Thirdly, the project is still cheaper, and of more benefit to the people of South Australia than the project proposed by the Liberal Party in Government and which in fact had been deferred, anyhow.

Finally, the project was investigated by the Public Works Standing Committee. Had the Hon. Mr Hill been a little more diligent he may well have found out that the $4.8 million estimated cost of the—

*The Hon. C.M. Hill interjecting:*

**The Hon. C.J. SUMNER:** The estimated cost may have contained some hidden costs that should have been looked at, but apparently they were not. I make that only as a comment.

**The Hon. L.H. Davis:** That is a terrible slur.

**The Hon. C.J. SUMNER:** It is not a slur.

**The PRESIDENT:** Order!

**The Hon. C.M. Hill:** You know that we haven't got any estimators on that Committee. You know that we haven't got consultants to refer costings to.

**The Hon. C.J. SUMNER:** That is a matter that the Hon. Mr Hill can take up in another forum.

**The Hon. L.H. Davis:** Withdraw that unwarranted attack!

**The Hon. C.J. SUMNER:** No, I will not. If the Public Works Standing Committee has a role and if it assessed and approved the project at $4.85 million, and the tenders subsequently come in at over $7 million, I would not be overly critical of the Hon. Mr Hill. All I say is that it raises a question about the quality of the investigation that was carried out by the Public Works Standing Committee.

**The Hon. L.H. Davis:** A lack of research of the Committee.

**The Hon. C.J. SUMNER:** It is all right for the honourable member to interject in that way and say 'a lack of research'. The Public Works Standing Committee has operated in the same way in this Parliament from time immemorial. It is just not good enough for him to come in by way of interjection and say 'lack of research' or whatever.

The fourth point in response to this unnecessary motion is that this thing was investigated by the Public Works Standing Committee, and I raise the query that perhaps if it was assessed at $4.8 million and tenders came in at $7.2 million, whether or not the Public Works Standing Committee investigated it to the extent that it should have may raise questions about the nature of that committee.

Having said that, I find distasteful the fact that the Leader of the Opposition has not mentioned the Public Works Standing Committee in any way as perhaps having a role or doing a more thorough investigation. He has not mentioned the private contractors: in his speech he has exonerated them completely from blame. He said that they were not to blame. He attempts to hone it all in on the Government and the Public Buildings Department. That is one very important reason why this motion should be voted out.

**The Hon. M.B. CAMERON (Leader of the Opposition):** That would have to be the worst reply that I have ever heard the Attorney-General give to any motion in this Council.

**The Hon. C.J. Sumner:** You say that all the time.

**The Hon. M.B. CAMERON:** The Attorney-General is getting worse as time goes along. What a pity that he had to try to shift the blame to everybody else, even to the stage where somehow or other he worked out that the Hon. Mr Hill was responsible for the cost overrun. That would have to be the most amazing contortion that I have seen in my time in this Council.

*The Hon. Diana Laidlaw interjecting:*

**The Hon. M.B. CAMERON:** Yes, I am amazed at the power of the Hon. Mr Hill. The facts are that the Public Works Committee, on which the Hon. Mr Hill sits, gets its information from departments. It is presented with projects by the departments.

**The Hon. C.M. Hill:** The Hon. Mr Creedon is on it: he knows all about it.

**The Hon. M.B. CAMERON:** Yes, he knows the situation. That Department is the Public Works Department. The Minister in charge is the Minister of Public Works, and his Department is the project manager and has supervised this cost overrun. The Public Works Committee can make no better decision than is allowed by the information that it has received, and it has obviously received the wrong information. Anyway, that is a side issue. The figure I quoted should have been $50 000 a week, and I apologise to the Council. One does not need the Auditor-General to investigate me: I can cope with that alteration.

**The Hon. C.M. Hill:** They are grasping at straws.

**The Hon. M.B. CAMERON:** That is right. Every single item that the Attorney brought up was an attempt to shift the blame. I do not want to go into the question of blame any more at the moment. I want an investigation: if it comes out that the builders are in some way responsible, fine. That is for the Auditor-General to find out. As far as I as a layman am concerned, project managers manage the project, and they have managed the overrun and brought it about until it is proved otherwise. So, I will not reflect on the builders without knowledge.

The person in charge is the Minister of Public Works. He has not even kept his colleague informed of the cost overrun or of anything to do with the project because the poor fellow was left high, dry and stranded a couple of weeks ago in Parliament, not knowing from one day to the next whether the thing will be finished in May or September.

**The Hon. L.H. Davis :** The Attorney doesn't even know—

**The Hon. M.B. CAMERON:** Yes, that is right. I was absolutely staggered to hear the Attorney say that no details were available to him on why this cost overrun has occurred. Heavens above! What sort of control is there on cost overruns on projects that we can let $4.5 million just fly out the window without even the Attorney-General's knowing what has happened. His must be the slackest Government imaginable! All that that statement has done is make it very obvious that there is a very real necessity for some independent person—and there can be nobody better than the Auditor-General—to investigate this project and find out what on earth has happened, what on earth has caused a doubling of the cost and why on earth we are still waiting around for the project to be completed.

The Attorney has said that the Centre is of international standard. I do not know what he means by 'international standard' because that means that international swimming events can take place here and be recognised—and they will not be. It is not up to scratch and it will not be when it is finished. Surely to goodness, we should have at least known before it started that that would be the situation. If we now want to stage a Commonwealth Games in Adelaide we have to spend another $14 million. That is absolutely ridiculous and it shows that something is rather strange.

The Attorney surprises me when he says that there is no need for an investigation. I am surprised—

**The Hon. C.J. Sumner:** I did not say that.

**The Hon. M.B. CAMERON:** Yes, the Attorney did. I copied the words down very carefully. He said that he saw no need for an investigation.

**The Hon. C.J. Sumner:** I said 'no need for a special investigation'.

**The Hon. M.B. CAMERON:** Even that surprises me because cost escalations are occurring every week and we have to do something about it now. We have to find out what is going on and get somebody in who can surely know, or at least indicate, what sort of control can go on, not only for this project but for other projects. There is obviously a real problem somewhere along the line when a cost escalation can occur on one single project. Those people who want money spent in this State want it spent wisely and carefully, and want to know that they are getting value for money. All those things do not at the moment appear to be answered to the satisfaction certainly of me, my colleagues and well over half the people of this State. I urge honourable members to support the motion.

The Hon. K.L. Milne's amendment carried.

The Council divided on the Hon. M.B. Cameron's motion as amended:

Ayes (12)—The Hons J.C. Burdett, M.B. Cameron (teller), L.H. Davis, R.C. DeGaris, Peter Dunn, I. Gilfillan, K.T. Griffin, C.M. Hill, Diana Laidlaw, R.I. Lucas, K.L. Milne, and R.J. Ritson.

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

Majority of 3 for the Ayes.

Motion thus carried.

## PERSONAL EXPLANATION: YOUTH SERVICES

**The Hon. L.H. DAVIS:** I seek leave to make a personal explanation.

Leave granted.

**The Hon. L.H. DAVIS:** Yesterday, I asked the Minister of Health a question about the proposed Adolescent Health Centre, and I reported that there had been severe concern and mounting criticism about the proposal—

*The Hon. J.R. Cornwall interjecting:*

**The PRESIDENT:** Order! This is a personal explanation, I presume.

**The Hon. L.H. DAVIS:** —to launch an Adelaide version of The Door, that in fact there had been some problems with communication, some mounting concern about the fact that the Minister of Health had not properly consulted youth workers and youth organisations.

**The Hon. J.R. CORNWALL:** I rise on a point of order, Mr President. I understand that this is a personal explanation. The Opposition saw fit to forgo Question Time today, and I do not believe that a long diatribe about The Door project or the people who Mr Davis has been urging to oppose it, or anything else, is relevant.

**The PRESIDENT:** Leave was granted. At this stage I cannot determine whether or not it is a diatribe. If you wish to withdraw leave—I suppose that can be done.

**The Hon. FRANK BLEVINS:** On a point of order, Mr President, I seek clarification. Is the purpose of a personal explanation a means for an honourable member to explain where he has been misrepresented or the like, or is it merely for an honourable member to have another go in the debate?

**The PRESIDENT:** I take the point of order.

**The Hon. FRANK BLEVINS:** If we set down rules, we will know—

**The PRESIDENT:** The rules are there: it is just a matter of members obeying them. If the Hon. Mr Davis wishes to make a personal explanation, please do so.

**The Hon. L.H. DAVIS:** I asked a series of questions of the Minister of Health. In his reply, the Minister of Health stated:

> May I say at the outset that the Hon. Mr Davis's ignorance is matched only by his extreme lack of manners. It so happens that the three visitors from the United States are in the gallery at the moment and I am sure that they would have been somewhat less than impressed by that extraordinary outburst. The Hon. Mr Davis really is a very ignorant fellow.

He also said:

> The Hon. Mr Davis's performance is not only discourteous but also disgraceful.

I resent that attack on me by the Minister. I am here to represent the public, and I will continue to raise matters of public importance, irrespective of who is in the gallery. There is no Standing Order or convention of Parliament to say that questions cannot be asked if there are people present who may have an interest in the matter. I place on record my objection to the Minister of Health's attack on me.

## FISHERIES ACT REGULATIONS

Order of the Day, Private Business, No. 6: the Hon. G.L. Bruce to move:

That regulations under the Fisheries Act, 1982, concerning devices and closed waters, made on 8 November 1984, and laid on the table of this Council on 13 November 1984, be disallowed.

**The Hon. G.L. BRUCE:** I move:

That this Order of the Day be discharged.

Order of the Day discharged.

## CONSTITUTION ACT AMENDMENT BILL (No. 2)

Adjourned debate on second reading.

(Continued from 12 March. Page 3054.)

**The Hon. C.M. HILL:** I have listened with interest to the speeches made so far during the second reading debate on this important Bill. I commend speakers on this side for their contributions. I make the initial point that great care and caution should be exercised at any time in amending the Constitution Act. It is, I suppose all would agree, the most important Act on our Statute Book and in considering amendments to it, we have a responsibility to try to foresee as many circumstances as possible that might occur in future.

One cannot over-emphasise the importance of this Act. Responsibility rests quite heavily on the shoulders of Legislative Councillors when considering amending this piece of legislation. Nevertheless, our skills are in reviewing legislation and I think that with the comprehensive debate that has already taken place, and with the much more detailed debate that will occur in the Committee stage, the best possible changes will result. To me the most important features in this Bill are the aspects of the proposed four year term for the South Australian Parliament, the three year period within that four year term in which it is suggested Governments will be precluded from going to the people and the exceptions within that period when elections can occur.

I propose only to discuss those three points, as I believe that other aspects of the Bill will be covered fully during the Committee stages of the debate. With regard to the four year term the question really arises as to what is the best possible period for Governments in Australia in both State and Federal spheres.

I speak from some experience because I have been in this place for some time now and have served on both sides of the Chamber during times when different Governments have been in office. I look at the existing practice of three year terms as a period that can be broken up into annual rests. The first year of any Government's reign is relatively slow in relation to progress: new policies have to be implemented; new roles and new people are involved in the new Government. Getting to know one's new job in Government, and getting to know different departments and personnel in those departments all takes time.

Some say that planning should be completed in Opposition in expectation of Government. That is quite right, although it is theoretical in some respects. I remember reading Sir Robert Menzies' recommendation that this is the way in which Oppositions should work: that is, they should prepare for the future and do a great deal of work so that on coming to Government time is not lost in implementing new Government policies. In practice, it does not work out like that. This is especially so when Parties come to office after long periods in Opposition. It takes considerable time, irrespective of the degree of planning, policy formation and so forth, for a new Government to settle into its role as a Government. From my experience a rough estimate of that period of time would be about 12 months.

**The Hon. Frank Blevins:** The Liberals must be pretty slow.

**The Hon. C.M. HILL:** It does not only apply to Liberal Governments. I am not trying to be political. I think that the Minister himself has found his first 12 months—

**The Hon. Frank Blevins:** Two weeks.

**The Hon. C.M. HILL:** The Minister only found it strange for two weeks? He then settled in like a veteran?

**The Hon. Frank Blevins:** My word I did.

**The Hon. C.M. HILL:** I am pleased that the Minister thinks so and exudes such confidence. But, in my view, a period of approximately 12 months is usually taken before a Government is really in top gear. In the second year there can be considerable progress with the implementation of policies and there can be solid activity that has been well researched. In the third year it is only human that some caution should pervade Governments in their decision-making because the future election is not far off. This does not mean that Governments necessarily lack courage and, indeed, it can be said to be another of the many checks and balances to ensure that Governments stay close to the people. It is not a period when great initiatives are usually launched.

This means that only the mid-term—the second year only—is a really positive and productive year for a Government that reigns a full three years. From my experience that is not enough time. If that mid-period is extended to, say, two years, being part of a four year term, a Government can work more productively and efficiently and can, if it is a good Government, get some sort of score on the board. If it is not a good Government the scoreboard will show it and reflect weaknesses in the captain or the team members as the case may be. This is looking at the question from the point of view of the legislator or a member of a Government.

If we look at the question from the people's point of view, they stand in judgment quite properly. They can best pass judgment if they observe a Government's record over a fair and reasonable period. Again, I come back to the point that particularly can they pass that judgment during that mid-term period which, in my view, should be two years and not approximately one year. This again brings me back in support of the four-year span. I believe that a four-year term is best. I notice that other States have already changed, for example, Victoria and New South Wales. That indicates a trend which is very good for Australian politics.

**The Hon. I. Gilfillan:** Why not have a fixed date?

**The Hon. C.M. HILL:** I am coming to that. The second point deals with the question of this three-year term that the Bill states is a period during which, subject to some exceptions, a Government must remain in office and cannot go to the people. This point introduces, as the Hon. Mr Gilfillan says, the fixed term concept. One cannot escape some debate or discussion on the fixed term concept when dealing with this Bill. We should be quite clear about what we mean by the fixed term concept. Some people have publicly said that the present legislation involves fixed term Governments. I do not agree with that.

What is meant by fixed term Governments is that the term of the Government is known—a specific or set date is known, which is the date of the next election. Governments should have the right to go to the people whenever they wish. If the Government acts in that matter capriciously, foolishly, or without good judgment, the people will respond. Some Governments will get what they deserve in the form of an adverse vote and others will get the opposite, depending on the particular circumstances, but it is an important practice in the Westminster system. If I was debating the question of fixed term Governments (I am not), I would use that argument very forcibly. Concerning the Bill before us, two considerations should be taken into account. The first is the question of public opinion. I am amazed by the strength

of public opinion supporting the fixed term Government principle. People in all walks of life with whom I have discussed this subject almost unanimously have said that there should be fixed term Governments and that we should know when the next election is to be held, and so forth.

As a legislator, one must respect public opinion; and one must be cautious when such opinion is whipped up by some kind of frenzy through, for example, the media or some emotional issue. To a degree, I believe we should also show some guidance and leadership when we look at the question of public opinion. However, we cannot escape respecting it—and I respect public opinion on this issue. I think the second consideration must be the flexibility within the Westminster system—flexibility in practice, flexibility based on principles, and flexibility involving such important considerations as tolerance and compromise.

Recently I attended a seminar conducted by the Commonwealth Parliamentary Association's Pacific Region. The objective of the seminar was to assist new small countries in the Pacific in establishing a Parliamentary form. They had all chosen to base their Parliamentary systems on the Westminster system. They did that out of respect for and friendliness, I think, towards Britain and Westminster itself (the mother of Parliaments) and also because of their close association with New Zealand and Australia. No doubt, too, they did it because they believed that Westminster is the best system. Such new nations as the Cook Islands, Fiji, Nauru, Tonga, Tuvalu, Vanuatu and Western Samoa were involved in the discussions. Meetings were held in Canberra and Tonga.

The seminar was also attended by Parliamentarians from such places as Norfolk Island, Hong Kong, Singapore and Malaysia. The amazing feature arising from the discussion was the manner in which each of those new, small—and in some cases very under-developed—countries were adapting their circumstances to the Westminster system, or perhaps I should say were adapting the Westminster system, its principles and some of its practices to their circumstances. That is a great feature of the Westminster system; it can be adapted to varying circumstances, irrespective of the size of the Parliament involved, the size of the country, the cultural background, customs, and so on. It proved to me how flexible the Westminster system can be.

Taking that point into account, I can see how this Bill can accommodate the three year span which is written into it during which—apart from the exceptions that I have mentioned and will discuss in a moment—a State Government, such as the one in South Australia, must remain in office prior to going to the people during its fourth year of Government. Therefore, I see the Bill in this respect as somewhat of a compromise between the very strong public opinion which favours the fixed term—and I know the Hon. Mr Gilfillan favours that approach—

*The Hon. R.C. DeGaris interjecting:*

**The Hon. C.M. HILL:** I must admit that, when one receives an immediate response, members of the public favour a fixed term. After some discussion on the point, in some instances they certainly have some second thoughts about it. I do not think that there has been sufficient public discussion out in the market place where people meet and talk their politics as laymen. I do not think there has been sufficient discussion and explanation of all the points for and against the fixed term proposal.

Of course, it is not an easy matter to develop that discussion publicly in a relatively short period of time. This brings me back to the point that I am not going along with public opinion in totality and saying, because that is the reaction I am getting, I therefore favour four year fixed terms. I do not. However, it is a public opinion which I respect and, as I have said, by supporting this feature of the Bill I see it as somewhat of a compromise between that public view and retaining the *status quo.*

My final point relates to the question of the exceptions which I think are absolutely necessary for incorporation in the Bill so that in certain circumstances elections can be held prior to the expiration of the first three years of Government. I notice that the Minister when introducing the Bill indicated, I think, two of these exceptions. I am supportive of the Hon. Mr Griffin's approach and I have perused his amendments in regard to this matter. I will mention these matters in broad terms, and I know that further details can be discussed in the Committee stage.

In broad terms, the Hon. Mr Griffin's amendments provide that, if there is a no-confidence motion in the House of Assembly and if within a period of time a new Government cannot be formed, it is quite obvious that it is proper that the matter should be put to the people by means of an election so that the people can make their decision as to which Party they want to govern them from that point on. That is one exception that is absolutely necessary. Of course, there is the point that deals with the provisions of section 41 of the Constitution Act, and that involves the deadlock provisions. If there is a deadlock between the Houses of this Parliament, legislation cannot be passed and, therefore, a stage is reached where it is proper that the people are asked to again cast their vote in a general election.

The third and I think very important exception deals with the question of when the House of Assembly is dissolved by the Governor because he believes that that is necessary in the public interest in order to resolve a crisis of government or to resolve a matter of grave public concern. In my view, this is a basic principle of the Westminster system, and it is a very important principle. I believe that it is a prerogative of the Governor to step in when situations like this occur. If this Bill passes, I hope that such a situation will not occur with legislation of this type. However, as I said earlier one must endeavour to foresee situations which might arise when one starts to tamper with the Constitution Act of the State. I also believe that the Governor must be prepared to hear formal advice from Executive Council. Executive Council may not wish to give that advice, but I believe that Executive Council is, in effect, the party to whom the Governor should turn for formal advice on these very important questions.

The Governor does not have to accept that advice—that is a very important principle—but it is the Governor's right, and the Governor's right alone, to decide what constitutes a crisis in Government and/or a matter of grave public concern. If we move away from these principles involved with the prerogative of the Governor, at some time in our history this State may well rue the day that the Constitution Act is not as strong as it should be.

The contributions that have been made have been very helpful to those who are following the debate. I know that there are many other matters to be discussed, but this important matter of the four-year term, which is a tremendous change for South Australia to be confronted with, should be supported. Although I oppose fixed terms for Government, I am prepared to support this compromise of the three years being written into the four-year term, that is, the first three years during which Parliament is endeavouring to ensure that the chances of an election confronting the people will be very slight. That kind of assurance is in keeping with public opinion and public demand. The main exceptions are most important, and it is my earnest hope that the Government eventually, as this Bill passes from this Council to the other House, will fully consider accepting amendments along the lines of those that have been placed on file by the Hon. Mr Griffin. I support the second reading.

**The Hon. C.J. SUMNER (Attorney-General):** I thank members for their contributions to this debate. All members have recognised that this is an important proposal to change a number of aspects of our Constitution Act. Changes to the Constitution Act always invite a degree of interest from members of Parliament, and rightly so. In this case, more than the usual interest has been generated by this proposal.

The proposition in its broad terms, despite the comments that have been made during the debate, is still valid. That is probably accepted by a majority of the Council. A number of important points have been raised by members about how this change to a three-year fixed four-year maximum term would work within the context of our traditional Westminster system, the prerogatives of the Governor, the role of the Premier and Executive Council, and the traditional conventions that relate to the formation of Governments in the House of Assembly.

I will certainly examine carefully those comments made by members and will consider some amendments that may overcome the difficulties that have arisen. I reject, however, criticisms of the Bill as raised by the Hon. Mr DeGaris, whose position is, I believe, that no change should be entertained, and I reject the criticism of the Hon. Mr Gilfillan, who says that there should be an absolute fixed term proposition for the South Australian Parliament.

If I read the consensus of opinion on this Bill, I would say—and I appreciate the intimations to this effect from members—that there is a majority support for the basic proposition brought in by the Government of a four-year maximum and three-year fixed term, but that there needs to be some consideration of the issues raised by members about what happens to give rise to circumstances for an election prior to that three-year period, whether it be a vote of no confidence in the Government in the Lower House, blocking of Supply in the Upper House, or the continual frustration by an Upper House of the Government's programme. I will give attention to those issues over the next few days and will come back.

**The Hon. R.C. DeGaris:** Do you want me to advise you?

**The Hon. C.J. SUMNER:** I will certainly consult the Hon. Mr DeGaris, whose expertise in this area is well known, although I want at the appropriate time, when I conclude my remarks, to make some more detailed comments on the contribution that he made.

As to the other issues in the Bill, again there is basic agreement with the proposal for the filling of casual vacancies. There is basic agreement on the determination as to who should be the long-term and short-term Legislative Councillors following the unlikely event of a double dissolution. That needs to be clarified.

At this stage, I indicate that I will seek leave to conclude my remarks. I will give before next Tuesday detailed consideration to all the arguments raised by members, at least by those members who I believe were in agreement with the basic thrust of the Bill. I concede that some further attention needs to be given to some of these areas. I will certainly do that, and on Tuesday next should be able to indicate to the Council what, if any, amendments the Government would contemplate to the original Bill. In doing that, I will also take the opportunity of discussing the matter further with the Parties in the Parliament.

It was by that process that a similar proposition was dealt with in the Victorian Parliament and that a basically satisfactory result was arrived at. It involves all members of Parliament, because it involves the role of members in the two Houses and the role of Governments, and I will attempt to raise issues with members and next Tuesday I should be in a position to provide the Council with a more detailed indication of what, if any, amendments the Government is willing to contemplate. I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

## CARRICK HILL TRUST BILL

Consideration in Committee of the House of Assembly's amendment:

Legislative Council's amendment:

No. 1. Page 2 (clause 7)—After line 28 insert new subclause as follows:

(1a) One of the persons appointed to the Trust shall be a person who is a member of the Council of the City of Mitcham, nominated by that Council.

House of Assembly's amendment thereto:

Leave out 'who is a member of the council of the City of Mitcham, nominated by that council' and insert 'whose principal place of residence is, in the opinion of the Minister, in the near vicinity of Carrick Hill'.

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

That the House of Assembly's amendment be agreed to.

When this Bill was previously before us the Committee moved to insert a clause that one of the persons appointed to the Trust should be a person who is a member of the council of the City of Mitcham and nominated by that council. The Government opposed the amendment and still does. However, another place has indicated its willingness to compromise and has put forward a reasonable compromise. It has suggested that, instead of a member of the council nominated by the council, there should be included on the board a person whose principal place of residence is, in the opinion of the Minister, in the near vicinity of Carrick Hill. I would have thought that that was a much better proposition than that inserted by this Committee, and I expect the Hon. Mr Milne to agree.

The fact is that Mitcham council may appoint someone to the Carrick Hill Trust without any expertise. It might even be someone who is not resident in the vicinity of Carrick Hill. It may be someone who has no connection whatever with that area of the Mitcham council's jurisdiction, and that seems to be defeating the objectives which the Hon. Mr Hill outlined and which the Hon. Mr Milne supported. The Government's compromise is reasonable. We do not want too many *ex officio* people on such trusts. The Trust has to be selected taking into account expertise, enthusiasm and commitment for the job.

If one ends up with a position like that originally advanced by the Hon. Mr Hill, with two *ex officio* members on a six or seven member board, it limits the expertise that one can bring to bear on the Trust. We are saying that one person as an *ex officio* member representing the local area can be placed on the Trust and that the Minister is willing to nominate someone to the Trust whose principal place of residence is in the near vicinity of Carrick Hill. I would have thought that that was a sensible compromise, and I suggest that the Committee accept it.

**The Hon. C.M. HILL:** When I first moved my amendments I tried to have two extra people on the Trust: one from local government and one from adjacent residents to Carrick Hill. At that time the Government opposed that scheme in totality. This Committee placed one person on the Trust who was to be a member of the Mitcham council and nominated by that council. After that amendment was passed, the Bill went to another place where the Government removed that provision and yielded at least to the principle of one person with these qualifications to be a member of the Trust, and that person was to be a person living in the vicinity of Carrick Hill.

I am guided by two points in this matter. First, I have a great faith in local government in the form of the City of

Mitcham to be able to appoint someone who would be interested in the good administration and management of Carrick Hill, and who would have the interests of the nearby residents at heart. The second point that concerns me is that the local member (Hon. D.C. Brown) is not happy about the wording which the Government in another place has written into the measure and which is now being supported by the Minister.

In matters of this kind members in this Chamber should take cognisance of the views of members in another place who serve in the areas in which projects such as the Carrick Hill Trust and the development of the property are involved. That causes me to oppose the Minister and, if the Committee supports that view, the matter will go back to the Government in another place with the provision in the Bill that a member of the Mitcham council must be on the Trust.

**The Hon. K.L. MILNE:** I would like to put the case again for having a direct link with the council. I do not approve of the idea of merely someone living nearby, whether or not they have the expertise. If we are to appoint a member just because that person lives near to Carrick Hill, then we will be appointing a resident of Mitcham. If we are to do that, why not appoint an elected member of the Mitcham council?

**The Hon. C.J. Sumner:** He might not live near Carrick Hill.

**The Hon. K.L. MILNE:** I am glad the Attorney raised that because I think we are assuming that because somebody lives near Carrick Hill that will be an advantage. The Attorney knows that if one is running an organisation one has trouble with people over the fence, so the closer such an appointed member might live to Carrick Hill the more trouble there might be.

**The Hon. C.J. Sumner:** That is what the Hon. Mr Hill wants.

**The Hon. K.L. MILNE:** That is not what I want. I want a member of the Mitcham council appointed because I think that is a two-way trade. I think we ought to consider that member being a member of the council nominated by the council and approved by the trust or the Government. I would like to see a direct link between Carrick Hill and the council for at least five to 10 years—we could make it a sunset clause in the form I have stated, because I think liaison between Carrick Hill and the Mitcham council would prove to be a great advantage. It has been put to me that this member could be a citizen nominated by the local member of Parliament, but I do not approve of that and do not think such an appointment would be wise. I do not think it wise to have an ordinary citizen, whether skilled or not, who does not hold some status such as having been elected to a council, appointed to the Trust. Therefore, I favour somebody being appointed by the Mitcham council as a trustee.

The Committee divided on the motion:

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

Noes (12)—The Hons J.C. Burdett, M.B. Cameron, L.H. Davis, R.C. DeGaris, Peter Dunn, I. Gilfillan, K.T. Griffin, C.M. Hill (teller), Diana Laidlaw, R.I. Lucas, K.L. Milne, and R.J. Ritson.

Majority of 3 for the Noes.

Motion thus negatived.

The following reason for disagreement was adopted:

Because it is more appropriate that an elected local government member be a member of the trust.

## FOOD BILL

Adjourned debate on second reading.

(Continued from 12 March. Page 3055.)

**The Hon. K.T. GRIFFIN:** I support the second reading of this Bill and indicate that the comments I make will largely be in relation to matters of detail. However, I think that it is important to be able to alert the Minister to the sorts of matters that I will be raising so that he may be able to gain advice on those questions.

I also make the point, as my colleague the Hon. John Burdett did, that the critical matters in relation to food legislation will come in the regulations, because it is not possible to include in the Statute all the fine detail that is necessary in the prescription of standards, imposing requirements about packaging and labelling of food, and dealing with all the other matters that are relevant to food quality and handling. To that extent I will not be addressing any comment to the fine detail, and will leave that to the Joint Standing Committee on Subordinate Legislation and hope that there will be extensive consultation with the industry, in particular, about the sort of standards and other requirements that will be imposed by regulation.

Under clause 11, I raise the concern that has been raised in many Bills appointing committees, boards, or councils: that is, the appointment of a member of a committee for a term not exceeding three years. My preference is to provide for a fixed term of three years, with the exception that the periods of appointment for first members may be up to a period such as three years, so that there can be some staggering of retirements, but thereafter the period of appointment should be for a fixed term, which means that individual members of a committee, council, board, or tribunal are not constantly giving attention to whether or not they are pleasing the Government of the day sufficient to warrant reappointment. I make that comment generally, because whichever Government is in power should not exercise any influence over committees or boards where the question of reappointment is a relevant consideration in the way in which members discharge their responsibilities.

Under clause 16 the penalty is $5 000 or imprisonment for two years. In the Police Offences Act Amendment Bill the ratio of fine to imprisonment was $8 000 to two years imprisonment. My understanding, during the course of that debate, was that there was to be an attempt to standardise the relationship of fines to periods of imprisonment, so that in the longer term there may be a more appropriate way to review penalties by the unitary system, which is in effect in Victoria. I draw attention to the fact that the $5 000 penalty would be inconsistent with what I understood was to be some sort of standard fixed in the Police Offences Act Amendment Bill, now to be the Summary Offences Act.

Under clause 21 the penalty for a person who handles food in the course of its manufacture, transportation, or storage for sale, or for the purposes of its sale, and who is suffering from a prescribed disease or who contravenes or fails to comply with a regulation relating to hygiene or otherwise fails to observe reasonable standards of personal hygiene, will be guilty of an offence and a maximum penalty of $500. Yet, where the person commits an offence in the course of his employment, the employer will be guilty of an offence and there the maximum penalty is to be $2 500.

I suppose that the reference to the offence being committed by an employee in the course of his employment would tend to import into that offence a direction or requirement of employment that the employee should act in contravention of clause 21. It may be that there needs to be further consideration given to that to ensure that an employee who is negligent without the authority of the employer, or does

certain things without the authority of the employer, does not thereby put the employer to the sort of risk that would invite a maximum penalty of $2 500. There is a fine point of interpretation involved, but I raise it because I think it needs to be clarified during the Committee stage of the Bill.

Under clause 26 a council or the commission may give such directions as are reasonably necessary to ensure the observance of proper standards of hygiene and to ensure that food intended for sale is fit for consumption. Subclause (8) provides that a person against whom a direction has been made by a council or controlling authority (by which the council's duty is to be carried out) may appeal to the commission (that is, the South Australian Health Commission) against the direction. If the Health Commission gives the direction, there is no right of appeal.

Two matters are involved in that provision: the first is whether the commission is the appropriate body to review a direction as to the observance of proper standards in the circumstances covered by the clause. It is not established as a body with any necessary expertise to determine whether or not the direction is reasonable. If the commission gives the direction, regardless of the consequences to the person to whom the direction has been given and whether or not the direction is objectively assessed to be reasonable, it appears that the decision of the commission is final.

I recollect that several years ago we dealt with a similar problem—it may have been in the Meat Hygiene Act. In that legislation some rights of review of such directions were to be given, or at least some rights of action were to be available, to a person against whom an improper or unreasonable direction had been made, and that person may take some action for damages. It may be that that is an appropriate mechanism to bring into this Act, because if the directions given are not reasonable or in some way can be described as being unnecessary, then a person in respect of whom the directions are given may stand to lose a considerable amount in having to comply with that direction under threat of a maximum penalty of $2 500.

I will develop that further and, as I said, it may be that the Meat Hygiene Authority Act will give us some lead. Clause 27 provides that where a body corporate is convicted, each director shall be guilty of an offence unless he proves that he could not, by the exercise of reasonable diligence, have prevented the commission of the offence by the body corporate. I think that is the normal defence provision in legislation now, and I support it. However, in clause 28 further defences are provided and, in those circumstances, where a defendant is able to prove that the circumstances alleged to constitute the offence arose in consequence of an act or omission on the part of some other person (not being an agent or employee of the defendant) and that he could not, by the exercise of reasonable diligence, have prevented the occurrence of those circumstances, it is a defence.

I am not sure that the exclusion of 'agent or employee' is appropriate. It may be that an agent commits an offence and the principal could not, by the exercise of reasonable diligence, have prevented the occurrence of those circumstances, yet the principal is liable and, in the same context, that applies equally to an act by an employee. I think that that area will certainly need to be given further consideration. They are the matters that I flag with a view to the Minister responding at least during the Committee stage.

**The Hon. J.R. CORNWALL (Minister of Health):** I thank honourable members for their contributions. Both the Hon. Mr Burdett and the Hon. Mr Griffin have raised matters of some moment and some importance. One way and another this Bill has had a gestation period of five or 10 years, depending on whether one goes back to the time when model food legislation was first mooted or to 1980 when a model Food Bill was first promulgated at the Health Ministers Conference. More recently, in the past 12 months, there has been extensive consultation with all interested parties and many individuals, ranging through the Municipal Officers Association, the Association of Health Surveyors, the Food Technology Association, the Local Government Association, and consumer associations, to name but five or six.

I am sure all honourable members will agree that there has been very extensive consultation. I believe we are on the point of being able to put through legislation which will be a very satisfactory basis for the operation of uniform food legislation in this State; that we will see consumers adequately protected; that industry is not disadvantaged; and that we do not get out of kilter with the rest of Australia. A number of points have been raised by the Hon. Mr Burdett and the Hon. Mr Griffin. At this stage there are two substantial amendments which have been filed by the Hon. Mr Burdett. A number of matters have been canvassed which can certainly be handled, I believe, in the Committee stage. However, in the spirit of extensive consultation which has characterised this whole genesis (and to this stage the debate), I think that the Council would be well served if I were to seek leave to conclude my remarks later, so that I can give a reasoned and well advised response to the second reading debate, and then take the Bill into Committee early next week. In order to consult with my technical and legal advisers, I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

## LIQUOR LICENSING BILL

Adjourned debate on second reading.

(Continued from 12 March. Page 3071.)

**The Hon. G.L. BRUCE:** I did not intend speaking to the second reading debate; I was saving my comments for the Committee stage. I believe that this is a Committee Bill, and the size and number of amendments seem to reinforce that comment. I believe that most of the amendments that will be thrashed out in Committee will bring out feelings and thoughts regarding the Bill. I rise during the second reading debate as a result of an attack on penalty rates by the Hon. Mr Davis. To put the record straight, I thought that I should have my say in this area. I think there is a misconception about what penalty rates are doing to the liquor industry. The Hon. Mr Davis's comments related to the licensed restaurant area, which is under a completely different award from that of most employees in the tourist or hospitality industry.

Most of the people in South Australia involved in the liquor industry are employed in hotels, and they are the front runners in the hospitality or tourist industry. To refute the Hon. Mr Davis's comments, I place on record that a waiter or waitress working in a hotel under the hotels and clubs award qualifies for the wage of $228.90 for a 40 hour week. A casual working overtime and on Saturdays qualifies for $8.58 an hour. What the Hon. Mr Davis said (and the point that people cannot grasp) is that the increased impost placed on people who use these facilities at weekends are brought about because of penalty rates. The Hon. Mr Milne said that some 65 per cent of the industry is made up of casual employees. I would have put it much higher than that. The 65 per cent (or even higher) work during the week for exactly the same wage they receive on Saturdays and Sundays. Therefore, the impost as a result of penalty rates applies right throughout the week. The trade has recognised that and at least the Hon. Mr Milne has grasped what was

going on, but I do not think he is fully aware of how it works.

The Hon. Mr Milne was correct in relation to the fine tuning and years of negotiations which have gone into award rates and wages. It is a very fine line. As the Hon. Mr Milne said, it is a very low wage. A barman in the industry working 40 hours receives $232.80. If he happens to work on a Saturday yet still works a total of 40 hours, he would receive payment for 44 hours. A barman receives time and a half for working on a Saturday, which is exactly the same rate as a casual. There is no differential because, if there was and a barman received more than a casual for working on a Saturday, in all probability the barman would lose Saturday work. For working on a Saturday as one of his working days, a barman receives the magnificent sum of $256.08 a week. Therefore, the wage structure is very delicate and very finely poised.

I refute the claim that penalty rates in the industry are an impost for the public to have to bear because in this industry the bulk of employers and employees come from the hotels and the clubs. That penalty is spread over the whole week. Having said those few words on the penalty rates and given the lie to the claim and, realising that a very fine line has been drawn over the years so that the balance is maintained between casuals and permanents not disadvantaging one another in their employment, I draw a long bow over some of the proposed amendments to the Licensing Act.

I commend the authors of the report—Mr Young and Mr Secker. The report is a credit to them: they have thoroughly gone into it. Whether one likes or dislikes some of the areas that have been touched on, they have done it in a fair and reasonable and, as the Hon. Mr Burdett said, humorous manner. That makes it very easy reading. Everything that has come up has been explained and put before us in very fine detail.

Virtually, the report has been accepted and picked up by the Government except in a couple of regions, the main one being the bottle shops. What the Government has done in the Bill is good. The previous Government brought in Sunday trading to tourist hotels; at the time it was brought in, I said it was a farce and would result in every hotel having to finish up getting into the tourist licence act. They did, and there was no cry from the bottle shops during that time, with the four hours trading going on in virtually any hotel that wanted to apply for a tourist licence.

I am very doubtful whether under Sunday trading that we are bringing in—and the other one is the minimum of four hours trading—we will have any more hotels open on a Sunday than we have now under the tourist licence.

**The Hon. M.B. Cameron:** You support the extended hours?

**The Hon. G.L. BRUCE:** Yes, I am not opposed to the extended hours for the hotels, by any means. We already have them in a peculiar sort of way in the tourist licence that the previous Government allowed to come in.

**The Hon. M.B. Cameron:** There is no problem for people working in the industry?

**The Hon. G.L. BRUCE:** No, I see no problem. It becomes an award matter. Whilst in the report of Young and Secker it was suggested that Sunday—

*The Hon. M.B. Cameron interjecting:*

**The Hon. G.L. BRUCE:** I will not go into the red meat argument at this stage. I am discussing the Licensing Act. I know that the Hon. Mr Cameron is deliberately trying to bait me but I refuse to be drawn into the red meat issue, which is another issue altogether.

**The PRESIDENT:** If I were you, I would not either.

**The Hon. G.L. BRUCE:** Young and Secker recommended that Sunday trading should be optional and that hotels should please themselves on opening. The industrial award covering the industry makes provision for a minimum amount of work to be paid for if paid labour is brought in. The argument that immediately springs to mind is the one that the Hon. Mr Dunn raises on the position of small country hotels that do not have to bring in or pay labour. That again throws it back on them as to whether or not they decide to open. He used the example of a bus going through on a fishing trip; the driver rang up a publican in a small town and said, 'Listen, we are going through with a bus load of 60 or 40 people; we are all calling in for a drink.' That hotel is immediately open for 60 drinks. Then half a dozen bikies may pull in and say, 'Rightoh, we want a drink, too.' The publican has the right to refuse them because it is purely optional whether he opens his doors or shuts them.

That concept is not good enough. There should be an awareness in the public mind that if a hotel is open it is open for a certain number of hours for trading and that the public have a right to know, prewarned, that they can freely get a drink without having to have an argument with the publican as to whether he wants to open or not at his option. Also, where an area of employment comes into it, it becomes an industrial matter. I do not doubt for a minute that the hotels and the industrial unions that cover them will sort out in due course the exact situation in relation to wages and hours that the staff will work. At present, Sunday is not a normal working day for a barman, but given the fullness of time the industrial agreement will be changed to make Sunday a full working day for people in the industry. They will set the conditions and terms and will adapt to it.

The requirement that there should be a minimum opening should at least comply with the industrial observations that are already in the awards. The minimum now is two hours pay so that, if they call anyone in, even if only for half an hour or five minutes, they are up for two hours pay. If one makes it optional, those people will bring in people and spread it over a long period. So, having a minimum opening time is good.

Taken out of the Licensing Act at this time is the provision for licensed brokers to deal with hotels. I do not object strongly to that being removed, but there should be a certain amount of expertise in the hotel-broking industry. I would like the Government to eventually consider the question of the hotel brokers, whilst not being provided for under the Licensing Act, having that expertise. They should be recognised, possibly in the Act that controls the various people who sell property. Some recognition should be given.

There is a fair bit of expertise gained over the years in the transfer of these businesses. It is not only the transfer of the business, but the transfer of staff entitlements. In a lot of cases, hotels have changed hands without a proper recognition of a commitment that was there before. It has put them into fights and blues over thousands of dollars and mix-ups with previous owners to try to sort it out, because it has not been done in a proper manner by a proper broker. It has been, I suppose, but in a lot of cases it has been slipshod. This should be tightened up so that the people who do the broking are recognised and have expertise to handle it.

I could touch on a lot of other matters, but I do not believe that I should. I stated at the start that it is a Committee Bill. Most of the action will happen in Committee. We have dozens of amendments on file which are small and are only fine tuning to the Bill. The major departure from the recommendations of the committee is the minimum of four hours for opening the bottle shops. There is no doubt pressure from other groups in the industry that consider they are disadvantaged and that some other groups are advantaged over against them but, overall, it is a very reasonable and balanced Bill. I look forward to the Com-

mittee stage, and proper debate, and eventually to the passing of the Bill. It is a vast improvement on the Bill under which we function now.

**The Hon. M.B. CAMERON (Leader of the Opposition):** At the outset, I indicate that I support extended hours for hotels. I do not want to go through the detail of the Bill because I agree with the Hon. Mr Bruce that it is a Committee Bill, but I must say that I find it staggering that for months now we have been trying to get a product of this State—red meat—sold on late night trading nights. We have argued and debated and it has been the subject of meetings between people, and it has gone on and on. Yet, the Hon. Gordon Bruce, who has been opposing my moves, can get up and support trading on Sundays without a blink of an eyelid. It shows the disparity of thought that can occur.

I trust that this new-found desire for extended hours in the mind of the Hon. Mr Bruce and his colleagues will extend to the point where eventually we may even see a change of mind on that subject. I do not want to go any further into it. I was relating it to the Bill and I trust that one day we will see this same enthusiasm extended to that.

I support the Bill. I will look very closely at the amendments. The Hon. Mr Burdett has thrown up an excellent set of amendments, particularly relating to bottle shops. I also believe in fairness in trading between outlets. I am certain that the Hon. Mr Burdett will argue that point very strongly and will want support from people like the Hon. Mr Bruce, who also would believe in fairness.

**The Hon. ANNE LEVY:** I wish to speak briefly to the Bill. I endorse the support for the second reading that every speaker has given the Bill and, along with everyone else, I would like to express my appreciation to Messrs Young and Secker for the invaluable service that they have provided through their report on which the Bill is based. It is a great rationalisation of the confused liquor laws that have existed until now. Also, it is a liberalisation of the liquor laws that can only be of benefit to the people of South Australia. I wish to refer briefly to two matters. The first relates to the retail liquor merchant's licence on which there has been considerable discussion already and on which there will be more in Committee.

I have received several comments from constituents regarding the liquor merchant's licence and the hours applicable to it. True, many women do not wish to purchase liquor in hotels. Doubtless, this varies according to the hotel, but in many hotels the atmosphere is not such that many women would wish to enter them. Admittedly, with drive-in bottle departments a large part of this apprehension can be removed: one does not need to get out of one's car so the atmosphere at the hotel is of less importance to those who do have their own private transport and who use the facilities of the drive-in bottle department. However, it is also true that few hotels have the range of wines that is found in retail liquor stores, and I am sure that, whatever the hours of opening, many people in the community, including a large number of women, would prefer for a whole range of reasons to go to a retail liquor store rather than buy wine in hotels.

Certainly, this is a relevant factor when one is considering the hours of hotels and liquor stores. It has been put to me that the advantage of being able to purchase one's wine on the day of a dinner party means that one does not have quite the same pressures on the refrigerator if white wine is being served because one can purchase it shortly before its consumption already chilled. Doubtless, this is a convenience and a consideration for people who do not have large refrigerators. One cannot assume that everyone has a family size refrigerator.

*The Hon. M.B. Cameron interjecting:*

**The Hon. ANNE LEVY:** As the Hon. Mr Cameron interjects, even family size refrigerators are often not sufficient, particularly over holiday periods where the greatest care and skill is required to pack a refrigerator, as I know from bitter experience. However, I think the reasons for the hours of opening for the liquor merchant's licence that appear in the Bill have to be considered in a wider context. Basically, it relates to the fact that alcohol is not yet viewed in our community in the same way as are other items of nourishment. General items of food and liquids that people consume do not have the aura about them that alcohol and alcoholic beverages do. As a community we do not yet regard alcoholic beverages as being just another beverage, say, in the same category as soft drinks, tea, coffee, cocoa, milk or any other liquid that people consume to satisfy thirst.

It is because we have a different attitude to alcohol that we have a liquor licensing Act in the first place. If alcoholic beverages were treated no differently in our community from tea, coffee or soft drinks we would not have a liquor licensing Act, and it is obvious that shops selling alcoholic beverages would not be treated any differently from all other shops. However, while our community does not put alcohol in the same category, there are welcome trends in the community to demystify alcohol and to regard it as just another beverage. While we have not achieved this, there are signs of change of attitude in the community that will lead eventually to such an attitude being adopted to alcohol. Because there have been moves along that path, many in the community would think of a bottle shop as just another shop selling a consumable and, consequently, the question of a bottle shop to many people cannot be divorced from opening hours of shops that sell other food items. This may be a healthy development and one I welcome, but it means that bottle shops—

*The Hon. M.B. Cameron interjecting:*

**The Hon. ANNE LEVY:** I am sure that the honourable member would agree that, if we can arrive at a situation in which alcohol is not regarded as something special, as indeed it is not in many parts of the world, we will have a more civilised and rational society and in that context bottle shops would not be regarded differently from other shops. However, we have not got to that situation and the question of opening hours for bottle shops in the minds of many people is tied up with the hours of opening of shops. This may be a healthy thing because it means that they are not regarding alcohol as something completely different and special. However, whilst there is this question of bottle shops being regarded on the part of many people as shops, one has to consider their hours of opening in regard to the hours of opening of all shops, and the analogy is not between bottle shops and hotels but between bottle shops and all other shops.

To compare bottle shops with hotels is equivalent to comparing supermarkets with restaurants. It seems to me that the hours of trading of bottle shops have to be considered in relation to the hours of trading of all other shops rather than in relation to hotel hours.

One other point I will now raise briefly relates to the area dealing with minors, and in particular clause 117, where it is provided that a licensee with the approval of the licensing authority will be able to declare parts of licensed premises out of bounds to minors. I am very glad that this cannot be done without the approval of the licensing authority. I hope that that authority will not give such approval lightly. To me it would be a retrograde step to have areas where minors are not able to enter except for certain special reasons. This could lead to what used to be the situation in New South Wales, a most undesirable situation where minors could not go into licensed premises. This meant, in effect,

that very few females went into licensed premises because if families went out it was usually the male who went into the licensed premises while the female stayed outside with the children. Such segregation of families is highly undesirable. It also gives rise to the all-male atmosphere that used to prevail in many hotels and in many front bars in this State where women were not permitted. These became rather uncivilised and undesirable places.

Although the presence of minors in itself may not have much effect on this situation, I think that the presence of both sexes certainly does. However, prohibiting the admittance of minors to certain areas could have the effect of preventing women from entering licensed premises as well, if they are looking after the children who are not allowed to enter those premises. I hope the approval under this clause, to be given by the licensing authority, will be very limited, given only on very rare occasions or in very special circumstances, and that it will not become a general situation.

**The Hon. R.I. Lucas:** Do you want to talk about Monday's letter to the Editor?

**The Hon. ANNE LEVY:** I already have; I am sorry the honourable member was not listening. I will not say any more about that at this stage. I agree with the comments made by other members that this is basically a Committee Bill: doubtless other matters will be discussed as we go through the Bill in the Committee stage. I support the second reading.

**The Hon. C.J. SUMNER (Attorney-General):** I thank honourable members for their co-operation. This is now clearly a Committee Bill as there is broad agreement on its principles. A number of issues were raised by various members during the second reading debate. I have provided answers to the Hon. Mr Lucas about the clubs that may now sell liquor for consumption on the premises. With respect to the Hon. Mr Burdett's advocating take-away rights for all clubs, the Government will oppose that amendment. It is not necessarily inconsistent with the role of the club to have that right, but I believe that in the balance of the industry it may well cause difficulties so far as existing outlets are concerned, a view taken by Mr Sangster, Royal Commissioner in 1966.

With respect to the issue of the four-hour minimum period of opening for hotels, I do not believe that that will affect most hotels, as they should be able to open profitably for that long. If they are to open on Sundays, I think that most would opt to open for at least four hours, in any event. The motel owners who do not believe that that is viable can still open for meals, or lodgers, or for whatever period they wish. The four-hour minimum period will certainly ensure that employees get proper periods of work.

The honourable member said that at present wholesalers can make up to half of their sales to the public. That is not correct, as only those places licensed before 1969 have that right: this relates to about 30 of the 50 premises. The rest can sell only 10 per cent to the public. The recommendations of the review and the Bill were to bring everybody back to 10 per cent, and I think that draws the correct distinction between wholesale and retail liquor merchants.

The other area raised by members opposite involved the question of bottle shops. The Government will oppose the proposed amendment relating to bottle shops. I think that the simple position adopted by the Government on this matter is that, while there is certainly some room for debate, the Government would characterise bottle shops as shops and retail outlets rather than as the other suppliers of liquor such as hotels, clubs, restaurants and the like, which all provide something in addition to the simple service of bottled liquor. That being the case, and that being the view that the Government takes in relation to bottle shops—namely, that they are more characterised as ordinary retail outlets—we believe that the hours available to other retail outlets should apply in general to bottle shops, although I realise that there is some extension on that already for bottle shops.

Other matters were raised by the Hon. Mr Burdett, but I believe I can deal with those during the Committee stage when talking about his amendments. The Hon. Mr Dunn says that the minimum four-hour Sunday trading for hotels will inconvenience small family hotels. I respond by saying that they can still sell liquor at any time with meals or to lodgers. Indeed, it would not be difficult for them to open, as many shops do, simply by being on call by means of a buzzer or something of that kind, if they are small country hotels.

The Hon. Mr Dunn also asked, if a restricted club purchased $30 000 worth of liquor one year and became unrestricted, what would happen if the following year it purchased less than $30 000 worth of liquor. The club does not then lose its unrestricted status. There are safeguards to ensure that the threshold sum is not reached by artificially inflating figures in one particular year. In any event, there is still a discretion to refuse the licence application. I believe that $30 000 is a fair threshold sum. The other point raised by the Hon. Mr Dunn is that the police should have the power to eject drunk or disorderly persons at a licensee's request. The Government agrees with that and will move an amendment to that effect. With respect to the point made by the Hon. Mr Davis about why there was no reference to how the six league football clubs without take-away sales were affected by those four clubs with that right, the answer is that, in a liquor licensing sense, that is not relevant. The four clubs with rights have those rights because they had them before 1967, not because they are football clubs or share any other common feature. It is simply a concession to those clubs with pre-existing rights.

*The Hon. R.I. Lucas interjecting:*

**The Hon. C.J. SUMNER:** Those rights?

**The Hon. R.I. Lucas:** Yes.

**The Hon. C.J. SUMNER:** That was not proceeded with, so they have those rights and will still have them. The Government does not propose to interfere with them.

**The Hon. R.I. Lucas:** You do not think that it is unfair?

**The Hon. C.J. SUMNER:** I think that it is an anomaly; there is no doubt about that. I do not think that it is particularly desirable. I do not believe, given they have those existing rights, that we can move to interfere with them. Obviously, if the honourable member wishes to move an amendment to that effect, we will give consideration to it and take into account the arguments he raises during the debate. Those clubs that have 'take away' rights are not confined to football clubs. The distinction exists right through the club area and depends on whether or not they had those rights prior to 1967.

The Hon. Mr Griffin raised a number of more technical points all of which will be covered by amendments he has on file. Rather than take time going through every individual point raised by the honourable member, I will deal with them when the clauses are before the Council. I thank honourable members for their contributions and support and I look forward to debate during the Committee stage.

Bill read a second time.

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

**The Hon. K.T. GRIFFIN:** I have several questions on clause 2. When is it envisaged that the legislation will be proclaimed to come into effect? What specified provisions are in the Government's contemplation for suspension? If there are any which are to be suspended, for what reasons

will they be suspended and when will they come into operation?

**The Hon. C.J. SUMNER:** The target date is 1 July 1985. It is not intended to suspend any provisions at this stage; they have been placed in the Bill in an excess of caution in case we wish to bring in some parts of the Bill but exclude others. At this stage it is hoped that all the necessary preliminary work can be done to have the Bill proclaimed to come into operation on 1 July.

Clause passed.

Clause 3 passed.

Clause 4—'Interpretation.'

**The Hon. C.J. SUMNER:** Do honourable members wish me to move my amendments to this clause *en bloc* or explain each one separately?

**The Hon. J.C. BURDETT:** I would like an explanation of each amendment.

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

Page 2—
After line 2—Insert definition as follows:
'Boxing day' means the day immediately following Christmas day:.
After line 25—Insert definition as follows:
'Easter Saturday' means the Saturday immediately following Good Friday:.

The definitions of Boxing Day and Easter Saturday are not included in other legislation and have an effect on opening and closing times in this Bill and should be defined.

Amendments carried.

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

Page 3, line 3—After 'section 79' insert 'or 80'.

This is a technical amendment.

**The Hon. J.C. BURDETT:** I acknowledge that these amendments can fairly be said to be technical amendments. I find it astonishing that for this Bill the Government, even before it got to the Committee stage, had 15 pages of amendments on file. That is a disgraceful method of legislative procedure.

The amendments do not deal with matters raised in debate; instead, they are said to be technical matters which were in the hands of the Government in the first instance, so they should have been fixed by the Government in the first place. I hasten to add that, once the Government decided to introduce these amendments, it was most helpful to the Opposition. The amendments were placed on my desk with a covering note on Monday night and I circulated them to all members on this side. I make it clear that the Government was in no way discourteous. Once it decided to introduce the amendments, I received the utmost co-operation and courtesy from the Government. However, it is a sloppy legislative procedure. The Government introduced this Bill after a lengthy inquiry and review. After the Government introduced the Bill it found that it was necessary to introduce 15 pages of technical amendments. While I do not disagree with the amendment before the Chair, I complain about the fact that Parliament was not provided with a Bill which was technically correct in the first instance.

**The Hon. C.J. SUMNER:** The Hon. Mr Burdett has made a point of the fact that there are some Government amendments. That is a perfectly normal procedure in relation to most Bills introduced into Parliament. It is sometimes necessary for the Government to move amendments, particularly in relation to a Bill of this type where, following its introduction, there was a period of some two weeks of public consultation. During that period submissions were put to the Department by the police and by interested parties in the industry and, as a result, a number of amendments are to be moved by the Government.

*The Hon. R.C. DeGaris interjecting:*

**The Hon. C.J. SUMNER:** That is quite possible. I can name a number of Bills that have been introduced into Parliament and laid on the table while submissions have been sought and received; as a result, the Government has moved amendments. To suggest that that is unusual, I think, is quite wrong. For example, it was done with the Associations Incorporation Bill, which was dealt with in this Parliament. I do not accept the Hon. Mr Burdett's criticism. Apart from the technical amendments, the others were discussed and drawn to the attention of officers as a result of the Bill being publicly exposed for comment.

**The Hon. J.C. BURDETT:** It is not true to say that this happens with most Bills. It happens with very few Bills that there are Government amendments and, if there are any at all, they are not usually as extensive as these. I certainly do not accept the position that the amendments only arose as a result of public comment. After all, comments were invited and made during the review process, the report of which was released in June 1984. It should not have been necessary to introduce amendments following the tabling of this Bill. In particular, it is disgraceful that this has happened. At this stage, because there are 24 pages of amendments—some will be carried, some may not, and some will be further amended—we will have a Bill which will be in a mess at the end of the Committee stage. I believe that there should be a copy of the Bill printed as it comes out of Committee.

**The Hon. C.J. Sumner:** Come on!

**The Hon. R.C. DeGaris:** That has been done before.

**The Hon. J.C. BURDETT:** Exactly.

**The Hon. C.J. Sumner:** That is a typically disruptive tactic.

**The Hon. J.C. BURDETT:** It is not disruptive. It will be quite impossible.

**The CHAIRMAN:** Order! Neither the Attorney-General nor the Hon. Mr Burdett are speaking to the amendment. I suggest that that is where we should start. In any case, the Bill will be automatically reprinted when it leaves this Chamber.

Amendment carried.

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

Page 3, after line 30—Insert definition as follows:
'packaged liquor' means liquor in sealed containers for consumption off licensed premises:.

The amendment includes a definition of 'packaged liquor'.

**The Hon. J.C. BURDETT:** Why is the amendment necessary? Why was the definition not included in the Bill?

**The Hon. C.J. SUMNER:** Because it is not defined in the Bill. The question was raised by someone who perused the Bill with the officers and it was agreed that in an excess of caution some definition of 'packaged liquor' should be included.

Amendment carried.

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

Page 3, after line 38—Insert definition as follows:
'prescribed premises' means—
*(a)* licensed premises;
*(b)* regulated premises;
or
*(c)* premises of a kind declared by regulation to be prescribed premises,
and includes areas appurtenant to any such premises:.

'Prescribed premises' is a phrase used in the Bill on two occasions and, therefore, it is considered better drafting to include the definition of 'prescribed premises' in the definition clause.

**The Hon. R.I. LUCAS:** Can the Attorney explain why the word 'appurtenant' is used and not a word such as 'adjoining'? Is it meant to include a car park which may be across the road from hotel premises? I can think of one or

two hotels in Adelaide where the car park does not strictly adjoin the hotel premises.

**The Hon. R.C. DeGaris:** It could be half a mile away.

**The Hon. R.I. LUCAS:** I am not aware of any half a mile away; I am referring to a car park which is just across the road. Certainly the people who congregate and drink in the car park are associated with the hotel premises. Why is the word 'appurtenant' used and does it include a car park separated from hotel premises by something like a public road?

**The Hon. C.J. SUMNER:** It probably would not include that situation. 'Appurtenant' is a word that has been used in existing legislation.

**The Hon. K.T. Griffin:** Would patrons in a car park be acting illegally under the Bill, bringing their liquor from the hotel and drinking it in the car park which is not appurtenant to but across the road from hotel premises?

**The Hon. C.J. SUMNER:** If it is across the road—

**The Hon. R.I. LUCAS:** It is not illegal? The other provisions in the Bill deal with minors in areas appurtenant to premises, and I think that is the major area where the definition is used. It would only apply where the car park strictly adjoined hotel premises. I am sure the Attorney is aware of a number of hotels with car parks across the road from the premises and where there are problems; this definition would not apply.

**The Hon. C.J. SUMNER:** That is possibly correct. If the car park does not adjoin the premises, those provisions relating to consumption by minors or control over those areas would not apply.

**The Hon. R.I. LUCAS:** I do not know whether I ought to pursue this at this stage or under the relevant clauses relating to minors drinking in parking areas. I do not know what the solution to the problem is. I would have thought that it would be consistent with what the Attorney is about that he would want to try to stop that problem, too, because he, and I am sure his officers, would be well aware that the complaints that have come from residents about certain hotel premises are just as important in those hotel premises where a public road separates the car park from the hotel premises. I do not know whether it is worth pursuing under this definition clause or whether the Attorney might like to think about it before we get to the operating clause.

**The Hon. C.J. SUMNER:** The problems of definition are insurmountable. The way that the thing is overcome is to prescribe the premises. So, one could prescribe the car park over the road, down the road, or over the footpath as prescribed premises and therefore pick up any gap that might be there.

Amendment carried.

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

Page 4, line 11—At the end of paragraph *(c)* of the definition of 'regulated premises' insert:

—

(i) to which admission is gained by payment of an admission charge;

(ii) in which entertainment or refreshments are provided, or are available, at a charge;

or

(iii) that is otherwise being used for the purpose of financial gain;.

The policy of the Government is to ensure that weddings in halls and such venues, where no charge is levied, should not need a permit of any kind for consumption. This inclusion in the definition makes that clear.

Amendment carried.

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

Page 4, lines 38 and 39—

Leave out paragraph *(c)* of the definition of 'to sell' and insert:

*(c)* to supply, or offer to supply, in circumstances in which the supplier derives, or would derive, a direct or indirect pecuniary benefit;.

This amendment is at the suggestion of the police and adds to the definition the words 'or offer to supply'. It makes clear what is envisaged.

Amendment carried.

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

Page 4, line 40—After 'to supply' insert ', or offer to supply,'.

This is the same point.

Amendment carried.

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

Page 5, line 18—Leave out 'has contracted' and insert 'is booked'.

This subclause deals with who is a lodger, and it makes clear that it applies to any person who has had a booking made to spend a night in licensed premises.

Amendment carried.

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

Page 5, line 34—At the end of paragraph *(b)* insert 'in circumstances in which the provision of entertainment or refreshments is related to the provision of liquor by way of sample, one being incidental or ancillary to the other'.

This is to clarify a clause that appears elsewhere in the legislation and to ensure that wine tastings in wineries are not hampered in any way.

Amendment carried.

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

Page 6, line 6—After 'Licensed Premises' insert 'or an Assistant Superintendent of Licensed Premises'.

This is a technical amendment, which includes not only the Superintendent of Licensed Premises but an Assistant Superintendent of Licensed Premises.

Amendment carried; clause as amended passed.

Clause 5 passed.

Clause 6—'The Liquor Licensing Commissioner.'

**The Hon. K.T. GRIFFIN:** It is obvious that the Commissioner will have a variety of functions, including those set out in clauses 14 and 15, which suggest that, in the matters that come before the Commissioner as though they are to be dealt with in a quasi-judicial situation, the Commissioner may act quasi-judicially. Is the Attorney able to give any indication as to the qualifications that he expects the Commissioner to have in order to satisfy the obligations under at least clauses 14 and 15 and other provisions of the legislation?

**The Hon. C.J. SUMNER:** It would be someone with experience in the area of liquor licensing.

**The Hon. K.T. Griffin:** No legal background?

**The Hon. C.J. SUMNER:** Not necessarily any legal background, but that does not mean that a lawyer would not be considered or well suited for such a task. It is not necessary to absolutely tie down the qualifications of a Liquor Licensing Commissioner to someone who is qualified to be a legal practitioner. That is certainly not the case with respect to a number of other people who carry out conciliation and arbitration functions. Particularly, one can refer to the Industrial Commission or the Planning Commission, although the Planning Commissioners sit with judges. Certainly, in the Industrial Commission a large number of important arbitral functions are carried out by a person without legal qualifications. It is really a matter that should be left to the appointing authority, and there is really no need to insist that someone have legal qualifications.

**The Hon. K.T. GRIFFIN:** I do not disagree entirely with that, but with the sorts of powers that the Commissioner is to have, including the power to summons, require the production of records, inspect records, and require the answering of questions, someone ought to be appointed to the position who not only has some experience and interest in the liquor industry but also has a sensitivity towards what is fair, proper and just and is able to exercise effectively the arbitration and conciliation functions that are being given to the Commissioner under other provisions of the Act.

It is obvious that even under clause 13 there will be a variety of matters on which the Commissioner will have to give judgment. Provided there are adequate avenues of appeal any abuse of those functions generally will be contained, but I do believe that a fairly highly developed sense of justice and an ability to give judgments will be required of the Commissioner in the performance of his or her duties.

**The Hon. C.J. SUMNER:** Those comments are appreciated.

**The CHAIRMAN:** I draw the attention of the Committee to the correction of a clerical error in Part II, 'Licensing Authorities and the Advisory Committee', that heading having been deleted.

Clause passed.

Clause 7—'Inspectors and other officers.'

**The Hon. L.H. DAVIS:** The Bill will simplify the administration of the sale and supply of liquor. Can the Attorney say whether it is intended to increase the number of inspectors pursuant to this clause to administer the Act, given that some increased powers have been vested in the police?

**The Hon. C.J. SUMNER:** There will not be any need to increase the number of inspectors as a result of the introduction of this Bill. It may be that there are other reasons for increasing the number of inspectors, particularly in regard to revenue avoidance. In fact, a number of inspectors were appointed some months ago with the task of trying to ensure that tax or licence fee evasion or avoidance was kept to a minimum. There would be no additional need for an increase in the inspectorate as a result of this Bill's being passed.

Clause passed.

Clause 8 passed.

Clause 9—'Commissioner may collaborate with other liquor licensing authorities.'

**The Hon. L.H. DAVIS:** Perhaps this is the appropriate time to note that the Bill does not contain any requirement, as far as I can see, for the Commissioner, who is responsible for the administration of the Act, to report to the Minister. I suspect that this is an oversight. The closest we get—

**The Hon. C.J. Sumner:** It's clause 6 (2).

**The Hon. L.H. DAVIS:** Yes, I have just made that point but the Bill contains no requirement for the Commissioner to report to the Minister and for that report to be tabled in Parliament. Certainly clause 9 refers to the fact that the Commissioner may disclose information gained by him to various authorities, but it is appropriate in the administration of this Bill that Parliament and the community be aware of various aspects of the sale, supply and consumption of liquor. I indicate that I will seek to place an amendment on file to rectify this apparent anomaly.

**The Hon. C.J. SUMNER:** There is no anomaly. An amendment is unnecessary and will be opposed at the appropriate time.

*Members interjecting:*

**The Hon. C.J. SUMNER:** It is not in legislation, for instance, that the Crown Solicitor is required to table a report in Parliament, yet she reports to me.

**The Hon. L.H. Davis:** That's different; it is hardly a good example.

**The Hon. C.J. SUMNER:** It is not necessary that every body or public servant responsible to a Minister should table a report in Parliament. In any event, it is not the matter before us now. It will be opposed by the Government.

Clause passed.

Clauses 10 to 15 passed.

Clause 16—'Representation.'

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

Page 9, lines 27 and 28—Leave out 'by him'.

This amendment brings the clause into line with clause 21.

**The Hon. J.C. BURDETT:** As it stands subclause (2) provides:

The Commissioner of Police may be represented in proceedings before the Commissioner by a member of the Police Force nominated by him for the purpose.

The Minister claims that this amendment brings the clause into line with another clause in the Bill. However, if a member of the Police Force is not nominated by the Commissioner of Police, who is to nominate him? I would have thought that, if the intention was that the member of the Police Force might be nominated for that purpose by an Assistant Commissioner or the like, it could have been specified. If the officer is not to be nominated by the Commissioner of Police, who will do the nominating? Will the Minister explain in detail whether a local sergeant can nominate him? Who can nominate him?

**The Hon. C.J. SUMNER:** The Parliamentary Counsel is of the view that it is the Commissioner of Police who is doing the nominating, and that is set out in clause 21. That clause does not refer to the words 'by him' and it is really a matter of making it consistent with that provision. Clause 21 (2) provides:

The Commissioner of Police may be represented in proceedings before the court by a member of the Police Force nominated for the purpose.

The amendment is simply to bring the clause into line with clause 21.

**The Hon. J.C. BURDETT:** In view of the explanation it would be more appropriate to amend clause 21, because we ought to be clear as to who is doing the nominating. If it is just nominating for that purpose, it could be a nomination by anyone. To take out the words 'by him' seems to cast a mystery over the whole proceedings. I would have thought that we ought to know, if someone is to be nominated, who is to do that nominating.

**The Hon. K.L. MILNE:** It would be better to insert 'by him' in clause 21 than to take those words out of this clause.

**The Hon. G.L. BRUCE:** We should consider using the words 'by him or his representative', because he is not always available.

**The Hon. C.J. SUMNER:** The best way is to chop out all the words after 'Police Force'.

**The Hon. J.C. Burdett:** I do not agree with that.

**The Hon. C.J. SUMNER:** That resolves all the problems, even the ones the honourable member has conjured up in his mind over this clause.

**The Hon. J.C. BURDETT:** I have not been doing any conjuring up in my mind. That suggestion does not resolve the problem. It should not be just any member of the police. After all, it is the Commissioner of Police who may be represented in the proceedings and it ought to be made clear, if he is to be represented by a member of the Police Force, who is doing the nominating.

I emphasise what I said previously: if there is thought to be an inconsistency between clause 16 and clause 21, then clause 21 should be tidied up and it ought to be made clear that the Commissioner may be represented by a member of the Police Force nominated by the Commissioner of Police for the purpose, or nominated by an Assistant Commissioner or a representative. Certainly, I take the point raised by the Hon. Mr Bruce that often it is not possible for the Commissioner himself to do the nominating, but it would be possible for an Assistant Commissioner or the like to do the nominating. If the Attorney is talking about nominating, he should say who is doing the nominating. It should not just be any member of the Police Force.

**The Hon. C.J. SUMNER:** This is just incredible, absolutely incredible. How the honourable member can make an issue out of this is beyond me. Surely my suggestion is

adequate. If we leave it at 'the Commissioner of Police may be represented in proceedings before the Commissioner by a member of the Police Force', and if someone fronts up without the authority of the Commissioner of Police before the Licensing Court or before the Commissioner, presumably the Police Commissioner would discipline the man. I cannot imagine any policeman turning up before the Commissioner without the authority of the Police Commissioner or someone who is in charge of the police officer.

How would he appear representing the Police Commissioner if the Commissioner had not given him authority to do so? He would not be able to represent the Commissioner. The clause certainly does not envisage that any Joe Blow police officer can front up before the Licensing Commissioner. I think that the easiest way out of this, without getting into a hassle, is to delete all the words in clauses 16 and 21 after 'Police Force' in the second line of the subclause, so that it reads, 'The Commissioner of Police may be represented in proceedings before the Commissioner by a member of the Police Force.' If a policeman went along and purported to represent the Police Commissioner without the Commissioner's authority then clearly he would be in breach of the Department's instructions.

Amendment carried.

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

Clause as amended passed.

Clause 17 passed.

Clause 18—'Application for review of Commissioner's decisions.'

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

Page 9, line 41—After 'the decision' insert ', insofar as it was made in pursuance of that discretion,'.

This amendment makes clear that not the entire decision of the Liquor Licensing Commissioner is reviewable by the Licensing Court. The amendment will retain certain areas of absolute discretion in the Commissioner that will not be reviewable.

Amendment carried; clause as amended passed.

Clause 19—'Proceedings before the Court.'

**The Hon. K.T. GRIFFIN:** I have a question for the Attorney-General. In proceedings under the Act the court is to act without undue formality and is not bound by the rules of evidence but may inform itself on any matter that arises for its decision in such manner as it thinks fit. I would have thought that it was necessary to add to that the sort of provision we had in the Equal Opportunity Act relating to the way in which the Equal Opportunity Tribunal should operate, that is, that it should act in accordance with equity and good conscience. Will the Attorney-General indicate why this provision is not included in relation to this court? I would have thought that this court should act in a similar way.

**The Hon. C.J. SUMNER:** I understand that the provision repeats what is in the existing Act.

**The Hon. K.T. Griffin:** Precisely?

**The Hon. C.J. SUMNER:** Apart from the question of acting without undue formality, which is not included in the existing Act. Clause 19 *(b)* is not in precisely the same words, but is an accurate paraphrase of what is in the existing legislation in section 6 *(b)*.

**The Hon. K.T. GRIFFIN:** In the light of the fact that in the Equal Opportunity Act—and I think other Bills during the past few years—the Parliamentary Counsel has tended to use the formula that it shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms and shall not be bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit, it would seem to me that that is a more appropriate formula. I wonder, not with a view to holding up the proceedings, whether the Attorney-General can give further consideration to the point to see whether we should follow what is apparently the now acceptable formula, recognising that the present Licensing Act is 20 years old.

**The Hon. C.J. SUMNER:** I am prepared to look at the matter, although I would have thought that any appeal court that ascertained that an inferior authority did not act in terms of the requirements of natural justice, which I suppose really imports the same sorts of notions as equity and good conscience, would not be very impressed by the proceedings of that particular authority. The inclusion of that requirement is something that is implicit in any event in the proceedings of authorities of this kind. I will examine the matter and if an amendment is considered to be necessary I will consider it when the Bill goes to the House of Assembly. I indicate that I am prepared to have another look at it.

Clause passed.

Clause 20 passed.

Clause 21—'Representation.'

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

Page 11, line 17—After the words 'Police Force' leave out the words 'nominated for the purpose'.

This amendment puts it in precisely the same terms as clause 16.

Amendment carried; clause as amended passed.

Clause 22 passed.

Clause 23—'Appeal from orders and decisions of the Court.'

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

Page 11—
Line 21—Leave out 'subsection (2)' and insert 'this section'.
After line 25—Insert subclause as follows:
(2a) An appeal lies, as of right, from a decision of the Court made on a complaint under Division VI of Part VI.

The purpose of the amendment is to allow an appeal from the court to the Supreme Court in relation to a complaint of the type specified. This is part of a series of amendments designed to strengthen the complaint provisions in the Bill, which are very good anyway. The complaint provisions start from a fairly good base but I do not think that they are wide enough. When we come to clause 112, under the heading 'Division VI—Noise', I will indicate that noise is not the only kind of annoyance, nuisance or detriment that there can be to a resident who lives close to licensed premises. In order to explain this amendment I will refer to clause 112, which is under the heading 'Noise', and which is not an adequate description of all nuisances and annoyances that there may be. Clause 112 provides:

(1) Where—
*(a)* any activity on, or the noise emanating from, licensed premises;
or
*(b)* the behaviour of persons making their way to or from licensed premises,
unduly disturbs or inconveniences any person who resides, works or worships in the vicinity of the licensed premises, a complaint may be lodged . . .

However, there is more to it than just that. Later I will move an amendment relating to giving offence to or being an undue annoyance. It is difficult to see whether the kinds of things that can happen are completely covered in the clause as it stands, and I refer to things such as stubbies thrown on to front lawns or the footpath or bottles thrown through windows, and so on.

While I think the Bill is a considerable improvement on the law as it now stands, I think it is necessary to strengthen and widen these provisions in regard to complaints. As the Bill stands at present appeals cannot go from the Licensing Court to the Supreme Court on matters relating to complaints. I believe that, particularly in regard to complaints,

it ought to be possible to appeal to the Supreme Court. It should not stop at the Licensing Court judge, which is at local court level. There ought to be the ability to go to the highest court in the State, if a citizen believes that his rights have been trampled on and that he cannot get redress. Citizens should be able to go to the highest court in the State in those circumstances, and I suppose that that also means the highest court in the land, if it goes that far. A citizen does not have to go that far, but I believe that he should have the ability to do that.

Of course, I am aware of the other side of the coin, that the party complained against would also have the right of appeal. However, as a matter of justice it seems to me that there should be a right of appeal in regard to matters which go to property rights, the right to quiet enjoyment of property and the right to the quiet enjoyment of life. If those things are interfered with, it seems to me that there ought to be scope for an appeal. Therefore, the amendment provides an appeal as of right from a decision of the Licensing Court made on complaint under Division VI of Part VI.

**The Hon. C.J. SUMNER:** I am not sure whether the honourable member is under a misconception about the effect of the Bill as introduced. As I understand it, the Bill gives to a complainant who has his or her complaint rejected by the licensing authority the right to appeal to the Supreme Court. A person who complains is a party to the proceedings before the court. There is no attempt to deprive a person who complains.

**The Hon. K.T. Griffin:** Only by leave.

**The Hon. C.J. SUMNER:** It is certainly by leave of the Supreme Court. When explaining the amendment the honourable member said, as I understand it, that there is no appeal by a complainant where a person is aggrieved by a decision of the Licensing Court.

**The Hon. K.T. Griffin:** I said 'by leave'.

**The Hon. C.J. SUMNER:** The only point of difference is that the honourable member believes that in a case involving noise—

**The Hon. J.C. Burdett:** Not in noise cases; in cases of complaints. I have suggested that it should be broader than noise.

**The Hon. C.J. SUMNER:** The point of difference is whether or not the appeal should be as a right or by leave.

**The Hon. J.C. Burdett:** Yes.

**The Hon. C.J. SUMNER:** Well, that is not acceptable. I am sympathetic to the honourable member's general view about the importance of ensuring that people in the vicinity of licensed premises have access to the court to complain about activities in and around those licensed premises which are causing disturbance. There is no dispute about the importance of that; there may be some dispute as to how it is rectified. If the honourable member says in that one area of appeal, that is, the area of complaint, the appeal to the Supreme Court is of right and not an appeal by leave, I believe he is really defeating the purposes of his argument.

As an example, I refer to a licensee, in the circumstances outlined by the honourable member, who would have the right to appeal against a decision that he was aggrieved as a result of a complaint resulting from noise. It would be open to the licensee to appeal, perhaps to the extent where he lodged a frivolous or non-serious appeal, have it placed in the Supreme Court list and then wait for 12 months. The disturbance could continue and the problems created by the licensee and the licensed premises could continue in that time. Rather than having a situation where the licensee has greater obligations placed on him and it is freeing up the option of a complainant, I believe the situation would be made much more difficult for a complainant in the interim period. In any event, I cannot see the logic behind separating out complaints as being those matters which come before the court where there should be an appeal as of right.

Obviously the Supreme Court is going to allow an appeal by leave on those matters that it considers to be of significance and importance where there is a real problem. I believe it is illogical to select out one certain sort of proceedings before the Licensing Court for appeal to the Supreme Court as of right. There are two objections: first, I do not think it fits in with the logic and consistency of the legislation; and, secondly, rather than helping complainants who live in the vicinity of licensed premises, the honourable member would be making it more difficult for them. In fact, he is leaving open the possibility of what I might call frivolous appeals by licensees against decisions for the purpose of holding up an action. That would then allow the licensee to trade perhaps in the same manner pending the decision of the appeal authority. I think that is quite counterproductive.

**The Hon. J.C. BURDETT:** The Attorney took the point that (and I take it that this is his argument), if a complaint had been made and an order was made in favour of a complainant, a licensee could raise a frivolous appeal to the Supreme Court and that that could hold up matters for 12 months. I do not think that that is right. As I understand it, the appeal does not suspend the operation of the order. As I understand it, if the order was made it would remain in force, notwithstanding an appeal. If I am wrong on that, I stand to be corrected, but I believ that to be the situation.

On the second point made by the Attorney, as to why we should differentiate between this and other matters in regard to appeal, there is very good reason to differentiate: this is a matter of citizens' fundamental rights.

**The Hon. C.J. Sumner:** You aren't giving them rights; you're taking them away.

**The Hon. J.C. BURDETT:** The Attorney can answer if he likes. I have answered the first point: that, as I understand it, the appeal does not suspend the operation of the order.

**The Hon. C.J. Sumner:** It does: that is what happens.

**The Hon. J.C. BURDETT:** I would like the Attorney to state the authority on which he says that because I would not think that would be the case. If it does, that is a different matter, but I believe that there is a valid distinction between appeals on other matters and appeals on matters that pertain to the citizen's right to enjoy his house and his property without undue interference. The Attorney seems to be hanging his hat on the statement that the appeal suspends the operation of the order. I would like him to give the authority for that.

**The Hon. C.J. SUMNER:** The authority is current practice. An appellant goes to the court in chambers and says, 'I wish to appeal,' and the courts invariably suspend the operation of the order because they see that it is not just to have a party bound by an order that is subject to appeal.

**The Hon. K.T. Griffin:** That is a matter of the discretion of the court.

**The Hon. C.J. SUMNER:** It is.

**The Hon. J.C. Burdett:** What you said is not right.

**The Hon. C.J. SUMNER:** What I said as a matter of practice is correct. I am talking about the residents, the complainants, the people it actually affects. The honourable member, having been a legal practitioner for longer than I have, knows as well as I do that litigants who are dissatisfied with the result can attempt to get the best out of that result by an appeal by relying on what are invariable procedures to be gone through before the courts to string out their rights pending that appeal.

I am advised that under the existing provisions almost invariably the appellants go to the Supreme Court, and get an order suspending the operation of the Licensing Court order. That is open to them and could and would occur in

all probability in these circumstances. If it did occur, rather than helping the residents the honourable member's amendment would be counter-productive. The appeal is still there.

**The Hon. J.C. Burdett:** By leave.

**The Hon. C.J. SUMNER:** Yes, by leave. That enables the Supreme Court to look at the matter early and decide whether or not to give leave. If it decides to give leave to the licensee, say, at least they know that the court is of opinion that there is something of substance in the appeal or it would not have given leave. Then there may be a case for suspending the operation of the Licensing Court order, but, where the appeal is of right, the general view taken by the court is that the decision should not be forced on a litigant—an aggrieved party—while the right to appeal is being exercised and there has not been a determination of the appeal.

The fact is that there is not a great disagreement with the thing. In terms of policy, I do not disagree with what the honourable member is saying, but what he is trying to achieve is thwarted more by his amendment than it is enhanced by it. I suggest that if he leaves it to the general appeal provision to the Supreme Court, where leave has to be granted, one would know that any appeal by a licensee against orders made against the licensee with respect to noise or whatever would have to be an appeal of substance, could be determined very early in the proceedings and would avoid the possibility on either side of what I may call frivolous or stop appeals, that is, those made for the purpose of manoeuvring to get the business functioning as it was prior to the original order. I understand the policy and am fully in sympathy with it, but I really think that what the honourable member has moved will not achieve that.

**The Hon. K.T. GRIFFIN:** I am pleased that both the Attorney and my colleague are on the same wave length with respect to the policy. The main reason why an appeal of right is being sought is that in present practice there is a great deal of dissatisfaction amongst those residents who take matters to the Licensing Court seeking a remedy, and who are frustrated by the delays that occur in the Licensing Court and in some instances by the decision of the Licensing Court, where they have indicated that the Licensing Court appears to be more sympathetic to the established interests of the licensees than to the genuine complaints of the residents who have to live with the problem.

*The Hon. C.J. Sumner interjecting:*

**The Hon. K.T. GRIFFIN:** No, there is no disputing that a lot has been done, but, as the Hon. John Burdett has said, there are ways in which that could be even improved. The appeal provision is one of those, but the more substantive provisions are those that seek to widen the basis for complaint from noise, disturbance and inconvenience to annoyance and inconvenience. So, certainly, the principal emphasis, as I interpret it, is on widening the basis on which citizens can lodge complaints either under clause 112 or under the other clauses to which amendments will be moved, all designed to give greater strength to the residents who have to suffer not just the disturbance and inconvenience through noise, particularly, but all the other incidents which occur and which detract from their enjoyment of their residential area.

As I understand it, the question of an appeal being determined by the Supreme Court to be one of substance or not is certainly considered in determining whether or not the order of an inferior court is to be suspended. If there is substance in the appeal it is more likely that the order will be suspended, but if something has to drag on for 12 months in the Full Court that would be an appalling situation, which would reflect very much on the practice and procedure of the Full Court rather than anything else. I would like to think that these sorts of appeals are not appeals that the Supreme Court is likely to delay for such a long period. In fact, the time for bringing on appeals is now a matter of a few months rather than a longer period like 12 months. I support my colleague on this. It is an area that is difficult, but what he is trying to do, which I support, is to widen the opportunity for citizens to gain relief rather than constrict it.

**The Hon. C.J. SUMNER:** All I can say is that the people who drafted the legislation put in the provision that leave was required precisely to stop appeals which were stop appeals and which would cause the very problems to which the honourable members have adverted.

Amendments negatived; clause passed.

Clauses 24 and 25 passed.

Clause 26—'Hotel licence.'

**The Hon. R.C. DeGARIS:** I move:

Page 12—
Line 17—Leave out 'or off'.
After line 27—Insert new paragraph as follows:
*(ab)* to sell liquor on the licensed premises for consumption off the licensed premises—

(i) on any day (not being Good Friday, Christmas Day or Sunday), between 5 a.m. and midnight;
(ii) on Christmas Day (not being Sunday) between 9 a.m. and 11 a.m.;
(iii) on New Year's Day (not being Sunday), between midnight and 2 a.m. (and between 5 a.m. and midnight);.

I refer to the whole question of Sunday trading which I raised in 1967 and subsequently because of the operation that we allowed in the 1967 legislation for clubs to trade on Sundays. I believe it was unfair that hotel trade should be placed in a position where hotels could not compete. Now I want hotels to be open on Sunday but not trading in bottles or liquor coming off the premises on Sunday. My amendment takes the hotels back to the position where they can trade on Sundays but are not permitted to sell 'take away' liquor on Sunday.

**The Hon. C.J. SUMNER:** The Government opposes the amendment. The arguments of the honourable member might have had some merit if we were starting from scratch in regard to Sunday trading, perhaps trying to limit it to some extent, but the fact is, and this is the overwhelming question really in regard to Sunday trading, that we already have it. 'Take away' sales account for 40 per cent of the hotels' trading in South Australia at present on Sundays. That being the case, it would be very difficult to wind the clock back, which is what the honourable member wishes to do in this amendment. All honourable members would have been aware of the implication of their decision in regard to 'taking off the premises' in regard to hotels in 1981 when the question of limited Sunday trading was debated.

Amendments negatived.

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

Page 12, lines 26 and 27—Leave out '(and between 5 a.m. and midnight)' and insert '(in addition to the trading hours permitted under subparagraph (i) or (ii) (as the case requires))'.

This technical amendment attempts to cope with the situation where New Year's Day falls on a Sunday.

Amendment carried.

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

Page 12, line 29—Leave out 'on the licensed premises' and insert 'in a part of the licensed premises defined in the permit'.

The amendment provides that a late night permit can be limited to certain parts of licensed premises and is not necessarily to be made available for the whole of the premises.

Amendment carried.

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

Page 12, line 30—Leave out 'on the licensed premises' and insert 'in that part of the licensed premises'.

The purpose of this amendment is the same as that of the previous amendment.

Amendment carried.

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

Page 12, lines 33 and 34—Leave out 'on the licensed premises' and insert 'in that part of the licensed permises'.

The purpose of this amendment is the same as that of the previous amendments.

Amendment carried.

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

Page 12, line 42—After 'a meal' insert 'provided by the licensee'.

The amendment clarifies the clause and makes it consistent with other phrases in other parts of the Bill. The effect is that a meal must be provided by the licensee and cannot be brought on to the premises by the consumer of liquor.

**The Hon. PETER DUNN:** What happens in the case of the licensee getting a contractor to supply the meal?

**The Hon. C.J. SUMNER:** Contractors are not allowed in a hotel. One cannot contract anything out in a hotel in terms of the supply of liquor or food. Under a hotel licence one of the obligations is that a hotelier—this has always been the case—is not permitted to contract out for the supply of liquor, because it is fundamental to the licence, and the provision of food.

Amendment carried.

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

Page 12, after line 42—Insert paragraph as follows:

*(f)* to sell liquor at any time to a person attending a reception for consumption in a designated reception area.

This amendment gives to hotels the same rights that motels have under this legislation in regard to the sale of liquor.

Amendment carried.

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

Page 13—After line 3 insert subclause as follows:

(2a) A licensee is not authorised to sell liquor under subsection (1) *(f)* unless those attending the reception include lodgers.

This amendment also brings hotels into line with motels.

Amendment carried.

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

Page 13, line 10—Leave out 'noise or inconvenience' and insert 'offence, annoyance, disturbance or inconvenience'.

Subclause (3) provides:

If the licensing authority is satisfied on the application of a licensee who holds a hotel licence—

*(a)* that the premises to which the licence relates are of an exceptionally high standard;

and

*(b)* that the grant of a late night permit in respect of the licensed premises is unlikely to result in undue noise or inconvenience,

it may, by endorsement on the licence, grant a late night permit in respect of the licensed premises.

The general intention of the provisions is excellent. As I indicated when I spoke on the previous amendment (and the Attorney said that he agreed with the principle that I was trying to establish), I believe that the power of people to complain and object is somewhat restricted in the Bill and that there is more to it than undue noise or inconvenience. This amendment seeks to leave out the words 'noise or inconvenience' and insert the words 'offence, annoyance, disturbance or inconvenience'.

I hope that the Attorney will support this amendment because there have been a lot of representations made by persons who live adjacent to licensed premises who feel that under the provisions of the existing Act they do not get justice. They feel that the right to enjoy their premises and their ordinary rights to enjoy their lives are interfered with. There are, of course, the 'show cause' provisions introduced by the former Liberal Government. Nonetheless, there is a strong feeling that the courts do not always give due weight to the complaints made by people who say that their ordinary right to enjoyment of life is interfered with by persons in licensed premises, both coming and going but more particularly when leaving those premises. This, I say, is a reasonable and moderate amendment that takes the matter to be taken into account by the licensing authority a little further than noise and inconvenience and adds 'offence, annoyance, disturbance or inconvenience'. My intent was to try to encompass all of the things that may legitimately affect a citizen where he may be aggrieved if he is adversely affected. Those are my reasons for moving this amendment.

**The Hon. C.J. SUMNER:** I do not want to argue the point in principle that the honourable member has put forth. However, my advice is that the Licensing Court has interpreted 'noise or inconvenience' to include matters that the honourable member wishes to include—'offence, annoyance, disturbance or inconvenience'. So, there is really not much added by his amendment. However, I have a concern that his amendment detracts from the existing clause because it removes the word 'noise'. He does that and wishes to insert 'inconvenience' in his definition, but instead of 'noise' in his definition he includes 'offence, disturbance or annoyance'. I suppose that in normal circumstances that would include 'noise'. It seems odd, given that noise is the thing that most people are concerned about, that the honourable member has left that word out of his amendment. I do not think what the honourable member is moving is necessary, but for the sake of a quiet night I will not oppose it but suggest that he might like to add the word 'noise' to his amendment.

**The Hon. J.C. BURDETT:** I am grateful for the Attorney's suggestion and seek leave to amend my amendment to include the word 'noise' so that the amendment reads 'offence, annoyance, disturbance, noise or inconvenience'.

Leave granted; amendment amended.

Amendment carried; clause as amended passed.

Clause 27—'Conditions of hotel licence.'

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

Page 13, lines 24 to 27—Leave out paragraph *(b)*.

Clause 27 deals with hours of trading with regard to hotel licences. Clause 27 (1) *(b)* states:

if the licensee elects to open the licensed premises to the public for the sale of liquor on a Sunday, the licensee must keep the licensed premises open to the public for that purpose for a continuous period of at least four hours;.

I referred to this matter when I spoke during the second reading debate. As with a number of amendments, I take note of the report of the review.

**The Hon. C.J. Sumner:** Only when it suits you.

**The Hon. J.C. BURDETT:** No, generally speaking the Opposition takes more notice of the report of the review than the Government does.

**The Hon. C.J. Sumner:** Ridiculous!

**The Hon. J.C. BURDETT:** It does, if the Attorney counts them. The report of the review recommended that Sunday trading be completely optional between the recommended hours, namely, 11 a.m. to 8 p.m., to the extent that if a publican wished to open for 10 minutes or half an hour during that time he could do so. We believe that the less obligations there on businesses the better. We believe in deregulation as far as possible and this report of the review went a long way towards that end of deregulation, and we support it in that regard.

I do not see why it is necessary to provide that, if the licensed premises are open to the public at all for the sale of liquor on a Sunday, they must remain open for a continuous period of four hours. I think that it should be completely and truly optional when a licensee opens or closes within that period. The arguments put forward so far in favour of the minimum four hour period I think came principally from the Hon. Gordon Bruce and seem to me

to be largely industrial arguments that related to labour employed. Of course, in country hotels where this will mostly be an issue there is no labour employed: it is simply a family business—the publican, his wife and family who may work on the premises. I suspect that most metropolitan hotels and the hotels in large country centres will open for the whole period from 11 a.m. to 8 p.m. or at least for four hours. However, there will be many country hotels where the industrial situation does not arise. If it does, I believe that the industrial situation ought to be dealt with in another forum under another Act and not in this place.

I see no reason why a licensee should not have all the options. If he can open on a Sunday between 11 a.m. and 8 p.m. then I think he can open at 11.05 a.m. and close at 11.10 a.m. The degree to which he does that will be dictated very largely by the practicability and profitability of doing so. There is no reason why he should do anything stupid.

**The Hon. C.J. Sumner:** Do you think that hotels should be able to open optionally from Monday to Saturday?

**The Hon. J.C. BURDETT:** No, I think that that is a different situation. We are dealing here with another situation—the question of Sunday opening. At all times that Sunday opening has been addressed it has been addressed on the basis of it being optional. It was very much so with regard to the tourist facilities under the previous Government—facilities that were brought into effect because one did not have to apply. The persons conducting the review made it very clear that they felt the ability to open on a Sunday should be a complete option at any time between 11 a.m. and 8 p.m. They are my reasons for moving the amendment.

**The Hon. G.L. BRUCE:** I oppose the amendment. While the Hon. Mr Burdett said I oppose the amendment on an industrial basis, I also oppose it because I feel that it will be left to the discretion of the publican in country hotels whether or not he should open. The Hon. Mr Dunn referred to this matter during his second reading debate. Even if the publican has shut the hotel someone can knock him up and say that he wants a drink, which the publican then gives him. The next bloke knocks on the door and the publican says, 'No, I do not feel like it. I am off to lunch and a round of golf. Bad luck.' I do not think that that is good enough. The public is entitled to know whether or not a hotel is open, and for the length of time that it is open, and that will soon be established in an area. The hours when a hotel is open should be determined on an industrial basis because staff have to be called in for a minimum of two hours, so the time that a bigger hotel will open will be for a minimum of two hours, at least. Four hours gives the people some idea that the hotel will be open for at least half of that day and they can then go down and get a drink on that basis.

I have two objections: first, the industrial arena, which I am not that tight on; and, secondly, I do not believe that the publican has the right on a Sunday to accept or refuse people as he sees fit. Suppose a bus is going down with 60 people on a fishing trip and they ring up or pull in and he says that he will serve them and then six bikies pull up and he says to them that the hotel is not open. I do not believe a publican should have that discretion. During the week when he is open for core hours he has to serve Billy the goose if he comes in the door. The same situation should apply to Sunday trading. The public should have the right to go and have a drink.

**The Hon. PETER DUNN:** I mentioned this situation during my second reading speech only because I was thinking of the family that work in the hotel. Consider the case where a family has a business and on Sunday morning—and remember it is a Sunday morning—they would like to have some time off.

**The Hon. B.A. Chatterton:** Why open at all?

**The Hon. PETER DUNN:** If that is the case, it is defeating the object. Why not allow these people to open for the busload that comes in. If the family wishes to go to church, a picnic, or any other function, why should they not be allowed to close the hotel earlier so that they can do that.

**The Hon. G.L. Bruce:** What is the equity in that busloads can get a drink but my wife and I cannot if we call in.

**The Hon. PETER DUNN:** Is your demand greater than that of the hotelier?

**The Hon. G.L. Bruce:** My demands are equal. It does not matter if there are two of us or 60 people on a bus.

*Members interjecting:*

**The ACTING CHAIRMAN (Hon. Anne Levy):** Order!

**The Hon. PETER DUNN:** I agree with the two hours minimum that the Hon. Mr Bruce is speaking of in relation to bringing in an employee. But families run a number of hotels and I believe that they should be able to choose whether or not they open. For that reason, and all the other reasons explained by the Hon. John Burdett, I support the amendment.

**The Hon. C.J. SUMNER:** I reiterate the Government's position, which is opposition to this amendment. As I said during the second reading debate, it will not affect most hotels. Most will be able to open profitably for that long. The others can still open for meals and lodgers. The point has been made by the Hon. Mr Bruce that the provision will ensure that employees get a proper period of work.

**The Hon. K.L. MILNE:** I do not understand why this affects the employees. If an employee is brought in he has to be employed for two hours and I would think that the hotel would probably stay open for those two hours, although the licensee could shut if he wanted to, dismiss the employee and pay him for the two hours. I cannot see that the employee is at risk. If the industrial situation is such that hotels must remain open for two hours, why are we discussing four hours? Where did the honourable member get that from.

**The Hon. R.I. Lucas:** Two lots of two, obviously.

**The ACTING CHAIRMAN:** Order!

**The Hon. K.L. MILNE:** Would it not be sensible to say that the time was two hours?

**The Hon. J.C. Burdett:** That would be worse.

**The Hon. K.L. MILNE:** Why would it be worse? I will support the amendment because we are talking about a Sunday. A large number of people still regard Sunday as different from any other day. Large hotels will open anyway and small hotels will have the right to shut or open for five minutes if they want to. I can see that there could be an industrial situation, but it does not affect the employee. I support the amendment.

**The Hon. G.L. BRUCE:** It looks like the numbers are against us. I understood that Sunday trading was brought in for the convenience of the public. The public will be inconvenienced to the extent that the publican can decide, who does and does not drink on a Sunday. That makes a mockery of Sunday trading. Sunday trading was brought in at the instigation of the public. The public is entitled to know that a hotel is trading on a Sunday from X to X. Eventually, that will be established in the area. Members are talking as if every hotel in the State will pick up Sunday trading. My bet is that not as many will pick it up as have picked it up under the tourist situation. Sunday trading should be for the convenience of the public, not the publican. The public is entitled to know that a hotel is open for a set number of hours on a Sunday, and that time will eventually

be known through the district. I maintain that that is a proper way to adopt this provision.

The Committee divided on the amendment:

Ayes (11)—The Hons J.C. Burdett (teller), M.B. Cameron, L.H. Davis, R.C. DeGaris, Peter Dunn, I. Gilfillan, K.T. Griffin, Diana Laidlaw, R.I. Lucas, K.L. Milne, and R.J. Ritson.

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

Pair—Aye—The Hon. C.M. Hill. No—The Hon. M.S. Feleppa.

Majority of 3 for the Ayes.

Amendment thus carried; clause as amended passed.

Clause 28—'Residential licence.'

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

Page 14, line 30—Leave out 'on the licensed premises' and insert 'in a designated dining area'.

This is a technical amendment which enables certain areas to be designated dining areas rather than the whole premises.

Amendment carried.

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

Page 14, line 31—After 'meal' insert 'provided by the licensee'.

Again, this is a technical amendment to make it consistent with other provisions.

Amendment carried; clause as amended passed.

Clause 29 passed.

Clause 30—'Restaurant licence.'

**The Hon. L.H. DAVIS:** There was some brief discussion during the second reading debate about restaurant licences. Of course, we heard from the Attorney-General that he was not terribly enamoured of the BYO licence. We are aware that the BYO licence was first introduced in 1978. It was styled as a limited restaurant licence and was colloquially known as the 'bring your own licence'. It allowed the consumption but not the sale or supply of liquor brought on to the premises by customers of a restaurant at any time of the day.

Earlier this evening I received a submission from the South Australian Restaurant Association in respect of BYO. Clause 30 (2) provides:

> A restaurant licence granted subject to the endorsement 'BYO' authorises the consumption of liquor on the licensed premises with or ancillary to a meal provided by the licensee but not the sale of liquor.

It appears that clause 30 establishes two types of licence: the licence described in clause 30 (1), where a restaurant is authorised to sell liquor at any time to a diner for consumption; and subclause (2), which refers to the BYO restaurant which authorises the consumption of liquor on licensed premises, provided it is brought on by the customer, but not the sale of liquor. The Association believes that it is in the public interest that all fully licensed restaurants should be available to the public as BYO restaurants. That point does not appear to be covered in the review by Messrs Young and Secker. I could well believe that there may be many restaurants in Adelaide which would prefer not to cater for the BYO customer anyway because they expect to make some profit margin on liquor sales. I am representing the view of the Association.

**The Hon. K.L. Milne:** They do, anyway, with the corkage fee.

**The Hon. L.H. DAVIS:** Yes, I understand that. Of course, that is part of the BYO arrangement. The Association is not quite sure whether the provisions of clause 30 provide for all restaurants to have a BYO arrangement. My interpretation is that that is probably not the case. I ask the Attorney to clarify that point.

**The Hon. C.J. SUMNER:** The draftspeople do not believe that there is a problem. Clause 109 (2) specifically provides that a person may bring liquor on to licensed premises, intending to consume that liquor and that no offence arises under that clause if the unconsumed portion of the liquor is removed from the licensed premises by the customer. I think it would be drawing a long bow to suggest that clause 30 (1) restricted the bringing on to full restaurant licence premises liquor that was to be consumed on the premises but not sold by the licensee. However, I will look at that. It is a drafting point.

There is no intention to prohibit a licensee with a full restaurant licence permitting people to bring their own liquor to those premises, if the licensee agrees. I do not think there is any doubt in relation to the policy of the matter. Perhaps the lawyers opposite can consider clause 30 in conjunction with clause 109 (2). We are adytum on the policy. The Hon. Mr Davis said that I made some disparaging remarks about BYO licences and the habit of BYO. I did not reply to that in my second reading speech; perhaps I can clarify it by saying that I think in South Australia some people became carried away with what they saw as the wonders of BYO drinking in other States.

**The Hon. B.A. Chatterton:** I think it was heavily supported by you, too.

**The Hon. C.J. SUMNER:** That is not inconsistent with what I am saying. I supported it then and I support it now. I am not arguing against BYO. I voted for the BYO limited licence category that was introduced by the Hon. John Carnie, I think, in 1978. I am saying that I do not believe that people who look at the licensing laws in Victoria or New South Wales and the existence of BYO restaurants in those States should become carried away with the joys of BYO drinking.

I can see that it can have a place in any licensing system, but, frankly, there are disadvantages with it, particularly for tourists who do not know what the licensing set-up in South Australia is. There are advantages when one goes to a place to get a meal knowing that it is licensed and that one can drink alcohol on the premises knowing that in those premises one can also order wine from the proprietor. That is a civilised way of consuming liquor with food.

I supported the motion for BYO licences in 1978 and I support the possibility and the potential for an expansion of BYO licences under this legislation. But what annoys me is that people parade the Victorian situation with its proliferation of BYOs as somehow or other a better system than we have in South Australia. I dispute that. One has a much better system in terms of licensing laws with restaurants if one has a very great preponderance of restaurants where one can buy liquor on the premises for consumption with one's meals. I am sure that that is more desirable from the tourist's or client's point of view. I also do not believe that the BYOs necessarily provide cheaper food. They do not. In fact, it is the reverse.

**The Hon. Diana Laidlaw:** That is not necessarily the point.

**The Hon. C.J. SUMNER:** No, but people argue for BYOs on the basis that one can buy liquor at a liquor store or hotel more cheaply than at the restaurant. If the restaurant cannot make the mark-up on the liquor it will make it on the food: so the food costs more. All I am saying is that some very good cheap restaurants in Adelaide have full licences, and provide excellent food, but give the facilities both of coming out at the end of the night with a reasonably cheap, economical meal and also the convenience of being able to purchase the liquor or wine in the restaurant without having to go through the nonsense of sitting down, getting all ready to have one's meal, and finding that one has to stand up and cart oneself a quarter of a mile down the road in the rain to the nearest pub or liquor store to buy a bottle of wine. I find that a fairly uncivilised performance.

If I know that it is a BYO restaurant, fine. I accept that the locals know that sort of thing and it can add variety to the sorts of liquor outlets one gets in a locality in South Australia. That is why I supported it in 1978 and why I support it now—because it adds to variety—but they need to advertise very clearly that they are BYOs and not fully licensed restaurants, and that will be provided for later. I wanted to reply to the honourable member's interjection and to indicate my stance on this very important topic of BYO restaurants.

**The Hon. L.H. DAVIS:** The Attorney is a bit like a blancmange on a railway line (he is wobbling all over the track) when it comes to his attitude on BYOs. We heard a tirade of abuse about the merits of BYOs last night, and I am indebted to his colleague, the Hon. Brian Chatterton, for his public shafting of the Attorney and bringing us to the full possession of the facts: that it was the Attorney who was one of the leaders of the charge on BYOs back in 1978. However, I do not want to digress from the clause that we have before us. I am not satisfied with the Attorney's explanation of clause 30. I do not accept that clause 30 (1) and (2) as presently drafted allows for a restaurant to be either BYO or a restaurant with a full licence, that is, having the ability to sell liquor. I implore the Attorney to look at that provision to ensure that the drafting is in order.

**The Hon. J.C. BURDETT:** Following a point taken by the Hon. Mr Davis, it seems that—if the Attorney would like to explain otherwise I would be interested in the explanation—within clause 30 there is not the ability for a restaurant to be licensed so that it may sell liquor and also allow BYO facilities. Clause 30 (1) states:

> Subject to subsection (2), a restaurant licence authorises the licensee to sell liquor at any time to a diner for consumption on the licensed premises with or ancillary to a meal provided by the licensee.

Subclause (2), to which subclause (1) is subject, states:

> A restaurant licence granted subject to the endorsement 'BYO' authorises the consumption of liquor on the licensed premises with or ancillary to a meal provided by the licensee but not the sale of liquor.

**The Hon. C.J. Sumner:** Look at clause 109 (2). I told you about that before.

**The Hon. J.C. BURDETT:** Clause 109 (2) provides:

> Where a person, with the consent of the licensee, brings liquor on to licensed premises intending to consume the liquor with or ancillary to a meal on the licensed premises, no offence arises under this section from the fact that he subsequently takes the unconsumed portion of the liquor from the licensed premises.

That has nothing to do with what I am saying.

**The Hon. C.J. Sumner:** It clearly implies that one can take liquor on to licensed premises for consumption.

**The Hon. J.C. BURDETT:** On to these licensed premises?

**The Hon. C.J. Sumner:** Including restaurants.

**The Hon. J.C. BURDETT:** Maybe you ought to clean up—

**The Hon. C.J. Sumner:** I have just said that we will look at it.

**The Hon. L.H. Davis:** Don't be so dogmatic!

**The Hon. C.J. Sumner:** He is wasting time.

**The Hon. J.C. BURDETT:** I am not wasting time. It is inconsistent at present. Clause 30 in itself clearly says that if one has a restaurant licence one can sell liquor, but if it is a BYO one cannot.

**The Hon. L.H. DAVIS:** I am glad that the Attorney wants to look at it, but he has to do more than look at it: he needs to amend it.

**The Hon. C.J. Sumner:** I will amend it if it is necessary.

**The Hon. L.H. DAVIS:** Section 109 (2) refers to a person who, with the consent of the licensee, brings liquor on to licensed premises.

**The Hon. J.C. Burdett:** One needs consent for that to occur with a restaurant.

**The Hon. L.H. DAVIS:** Sure, but I would have thought that any strict interpretation of clause 30 (1) limits a person with a full restaurant licence to selling liquor. It is by no means clear that he can consent to someone's bringing liquor on to the premises for the purpose of consuming it.

Clause passed.

Clauses 31 and 32 passed.

Clause 33—'Conditions governing grant, etc. of entertainment venue licence.'

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

Page 16, line 4—Leave out 'noise or inconvenience' and insert 'offence, annoyance, disturbance or inconvenience'.

I was indebted to the Attorney when I moved a similar amendment to another clause. The Attorney drew to my notice the fact that 'noise' was left out in this amendment, Although he said that 'disturbance' probably included 'noise', to make the matter clear I did with leave of the Council insert 'noise' after 'disturbance'. Before I speak further to the amendment, I seek leave of the Committee to make the amendment read 'Offence, annoyance, disturbance, noise, or inconvenience'.

Leave granted; amendment amended.

**The Hon. J.C. BURDETT:** This amendment is part of a series of amendments that I have referred to previously. I referred in my second reading speech to the need to broaden the protections for the public who may happen to live close to licensed premises and sometimes, but by no means always, be subject to inconvenience, disturbance, nuisance and all sorts of things, particularly from licensed premises at night and people leaving licensed premises. This clause relates to an entertainment venue licence and my amendment is to broaden the important provisions that the premises be of an exceptionally high standard and that the grant or removal of the licence is unlikely to result in undue noise or inconvenience. My amendment will broaden that to cover 'offence, annoyance, disturbance, noise or inconvenience' so that all of the legitimate interests of the public who may reside close to licensed premises can be taken into account.

Amendment carried; clause as amended passed.

Clause 34—'Club licence.'

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

Page 16, lines 20 to 22—Leave out subclause (1) and insert subclause as follows:

(1) A club licence authorises the sale of liquor, during periods specified in the licence—

*(a)* to a member of the club or a visitor in the company of a member for consumption on the club premises;

*(b)* to a member of the club for consumption off the club premises.

Page 17, lines 8 to 17—Leave out paragraphs *(b)* and *(c)*.

My amendment relates to a club licence as I foreshadowed in the second reading speech. It allows 'take off' facilities for licensed clubs and provides that a member of a club may take liquor for consumption off the club premises. It provides that a member or a visitor may consume liquor on the club premises but a member of the club may take liquor away for consumption off the club premises.

In the second reading debate I explained that I was thinking of a situation involving a member of a sports or social club who was proceeding home and who wanted, say, to take a bottle of wine home to consume with his family or friends; he should be able to purchase it on the club premises and take it home instead of having to go to a hotel at night to purchase it. That was the kind of situation at which I was looking. As I said, most clubs would not have the space or financial resources to enter into a massive trade in 'take off' liquor. They would not be able to compete with hotels and other outlets such as bottle stores and enter into discount wars or the like at present.

Certainly, the intention of my amendment is simply to provide the facility to allow a club member to take a bottle home. The Hon. Mr Milne in his second reading contribution said that he thought that that was right but wanted to ensure that clubs could not indulge in the massive marketing in which other outlets engage; he wanted to ensure that they could not engage in a discount war and said that he would limit the quantity that could be taken off to two litres. However, I have looked at the amendments on file and it appears that the Hon. Mr Milne does not intend to move that amendment. If he had I would have gladly accepted it as an amendment to my amendment.

**The Hon. C.J. SUMNER:** It appears that there is a majority supporting the amendment in this Committee now for clubs to be able to sell liquor for consumption off premises. The Hon. Mr Burdett has moved his amendment and the Hon. Mr Milne has indicated in his second reading speech his intention to move a similar amendment. They were not identical but I assume that on the basis of those speeches a majority of the Committee is in favour of clubs being able to sell a limited amount of liquor for consumption off premises.

However, that is not the position that the Government takes and clearly the Government will have to move in another place to reinsert the prohibition on 'off premises' sales. I have outlined previously the Government's objections to 'off premises' sales for clubs. I indicated that in 1966 the Royal Commissioner took the view that to allow bottle sales from clubs was not something that could be accepted then. The situation now is not really changed all that much from the position in 1966. Clearly, it would provide a broad area of competition for some retail liquor outlets and could cause significant economic difficulties for other outlets and, in particular, hotels.

I presume that the Hon. Mr Burdett is moving this amendment knowing what will be the effect of it, but it seems that he is determined to proceed. It seems that his Party is determined to support him in this matter. His other colleagues have indicated their support for this move and the Hon. Mr Milne also supports it. I must confess that in terms of logic and any arguments against it one can only put up a practical argument against it. The theoretical and conceptual arguments are probably all in favour of the honourable member and his colleagues opposite, but clearly what the honourable member is doing would be to create a significant added area of competition to the other retail outlets; added competition is already imposed on the hotels by the honourable member's amendment relating to the retail storekeepers, which I also understand has the support of the majority of this Committee.

It looks as though the Hon. Mr Burdett is attempting to provide increased competition for hotels. I suppose that, conceptually, that is something that is difficult to argue against. It is a matter, I suppose, that has some logic if one is talking about deregulation of the liquor industry. However, he should be under no misapprehension that what it will do is destroy one section of the liquor industry. This amendment, combined with his amendment relating to retail bottle shops, will certainly supply a much more competitive environment for hotels, but in that competitive environment it will ensure that many people will become much more economic than they are at the present time. That may be what he is aiming to do because he may believe that in the free market philosophy that is a perfectly legitimate view to take, that the free market should be allowed to operate and the economically strong work out and those not economically strong fall by the wayside.

The position I take is that, while I can understand his position from his point of view conceptually, I think that at this time (and it may not be the same in the future) permitting clubs to have this extra outlet of sales will create imbalances in the liquor industry which will be very difficult for existing outlets, and in particular for hotels. On that ground I oppose the amendment moved by the honourable member. However, it appears from speeches made by members that there is a majority in favour of this amendment, so I suppose I will have to see the Government fix this matter in the Lower House.

**The Hon. G.L. BRUCE:** I oppose the amendment, but go further than the Attorney-General. Looking at the Review on page 157 one sees the definition of a club in Halsbury's Laws of England, (4th Edition, Volume 6), as follows:

> A club . . . may be defined as a society of persons associated together, not for the purposes of trade, but for social reasons, the promotion of politics, sport, art, science or literature, or for any other lawful purpose; but trading activities will not destroy the nature of a club if they are merely incidental to the club's purposes.

A right to take away bottles involves a club in a trade activity and is no longer incidental to what it does. Clubs are already permitted to sell bottles and have been granted that privilege over the years. In clause 34 (5) *(c)* provision is made whereby if the licensing authority is satisfied that the members of a club cannot without great inconvenience obtain supplies of packaged liquor from a source other than the club and makes an endorsement on the licence to the effect the licence shall authorise the sale of liquor to members of the club for consumption off the premises of the club, so provision has already been made for that.

I do not believe that clubs should enter into trading activities. It has been put to us by the Clubs Association that a club's charter is for a group of people to get together and treat a club as their home, so if they are going to sell bottled grog to members to take home and have, then one is destroying the whole idea and concept of the club. We have more clubs in South Australia than has any other State in Australia. There are clubs selling liquor from their premises and that will become big business to them if this clause is passed. I say that that is in direct competition with the selling of liquor through hotels and bottle shops. It is a detrimental step. It will not improve the atmosphere or goodwill in a club if its members go to the club, buy their booze and take it home. If there is inconvenience to a member there is provision for a club to sell him liquor. I oppose the amendment and am appalled that members in this Chamber are heading down this track.

**The Hon. K.L. MILNE:** I think that members of the Committee have misunderstood the Hon. Mr Burdett. I told him that I would not move my amendment and would not support his amendment to this clause. That is what he was saying because that is what I told him.

**The Hon. R.C. DeGaris:** This was after the powerful argument presented by the Attorney-General.

**The Hon. K.L. MILNE:** It was no ordinary plea, and I was feeling most uncomfortable. I will repeat what I said last night, as follows:

> Some clubs want to be both privileged clubs with restricted membership and hotels at the same time.

They also want to be restaurants at the same time. I continued:

> That is not on as far as I am concerned. The right to take away or take off (I understand that that is the official term) from clubs seems to be sensible but, as far as I can see, it should not be encouraged. I suggest that we should make a limit of, say, 2 litres per person, per member, and I will be seeking to move an amendment to that effect. My amendment will put the take off facility into perspective. If the provision is unlimited it changes the whole concept of a club liquor licence into something else.

That is what the Hon. Mr Bruce was getting at. I will turn to some statistics. In South Australia there are about 600 hotels and 120 bottle shops, a total of 720 outlets selling liquor, if we want it, and several hundred clubs. If the clubs

get into this (although they would not have the volume of the hotels and restaurants), it would make a difference to the balance that the Attorney-General has mentioned.

I have obtained certain information since last night and have changed my mind. The Hon. Mr Gilfillan feels the same way. One of the reasons for this is that the two litre rule cannot be policed. I understand that this has been tried before and what has happened is that members simply take two litres of liquor, go home and then get in the car and come back to get another two litres. It is difficult to say that they can only have two litres a day or something of that nature. I understand, also, that many clubs that have been contacted do not want this right and do not want to see members staggering out of their clubs with bottles under both arms and climbing into their cars. They do not want the additional stock, accounting and control problems associated with selling liquor in this way. I have here a copy of the club management journal relating to Victorian clubs which have been granted extended trading hours following recent amendments to the Liquor Control Act. I think that this was sent to me to show that they are being generous in Victoria, but perhaps that is not right. However, I take this as a warning that the clubs are keeping on keeping on, and want more and more privileges without the involvement in premises, furniture, staff, amenities, toilets, rooms, cutlery and so on.

**The Hon. C.J. Sumner:** Have you changed your mind?

**The Hon. K.L. MILNE:** I said that at the beginning. This should be a warning that clubs are still trying to get privileged treatment, and I do not see why they should. If someone wishes to start a club with a restricted membership, they can start it, but, they should not expect to be treated like other people who have to give facilities to the public. I am on the Hon. Mr Bruce's side: hotels and restaurants are for the public; clubs are not. There is a difference. Clubs cannot expect to be treated in exactly the same way. Take-away sales would increase the volume of trade in clubs and take that trade away from other organisations that are staffed by union personnel. Members should not overlook that point. It will change the nature of clubs to give them privileges that they should not have. People have made the choice to join a club and to take what comes with it. I no longer support the amendment.

**The Hon. R.I. LUCAS:** From listening to the Hon. Mr Milne's second reading speech last night I thought that he agreed with the Hon. Mr Burdett's amendments. Clearly, the most powerful speech from the Attorney-General this evening has managed to swing the Hon. Mr. Milne's views. Clearly, the Attorney-General has the numbers in the Chamber to defeat the amendment. I strongly support the amendment moved by the Hon. Mr Burdett.

**The Hon. R.C. DeGaris:** I wonder whether you are as good as the Attorney-General?

**The Hon. R.I. LUCAS:** I doubt whether I am, but one can always try with the Hon. Mr Milne until the vote comes in. He raised the point that licensed clubs did not really want this facility.

**The Hon. K.L. Milne:** I said that some did not.

**The Hon. R.I. LUCAS:** I think the wording was stronger than that. Anyway, the honourable member said that clubs did not want this facility.

**The Hon. K.L. Milne:** I said that some of those clubs contacted did not want it.

**The Hon. R.I. LUCAS:** The Hon. Mr Milne says that some of the clubs contacted did not want this facility. Page 164 of the review contains the official submission put forward by the Licensed Clubs Association of South Australia, the representative of the licensed clubs group. Amongst many things, one of the points they ask for on page 164 states:

> All clubs should have the right to sell packaged take-away liquor to members, (not guests).

Clearly, the official view put by the representatives association for the licensed clubs strongly supports the amendment moved by the Hon. Mr Burdett. Some of the clubs I spoke to at lunchtime today, and I will refer to those later on another point, strongly supported the move, too.

**The Hon. M.B. Cameron:** Was that West Adelaide?

**The Hon. R.I. LUCAS:** Yes, West Adelaide was one of them.

**The Hon. M.B. Cameron:** Are you a member of West Adelaide?

**The Hon. R.I. LUCAS:** I am happy to declare my interest in West Adelaide. It is actually on my register of interests.

**The Hon. L.H. Davis:** Did you lose a lot of money last year?

**The Hon. R.I. LUCAS:** That is true, too.

**The CHAIRMAN:** Order!

**The Hon. R.I. LUCAS:** I understood that the point raised by the Hon. Mr Bruce in relation to trading—and I do not want to misinterpret him again—was evidence from the review and was arguing that clubs should not be allowed to get into trading. The Hon. Mr Bruce quoted from a definition section of clubs in the review and offered that as his argument. Page 169 of the review states:

> The clubs want to have the right to sell take-away liquor. Those opposing this—principally the hotels—

and many of us will be aware of the intense activity of the hotel lobbying during the past 24 hours—

> for obvious reasons— do so on two main grounds:

They give a first reason that I do not want to presently address. The second reason is:

> It is not in the nature of a true club that it should be able to sell take-away liquor. The second of these reasons is more easily disposed of. Only a purist would insist that it is in the nature of a genuine club that all the benefits of the club, including its liquor supplied, should be enjoyed on the club premises. No-one would suggest that the 41 clubs in South Australia (and I will refer to them in a minute), including some of our oldest and most prestigious clubs, are not genuine because they enjoy this right. The same situation applies to the hundreds of clubs in every other Australian jurisdiction, and they sell take-away liquor to members and their guests.

Whilst I would not suggest that the Hon. Mr Bruce is a purist on most matters, perhaps the writers of this report may lump his argument amongst the purists' arguments that they refer to in subparagraph 7.6.4 of the report. As I indicated, I will support the amendment of the Hon. John Burdett, and he has given some very cogent and powerful reasons for the amendment.

I want to add one or two other small points. The amendment needs to be looked at in the context of the whole Bill. The growth that has existed in clubs in South Australia has, in part, been due to the lack of Sunday trading by hotels. I am not saying that that is the only reason, but it is certainly one of the strong arguments for people joining clubs because it gives them access to alcohol on Sundays when, in the past, they have not been able to obtain access. Since 1982 more and more hotels have been able to trade on Sundays. I cannot quickly turn the figure up, but I think about 40 per cent of hotels in South Australia are now trading for limited periods on Sundays.

Nevertheless, it is still a limited period up until now, whereas drinking alcohol in clubs on Sundays certainly extends for a far longer period. Clubs flourished and since the introduction of Sunday trading by hotels there is considerable evidence to show that hotels trading in certain regions on Sundays have affected the viability of clubs in those areas. With the other parts of this Bill, that will enable

all hotels to trade on Sundays if they choose to do so, then the effect we have seen over the past two or three years must increase. Therefore, the trade and viability of clubs in South Australia will be affected by other parts of the Government Bill if hotels are allowed to trade on Sundays in all areas—not just tourist areas as are currently allowed. Thus, a large number of clubs could now have their viability affected by the Government's move, which we are supporting, in another part of the Bill.

That is why I say that this amendment of the Hon. John Burdett should be seen in the whole context of the Bill. While the viability of clubs is challenged or threatened by the Government move in another part of the Bill, surely we should give something to the clubs in another section of the Bill. While the review did not argue for this and put forward a contrary argument, it certainly talked about the need for balance between the viability of clubs and hotels.

Clearly, the review's argument of balance is different from our argument of balance. I believe that Sunday trading for hotels will certainly affect the viability of many clubs and that we should offer them a *quid pro quo* in the nature of the very good amendment moved by the Hon. Mr Burdett. I accept the argument put by the Hon. Mr Milne last night which, with the passage of time, has changed.

Nevertheless, I refer to his argument of last night where he indicated that he would not want to see clubs get into large scale retailing and discounting thereby threatening the viability of hotels. The Hon. Mr Milne canvassed a possible amendment, which may or may not have been the most appropriate amendment. I thought it was a useful thought and I believe that we should at least consider certain amendments to try and ensure that the Hon. Mr Burdett's amendment to allow clubs to trade in liquor would not have an adverse effect or significant effect on the viability of hotels.

I now refer to the 41 clubs which currently enjoy the privilege of selling packaged liquor to their members. In fact, I think that six of those clubs are also allowed to sell packaged liquor to visitors. Those clubs are listed in clause 34 (5) *(a)* as the Adelaide Club, the Adelaide Bowling Club, the Adelaide Democratic Club, the Naval Military and Airforce Club of South Australia, the Royal Adelaide Golf Club, and the South Australian Commercial Travellers Association. Those clubs are authorised to sell liquor to a member of the club or a visitor in the presence of a member at any time. The Government's proposition is to support the privileged position of the six clubs I have named and another 35 clubs and continue their privileged situation which existed under previous licensing arrangements when clubs such as the West Adelaide Football Club, for example—a good workingman's football club—is not entitled to those privileges. Of course, there are hundreds of other clubs—I am not referring only to the West Adelaide Football Club—that do not enjoy the privileged position of, say, the Adelaide Club or the Royal Adelaide Golf Club. The Attorney-General and his colleagues seek to support that privileged position through their opposition to this amendment.

I am surprised to see the Hon. Anne Levy and other honourable members opposite opposing such an egalitarian amendment moved by the Hon. Mr Burdett and, in effect, supporting the privileged position of such prestigious clubs in South Australia—

**The Hon. Anne Levy:** Why don't you move an amendment?

**The Hon. R.I. LUCAS:** We are moving an amendment, and honourable members opposite can support it.

**The Hon. C.J. Sumner:** I think we will.

**The Hon. R.I. LUCAS:** Good. I was only hoping to convince the Hon. Mr Milne, but if I have convinced the Attorney—

**The Hon. K.L. Milne:** As a matter of fact, you have convinced me, too.

**The Hon. R.I. LUCAS:** And I only have another two reasons to go.

**The Hon. C.J. Sumner:** You can sit down.

**The Hon. R.I. LUCAS:** One can never believe them. The Hon. Mr Milne may well change his mind again. I have two more reasons to put. I seek leave to have incorporated in *Hansard* without my reading it a reply given by the Attorney-General to a question I raised during the second reading debate. It is a list of 41 clubs licensed pursuant to section 22 of the Licensing Act, 1967, which may sell liquor to members for consumption off licensed premises.

**The CHAIRMAN:** I cannot see anything statistical in the names of 41 clubs.

**The Hon. C.J. Sumner:** We do not object.

Leave granted.

CLUBS LICENSED PURSUANT TO SECTION 22, LICENSING ACT, 1967, WHICH MAY SELL LIQUOR TO MEMBERS FOR CONSUMPTION OFF THE LICENSED PREMISES.

Adelaide Bowling Club
Adelaide Club
Adelaide Democratic Club
Adelaide Rowing Club
BHAS Pty Ltd Port Pirie Employees' Picnic & Sports Association
Cadell Club
Central District Footballers Club
Cobdogla & District Club
Commerce Club
Eudunda Club
Glenelg Footballers Club
Glenelg Golf Club
Grange Golf Club
Holdfast Bay Bowling Club
Kangaroo Island Community Club
Kooyonga Golf Club
Loxton Club
*Lyrup Community Club (12/9/72)
Mannum Club
Millicent & District Community Club
Monash Club
Moorook & District Club
*Mundoora Community Sports Club (30/1/68)
Murray Bridge & District Community Club
Naracoorte & District Community Club
Naval, Military & Air Force Club of S.A.
Norwood Club
Police Club
Port Adelaide Footballers Club
Public Schools Club
Renmark Club
Royal Adelaide Golf Club
Royal South Australian Yacht Squadron
South Adelaide Footballers Club
South Australian Tattersalls Club
Stock Exchange Club
Tanunda Club
The South Australian Club
University of Adelaide Staff Club
Waikerie Club
Whyalla Golf Club

Notes: (1) asterisk denotes club licence granted since commencement of Licensing Act, 1967. Commencement date of right to sell take-away liquor follows in parentheses.
(2) since commencement of Licensing Act, 1967, three clubs have ceased to exist or lost the right to sell take-away liquor. They are: Amateur Sports Club; R.S.S. & A.I. League of Aust. (S.A. Branch); and the S.A. Public Service Club.

**The Hon. R.I. LUCAS:** Of the clubs set out in the list I refer particularly to the Port Adelaide Footballers Club, the Central District Footballers Club, the Glenelg Footballers Club and the South Adelaide Footballers Club. There has been considerable discontent amongst the other six football clubs in South Australia about the privileged position of those four football clubs. The clubs that are not included in this privileged position argue that the other four football clubs are able through their facilities to make extra profits and therefore become stronger within the South Australian

National Football League. How great an extent that is one does not know unless one looks at the trading figures. Certainly, one of the clubs that is not included in the privileged four has liquor sales of some hundred of thousands of dollars. Therefore, we are not talking in the little league; we are talking in terms of considerable sums of money. It is patently unfair that, within a football competition, four clubs, two of which have been to the forefront in the competition and are recognised as having some strength—

**The Hon. C.J. Sumner:** Why don't you move to extend it to all clubs?

**The Hon. R.I. LUCAS:** We are moving to extend it to all clubs. That is the import of the Hon. Mr Burdett's amendment. In relation to the 41 clubs—

**The Hon. K.L. Milne:** Do you think it is fair competition between the clubs and the hotels when the clubs have volunteer labour?

**The Hon. R.I. LUCAS:** The Hon. Mr Milne raises a point, and certainly it must be considered. It is true that to a degree the clubs rely on voluntary labour. I have never been one to shy away from volunteerism. The union has been very active in the area, and I think the review mentions that pressure has been applied and that the number of paid jobs within the clubs area has been increased by 300 (I think that is the figure mentioned by the review). The union is seeking to get its tentacles into the licensed clubs area. I might add that it is being strongly opposed, certainly by the smaller clubs. I am certainly not put off by the concept of volunteerism in clubs, and I certainly strongly support it. Finally, I refer to the stupidity of the existing law in relation to clubs whereby some football clubs and other clubs have got into the habit of producing commemorative ports.

I am sure that most members would be well aware of the fund-raising basis of many clubs, associations or groups that put together a private bottling or commemorative port celebrating a premiership win or whatever. Someone from one of the clubs told me today that when they did their most recent commemorative port they were not allowed to sell it within their licensed club premises because they were not one of the privileged 41. So they had to arrange with nearby hotels to sell their football club commemorative port because they were unable to do so under the restrictive provisions of the Act. If that is how the Act is operating it is a nonsense. The fact that a club in a small fund-raising venture such as a commemorative port is unable to sell within its licensed club premises is a nonsense.

In my final point, I will quote again, from the review, at page 159. As I indicated, the hotels lobby has been strong in the past 24 hours. I argue that certain clubs provide a service for the public of South Australia that is not being provided by hotels in particular regions. The review states:

> ... but some clubs have arisen directly from the refusal or inability of hotels to meet public needs. In some communities—some country towns, especially—local hotels have failed to provide facilities or a style of establishment that the residents want, so those residents withdraw their custom and establish their own club that does meet their needs. Virtually every member of the local community might join the club making it, in effect, a public outlet, at least for that area. The hotel then complains of this competition.

The essence of that whole argument is competition. What the Hon. Mr Burdett is trying to do is to put the pressure of the market place on the hotels and, as I indicated before, the Government's amendments will support the hotels to the disadvantage of clubs in other areas of the Bill. I strongly support the amendment of the Hon. Mr Burdett.

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

Page 16, line 21—Leave out 'presence' and insert 'company'.

This is a technical amendment to bring the words of the clause into line with what exists in other parts of the Bill.

**The CHAIRMAN:** This is a test case for both amendments.

The Hon. J.C. Burdett's amendment negatived.

**The Hon. C.J. SUMNER:** It is worth pointing out that honourable members opposite did not vote on that call and therefore declined to support the amendment that they moved. It is probably worth while making that point. There were no calls in favour of the amendment moved by the Hon. Mr Burdett.

The Hon. C.J. Sumner's amendment carried.

**The Hon. C.J. Sumner:** I take it that you blokes were done in by the hotels. You are just cheer-chasing for the clubs in the meantime and are not prepared to stand up for what you have had to say. What an absolute farce!

**The CHAIRMAN:** Order!

**The Hon. J.C. BURDETT:** In view of the vote on the previous amendment I do not propose to move my next amendment.

Clause as amended passed.

Clause 35—'Conditions as to visitors.'

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

Page 17, after line 25—Insert paragraphs as follows:

*(c)* the club must ensure that its rules, as approved by the licensing authority, are observed;

and

*(d)* (i)in the case of a restricted club licence—the club must have, at times when the sale of liquor is authorised by the licence, a right to occupy the licensed premises to the exclusion of others;

(ii) in the case of an unrestricted club licence—the club must have an exclusive right to occupy the licensed premises.

This amendment ensures that clubs must keep to their rules and have adequate tenure while they are operating the club licence in the same way as is necessary when they apply for the licence.

Amendment carried; clause as amended passed.

Clause 36—'Eligibility to hold club licence.'

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

Page 18, lines 7 and 8—Leave out 'or such other sum as may be prescribed'.

Clause 36 deals with the question of clubs, and in particular sets the differentiation between restricted and unrestricted club licences. Clause 36 (4) provides:

> A club is not eligible to have a restricted club licence converted into an unrestricted club licence unless—
>
> *(a)* ...
>
> *(b)* ...
>
> *(c)* the gross amount expended on the purchase of liquor during the last assessment period exceeded thirty thousand dollars or such other sum as may be prescribed;

My amendment is to leave out 'or such other sum as may be prescribed'. It is better to achieve certainty and to have it written into the Bill. It may need to be changed at some time. I do not believe that it ought to be left to regulation, but it ought to be written into the Bill.

**The Hon. C.J. SUMNER:** I oppose that amendment. It is important that there be a flexibility to increase that amount. It could be decreased, but it is primarily to be increased, I guess in line with inflation.

The Committee divided on the amendment:

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

Noes (9)—The Hons Frank Blevins, G.L. Bruce, B.A. Chatterton, J.R. Cornwall, I. Gilfillan, Anne Levy, K.L. Milne, C.J. Sumner (teller), and Barbara Wiese.

Pairs—Ayes—The Hons R.C. DeGaris and C.M. Hill. Noes—The Hons C.W. Creedon and M.S. Feleppa.

Majority of 1 for the Noes.

Amendment thus negatived; clause passed.

Clause 37—'Retail liquor merchant's licence.'

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

Page 18—

Lines 39 to 41—Leave out all words in these lines and insert:

*(a)* on any day (not being Good Friday, Christmas Day or Sunday) between 9 a.m. and 6 p.m. or, if the day is one on which late trading is permitted, between 9 a.m. and 9 p.m.;

*(b)* on Sunday (not being Christmas Day) between 11 a.m. and 6 p.m.;

Line 44—Leave out '(1)' and insert '(1) *(a)*'.

There are two views to this matter. The first suggests that on Sundays liquor stores should be allowed to trade for the same hours as any hotel or restaurant, and the other claims that they should not. I have tried to come to a conclusion after talking to the various interests involved. I have had to determine the difference between a bottle shop, which is a shop, and a restaurant or a hotel, which are something different.

I believe that there should be normal trading hours six days a week, and I agree that liquor stores should be open on Sundays but not on Christmas Day in any circumstances. I can accept opening on Sundays between 11 a.m. and 6 p.m. only. The Liberal Party wants more extended hours that I do not believe are justified because they are two different concepts. What does the hotel or restaurant have to supply in addition to liquor? They have to supply so many other things that they deserve protection and consideration from this Committee. In my amendment I have sought to arrange times to maintain that difference. True, it will not please everyone, but I believe it does make sufficient differences for the time being.

**The CHAIRMAN:** The Hon. Mr Burdett also has an amendment to this clause. Perhaps he can discuss his amendment.

**The Hon. J.C. BURDETT:** In doing that, I am at a disadvantage because the Hon. Mr Milne's amendment has been moved first. My intention is to oppose this clause and insert a new one.

**The CHAIRMAN:** The Hon. Mr Burdett can vote against the clause, which is what he wants to do, after the Hon. Mr Milne's amendment has been tested. If the clause as amended is not carried then the honourable member is free to insert his new clause.

**The Hon. J.C. BURDETT:** I am still at a disadvantage, and I make that point without arguing about it. I want to implement the review's report, namely, to allow liquor merchants to operate on any day not being Good Friday, Christmas Day or Sunday between 5 a.m. and 9 p.m., that is to extend the hours from 6 p.m. to 9 p.m. on an ordinary day, on Sunday not being Christmas Day between 11 a.m. and 8 p.m., and on Christmas Day between 9 a.m. and 11 a.m. If the Hon. Mr Milne's amendment is put first I cannot vote against it because, whilst his does not go as far as I would want to go, it is better than nothing.

**The Hon. C.J. Sumner:** You can do that and then you can vote to delete the clause and insert yours.

**The Hon. J.C. BURDETT:** Yes, it is acceptable to vote for the Hon. Mr Milne's amendment and then vote against the clause, so that I can proceed with my amendment. The Hon. Mr Milne's amendment does something, but it does not go far enough. I cannot understand why he wants to restrict trading on Sunday from 11 a.m. to 6 p.m. instead of going through until 8 p.m., as hotels can do. I can see no point in that at all because it is optional, in the same way as hotel trading is optional. Bottle shops do not have to open all the time, unless they want to. The Hon. Mr Milne said that they are two separate concepts—a bottle store and a hotel. As I said in the second reading debate, we are dealing with packaged liquor. Two kinds of outlet deal with packaged liquor: hotels and retail bottle stores. If two kinds of outlet deal with the same product, the hours of trading should be the same. I cannot see that it is valid to say that they do different things or are different kinds of outlet: they are dealing with the same products.

As I said during my second reading speech, and I now repeat in support of my amendment (which goes all the way), the Bill as it stands is discriminatory. The report of the review was not discriminatory because it recommended that bottle stores be allowed to open for practical purposes until the same time as hotels—until 9 o'clock on an ordinary day and between 11 and 8 on Sunday. That time of 9 o'clock would be as late, I suppose, as a liquor store would want to open, anyway. As I have said before, the Bill, which departs markedly from the review recommendations, is discriminatory on two grounds: it discriminates against small businesses because most liquor merchants are in small business. Members on this side of the Council support the principle of supporting small business.

We maintain that small business has enough disadvantages already and so often is swallowed up, bought out or overcome in one way or another by large businesses, so there is no need to put any artificial legislative bar in its way. It ought, at least from a legislative point of view, operate on an equal footing to big business. Secondly, as I suggested before, the Bill discriminates against women. I have found out, since I spoke yesterday, by way of a number of further representations from both women and bottle store operators, that women who wish to purchase packaged liquor often do so from a bottle store. One merchant told me this morning that 60 per cent of his customers are women who do not wish to go to a hotel to purchase their liquor and who did not wish to go to a place where liquor was being consumed.

Although they had some ability to avoid what they considered to be the unpleasantness of going to places where liquor was being consumed, to go to a drive in bottle department conducted by a hotel did not give them the same range and display that they have in a bottle shop, and very often not the same prices. Therefore, there were strong representations made by both bottle store operators and by women that not all but many women prefer to purchase their liquor from a retail liquor merchant and believe that they should be able to purchase liquor on a Sunday and during extended hours.

It has also been put to me quite strongly today by a number of bottle shop proprietors that people who like to purchase liquor from a bottle shop on weekdays find it difficult to do so before six o'clock as they may well be business or professional men who do not leave their place of business until six o'clock but who wish to purchase their liquor from a bottle shop.

**The Hon. C.J. Sumner:** What about shift workers?

**The Hon. J.C. BURDETT:** There could well be shift workers as well as a range of business people who want to purchase their liquor from retail liquor merchants and find it inconvenient to do so during present trading hours. The Hon. Mr Milne's amendment would take the matter somewhat further but not, I believe, far enough. However, I believe that his amendment ought to be considered as a matter of justice and at least in accordance with the recommendation of the review. Any member who has not read that part of the review (indeed, the whole of it) should do so and I commend it to them because the reasons in it are very persuasive and compelling as to why retail liquor merchants should not be discriminated against and as to why they should be able to sell liquor on Sundays at least and during other extended hours—not only why they should not be discriminated against, but, more importantly, why the people who wish to purchase from them—the consumers—should not be discriminated against. For those reasons I will support the amendment moved by the Hon. Mr Milne as a first step and if that is passed I will oppose

clause 37 as amended and, if successful, will move for insertion of a new clause 37.

**The Hon. C.J. SUMNER:** For the reasons I outlined during the second reading reply I oppose both the Hon. Mr Milne's amendment and the Hon. Mr Burdett's proposition relating to retail liquor stores. The honourable member has indicated that retail liquor stores are small businesses and I suppose that that is true in a good number of cases, but they are not smaller businesses than hotels. The average licence fee paid by retail liquor stores is 30 per cent higher than the average licence fee paid by hotels, indicating that retail liquor stores in fact have a turnover, on average, 30 per cent higher than that of hotels, so for the honourable member to talk in terms of liquor stores being small businesses and therefore disadvantaged in relation to big businesses, the hotels, is really, on the figures, quite an inaccurate picture to paint.

**The Hon. L.H. DAVIS:** The review recommended in favour of retail liquor merchants being allowed to open on Sundays. At page 241, paragraph 11.5.58, they conclude:

> We recommend that the holders of retail liquor merchant's licences be allowed, at their option, to open on Sundays at any time between 11 a.m. and 8 p.m.

I am not sure whether either the Hon. Mr Milne's amendment or the Hon. Mr Burdett's amendment take up that point. It may well be implied that if they can open between the hours of 11 a.m. and 6 p.m. or 8 p.m. they can open for as many hours as they wish. I would like some response to that point. I strongly endorse the concept of retail liquor merchants being allowed to open on Sundays. The honourable Mr Milne's proposal is slightly different from the amendment put on file by the Hon. Mr Burdett. I think that it is important to note that this will not really extend the number of outlets for the sale of liquor on Sundays by very much at all. We are told that there are already well over a thousand outlets in this State where liquor can be legally bought on a Sunday for eight hours or more.

**The Hon. K.L. Milne:** And take-away?

**The Hon. L.H. DAVIS:** It is not all take-away.

**The Hon. K.L. Milne:** That is what we are talking about.

**The Hon. L.H. DAVIS:** That is right, but there are 610 hotels and 124 bottle shops available. In addition, there are the licensed restaurants and vignerons with cellar door sales, so there are a large number of liquor outlets open on Sundays.

**The Hon. B.A. Chatterton:** How many vignerons are actually open on Sunday?

**The Hon. L.H. DAVIS:** I do not know the figure. I would imagine a significant percentage of those 132 would be open. It would be logical for vignerons to be more likely to be open on weekends rather than during weekdays. The proposition so clearly explained by the Hon. Mr Burdett does not really bear repetition, namely, that to allow retail liquor merchants to sell liquor on Sundays will not extend by a large number the outlets for liquor on Sunday. This facility will be attractive to women, tourists and so on. I will be interested in the response on the point I raised, whether or not the amendments proposed by the Hon. Mr Milne and the Hon. Mr Burdett would intend the retail liquor merchants to be open for the whole of the period.

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

**The Hon. K.L. MILNE:** I will give my response.

**The Hon. C.J. Sumner:** You don't need to.

**The Hon. K.L. MILNE:** I am sick to death of this nonsense of whether it should be 8 o'clock, 6 o'clock, 5.30 a.m., or something else in the morning. Anyone would think that the whole future of the community revolved around whether or not people can get a drink on Sunday. Anyone who is out of kindergarten knows that they can drink at home and do not need to go to a bottle shop on Sunday. I am sick of all this nonsense. I have made a compromise and that is where I stand. That is it for me. If members want their friends to have that, that is where it has to be. I am tired, and if there is any more nonsense I am going home.

The Committee divided on the Hon. Mr Milne's amendment:

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

Noes (7)—The Hons Frank Blevins, G.L. Bruce, B.A. Chatterton, C.W. Creedon, Anne Levy, C.J. Sumner (teller), and Barbara Wiese.

Pairs—Ayes—The Hons K.T. Griffin and C.M. Hill. Noes—The Hons J.R. Cornwall and M.S. Feleppa.

Majority of 2 for the Ayes.

Amendment thus carried.

**The Hon. J.C. BURDETT:** I will oppose this clause and if I am successful I will move to insert a new clause. I have previously put the arguments and they have been debated by the Committee. I do not propose to put them again.

Clause as amended passed.

Clause 38—'Conditions affecting the grant or removal of a retail liquor merchant's licence.'

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

Page 19, line 19—Leave out "in that locality".

This amendment refers to bottle shops, that is, the retail liquor merchant's licence. This amendment will return the Bill to the position presently applying under the existing Act which is a tried formula and one that has been interpreted in the courts on a number of occasions.

Amendment carried; clause as amended passed.

Clause 39 passed.

Clause 40—'Conditions of wholesale liquor merchant's licence.'

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

Page 20, lines 14 to 16—Leave out paragraph *(b)* and insert paragraph as follows:

> *(b)* (i) in the case of a licence converted from a wholesale storekeeper's licence that came into force under the repealed Act before the 6th day of November, 1969—a predominant proportion of the licensee's gross turnover form the sale of liquor in each assessment period must be derived from the sale of liquor to liquor merchants;
>
> (ii) in the case of a licence converted from a wholesale storekeeper's licence that came into force under the repealed Act on or after the 6th day of November, 1969—at least 90 per cent of the licensee's gross turnover from the sale of liquor in each assessment period must be derived from the sale of liquor to liquor merchants;
>
> (iii) in any other case—at least 95 per cent of the licensee's gross turnover from the sale of liquor in each assessment period must be derived from the sale of liquor to liquor merchants.

This amendment relates to a wholesale storekeeper's licence. As the Attorney-General stated in his second reading reply, there are presently various proportions of the licensee's gross turnover for the sale of liquor that must be derived from liquor merchants when applying, depending on when the licence was granted; there are two separate periods.

During the second reading debate I pointed out that some wholesale licensees will be discriminated against by the Bill, since they have had the ability to dispose of a considerable portion of their turnover to persons other than licensees and other merchants. In some instances this is restricted and diminished by the Bill. I suggest that it is proper to preserve existing privileges. That is a principle upon which this Committee has operated on many occasions—that we do not lightly take away privileges. There are other examples in the Bill where privileges existing under former legislation are preserved, and one was spoken about at some length by the Hon. Mr Lucas, namely, that the Bill preserves the rights of 41 clubs which already have take-off facilities. The

Bill preserves that privilege. In that instance the Bill provides that where there is an existing privilege it should be retained.

I suggest that in regard to the holders of wholesale storekeeper's licences the same situation should apply. In the case of a licence converted from a wholesale storekeeper's licence that came into force under the previous Act before 6 November 1969 a predominant proportion of a licensee's gross turnover from the sale of liquor in such assessment period must be derived from the sale of liquor to liquor merchants, and that means something over 50 per cent. In the case of a licence converted from a wholesale storekeeper's licence that came into force under the repealed Act on or after 6 November 1969, at least 90 per cent of the licensee's gross turnover from the sale of liquor in each assessment period must be derived from the sale of liquor to liquor merchants, and in other cases, as in the Bill, 95 per cent. However, particularly in the case of those whose licence came into force before 6 November 1969, so that they have been able to dispose of almost half their turnover to persons other than licensees, their method of trading will have to radically change.

While they have relied on the existing law and a pattern which enabled them to dispose of almost half of their turnover to persons other than licensees, they will obviously be drastically and radically affected if the change comes and they have to make 95 per cent of their sales to liquor merchants. I argue most strongly that it has been a principle, not only in licensing legislation but in all sorts of legislation and elsewhere in this Bill, often adopted in this place that existing rights and privileges should not be taken away.

**The Hon. C.J. SUMNER:** The Government opposes the amendment. It really confuses the licence categories unnecessarily. If a wholesaler wishes to retail liquor as a significant part of his business, he should apply for a retail liquor licence. The amendment means that for wholesale storekeepers there would be three sets of conditions applicable. Those licensed before 1969 would only have to satisfy the criteria that a preponderant proportion of the licensee's gross turnover is from wholesale sources. Those licensed after 1969 and up until the present must show that at least 90 per cent is wholesale sales and after that that 95 per cent is wholesale sales.

The licensing review team wanted to achieve some rationality in the licences that are issued. Clearly, if wholesalers wish to retail, they should obtain a retail storekeeper's licence. In any event, there is no great difficulty with this. The review found that, of the 57 licences in this category, only four sell more than 10 per cent, so there is not a real problem. On balance, I believe that at this stage, now that we have the opportunity to clarify the situation, it is better to try to achieve the rationality which I think the honourable member wants in the licensing laws in this area as in others.

**The Hon. J.C. BURDETT:** I have some sympathy with what the review tried to do—some considerable sympathy in that it tried to deregulate, rationalise and reduce the number of licences and different conditions applying to licences. When one is taking away rights presently granted by law, I do not think one is entitled to do that for the sake of administrative convenience—and that is what applies, even if there are only four. They are people who have the right at the present time to sell almost half of their turnover to persons other than licensees. They have been operating on those licences and have been relying on the law to protect their businesses.

As I have said, while I have sympathy with the review and with the Government in trying to rationalise and deregulate (and, in fact, the Bill amounts to greater regulation), we should not destroy a person's existing rights for the sake of administration. We should not put administration above an individual's rights for the sake of administrative convenience. As I have said, this has been recognised elsewhere in the Bill, and I refer to the 41 clubs whose present take-off facilities are preserved. There has been no attempt at rationalisation in that area. Their present rights are preserved. The rights should also be preserved in regard to wholesale liquor merchants.

The Committee divided on the amendment:

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

Noes (9)—The Hons Frank Blevins, G.L. Bruce, B.A. Chatterton, C.W. Creedon, I. Gilfillan, Anne Levy, K.L. Milne, C.J. Sumner (teller), and Barbara Wiese.

Pairs—Ayes—The Hons R.C. DeGaris and C.M. Hill. Noes—The Hons J.R. Cornwall and M.S. Feleppa.

Majority of 1 for the Noes.

Amendment thus negatived; clause passed.

Clause 41—'Producer's licence.'

**The Hon. B.A. CHATTERTON:** It has been raised with me that clause 41 (1) *(c)*, in saying that sampling in wineries must be free, discriminates against tourists, because the effect of this with the larger wineries is that they do not allow the tourists to test any expensive wines. There have been a number of complaints to me that tourists come to places like the Barossa Valley or the Clare Valley and expect to be able to taste all wines and that they would not mind paying something for that. The wineries are not prepared to give away their expensive wines as free samples, so they will not allow those expensive wines to be tasted at all. If one goes to a number of the larger wineries one sees on the wine list an asterisk against those wines that cannot be tasted. Has the Attorney-General looked at this? If it were left open I am sure that the wineries would give free tastings for the majority of their wines but, if they were free to charge for those very expensive wines, they would be free to charge those tourists who wanted to pay.

**The Hon. C.J. SUMNER:** For the larger producers it may be possible to apply for and obtain a general facility licence that would enable them to have the tastings paid for. The main objection to it, if there can be an objection—and certainly I see some merit in what the honourable member is saying— is that if one opens up another liquor outlet that does not fit in any way within existing licence categories it would be possible for these producers in effect to become wine bars.

*An honourable member interjecting:*

**The Hon. C.J. SUMNER:** The rationalisation of the law has done away with wine bars as being—

**The Hon. Frank Blevins:** What did you do that for?

**The Hon. C.J. SUMNER:** Because they no longer have a place in the overall scheme of things. It is not that wine bars as such have been condemned forever, but the facilities that one can obtain from a wine bar can now be obtained from a restaurant.

*The Hon. Frank Blevins interjecting:*

**The Hon. C.J. SUMNER:** The wine bar may be able to apply for a restaurant licence, a condition of the licence being that it serve only wine. That is possible under the restaurant licence provisions of this Act. All sorts of restrictions can be placed on a restaurant licence under this legislation. Whether the Commissioner would do that would be a matter for the Commissioner's discretion, but if they can put up a reasonable argument (for instance, if they want to put in a boutique wine bar or a restaurant that specialised in certain sorts of wines) it is possible that the Commissioner could give them a restaurant licence subject to conditions.

Most of the wine bars now operate by selling wine in conjunction with a meal. Most of them find that that is not particularly satisfactory, and they will be given the option of applying for a restaurant licence or some other licence

that may be applicable to them. I understand the point that the honourable member is making. If he would like to consider an amendment along those lines I would certainly be prepared to give it further consideration.

**The Hon. B.A. CHATTERTON:** I thank the Attorney-General for that indicated interest in the question of free sampling. The other question that I would like to raise on the same clause relates to subclause (3), which is really just a point of clarification because it has been raised with me by a number of winemakers. It says there in the case of wine, 'if it was fermented by that person'. I have been asked whether 'that person' includes the employees or the contractors of the person.

**The Hon. C.J. SUMNER:** It certainly would include the employees of that person. I am not sure what the honourable member is referring to when he refers to contractors. If the whole of the wine was fermented by another institution, brought in to the producer and labelled as the producer's wine without the producer doing anything further to the wine, that would not be permitted under the producer's licence.

If bulk wine is bought in to the producer's premises, blended, treated further and bottled, it would come under the producer's licence and could be sold under that licence. The honourable member knows more about this matter than I do. However, if the wine is bought in bulk from another winery and the producer only places his label on the bottle without doing anything further, it would not be permitted.

**The Hon. B.A. CHATTERTON:** Some wineries have their own grapes which they have purchased and they might ferment or partly ferment them with another winery under contract, which is why I sought an explanation about contractors. If the grapes belong to the winemaker but are crushed and fermented in one facility and then moved to other premises, what is the position? Several Barossa Valley wineries share a number of facilities and are making their wine in a place under contract, with the grapes being crushed and fermented not exactly in their own tanks under their own personal supervision.

**The Hon. C.J. SUMNER:** There would be no problem in selling that wine pursuant to a producers licence. The only produce excluded would be that to which I have already referred—a product not in any way manufactured by that producer and merely having his label on it.

**The Hon. B.A. CHATTERTON:** I refer to subclause (4) because there has been some confusion about what it actually means.

**The Hon. C.J. SUMNER:** It merely ties up what I said previously. It does not include any fermentation that might go on in the bottle after it has come into the producer's premises. A producer could buy wine from another company and merely label it and believe he can sell it under the producer's licence. The clause was designed to prohibit that and subclause (4) is designed to make that clear by saying that, if there is any fermentation that occurs in the bottle after that, it will be disregarded and will not be considered as wine fermented by the producer in determining whether it can be sold under the producer's licence.

**The Hon. B.A. CHATTERTON:** I seek an interpretation of the example provided to me. If someone bought in wine and bottled it and then did a champagne fermentation, under this provision it would not be regarded as the producer's wine but, if the wine was subject to fermentation in a tank to produce champagne, it would be regarded as the producer's wine. There seems to be some contradiction in the minds of people who have asked for the interpretation.

**The Hon. C.J. SUMNER:** What was intended is clear, but obviously the honourable member knows much more about this topic than I do. It is not intended to cover the situation where as part of the process the winery ferments wine in the bottle. That would not exclude them from selling the wine under the producer's licence, but it is supposed to, and would, exclude wineries buying wine in a bottle that was corked without a label which they have done nothing to produce. The latter point raised by the honourable member is worthy of further investigation, and I will do that. If an amendment is needed to accommodate the problem raised by the honourable member I shall be happy to do that. In regard to the other point, I will leave it to the honourable member to decide whether an amendment can be moved, but we can consider that later.

**The Hon. G.L. BRUCE:** I seek clarification. What happens in the case of a winery that produces and does a fermentation of much of its own wines and labels bottles but in the case of champagne they buy the juice and have it processed and fermented under contract in another winery? When it comes back and they label it, can it be sold from the premises under that licence? Perhaps a hardship could be encountered by that winery through its selection of the blended wine. It could have done everything correctly but, because it is such a complicated process and they have not involved their machinery and expertise to handle it, a problem could arise.

*Members interjecting:*

**The ACTING CHAIRMAN (Hon. Peter Dunn):** I suggest that the Attorney listens to the question.

**The Hon. C.J. SUMNER:** That is a matter for me.

Clause passed.

Clauses 42 to 49 passed.

Clause 50—'Power of licensing authority to impose conditions.'

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

Page 24—After line 30 insert paragraph as follows:

*(ab)* conditions that the licensing authority thinks desirable in order to minimise the offence, annoyance, disturbance or inconvenience that might be suffered by those who reside, work or worship in the vicinity of the licensed premises in consequence of activities on the licensed premises, or the conduct of those making their way to or from the licensed premises;.

I refer to the amendments moved by the Hon. Mr Burdett earlier that the Attorney has accepted. Clause 50 identifies the conditions that a licensing authority may impose on a licence, including those that it believes are desirable in order to ensure that the noise emanating from premises is not excessive. I want to add an additional paragraph and I did want to include before the word 'disturbance' the words 'noise or inconvenience', although I suppose noise is already dealt with.

It seems to me to be appropriate that, if the licensing authority believes that there are certain actions that the licensee took to minimise that offence, disturbance or inconvenience, it is appropriate that they be endorsed on the licence. I see this as consistent with earlier amendments that have been accepted and subsequent amendments that all seek to give to residents, in particular, a greater level of protection and the licensing authority a greater level of authority over licensees. I have moved my amendment, but on reflection would not want to include the word 'noise' because that is already in paragraph *(a)* to which I have already referred.

Amendment carried.

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

Page 24, line 37—After 'under subsection (1)' insert 'or a condition previously imposed may be varied or revoked'.

Page 25—

Line 10—After 'under subsection (1)' insert 'or a condition previously imposed may be varied or revoked'.

Lines 37 and 38—Leave out subclause (6).

All my amendments to clause 50 are related and make clear that conditions of a licence may be varied or revoked in the same circumstances as they may be imposed.

Amendments carried; clause as amended passed.

Clauses 51 to 53 passed.

Clause 54—'Members of Police Force not to hold licence, etc.'

**The Hon. K.T. GRIFFIN:** This is an appropriate place to raise questions that I raised during the second reading debate about co-operatives and companies limited by guarantee. I could have raised them under clause 36 but missed my opportunity. The definition of 'a position of authority' appears in clause 4 (5) as foliows:

*(a)* he is a director of the body corporate;

*(b)* he exercises or exerts, or is in a position to exercise or exert, control or substantial influence over the body corporate in the conduct of its affairs;

*(c)* he manages, or is to manage, the business of the body corporate to be conducted in pursuance of a licence;

*(d)* where the body corporate is a proprietary company—he is a shareholder in the body corporate.

I have two questions. First, are there any companies limited by guarantee that hold licences and, in that event, is it appropriate to consider the extension of the definition of 'a position of authority' under clause 4 to recognise that a company limited by guarantee, while it has directors, also has shareholders where the shares are limited by guarantee? The second aspect relates to co-operatives. Are there any co-operatives that hold licences and, if there are, is it appropriate, again, to consider an extension of the definition of 'position of authority' because co-operatives do not have directors, but have committees of management, although they do have shareholders?

**The Hon. C.J. SUMNER:** Parliamentary Counsel advises me that there is no reason why a co-operative cannot hold a licence, as several do under the existing Act. With respect to the other matters that the honourable member has raised, I am having them examined by the officers in conjunction with Parliamentary Counsel and if we perceive it as being a problem then amendments can be moved at a later stage or in the House of Assembly, I will add this matter to those that I have indicated will be examined and at some stage clarified, if there is a need for that.

**The Hon. K.T. GRIFFIN:** I accept that undertaking. This is not an issue that is highly contentious and may just be a matter of drafting.

Clause passed.

Clause 55—'Minors not to hold licences, etc.'

**The Hon. K.T. GRIFFIN:** I mentioned during the second reading debate that I had some concern about clause 55 (2). Clause 55 (1) provides that subject to subsection (2) a minor shall not hold a licence or occupy a position of authority in a body corporate that holds a licence. Under the definition of 'position of authority' that extends to a shareholder. Under the Companies Code I doubt that a minor can be a director, anyway. However, subclause (2) provides an exception to the definition of 'position of authority' because it indicates that it does not prevent a minor from being a shareholder in a proprietary company that holds a licence.

My point in relation to this matter is, first, whether there are any minors who are shareholders in existing proprietary companies? I would expect that if they have all been vetted there may be some information available to the present licensing authority about that matter. In any event is it appropriate to at least recognise that contrary to the legal position some accountants and others may have introduced minors as shareholder, or want to introduce minors as shareholder in a situation where they have no legal capacity to deal with the shares or even, for that matter, to accept the allotment of shares. This generally requires them to give a commitment that they will be bound by the terms and conditions of the memorandum and articles of association. Before I move my amendment, will the Attorney-General address the issue and, depending on his answer, we can proceed to consider the amendment?

**The Hon. Diana Laidlaw:** Is this provision in the current Act.

**The Hon. C.J. SUMNER:** That subsection is not in the current Act. We do not know whether or not there are any proprietary companies where minors are shareholders. It would be a difficult and time consuming task to try to find that out.

The subsection only appears there at the suggestion of someone who was connected with the hotel industry for a very long time and was apparently of the view that some minors hold shares in proprietary companies which hold liquor licences. The view we would take is whether or not a minor holds a share does not really need to be decided. All this provision says is that a minor shall not hold a licence or occupy a position of authority in a body corporate which holds a licence. That does not affect any existing rights that the minor may have with respect to shareholdings in a proprietary company which holds a licence. In a sense it begs the question of whether or not under the companies legislation a minor can be a shareholder.

That is a question that the Hon. Mr Griffin says should be resolved in the negative, but he concedes that there is some body of advice that supports the proposition that minors can be shareholders. The honourable member may like to consider an amendment that makes clear that all we are talking about is saying that a minor's rights to hold shares in proprietary companies—whatever they are—are not affected by clause 55 (1). I believe that is more or less what we have, anyhow. If that is not clear and the honourable member thinks that clause 55 (2) would override the general rules in the companies legislation relating to shareholdings by minors, perhaps that clause can be modified.

**The Hon. K.T. GRIFFIN:** I would be happy, rather than holding up the business of the Committee, if the Attorney would have a look at it, along with the other matters. I do not want to disturb existing entitlements. If the Attorney has received a submission from someone in the hotel industry asking for this to be included on the basis that some minors are existing shareholders, then it is not my intention to disturb that situation. That would be bad legal practice. I know from personal experience that some accountants who are not versed in the law have allotted shares—not in hotels or similar sorts of companies, but in other companies—to minors.

The difficulty is that one cannot deal with the shares until the minors turn 18 years of age. It frustrates any reconstruction or dealings with other shares in the company. It is bad legal practice. If there are some, notwithstanding that, that presently exist, I do not want to interfere. I ask the Attorney to look at it, in conjunction with his advisers. Perhaps they will be kind enough to discuss this with me and we can work out a suitable formula to meet that problem.

**The Hon. C.J. SUMNER:** I am prepared to do that.

Clause passed.

Clauses 56 and 57 passed.

Clause 58—'Certain applications to be advertised.'

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

Page 28—

After line 4—Insert paragraph as follows:

*(e)* an application for conversion of a temporary licence into an ordinary licence by revocation of the condition by virtue of which the licence is a temporary licence.

After line 16 insert paragraph as follows:

*(ea)* an application for variation or revocation of a condition attached to a certificate under this Part:

This clause deals with the question of temporary licences and is consequential on amendments to clause 79, which clarifies the nature of a temporary licence, so that no new

licence need be obtained. There is simply a transfer from temporary licensee to permanent licensee.

Amendment carried.

**The Hon. K.T. GRIFFIN:** There is provision for advertisement. Is it envisaged that in the regulations there will be a requirement for notice to be given to the Commissioner of Police and the local council in respect of those applications that may be advertised or may, by direction of a court, be advertised, or in the rules which may affect the operation of the Licensing Court?

**The Hon. C.J. SUMNER:** The police will be advised as a matter of course because under the proposed administrative arrangements police will be stationed in the licensing branch—one or two, however many are necessary. They will automatically know of the licences applied for. In relation to local councils, they will have to check just like any other person who wishes to lodge an objection.

**The Hon. K.T. GRIFFIN:** I wonder whether or not there should be a provision to require notice to be given to the local council of such an application. Many council officers are diligent and read the public notices column, but it seems to me that it would be an advantage if there were some formal mechanism by which notice was automatically given of an application under subclauses (1) and (2), to the extent that the licensing authority gives direction for advertisement. Although I have an amendment on file I wonder whether the Attorney would give some favourable consideration to that sort of amendment. It should not be administratively difficult. In fact, it may be a requirement placed on the applicant rather than the licensing authority. Of course, it is not uncommon in other legislation, such as planning legislation.

**The Hon. C.J. SUMNER:** I believe that councils will probably know about applications anyhow, by other means, by way of applications for building alterations or planning approvals. In that light I do not believe that the amendment is necessary. I can examine it and perhaps place the obligation on applicants to advise the local council, although that is perhaps increasing the amount of bureaucracy that is needed when the whole thrust of this legislation is to try to decrease the amount of bureaucracy and form filling that is now needed in order to get a licence.

**The Hon. K.L. MILNE:** Do I read this correctly that a late night permit must be advertised? Does it have to be advertised under present conditions?

**The Hon. C.J. Sumner:** Yes.

**The Hon. K.L. MILNE:** Why must a late night permit be advertised? Is that the case now?

**The Hon. C.J. Sumner:** Yes.

**The Hon. K.L. MILNE:** I have never seen an advertisement for that. What does a late night permit cost at the moment? Is it $1? Is a late night permit required for a party?

**The Hon. K.T. Griffin:** No, they relate to discos, and so on.

**The Hon. K.L. MILNE:** What sort of licence is it when one holds a party in an unlicensed venue?

**The Hon. C.J. Sumner:** A permit.

Clause as amended passed.

Clause 59—'Discretion of licensing authority to grant or refuse application'.

**The Hon. L.H. DAVIS:** I have no objection to clause 59 (2). I think it is highly desirable that the licensing authority should not grant an application without a proper inquiry into the merits. Of course, that is the specific provision of the subclause. However, clause 59 (1) gives the licensing authority a very wide power indeed— in fact, an unqualified discretion to grant or refuse an application under the Act on any ground or for any reason that the licensing authority considers sufficient. I place on record my view that this is a very wide power. For example, it would allow the licensing authority to theoretically refuse a perfectly good application for a restaurant simply because there was another restaurant down the road.

**The Hon. C.J. SUMNER:** While not precisely in the same terms, subclause (1) is substantially the same as section 61 of the parent Act. It is not in any way appreciably different from the parent Act.

Clause passed.

Clause 60 passed.

Clause 61—'Requirements as to premises.'

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

Page 29, lines 22 to 29—Leave out paragraphs *(a)* and *(b)* and insert paragraphs as follows:

*(a)* that the premises in respect of which the licence is sought are, or, in the case of premises not yet constructed, will be, of sufficient standard for the purpose of properly carrying on business in pursuance of the licence;

and

*(b)* that the grant of the licence is unlikely to result in undue offence, annoyance, disturbance or inconvenience to those who reside, work or worship in the vicinity of the licensed premises.

This amendment is part of a scheme which I and my colleague the Hon. Mr Burdett have been endeavouring to build up in relation to the protection of local communities. The amendment is drafted so that it picks up what is in the Bill, anyway, in a different form, but it also has the requirement that an applicant for a licence must satisfy the licensing authority by such evidence as it may require. That is consistent with the general theme of the amendments that I have been moving and I hope that in that context, and because it maintains what is in the Bill and adds to it, the Attorney-General may be disposed to accept it.

**The Hon. C.J. SUMNER:** On balance, I oppose the amendment, from what I can understand of what the honourable member is getting at. There is already a ground of objection to a licence on the basis of noise, disturbance, inconvenience and so on. If a licence is granted, there is the capacity to apply to have the condition varied or indeed have it revoked on the grounds of undue offence, noise, annoyance or disturbance. I think the problem with the amendment is that it places a heavy onus on an applicant to in effect prove that certain things will not happen as a result of the granting of a licence, that is, as a result of the granting of a licence there will not be undue offence, annoyance, disturbance, and so on.

Clause 61 places the onus squarely on the applicant to establish that the granting of the licence will not result in undue offence. I would have thought that it was satisfactory to have it as a ground of objection to the granting of a licence that there would be offence, noise, and so on. I really think all we are talking about is a question of onus and whether it should be a matter established by the applicant as part of his normal case to the court for the grant of a licence. The way the honourable member has moved it, irrespective of whether or not there was an objection, the applicant would have to come before the Commissioner or the court (depending on the application being filed) and, irrespective of whether or not there had been advertisements and notices (as there undoubtedly would be), the applicant must establish that it would be unlikely that there would be any offence, annoyance or inconvenience. Depending on the view of the Licensing Commissioner or the Licensing Court, it could constitute quite a significant barrier in the first instance to the grant of a licence, because the onus would be on the applicant even though there might be no objection. There may be shadow boxing with an opposition that he does not know, and the applicant would have to establish in a positive way that the licence would not result in these things happening.

On balance, given that the significant rationale for the new Bill was to try to free up the bureaucracy that was involved in applying for a licence, the provisions that we have in the Bill elsewhere (relating to objections on the grounds of the possibility of noise and disturbance) are sufficient to protect the rights of residents and other people in the vicinity. Therefore, the amendment of the honourable member should not be supported.

**The Hon. K.T. GRIFFIN:** I understand the contrary argument that the Attorney is putting. To a large extent it is a question of onus. I draw attention to the fact that the applicant has only to satisfy the licensing authority that the grant of the licence is unlikely—and the emphasis is on 'unlikely'—to result in undue offence, annoyance, disturbance or inconvenience to those who reside, work or worship in the vicinity of the licensed premises. It is not that the applicant has to show that it will not result in such offence, annoyance, disturbance or inconvenience, but that it is unlikely to result in those consequences. So, I very largely agree that it is a matter of onus. I do not believe that it will be as difficult as the Attorney has indicated, but it is a useful criterion that the licensing authority should take into consideration in determining the grant of all licences.

**The Hon. C.J. Sumner:** They would if there were an objection.

**The Hon. K.T. GRIFFIN:** If there were an objection, yes, but I suggest that it ought to be wider than that. If there are no objections the shadow boxing to which the Attorney referred is not likely to be of any consequence but, if there is an objection, under the Attorney's proposal the onus is on the objectors rather than on the applicant for the licence.

It is more difficult for the objectors to show the prospective nuisance than for the applicant for the licence to show that it is unlikely to occur. I am sensitive to the need to try and get some balance, but particularly with some licences, which may affect large groups of people in the vicinity of the proposed licensed premises, it is not unreasonable to place some onus on the applicant for the licence to establish that it is not likely to result in the consequences that I have identified in the amendment.

The Committee divided on the amendment:

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

Noes (7) The Hons Frank Blevins, G.L. Bruce (teller), B.A. Chatterton, C.W. Creedon, M.S. Feleppa, Anne Levy, and Barbara Wiese.

Pairs—Ayes—The Hons R.C. DeGaris and Peter Dunn. Noes— The Hons J.R. Cornwall and C.J. Sumner.

Majority of 3 for the Ayes.

Amendment thus carried.

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

Page 29, line 30—After 'licence' insert '(not being a limited licence)'.

This amendment clarifies that the conditions in clause 61 are not really appropriate for a limited licence.

Amendment carried; clause as amended passed.

Clause 62—'Grant of category A licence must be justified by public need.'

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

Page 30, after line 4—Insert subclause as follows:

(2) A reference in this section to licensed premises already existing in a locality extends to premises in that locality, or premises proposed for that locality, in respect of which a licence is to be granted, or to which a licence is to be removed, in pursuance of a certificate under this Part.

This makes it clear that premises not yet built, but where a licence has been promised on completion of construction, can be granted a licence.

Amendment carried; clause as amended passed.

Clause 63—'Certificate in respect of proposed premises.'

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

Page 30—

After line 14—Insert subclause as follows:

(1a) A certificate under subsection (1)—

*(a)* may be granted on such conditions as the licensing authority thinks fit;

and

*(b)* may include a statement of conditions to which, in the opinion of the licensing authority, the licence should be subject.

Line 19—After "authority" insert:

—

(i) that the conditions (if any) on which the certificate was granted have been complied with;

and

(ii).

After line 22—Insert subclause as follows:

(2a) On the grant of a licence under subsection (2), the conditions (if any) stated in the certificate under subsection (1a) *(b)* shall become conditions of the licence.

The amendment enables conditions to be applied to certificates which in effect amount to judicial promises, such conditions being that the building must be completed within a certain time.

Amendments carried; clause as amended passed.

Clause 64 passed.

Clause 65—'Requirements as to premises.'

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

Page 30, lines 30 to 37—Leave out paragraphs *(a)* and *(b)* and insert paragraphs as follows:

*(a)* that the premises to which removal of the licence is sought are, or, in the case of premises not yet constructed, will be, of sufficient standard for the purpose of properly carrying on business in pursuance of the licence;

and

*(b)* that the removal of the licence is unlikely to result in undue offence, annoyance, disturbance or inconvenience to those who reside, work or worship in the vicinity of the licensed premises.

The amendment is similar to the amendment on which we have just divided, but it relates to the application for removal of a licence to other premises. The applicant must satisfy the licensing authority as to matters already in the Bill and must ensure that removal of the licence is unlikely to result in any undue offence, annoyance, disturbance or inconvenience to those who reside, work or worship in the vicinity of the licensed premises. I will not further develop the argument.

**The Hon. C.J. SUMNER:** Although the Government opposes the amendment, as we have just lost the previous vote I will not seek to divide.

Amendment carried; clause as amended passed.

Clause 66—'Removal of category A licence must be justified by public need.'

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

Page 31, after line 11—Insert subclause as follows;

(2) A reference in this section to licensed premises already existing in a locality extends to premises in that locality, or premises proposed for that locality, in respect of which a licence is to be granted, or to which a licence is to be removed, in pursuance of a certificate under this Part.

The amendment is identical to the amendment that I moved in respect of clause 62 concerning removals rather than grants and relating to the giving of judicial permits.

Amendment carried; clause as amended passed.

Clause 67—'Certificate in respect of proposed premises.'

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

Page 31—

After line 20—Insert subclause as follows:

(1a) A certificate under subsection (1)—

*(a)* may be granted on such conditions as the licensing authority thinks fit;

and

*(b)* may include a statement of conditions to which, in the opinion of the licensing authority, the licence should be subject on its removal.

Line 24—After "authority" insert:

(i) that the conditions (if any) on which the certificate was granted have been complied with;

and

(ii).

After line 27—Insert subclause as follows:

(3) On the removal of a licence under subsection (2), the conditions (if any) stated in the certificate under subsection (1a) *(b)* shall become conditions of the licence.

The amendments have the same effect as those previously moved.

Amendments carried; clause as amended passed.

Clauses 68 to 71 passed.

Clause 72—'Suspension of licences.'

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

Page 32—

Lines 24 to 30—Leave out subclause (1) and insert subclause as follows:

(1) The Commissioner may, on the application of a licensee, suspend the licence held by that licensee for such period as the Commissioner thinks fit.

Line 31—Leave out "suspend" and insert "revoke".

The amendments allow the Commissioner to suspend licences held by a licensee. A suspension might be granted to enable the licensee to take a holiday or, if he were ill, he might wish to have the licence suspended and the amendment provides that power.

Amendments carried; clause as amended passed.

Clauses 73 and 74 passed.

Clause 75—'Extension of trading area.'

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

Page 33—After line 14 insert paragraph as follows:

*(ba)* a club licence;

This clause deals with the extension of the trading area and application can be made only by a licensee holding one of five licences. As I said in the second reading debate, I cannot see why clubs are not included. All the same principles are present. If an area is adjacent to the licensed premises of a club and if it is appropriate for liquor to be sold there from time to time, I cannot see why the extension of the trading area provisions should not apply to a club. Additionally, the amendment is in accordance with the spirit of the review: to rationalise, deregulate and make things as much the same for all classes of licence as possible. It is trying to do away with the distinctions where they do not apply and then make all the licences the same where there is not some specific reason why they should be different. If the Attorney opposes the amendment, will he explain specifically why this provision should not apply to a club and why the situation is different in regard to the categories of licence set out in the clause, as opposed to a club?

**The Hon. C.J. SUMNER:** The amendment is opposed. The categories of licence set out in section 75 (2) are licences established for direct dealing with the public as opposed to dealings by a club. The amendment cuts across the notion that a club caters for its members and guests, and that clubs should have exclusive right to their premises. That cannot be done if this is allowed to occur on land not controlled by the club. The provision is put in for retail premises, where the consumption is on the premises, to pick up passers-by. It is an appeal to the public rather than an appeal to people who may be members of a club.

Clubs may redefine their premises but only if they have tenure over the land, so it does not preclude a club from having an outdoor area, provided it is on club land. However, what it says is that it should not apply to an area that is not the licensed area owned by the club—a footpath in the case of a club, for instance.

**The Hon. J.C. Burdett:** What about a hotel?

**The Hon. C.J. SUMNER:** A hotel can do it on a footpath.

**The Hon. J.C. Burdett:** Then why can't a club?

**The Hon. C.J. SUMNER:** Because it is not attempting to attract the public. All the licences mentioned in the current provisions are ones that provide for people to deal with the public. This is established to enable them to facilitate their dealings with the public, perhaps on the footpath or in areas that are public areas that people pass by. The category of a club licence is not given to attract members of the public but to provide a service to its members. The argument I put is that this sort of provision is not appropriate for a club.

**The Hon. J.C. BURDETT:** I am not convinced by the Attorney's explanation. He used the example of a footpath but it could be some area of land adjacent to the licensed premises. I point out that clause 75 only gives the licensing authority, on application by a licensee, the power to make the endorsement on the licence, so the power is in the hands of the licensing authority and is not automatic.

The licensing authority could consider a footpath as inappropriate or any other area as inappropriate in the circumstances of a club, but I am saying that it should have the power that I have mentioned. Subclause (3) says that where an application is granted under this section the adjacent area in which the licensee is authorised to sell liquor shall, at times when the sale of liquor is authorised, be deemed to form part of the licensed premises. Therefore, it will be subject to conditions of the licence and of a club licence. That means that liquor can only be sold to members or visitors in terms of the club licence. Obviously, if this involved the footpath or some other area the licensing authority thought it was not possible to police and where it was not possible to comply with that requirement the licence would not be granted. All I am asking the Attorney to do is enable the licensing authority, on suitable occasions after considering all the facts of a case, to be able to make an appropriate endorsement in the case of a club.

The Committee divided on the amendment:

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

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

Pair—Aye—The Hon. R.C. DeGaris. No—The Hon. J.R. Cornwall.

Majority of 1 for the Noes.

Amendment thus negatived; clause passed.

Clauses 76 and 77 passed.

Clause 78—'Consent of lessor or owner of premises required in relation to certain applications.'

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

Page 34, line 10—After 'occupied' insert ', or are to be occupied,'.

This amendment caters for lessees where occupation has not actually taken place.

Amendment carried; clause as amended passed.

Clause 79—'Devolution of licensee's rights in certain cases.'

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

Page 35—

Lines 16 to 19—Leave out paragraphs *(a)* and *(b)* and insert paragraphs as follows:

*(a)* of the same class, and subject to the same conditions, as the licence that was surrendered or revoked;

but

*(b)* subject to a condition that the licence shall expire at the expiration of a term fixed by the licensing authority not exceeding six months.

Lines 20 to 23—Leave out subclauses (6) and (7).

After line 29—Insert subclauses as follows:

(9) A temporary licence granted under this section may be converted into an ordinary licence by revocation of the

condition referred to in subsection (7) *(b)* but an application for revocation of such a condition shall not be granted unless the licensing authority is satisfied by such evidence as it may require—

*(a)* that the person who is to hold the licence on revocation of the condition is a fit and proper person to hold a licence of the relevant class;

and

*(b)* where that person is a body corporate—that each person who occupies a position of authority in the body corporate is a fit and proper person to occupy such a position in a body corporate holding a licence of that class.

(10) A fee of an amount fixed by the Commissioner is payable in respect of—

*(a)* a temporary licence under this section;

or

*(b)* the conversion of a temporary licence into an ordinary licence under this section.

(11) This section does not apply in respect of a club licence or a limited licence.

These amendments relate to clause 58, which I have already explained, and are all related.

Amendments carried; clause as amended passed.

Clause 80—'Bankruptcy or winding-up of licensee.'

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

Page 35, after line 36—Insert subclause as follows:

(3) This section does not apply in respect of a club licence or a limited licence.

Amendment carried; clause as amended passed.

Clause 81 passed.

Clause 82—'Rights of intervention.'

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

Page 36, lines 6 to 10—Leave out all words in these lines and insert—

*(a)* on the question of whether—

(i) the premises are suitable to be, or to continue to be, licensed;

or

(ii) a proposed alteration to the premises should be approved;

or

*(b)* on the question of whether—

(i) any activity on, or the noise emanating from, licensed premises;

or

(ii) the behaviour of persons making their way to or from licensed premises;

is unduly offensive, annoying, disturbing or inconvenient to any person who resides, works or worships in the vicinity of the licensed premises.

This amendment is part of a pattern of amendments moved by the Hon. Trevor Griffin and myself to preserve and strengthen the rights of residents who live in the vicinity of licensed premises.

This is the first clause in Division XIII of this Part, which deals with the rights of intervention and objection. Presently the Bill only applies to the condition of the premises. The amendment seeks to extend that. Objections may be raised on the question of whether the premises are suitable and so on; whether proposed alterations to the premises should be approved; whether any activity on, or the noise emanting from, licensed premises or the behaviour of persons making their way to or from licensed premises is unduly offensive, annoying, disturbing or inconvenient to any person who resides, works or worships in the vicinity of the licensed premises.

This amendment is part of a pattern of amendments that have been moved and are designed to strengthen the rights of the public, particularly residents, in the vicinity of licensed premises. Many representations have been made to me from various areas in the metropolitan area in particular, and there may well be some country areas, supporting the strengthening of powers to protect members of the public and residents. Spelling them out in the Bill will make it more likely that the licensing authority, whether the Commissioner or the court, will take these matters into account. For these reasons I have moved the amendment.

**The Hon. C.J. SUMNER:** This amendment is opposed. A council already has a right to object to the granting of a licence on these grounds. What the honourable member is doing is saying that without lodging an objection (in other words, without making any pleadings to this effect) a council can intervene at any stage of the proceedings and object to the granting of a licence on the grounds that there may be noise, annoyance, disturbance, etc. If a council wishes to object in that way it should surely lodge an objection as it is entitled to do.

The honourable member gives a council a *carte blanche* capacity to intervene at any stage of the proceedings without having given notice to the parties of its intention to object on these grounds. I oppose the amendment on that ground. If a council or anyone else wishes to object to the granting of a licence then they should do just that—file an objection. Then they can appear and make their submissions and the parties know where they stand. But, to give an open door *carte blanche* right of intervention at any stage without giving notice of it is not desirable. With the amendments moved by members opposite they are running a very serious risk that what was designed to be a Bill to facilitate the granting of liquor licences and to cut out the bureaucracy involved, and to attempt to liberalise and deregulate the industry—that legislation could have the opposite impact because of the efforts of members opposite.

While the review team certainly supported the rights of residents to get before the courts and the licensing authority expeditiously, if too many of these unnecessary qualifications are placed in the Bill we will have a situation where the authority becomes more bogged down under this legislation than it has in the past.

[*Midnight*]

**The Hon. J.C. BURDETT:** That is a ridiculous argument. This Division sets out the rights of intervention and objection. The ability of a council to object is already in the Bill. The Attorney says that what I am doing will enable a council to intervene without giving notice. Clause 82 (2) states:

A council in whose area licensed premises or premises proposed to be licensed are situated may intervene in proceedings . . .

All I am trying to do is extend the grounds. Any suggestion about it being wrong to give a council the power of intervention is ridiculous because it is already in the Bill. I want to broaden the grounds for the protection of the public interest. To me this is a most important matter. The Attorney says that this will make the granting of licences too difficult and mess up the intent of the Bill to free things up, but I do not believe that that is so. The public have been quite vocal about this from time to time. When I was Minister I received a number of deputations and representations from residents who were upset, apparently justifiably so, about conduct in the vicinity of licensed premises. At times I was embarrassed that nothing seemed to be able to be done about it. Many of my colleagues, particularly those in the other House who represent certain areas, constantly receive complaints from constituents and complain on their behalf that nothing seems to be able to be done about unseemly, inconvenient and annoying behaviour in the vicinity of licensed premises. This amendment seeks to use an existing provision in the Bill—the power to intervene—and extend it to a situation that protects the public interest, which is most important to many members of the public.

The Committee divided on the amendment:

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

Noes (9)—The Hons. G.L. Bruce, B.A. Chatterton, C.W. Creedon, M.S. Feleppa, I. Gilfillan, Anne Levy, K.L. Milne, C.J. Sumner (teller), and Barbara Wiese.

Pairs—Ayes—The Hons. L.H. Davis and R.C. DeGaris. Noes—The Hons. Frank Blevins and J.R. Cornwall.

Majority of 1 for the Noes.

Amendment thus negatived; clause passed.

Clause 83 passed.

Clause 84—'General right of objection'.

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

Page 36—

Line 40—Leave out "adequately".

Line 44—After "licence" insert ", or for the conversion of a temporary licence into an ordinary licence".

Page 37 line 2—After "licence" insert ", or for the conversion of a temporary licence into an ordinary licence".

Amendments carried; clause as amended passed.

Clause 85 passed.

Clause 86—'Licence fee.'

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

Page 38—

Line 15—After "assessing" insert "for the purposes of this Act".

Line 16—Leave out "for the purposes of subsection (2) *(a)*".

Line 19—After "payable" insert "by the holder of a retail licence".

Line 33—After "payable" insert "to the holder of a wholesale licence".

Line 38—Leave out "retail storekeeper's" and insert "retail liquor merchant's".

Lines 40 to 42—Leave out subclause (8) and insert subclause as follows:

(8) For the purpose of assessing a licence fee for a wholesale licence—

*(a)* liquor sold at auction in pursuance of a limited licence;

*(b)* liquor otherwise sold in pursuance of a limited licence;

*(c)* liquor sold to a person who holds a limited licence and no other licence;

and

*(d)* liquor of a particular type sold to a person who holds a licence but not one that authorises the sale of liquor of that type, shall be conclusively presumed not to have been sold to a liquor merchant.

**The Hon. L.H. DAVIS:** I accept the fact that the fees set for retail, wholesale and producer's licences are effectively the same as exist now, but I wonder whether the Government has assessed the likely impact of changes to trading hours. Does the Government believe that there will be an increase in licence fees collected as a result of hotels opening on Sundays? Of course, there may be some additional impact, given the prospect of retail liquor merchants also being able to trade on Sundays. I think all members would be aware that the collection from licence fees has effectively doubled in the past three years, and I think some $3 million is expected to be raised in the current financial year.

**The Hon. C.J. SUMNER:** The review report indicates that it is not expected that there will be an overall increase in the consumption of liquor and, therefore, there would not be an overall increase in the licence fees collected.

**The Hon. L.H. DAVIS:** Under the present Act BYO restaurants are subjected to a sliding scale fee arrangement between $100 and $300. BYO restaurants are exempted from licence fees under the clause. In a submission received from the South Australian Restaurant Association today it is noted that BYO restaurants are not subject to the payment of any fee. I refer to a letter signed by Paul Sandercock, President of the South Australian Restaurant Association as follows:

We think that since the Licensing Authority will expend its resources in adjudicating in the matter of an application for a BYO licence, it is fair and reasonable that an annual fee be imposed. This levy would go towards the superintendence of the BYO premises by officers of the Licensing Authority, in order to maintain a uniform standard of service and premises.

I introduce that matter and would appreciate a comment from the Attorney-General.

**The Hon. C.J. SUMNER:** A minimum fee will be imposed for BYO restaurants.

Amendments carried; clause as amended passed.

Clause 87—'Licence fee where licence granted during the course of a licence period.'

**The Hon. PETER DUNN:** In the case of a restricted licence becoming unrestricted, what happens to the licence fee when the club purchases liquor direct from the brewery? Is that fee established three months down the track or is there an immediate adjustment to the hotel licence and to the then unrestricted licence?

**The Hon. C.J. SUMNER:** If a club buys from a retail source, there is no fee. If the purchase is made direct from the wholesalers, a fee will be paid, but the fee will be picked up later once the purchases are assessed.

**The Hon. PETER DUNN:** I refer to a restricted club which purchases liquor from a hotel and then changes to a wholesaler. It is reasonable to assume that the hotel will not be selling the amount of alcohol it sold previously, and I understand that hotels pay 11 per cent. For example, a hotel might cut back from 20 kegs to 10 kegs. Does the unrestricted club pick up that licence fee immediately, or does it pay it further down the track, and does the hotel pay a lesser licence fee because its turnover is less?

**The Hon. C.J. SUMNER:** Eventually a lesser licence fee would be assessed. It would not be picked up until the expiration of a period—

**The Hon. Peter Dunn:** Three months?

**The Hon. C.J. SUMNER:** It would be longer than that. It would not be picked up until the licence fee is assessed again.

Clause passed.

Clauses 88 to 91 passed.

Clause 92—'Estimate by Commissioner on grant of retail or wholesale licence.'

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

Page 40—

Line 24—Leave out "to" and insert "by".

Amendment carried; clause as amended passed.

Clause 93 passed.

Clause 94—'Reassessment of licence fee.'

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

Page 41—

After line 9—Insert paragraph as follows:

*(ab)* if the original assessment was made on the basis of information later found to be false or incomplete;.

Amendment carried; clause as amended passed.

Clause 95—'Review of Commissioner's assessment.'

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

Page 41—

Line 18—After "applies" insert "to the Court".

Amendment carried; clause as amended passed.

Clauses 96 to 100 passed.

Clause 101—'Returns.'

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

Page 43—

After line 30—Insert "and containing such other information as may be prescribed".

Amendment carried; clause as amended passed.

Clauses 102 to 104 passed.

Clause 105—'Prohibition of profit-sharing arrangements.'

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

Page 45—

Line 30—After "licence" insert "or provides that the remuneration of the employee is to vary by reference to the quantity of liquor sold".

Amendment carried; clause as amended passed.

Clause 106 passed.

Clause 107—'Supply of liquor to lodgers.'

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

Page 46—

Line 8—After "guests" insert "of the lodger".

Line 14—After "hotel licence" insert "or a general facility licence".

Amendments carried; clause as amended passed.

Clause 108—'Record of lodgers.'

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

Page 46—

Line 17—Leave out "or a residential licence" and insert ", a residential licence or a general facility licence that authorises the sale of liquor to lodgers".

Amendment carried; clause as amended passed.

Clause 109 passed.

Clause 110—'Restriction on consumption of liquor in, and taking liquor from, licensed premises.'

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

Page 47—

Line 11—After "that" insert "within fifteen minutes of the conclusion of the relevant authorised trading hours".

Lines 16 and 17—Leave out "within the relevant authorised trading hours or within a period of fifteen minutes thereafter".

Line 19—After "that" insert ", within thirty minutes of the conclusion of the relevant authorised trading hours".

Lines 24 and 25—Leave out "within the relevant authorised trading hours or within a period of thirty minutes thereafter".

After line 32—Insert "or".

Lines 35 to 37—Leave out all words in these lines.

After line 37—Insert subclause as follows:

(7) No offence is committed under this section by reason of the consumption of liquor on licensed premises by an employee of the licensee.

Amendments carried; clause as amended passed.

Clause 111 passed.

Clause 112—'Complaint about noise, etc., emanating from licensed premises.'

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

Page 48—

Line 12—Leave out "unduly disturbs or inconveniences any person" and insert "is unduly offensive, annoying, disturbing or inconvenient to any person".

Lines 18 and 19—Leave out "to suffer from the disturbance or inconvenience" and insert "to be adversely affected by the subject matter of the complaint".

This clause is the citizen's right to complain. The clause in the Bill is a good one, giving this fairly informal power to complain. One must remember that if the complaint is made there is a short and sensible procedure in the Bill to determine it. However, the amendment makes it better.

Amendments carried; clause as amended passed.

Clause 113 passed.

Clause 114—'Name of licensee, etc., to be displayed.'

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

Page 49—

Line 8—Leave out "and".

After line 9—Insert—

and

*(d)* if the licence is a restaurant licence subject to the endorsement "B.Y.O."—an indication that the licence is subject to that endorsement.

Amendments carried; clause as amended passed.

Clause 115—'Copy of licence to be kept on licensed premises.'

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

Page 49—

After line 14—Insert subclause as follows:

(1a) The licensee, or a manager of the business conducted in pursuance of the licence shall, if so required by an inspector or a member of the police force, produce the copy of the licence for inspection.

Lines 15 and 16—Leave out subclause (2) and insert subclause as follows:

(2) A person who fails, without reasonable excuse, to comply with subsection (1), or a requirement under subsection (1a), is guilty of an offence.

Amendments carried; clause as amended passed.

Clause 116—'Sale or supply of liquor to minors.'

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

Page 49—

Line 27—After "years" insert "and that person was actually of or above the age of seventeen years".

**The Hon. K.T. GRIFFIN:** I cannot understand why the Attorney has 17 in the amendment because the defence to a charge of selling or supplying liquor to a minor—

**The Hon. C.J. Sumner:** It's reinstating the existing law. There must be reasonable grounds that he was over the age of 18 and in fact was over the age of 17.

**The Hon. K.T. GRIFFIN:** You have 'of or above the age of 17,' so it is not over the age of 17.

**The Hon. C.J. Sumner:** Yes, it is. It is a tighter provision.

**The Hon. K.T. GRIFFIN:** If it maintains the *status quo,* I am willing to accept it.

Amendment carried.

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

Page 49—

After line 38 insert subclause as follows:

(3a) Where a person, acting at the request of a minor, purchases liquor on behalf of the minor on licensed premises, that person and the minor are each guilty of an offence.

The amendment deals with the purchase of liquor on behalf of a minor on licensed premises where the person is acting at the request of a minor.

Amendment carried.

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

After line 38—Insert subclause as follows:

(3b) This section does not apply to the gratuitous supply of liquor to, or the consumption of liquor by, a minor who—

*(a)* is a child of—

(i) the licensee;

(ii) a manager of the licensed premises; or

(iii) an employee of the licensee; and

(b) is resident on the licensed premises.

Amendment carried; clause as amended passed.

Clause 117—'Area of licensed premises may be declared out of bounds to minors.'

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

Page 50—

Line 4—After "minor" insert "(not being a child of the licensee or a manager of the licensed premises)".

Line 5—After "minors" insert ", and in respect of which notices have been erected,".

Amendments carried; clause as amended passed.

Clause 118—'Notice to be erected.'

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

Page 50—

After line 24 insert subclause as follows:

(2) A licensee who fails to comply with this section is guilty of an offence.

Amendment carried; clause as amended passed.

Clause 119—'Offences relating to minors.'

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

Page 50—

Lines 29 to 36—Leave out subclause (3) and insert subclause as follows:

(3) This section does not apply to the gratuitous supply of liquor to, or the obtaining or consumption of liquor by, a minor who—

*(a)* is a child of—

(i) the occupier of the prescribed premises;

(ii) the manager of the prescribed premises;

(iii) an employee of the occupier of the prescribed premises;

and

*(b)* is resident on the prescribed premises.

Amendment carried; clause as amended passed.

Clause 120—'Evidence of age may be required.'

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

Page 50—

Line 38—Leave out "licensed" and insert "prescribed".

Page 51—

Lines 10 and 11— Leave out paragraphs (a) and (b) and insert paragraphs as follows:

*(a)* the occupier of the prescribed premises or an employee of the occupier;

*(b)* a manager of the prescribed premises;.

Amendment carried; clause as amended passed.

Clause 121 passed.

Clause 122—'Grounds for disciplinary action.'

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

Page 52—

Lines 19 to 21—Leave out paragraph (i).

Lines 31 to 33—Leave out subclause (5).

The clause provides:

(1) The court may on complaint lodged under this section, take 40 disciplinary action against a licensee.

(2) The complaint must allege that proper cause for disciplinary action exists and set out the grounds on which that allegation is made.

(3) There shall be proper cause for disciplinary action against a licensee if—

And paragraph (i) provides:

a contravention or failure to comply with an industrial award or agreement occurs in the course of the business conducted on the licensed premises.

Subclause (5) provides:

A complaint founded on subsection (3) (i) may be lodged with the court only by an association registered under the Industrial Conciliation and Arbitration Act, 1972.

This provision is not in the present law and I see no reason for it to be in the new law. It is not a function of the licensing legislation to police industrial awards and, in any event, the inclusion in this provision in the Bill would place the licensee in double jeopardy.

**The Hon. C.J. Sumner:** Nonsense!

**The Hon. K.T. GRIFFIN:** It would. He is liable to action under the industrial award as well as the Licensing Act. We have heard arguments from the Minister of Correctional Services concerning prisoners breaching prison disciplinary regulations not having remission matters cancelled for good behaviour because they are placed in double jeopardy if the prisoner is being prosecuted under other provisions for offences. One cannot have it both ways. I do not believe the situation about which the Minister of Correctional Service argues is a matter of double jeopardy, but it is in a different context from this matter. It is not on to apply two penalties and I oppose the inclusion of these provisions, which my amendment seeks to remove.

**The Hon. K.L. MILNE:** I support the Hon. Mr Griffin's amendment. It is unfortunate that this aspect has crept into the Bill. Union politics have come into the legislation. It is not the thing to do. It is not the place to put it and it is not the way for them to behave. I wish people would not do this kind of thing, which is unnecessary bullying. Licensees have enough things to be careful of.

**The Hon. C.J. Sumner:** You do not believe that licensees should be careful about working conditions?

**The Hon. K.L. MILNE:** Of course they ought to be careful, but that is under the Industrial Award.

*The Hon. C.J. Sumner interjecting:*

**The Hon. K.L. MILNE:** The unions have their redress—it is double jeopardy and it is not fair. The procedure is totally different in paragraph (i) from that in paragraphs (a) to (h), which deal with how to run premises—and paragraph (i) is different.

The Attorney can take it out of the union rules or leave it here, but the matter cannot be dealt with in both areas. This provision is in the wrong place and I am sorry it was ever allowed. I oppose it.

**The Hon. C.J. SUMNER:** This sensible proposition should be supported. The Government feels strongly about it and will persist with the clause. To say that it is double jeopardy and that the other matters encompassed in subclause (3) are not double jeopardy is nonsense.

If the honourable member argues that double jeopardy is involved then he should argue with regard to all the criteria under which disciplinary action can be taken. If a licensee has failed to comply with the conditions of his licence and is convicted of the indictable offence of shoplifting a packet of Smarties, he is then liable for disciplinary action and to have his licence cancelled under this clause. That is double jeopardy.

**The Hon. K.T. Griffin:** It relates to whether he is a fit and proper person.

**The Hon. C.J. SUMNER:** Yes, that is right. If he is convicted of unlawful gaming matters—he could then be subject to double jeopardy, that is, disciplinary action against him under this clause.

If the safety, health and welfare of persons who resort to the premises are endangered by an act of neglect of the licensee then that, again, may lead him to be subjected to either civil proceedings or possibly criminal proceedings. He is subjected to those criminal proceedings and, furthermore, is subjected to disciplinary action under this section. In a similar vein, the contravention of an industrial award may well be a criminal offence.

**The Hon. K.L. Milne:** That is unlikely.

**The Hon. C.J. SUMNER:** It is most likely that, in fact, the underpayment of wages that an employer must pay in accordance with an award is a criminal offence under our legislation. That is not unlikely, that is a fact of life, and the law.

**The Hon. K.T. Griffin:** It is a statutory offence.

**The Hon. C.J. SUMNER:** The honourable member says that it is a statutory offence. The fact is that prosecutions for non-payment of wages and for breaches of industrial awards are taken every day of the week on complaint. What the honourable member is doing is drawing a distinction and saying that, if it is a criminal matter such as picking up a block of chocolates in Coles supermarket, that may render the licensee an unfit person to be a licensee.

**The Hon. K.L. Milne:** That is a police matter, surely?

**The Hon. C.J. SUMNER:** The fact is that a breach of an industrial award is a criminal offence. The honourable member apparently does not understand the law. If there is an industrial award requiring an employer to make payments to an employee at a certain rate and the employer does not do that, then he is guilty of an offence under the law of the land—that is clear; there is no argument about that. Every lawyer in the Parliament will agree with this. What the honourable member is saying is that a licensee who is guilty of a minor indictable offence such as taking a packet of chocolates from Coles may be subjected to disciplinary action under this clause but that an employer, a licensee, who fails to pay correct wages for two or three years that are applicable under an award (wages that may amount of several thousand dollars) has not provided grounds for disciplinary action under this clause. That is absurd.

A minor indictable offence will bring the weight of disciplinary action against a licensee, but the quite serious offence of depriving his employees of their correct wages, which may go on for a longer period of time, is not subject to disciplinary action. That is quite inconsistent as they are both criminal offences, one a breach against what I call the criminal law *per se*, and the other a breach against the industrial awards of this country, which constitutes a criminal offence.

**The Hon. K.L. Milne:** I do not deny that.

**The Hon. C.J. SUMNER:** The honourable member is drawing a distinction between the block of chocolate and the employer—

**The Hon. K.L. Milne:** You cannot deal with the block of chocolate anywhere else, but you can deal with this somewhere else.

**The Hon. C.J. SUMNER:** The matter can be dealt with in the criminal court. A person is prosecuted for larceny in the Magistrates Court and in addition that is a ground for disciplinary action in the same way as the non-payment of wages is a matter that can be taken up and pursued in other courts and could also, and should also, be a ground for disciplinary action. I am astonished that honourable members opposite, once again, bring out their blind spot with respect to unions and industrial conditons. There is a clear analogy between those situations. If there is double jeopardy in the situation that occurs with respect to contravention of industrial awards, there is double jeopardy with three or four of the other clauses in this section. I do not believe that an employer should not be subjected that disciplinary action if he behaves in blatant contravention of the industrial laws of this country and if he blatantly avoids the payment of correct wages to his employees.

**The Hon. K.L. Milne:** Nobody is denying that.

**The Hon. C.J. SUMNER:** Such persons should be subjected to discipinary action just as they should be subjected to the potential for disciplinary action if they are guilty of an indictable offence. The non-payment of correct wages may be a much more serious offence than a very minor larceny.

**The Hon. K.L. Milne:** I agree with all of that, but it is in the wrong place is what I am saying.

**The Hon. C.J. SUMNER:** The Government is quite firm about this matter and will not brook any amendment.

**The Hon. G.L. BRUCE:** I support the Bill and oppose the amendments. What intrigues me is that we are looking at a clause that says that, if a person is convicted on unlawful gaming in respect of events that take place on licensed premises, disciplinary action can be taken against them, which is double jeopardy. What gets me is that that person is allowed to gamble his staff wages away. There is a hotel in Hindley Street that was going through the bankruptcy process. Week after week staff lined up and got no wages. Every action was taken to stop that hotel trading because staff were brought in for a week, not paid, and then a new lot of staff came in. This went on for weeks and weeks and could not be settled in the Industrial Court. When it was settled there was no money in the kitty. No action could be taken to have the people involved looked at, yet they were not proper people to be running that hotel. If those people could knowingly and wilfully continue doing such a thing, they should be prosecuted. If they can get away with such things, some people will do so. If this continues for month after month some action should be taken. People say that if there is gaming on the premises they should be prosecuted yet they should be allowed to gamble with thousands of dollars of wages without any action being taken.

The Committee divided on the amendment:

Ayes (11)—The Hons J.C. Burdett, M.B. Cameron, L.H. Davis, Peter Dunn, I. Gilfillan, K.T. Griffin (teller), C.M. Hill, Diana Laidlaw, R.I. Lucas, K.L. Milne, and R.J. Ritson.

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

Pair—Aye—The Hon. R.C. DeGaris. No—The Hon. J.R. Cornwall.

Majority of 3 for the Ayes.

Amendment thus carried; clause as amended passed.

Clauses 123 to 125 passed.

Clause 126—'Power to remove persons guilty of offensive behaviour on licensed premises.'

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

Page, 54—

line 28—Leave out 'A member of the police force' and insert 'An authorised person'.

Amendment carried.

**The Hon. J.C. BURDETT:** I have an amendment on file, but I will not move it on the understanding that the Attorney-General will move his amendment after line 32.

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

Page 54—

After line 32—Insert subclause as follows:

(1a) A member of the police force shall, at the request of a licensee or a manager of licensed premises, exercise the power conferred by subsection (1) to remove from licensed premises a person who is behaving in an offensive manner or is intoxicated.

After line 37—Insert subclause as follows:

(4) In this section—

'authorised person' means—

*(a)* the licensee or an employee of the licensee;

*(b)* a manager of the licensed premises;

or

*(c)* a member of the police force.

Amendments carried; clause as amended passed.

Clauses 127 to 129 passed.

New clause 129a—'Prohibited areas'.

**The Hon. J.C. BURDETT:** I move to insert the following new clause:

129a. (1) A council may, by resolution, declare any public place within its area to be a prohibited area for the purposes of this section.

(2) Where a public place is declared to be a prohibited area under this section, the council shall cause notices, in a form prescribed by regulation, to be erected—

*(a)* where the place is enclosed by a fence or wall—at each entrance to the place;

*(b)* in any other case—in prominent positions in or adjacent to the place.

(3) A person who consumes liquor, or has liquor in his possession, in a prohibited area is guilty of an offence.

(4) In this section—

'area' means the area in relation to which a council is constituted and, in relation to the Outback Areas Community Development Trust, means that part of the State that is not within the area of a council:

'council' includes the Outback Areas Community Development Trust:

'public place' means a place (not being licensed premises to which the public has access (whether or not admission is obtained by payment of money).

The amendment is appropriate because conditions vary very much from area to area and from place to place, and the local governing body is more equipped than anyone else to know the feelings of its ratepayers. Ratepayers can place a very real and proper pressure on councils to carry out their wishes in this regard. It can be difficult for any other kind of authority to ascertain the wishes of residents in a way which can be done by a local governing body.

In the view of the Opposition it is appropriate to enable the council to declare any public place within its area to be prohibited for the purposes of this provision. Several times during debate Colley Reserve and the Glenelg riot have been mentioned. This provision enables the council to take its part in declaring an area to be prohibited. It enables a council, which is the closest form of Government to the people in its own area, to take its part and prohibit an area for the purpose of the section, if the amendment is carried. If I recall correctly, I think the Hon. Mr Milne in his second reading contribution supported a similar course. I believe that the amendment is necessary to strengthen an already good and strong Bill. It does not adversely affect any area of the liquor trade and, in fact, I believe that it would have the support of hotels and most areas of the liquor trade.

**The Hon. C.J. SUMNER:** I oppose the amendment. There is already power in the Bill to prescribe premises, which includes land, as areas where people may not consume

liquor. 'Regulated premises' means unlicensed premises and includes land. I believe it is clear that, where premises are prescribed, as they may be, and they include land under the definition 'regulated premises', the person who consumes liquor on those premises may be guilty of an offence.

I do not believe that there is a need to give that power to local governments. That would result in a diversity of administration of the legislation throughout the State, depending on the whim of the council concerned. Giving it to councils could have undesirable and serious effects. I do not want to overemphasise the problem, but, clearly, Aboriginal people are used to drinking in public places. Some people find that offensive and no doubt if a local government found that it could move in and shift the people out of the town. I suppose that it could shift them out of Victoria Square, where they are not doing anyone any harm. Similar circumstances apply in other parts of the country.

If there is a problem it should be addressed by the Government by prescribing premises, which would make it an offence for liquor to be consumed in those premises, and that would apply to land. That is a less potentially emotional way of getting prohibition of consumption of liquor on public premises when that is deemed necessary.

**The Hon. J.C. BURDETT:** The definition of 'regulated premises' is not extensive enough. It is necessary and desirable to leave the power in the hands of the local governing body. In these 15 pages of amendments that have been introduced by the Government it is difficult to find out what the Bill in its present form says.

**The Hon. C.J. Sumner:** It hasn't been touched.

**The Hon. J.C. BURDETT:** I will come to that later. The definition of 'regulated premises' as proposed in the amendments does not seem to be sufficient and does not take away the situation that a council will best know the areas where the consumption of liquor ought to be prohibited and the times at which it ought to be prohibited.

**The Hon. K.T. GRIFFIN:** The definition of 'regulated premises' is not adequate. Although it includes paragraph *(d)*, it does not mean that one can prescribe any kind of premises. It would have to be within the characterisation of the regulated premises referred to in paragraphs *(a)*, *(b)* or *(c)*.

*The Hon. J.C. Burdett interjecting:*

**The Hon. K.T. GRIFFIN:** By regulation, and there would be a very good argument that if one prescribed an open space where there might be a free rock concert, for example, that would be *ultra vires*. The mere reliance on paragraph *(d)* is not adequate to overcome the very real problem of a regulation being declared to be *ultra vires* by the court.

**The Hon. K.L. MILNE:** We are talking at cross purposes. There may be nothing wrong with the definition of 'prescribed premises', and the procedure for prescribing the premises, but that takes a long time. What the honourable member is getting at, and I would support him, is that local councils, which are as responsible as everybody else, cooperate with the police in circumstances where there might be trouble—and it will not get any less than it has been in the past.

**The Hon. Anne Levy:** No time limit is put on it.

**The Hon. K.L. MILNE:** We may put a time limit on it: I would not mind that. It is the urgency of wanting to prescribe something. Colley Reserve at Glenelg has been used perhaps too much as an example, but the council would have prescribed that area if it knew that there was going to be a demonstration or a whole lot of carrying on. With a special meeting it could do it in 24 or 48 hours.

**The Hon. Anne Levy:** There is nothing there about revoking it. Once moved, it applies forever, according to this.

**The Hon. K.L. MILNE:** That can be inserted in another place, but I can see the value of the local council's involvement. Obviously, it would do it in consultation with the police, or it would be likely to prescribe some area.

*The Hon. Anne Levy interjecting:*

**The Hon. K.L. MILNE:** They do not have to. They are responsible in their own right, but that is what would happen. The police on many occasions may have asked the council to protect some area, but it cannot do it. This is an excellent thing to try, and if refinements can be made in another place I would support that. This is a good amendment and it can only be to the benefit of the liquor industry in the long run.

**The Hon. ANNE LEVY:** I oppose this amendment as it really negates the whole philosophy behind this legislation. Parliament has decided that the sale and consumption of liquor requires control, and it is controlled by Parliament. The whole of this legislation is universal throughout the State and is being determined by Parliament. Suddenly, in this amendment the control of the consumption of liquor in an area will be given to the local council, divorced from Parliament, not obliged to consult with anybody, being able to do it off its own bat by a simple motion, with no means of objection by anyone and no appeal to anyone.

**The Hon. K.L. Milne:** It has nothing to do with licensed premises.

**The Hon. ANNE LEVY:** My home is not a licensed premise, either, but if the council passed a motion that no grog was to be consumed in my home I would have no means of appeal. Parliament would be negating its responsibility, and throughout the rest of the Bill there are careful processes.

**The Hon. K.L. Milne:** That is delegation.

**The Hon. ANNE LEVY:** It is irresponsible delegation. There is no provision for appeal. Everywhere else in the Bill complaints can be subject to appeals up to the Supreme Court. Here, there is no mechanism of appeal to anyone or at any time. It is a complete denial of natural justice to have no appeal mechanism and no consultation mechanism. It splits the whole State into different areas where all sorts of different conditions can apply, whereas in every other area of liquor in this State we have it carefully considered by Parliament with built-in safeguards, and State authorities will administer the legislation for the whole State without fear or favour. Suddenly, one section would pass over to a local council so that there could be vast differences across the State with no appeal mechanism and no consultation possible, a situation that flies in the face of the whole philosophy of the rest of the legislation. I oppose it strongly.

**The Hon. G.L. BRUCE:** I also rise to oppose the amendment. What concerns me is that councils could take a beach and say, 'This is a public beach', and put up a sign saying 'No grog on the beach'. On the next beach people could drink: it would not be consistent.

**The Hon. R.I. Lucas:** What about nude bathing?

**The Hon. G.L. BRUCE:** That is a special beach allocated for that purpose. It is a one-off. We would have a piebald situation where councils could put a sign up on a beach and decide to leave it forever. My right of appeal as a person using that public place, even though it comes into that council's area, is non-existent. No doubt, the honourable member is thinking of the public arena in the centre of Port Augusta and would have the council ban drinking there.

**The Hon. Anne Levy:** Or Victoria Square.

**The Hon. G.L. BRUCE:** Or places like that. The honourable member is using a sledgehammer to crack a walnut. Specific problems should be dealt with in that context, not in overall, sweeping legislation that takes in everything and everyone. It is worth a second thought. We should not lose control of the Licensing Act and let it go into the hands of local government. I oppose the amendment.

New clause inserted.

Clause 130—'Penalties.'

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

Page 56—

Line 4—After 'he is' insert ', or was at the time of the offence,'.

Amendment carried.

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

Page 56—

Line 7—Leave out 'five hundred' and insert 'two thousand'.

Five hundred dollars seems to be an inadequate penalty: we are looking to $500 for breaches of regulations. There are some serious offences in the Bill that do not have other penalties attached to them. This would seem to be a reasonable figure for a licensee to bear for a breach of the Act.

Amendment negatived; clause as amended passed.

Clause 131 passed.

Clause 132—'Offences by bodies corporate.'

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

Page 56—

Line 15—Leave out "Where" and insert "Subject to subsection (2), where".

After line 22—Insert subclause as follows:

(2) It is a defence to a charge of an offence against subsection (1) for the defendant to prove that he could not, by the exercise of reasonable diligence, have prevented the commission of the offence by the body corporate.

There is no defence for a director of the body corporate.In most of the other legislation, where a body corporate is convicted of an offence and directors have similar liability to that of a body corporate, we provide for a defence for the director who is able to prove that he could not by the exercise of reasonable diligence have prevented the commission of the offence by the body corporate. That is a reasonable provision considering some of the penalties that are likely to be applicable to breaches. It is fair and reasonable, and consistent with other legislation.

**The Hon. C.J. SUMNER:** This amendment is not supported by the Government. There needs to be strict liability in this area. Liquor is a potentially harmful substance and the sale is subject to abuse because of possible quick profits. It is incumbent on directors to take a measure of social responsibility for their actions and not avoid responsibility on the basis that they live elsewhere and take no active part in the business. It is not appropriate to have this sort of defence in liquor licensing legislation.

The directors of the company should not be able to get off scot free when there are abuses of the liquor licensing laws over which they should have control. The fact is that the honourable member's amendment will provide a loophole for people to escape liability when they should be responsible for their actions. Companies and directors are valid commercial vehicles, but the sale of liquor is not a normal commercial activity. If the directors are held responsible there may be more chance of managers, employees and, thereby, licensed premises being properly directed.

In this legislation we are trying to ensure that licensed premises are properly directed. It is strange that the honourable member, whilst he has advocated the provisions for local resident participation in the licence procedures, when it comes to this point is prepared to allow directors a potential loophole to get out of their responsibility under the Act.

The fact is that the directors of the company, if it is licensed premises run by the company, should take an active interest in what is going on and should not be able to get out of their responsibilities by a defence such as this. I believe that if the obligation is placed fairly and squarely on the directors then there is a better chance that licensed premises will be conducted properly and in accordance with the Act. I also point out that under the existing legislation (and this is surely reasonably persuasive for the honourable member) directors, managers and shareholders are responsible with no defence. That is in section 82 (9) of the existing Act. All we are doing in this legislation is picking up what is in the existing Act. To pass the honourable member's amendment would be a retreat from the sorts of controls that exist in the legislation. I find the position put by the honourable member to be somewhat inconsistent with the previous amendments he put, which were designed, I believe, to ensure proper control in licensed premises and to ensure that the law was upheld.

**The Hon. K.T. GRIFFIN:** I do not see anything inconsistent with my earlier position. I was endeavouring to ensure with this amendment that there is some equity. I do not disagree with the comments that the Attorney-General has made about the need to have very active policing and to ensure that corporations comply with their obligations. The point that he is missing is that in fact it is the corporation that is convicted and, if the directors are unable to show that they could not by the exercise of reasonable diligence have avoided commission of the offence by the body corporate, then they too are liable.

*The Hon. C.J. Sumner interjecting:*

**The Hon. K.T. GRIFFIN:** We are looking at this in the context of modern legislation.

**The Hon. C.J. Sumner:** So directors escape their responsibilities.

**The Hon. K.T. GRIFFIN:** It is not a loophole at all: it is a reasonable measure of equity.

**The Hon. C.J. Sumner:** You are prepared to let directors off and not penalise them when they are exploiting their workers. That is an incredible double standard.

**The Hon. K.T. GRIFFIN:** There is no relationship between the two. The Attorney is suffering from the fact that it is now 1.20 a.m. I have made my point and stick with the amendment.

**The Hon. K.L. MILNE:** It is rather unfair to be debating this matter at 1.20 a.m. when the amendment came to my desk at about 10 o'clock. There is something bothering me and I cannot understand what it is. Can the Attorney say what is the normal procedure regarding liability of directors in any other company apart from one dealing in liquor? What is the usual treatment of directors of a limited liability company when the corporate body commits an offence?

**The Hon. C.J. SUMNER:** All I can say to the honourable member is that this loophole does not appear in the existing Licensing Act so it has the potential for the directors to escape responsibility for the actions of their company if the amendment put forward by the honourable member is accepted. I am not saying that a clause similar to that does not exist in some legislation because it does, but it does not exist in all legislation and certainly does not exist in the existing Licensing Act. We make the point that it is a considerable privilege to be able to sell liquor as a lot of money can be and is made out of it.

I believe that because of that, and because of the sorts of comments that have been made by honourable members opposite during the course of the debate about the importance of the control of licensed premises because liquor is sold there and because liquor has an effect on people's behaviour, generally for good, but sometimes for the worse, that is what has to be controlled. I cannot see why a fuss is made about this particular clause when introduction of this Bill by the Government in fact narrows the responsibility that currently exists. It currently extends to shareholders, but we are saying directors and managers should be responsible: responsibility should be sheeted home to the people who run the company and get the profits out of it.

Amendment negatived; clause passed.

Clause 133—'Evidentiary provision.'

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

Page 56—after line 30—Insert subclause as follows:

(2) In any legal proceedings, a document apparently certified by the Commissioner to be a licence, certificate or other document issued under this Act, or to be a copy of a licence, certificate or other document issued under this Act, shall be accepted as such in the absence of proof to the contrary.

Amendment carried; clause as amended passed.

Clauses 134 to 137 passed.

Clause 138—'Regulations.'

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

Page 57, line 22—After 'is' insert ', or was at the time of the offence,'.

Amendment carried; clause as amended passed.

Schedule.

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

Clause 1—Insert at the end of subclause (6) 'or in respect of the Rising Sun Inn'.

Clause 4—Leave out 'adequately' from subclause (7).

Clause 6—Leave out subclause (7) and insert subclause as follows:

(7) Where—

*(a)* before the appointed day a person purchased, or assumed the conduct of, a business conducted in pursuance of a vigneron's licence;

and

*(b)* that person holds a producer's licence that is converted from a vigneron's licence under this clause,

that person may sell liquor that was, at the time he purchased or assumed the conduct of the business, part of the trading stock of the business as if it had been produced by him.

Clause 7—Leave out 'section 42 *(b)*' from subclause (2) and insert 'section 40 (1) *(b)*'.

Clause 11—Insert the following subclauses after subclause (2):

(3) Where a retail storekeeper's licence is converted into a retail liquor merchant's licence under this clause—

*(a)* trading hours fixed under section 22 (1) of the repealed Act continue in operation subject to this Act as if fixed under section 37 (2) of this Act;

and

*(b)* a day fixed under section 22 (6) *(b)* of the repealed Act as a day on which late trading is permitted continues, subject to this Act, as a day on which late trading is permitted as if fixed under section 37 (3) *(b)* of this Act.

Clause 13—Insert the following paragraph in subclause (1) after paragraph *(j)*:

*(k)* the full publican's licence in respect of the Rising Sun Inn,.

Insert the following subclause after subclause (4):

(5) A statutory requirement to provide meals or accommodation that existed under the repealed Act and affected any of the licences referred to in subclause (1) continues in operation, subject to this Act, as a condition of the licence as if it has been imposed in pursuance of section 50 of this Act.

New clause 14a—Insert the following new clause after clause 14:

14a. A permit in force under section 131 of the repealed Act immediately before the appointed day continues in operation until the date on which it was due to expire as a consent under section 111 of this Act.

Clause 15—Leave out 'conditions imposed' and insert 'terms and conditions fixed or imposed'.

After 'certificates' insert ', permits'.

After 'continue in force' insert 'subject to this Act as if they had been fixed or imposed under this Act'.

Clause 18—After subclause (4) insert subclause as follows:

(5) If, on the appointed day, an application (not being an application for a licence) had been made under a provision of the repealed Act but had not been determined, the proceedings based on the application may be continued and completed as if the application were an application under the corresponding provision of this Act.

New clauses—Insert the following new clauses after clause 20:

21. A licensee is, for a period of two months from the appointed day, exempt from the requirements of sections 114, 115 and 118 of this Act provided that, during that period, the licensee complies with the corresponding requirements of the repealed Act.

22. (1) A delineation or definition of licensed premises made for the purposes of the repealed Act continues in operation, subject to this Act, as a delimitation of the licensed premises.

(2) An area fixed or declared under the repealed Act as an area in which liquor may be sold or supplied with or ancillary to *bona fide* meals continues, subject to this Act, as a designated dining area for the purposes of this Act.

(3) At any time within 12 months after the appointed day, the Commissioner may apply to the Court for re-definition of licensed premises, or a designated dining area, to which this clause applies in order to bring the licensed premises or the designated dining area into conformity with the requirements of this Act.

Amendments carried; schedule as amended passed.

Bill recommitted.

New clause 91.

**The Hon. L.H. DAVIS:** I move:

After clause 9 insert new clause as follows:

9a. (1) The Commissioner shall, on or before the thirty-first day of October in each year, submit to the Minister a report on the administration of this Act during the year ending on the preceding thirtieth day of June and information upon such other matters as the Minister may direct.

(2) The Minister shall cause a copy of a report furnished to him under subsection (1) to be laid before each House of Parliament within fourteen sitting days of his receipt of the report if Parliament is then in session, but if Parliament is not then in session, within fourteen days of the commencement of the next session of Parliament.

The provision for the Commissioner to be responsible to the Minister for the administration of this Act is set down in clause 6 (2).

However, there is no further provision requiring the Commissioner to report to the Minister on the administration of the legislation. When I forshadowed my amendment the Attorney said that he could not support it. I am disappointed with that response, because the Bill contains significant changes. It develops a new licensing structure, new trading hours, new administrative procedures, and there are the continuing and changing trends in the liquor industry as a whole. It is an industry of some significance in the economy of South Australia. We can look at many Acts of Parliament and see a similar provision. For example, the Ombudsman is required to report to the Minister, and that report is in turn tabled in Parliament. There is no requirement in the Bill for the Commissioner to report. I think that that is a deficiency of the Bill which should be rectified.

**The Hon. C.J. SUMNER:** I do not think there is a need for this obligation to be placed on the Licensing Commissioner. There were significant amendments to the legislation in 1967, and no obligation was placed on the Superintendent of Licensed Premises to report on the operation of the legislation. I do not think that that has caused Parliament any problem over that period. In order to establish a case for a report to be tabled in Parliament one must establish an overwhelming public need or interest. The fact is that not all public servants produce reports to Ministers that are tabled in Parliament. The fact is that where there is a statutory officer who is responsible to the Minister for the administration of legislation, there is a clear responsibility that can be sheeted home.

If the liquor licensing laws are not working well, they can be criticised and discussed in Parliament and the Minister can be questioned. Information can be sought about the number of licences and the sorts of things that normally find their way into a report. It is really a matter of whether there is a public need for such a report, and the Government believes that there is not. It imposes a significant amount of work on Government departments, and I certainly agree that that is justfied and necessary in some circumstances.

Honourable members opposite on the one hand blithely say how important it is that there be efficiency in Government and that people be gainfully employed, but then they insist in a whole range of areas that there be reporting to Parliament. The honourable member must realise that the

production of a report perhaps takes two officers three months to prepare. They have to go back over all the material. Most of the information which comes before Parliament is useless as far as honourable members are concerned, because most of us do not read it.

The fact is that the Government has to crank up its resources for a considerable period of time in order to produce a report that is read by very few people. What is the overwhelming public interest that is served in the Liquor Licensing Commissioner producing a report containing a lot of factual information? That information can be obtained by a specific request, which means that there is no need every year to produce a report which places significant burdens on public servants. In this case I do not think it is necessary. I fully concede that it is necessary and desirable in the public interest to have more information about Government, but in this case I do not believe that the best way of achieving it is by compelling an annual report to be produced.

**The Hon. K.L. MILNE:** When Parliament requires reports, they are normally from organisations which receive and spend a great deal of public money. Whether or not the authority makes a profit is irrelevant. I take it that a certain amount of money will be spent and a certain amount will be received. From where will the funds come?

**The Hon. C.J. SUMNER:** The Government gets its revenue from licence fees—something in the order of $30 million. The cost of administration is about $1 million. Of course, the income from licence fees goes into General Revenue. The licence fees are not collected to cover administration costs: they are a source of Government revenue, and always have been. There is a report in the Auditor-General's Report each year which the honourable member can peruse; there is also the option of honourable members receiving the Estimates Committee papers which outline what is happening in the licensing area. Quite frankly, I do not think there is a need to go beyond that.

**The Hon. L.H. DAVIS:** I do not accept the Attorney's proposition that, because members are overwhelmed by reports, there is no need to have them. That is a shallow argument. It is an important industry in South Australia. We are talking about $33 million in licensing fees which goes into the State coffers. It is one of the larger revenue gatherers for the State Government.

**The Hon. K.L. Milne:** It doesn't spend it. It isn't required to spend and account for it.

**The Hon. L.H. DAVIS:** Certainly it doesn't spend it. The fact it collects so much underlines the magnitude and significance of the industry. One has only to look at the many thousands of people involved and also consider the complexity of this legislation. It is important that we are able to monitor industry trends. Indeed, I suspect that that is one of the great disadvantages that has resulted from lack of information over past years, and so we have ended up with a patch work quilt Licensing Act. Also, various sections of the liquor industry are entitled to monitor trends, and I refer to restaurants, hotels, bottle shops, clubs and so on. The community at large has an interest. I believe that there is a strong case for this and I hope that the Hon. Mr Milne with his business acumen will support his amendment.

New clause negatived.

Clause 41—'Producer's licence'—reconsidered.

**The Hon. B.A. CHATTERTON:** I move:

Page 20, line 31—Leave out "free".

I have already explained this amendment to the Committee; it allows samples to be either provided free or charged for.

Amendment carried; clause as amended passed.

Title passed.

Bill read a third time and passed.

## PLANNING ACT AMENDMENT BILL (No. 2) (1985)

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

## POLICE (COMPLAINTS AND DISCIPLINARY PROCEEDINGS) BILL (1985)

Adjourned debate on second reading.

(Continued from 12 March. Page 3077.)

**The Hon. K.T. GRIFFIN:** At 20 minutes to two in the morning, I am not inclined to speak at great length on this important piece of legislation that establishes a Police Complaints Tribunal and an Authority to review and, where necessary, investigate complaints made against members of the Police Force. The attitude of the Liberal Party to this matter has been very competently explained in another place, although I had hoped that there would have been an opportunity at a much more hospitable hour than this to deal with some other aspects of the Bill.

It comes to us after a period of at least 18 months of consideration by the Government embroiled at times in controversy to a certain extent resulting from the attitude of the Government to police investigation, and having its origin perhaps as early as 1981 when we were confronted with wild allegations by the then member for Elizabeth (Hon. Peter Duncan) and by various other persons predominantly with criminal backgrounds making wild allegations about police corruption.

That really brought the issue to a head because the Council will remember that in September 1981 as then Attorney-General I established an investigating team to investigate the wild allegations that had been made against certain police officers, particularly in regard to drugs. The investigating team comprised the then Deputy Commissioner (Mr J.B. Giles), the then Assistant Commissioner and now Police Commissioner (Mr D.A. Hunt), and the then Deputy Crown Solicitor (Mr J.M.A. Cramond), and that team investigated in some detail the allegations that had been made against certain police officers.

At that time some assertions were made by persons making allegations that they would not appear before the investigating team or allow themselves to be interviewed but, as it turned out, they did co-operate with the investigating team and gave comprehensive statements. The investigating team produced a most voluminous report—I think about 13 volumes—and the conclusion it made was that there was no evidence to justify the prosecution of any police officer or disciplinary action.

At the time, I took the precaution of engaging the Honourable Sir Charles Bright, a retired Supreme Court judge, to give an overview of the investigating team's activity, and to give an independent perspective to the conclusions that the investigating team had reached. Members may remember that Sir Charles Bright, when given the brief, was given access to the investigating team at any time. He was given the opportunity to demand such information, reports, papers, documents and so forth that he believed were necessary to ensure that he undertook an independent review and was given every assistance in that task.

In consequence of that, as I indicated, the investigating team reached a conclusion, which was confirmed by Sir Charles Bright, that there was no evidence to warrant any prosecution either for criminal acts or for breaches of discipline. It was interesting to note that the investigating team interviewed 101 persons and took 52 statements resulting from 159 interviews. There were 34 identifiable allegations

that went far beyond the original 11 allegations raised in the *Advertiser* newspaper by its journalists.

It was interesting to note that some of the complaints had been laid by the notorious Colin Conley, who has just been released early from prison and is one of the Mr Bigs of the drug scene in Adelaide. Conley had been convicted of offences relating to trading in heroin and possessing heroin for sale, and was one of the principal accusers. Another person was a person by the name of Romeo, who again had been convicted of offences involving trading in drugs.

Of the 11 informants, 10 had criminal records. Sir Charles Bright recognised that that in itself was not sufficient reason to dismiss out of hand allegations that may have been made. The investigating team reached a conclusion, after extensive inquiries, that several persons facing serious criminal charges relating to illicit drugs attempted to weave their own web of intrigue and innuendo where any publicity calculated to discredit the police, in particular members of the Drug Squad, might well be favourable to the outcome of their cases.

That was the context in which a number of the allegations were made by some of the informants: that they were out to make wild allegations to besmirch the character of investigating police officers and were doing it for their own ends, either directly in relation to proceedings in which they were the defendants at the time or to build up some longer term discrediting of police officers, particularly those involved in the drug scene.

I refer to the results of that investigation, because I think it is important to recognise that, although there may be one or two out of the thousands of police officers in South Australia who may commit offences and be liable to prosecution for either criminal offences or breaches of the police regulations, the very substantial majority of police in South Australia are honest, hardworking, have a difficult task maintaining order and protecting the public, and are dedicated to those tasks.

In that context, it is easy for criminals to make allegations to discredit those honourable police officers and, because they are police officers, it is so much more difficult for them to protect their own character and integrity. Some of the mud will often stick, and an innocent police officer will, for that reason alone, have a difficult task establishing that innocence.

So, while the Liberal Party would want to ensure that the occasional bad apple was brought to justice, we certainly would not want to do anything that would create unnecessary pressure, hardship, concern and tension among members of the Police Force. That is what this Government has been doing during the long debate over this controversial question of independent investigation of complaints against police officers—complaints which, in many instances, are made for the ends of the complainant and for no other reason.

It is very important in this sort of legislation to have built-in safeguards to protect the good character and reputation of our police officers and the Police Force in general. In Government, the Liberal Party had concluded that there was a need to establish some independent mechanism for involvement in the assessment of complaints against police officers. We believed that it was necessary for the reason that the public at large could see not only that justice was done, but also that it was seen to be done.

We found no cause for criticism or complaint in relation to the investigations by the Commissioner of Police and his own internal investigating officers in relation to allegations against police, but we recognised that an independent involvement in that process would contribute to the public sense of easiness towards the police.

It was also very important to maintain the proper line of Authority and command within the police structure, from the Commissioner down, and that any independent involvement should recognise the principal responsibility of the Police Commissioner under the Police Regulation Act for the discipline, the command, and the operation of the Police Force in South Australia.

I think a reasonable balance has been achieved in the Bill that the Government has finally brought before Parliament. That was not the case when the Bill was first introduced, but that has occurred subsequently as a result of amendments that were made following considerable public agitation. However, I want to address some issues specifically, because my colleague the Hon. John Burdett will be dealing with the Bill during the Committee stage in my absence on Parliamentary business later today.

The Opposition intends to move a number of amendments. In relation to clause 5, the success of the independent involvement in the assessment of complaints against police officers depends so very much on the character, ability and personality of the person appointed to be the complaints authority. If the appointee is sensitive and not aggressive towards the police, whilst respecting civil liberties and civil rights, but recognises the difficult role of the police in protecting the public, we will get somewhere with the Police Complaints Authority. However, if a person is antagonistic to the police and determined to ride roughshod over them, it will be an absolute disaster.

So, I hope that in the appointment of the Police Complaints Authority the Commissioner of Police will be consulted by the Government. A question that I want asked of the Attorney-General is whether the Government will give an undertaking to consult with the Commissioner of Police about the appropriate person to be appointed to be the Police Complaints Authority.

In that context I notice that it may be a legal practitioner from any State or Territory of the Commonwealth. I am not opposed to that, because I recognise that it may be necessary for someone to be brought in from outside South Australia, although there are many competent legal practitioners who could do the job very well in South Australia. However, the legal practitioner has only to be qualified for five years, which is the minimum qualification required for magistrates. I think that that is not adequate. I think that the period should be at least seven years, which is the qualifying period for judges of the Local and District Criminal Court. Therefore, an amendment will be moved to deal with that matter.

I would like some assessment of clause 6 from the Attorney-General as to the likelihood of the person constituting the Police Complaints Authority in fact being full time in the past. Clause 6 provides that the Authority is not to undertake remunerative employment outside the duties of his or her office unless with the consent of the Minister. I cannot believe that there will be sufficient work for the Police Complaints Authority to enable that person to be appointed full time. In that context, I would like to know what is the envisaged salary rating and package for the person to be appointed?

Clause 8 deals with the grounds upon which the office of the Police Complaints Authority becomes vacant, and in subclause (4) *(e)* if that person is convicted of an indictable offence then the office becomes vacant. I do not think that that is sufficient, because with the Police Complaints Authority the person constituting the Authority ought to be squeaky clean, and it would be an impossible position if that person was not so free of convictions as to be regarded as beyond reproach. I will be seeking to have included a provision that, if the Authority is imprisoned or convicted

of an offence punishable by imprisonment for a term of six months or more, upon that event the office becomes vacant.

In clause 16 (4) the Commissioner of Police is not to investigate complaints against a member of the Police Force where the complaint is made against a person who is a prescribed officer or an employee. I presume that means no investigation by the Police Commissioner in relation to complaints against public servants within the Police Department and that, rather, that is to be handled by the Police Complaints Authority. I wonder why the Commissioner should not have responsibility for that initially as well as responsibility for investigating complaints against police officers. Under clause 23 (2) *(a)* (iii), the Authority may make a determination that a complaint should be investigated after consultation with the Commissioner if he is satisfied that it is in relation substantially to practices, procedures or policies of the Police Force. What I do not want to see is the Authority embarking upon an investigation into matters that are more properly the responsibility of other tribunals or bodies such as the Equal Opportunity Tribunal.

I recall only too well the abortive investigation by Judge Layton, as Chairman of the Sex Discrimination Board, into the Police Department and I would not want to see the Authority embark on that sort of inquiry when, in fact, it can be handled outside the Authority. I am not sure what clause 25 (4) means, although I have had discussions with officers. I would like the Attorney to clarify exactly what it means. Subclauses (10) and (11) of clause 25 deal with incriminating information and provide that a member of the Police Force may refuse to furnish information or produce a document or record if it is likely to incriminate the police officer or a close relative. A close relative is described as a spouse, including a putative spouse, a parent or a child of the member. I understand from discussions that that might be related in some way to the recent amendments to the Evidence Act regarding compellability of spouses, but I cannot see that the inclusion of putative spouse in that context is a proper basis upon which a police officer may refuse to answer questions.

Under clause 28 (9) there is a provision that to some extent deals with Crown privilege. I am not sure why it is included, but, if it is included for a good reason, I wonder whether it should extend to Crown privilege, broadly speaking, rather than just to decisions of Cabinet or a committee of Cabinet. Why should it not extend to legal advice to a Minister and other departmental dockets? It may be that that is basically not necessary, but because that provision is included, and because I understand it appears in the Commonwealth police complaints legislation, it would be helpful to have further information from the Attorney about why it has been included in this Bill. I draw attention to subclause (14) of clause 28 and I make the same point about incriminating evidence and the definition of a close relative including a putative spouse. I am not convinced that it is necessary or even appropriate that that be included.

Under clause 37, the Police Disciplinary Tribunal is to be constituted of a magistrate appointed by the Governor. I would have thought that a judge of the Local and District Criminal Court would be more appropriate, but it has been suggested that, because police generally work in the magistrates court, they are more familiar with the idiosyncrasies of magistrates and therefore they would prefer a magistrate to a judge of the Local and District Criminal Court. I am not too worried about that, but I raise the question whether it is more appropriate for a more senior judicial officer to be involved.

Clause 49 deals with false representations made by a person knowing the representation to be false, and a penalty of $2 000 is provided. I will move amendments to allow the Tribunal or a court to make an order that a complainant making a false representation and knowing it to be false pay the costs incurred in pursuing that false representation.

I think there is something in the Police Offences Act (or the new Summary Offences Act, as it is to be called) dealing with false reports to the police and the same sort of recovery procedure. However, even if it is not in that legislation I think it should be included in this Bill because of the real risk that there will be many false allegations made against police officers where the complainants know them to be false. In clause 52 there is provision for an annual report as well as special reports to be made to Parliament. I have foreshadowed an amendment to ensure that the names of officers who might be investigated and others are not disclosed under Parliamentary privilege where such disclosure would be prejudicial to the person so named. I think that is an important principle.

I do not want to see the Authority abusing Parliamentary privilege by naming persons where that would be prejudicial. They should be given some rights to be protected against that use of Parliamentary privilege. The only other matter that I would want to have included is the requirement that, as soon as practicable after the expiration of two years from the commencement of the legislation, the Minister causes a review and report to be made upon the operation of the Act and for that review to be tabled in Parliament. The Bill is of such a controversial nature, with the potential for tension to develop, that I think it is important for a review of the operation of the Act to be conducted after a period of time (and two years seems to be reasonable) and for the result of the review to be tabled in Parliament.

They are the principal matters of concern which I raise on the Bill. I would have preferred to speak at a much more civilised hour on such an important piece of legislation, because it will have a significant impact upon our Police Force, on whom we depend for our protection from law breakers and those who would seek to pit themselves against the community and to act to the detriment of society. Notwithstanding that, I have made points about what I regard to be the major issues and hope that the amendments that will be moved on my behalf and the questions that I have asked tonight will be satisfactorily resolved during the Committee stage of the Bill.

**The Hon. L.H. DAVIS** secured the adjournment of the debate.

## ADJOURNMENT

At 2.9 a.m. the Council adjourned until Thursday 14 March at 2.15 p.m.