LEGISLATIVE COUNCIL

Thursday 9 April 1987

The PRESIDENT (Hon. Anne Levy) took the Chair at 11 a.m.

The Clerk (Mr C.H. Mertin) read prayers.

CREDIT UNIONS ACT AMENDMENT BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Credit Unions Act 1976. Read a first time.

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

That this Bill be now read a second time.

The purpose of this Bill is to amend the Credit Unions Act 1976 to enable the Registrar of Credit Unions to register a change of name of a credit union. Over the years the Registrar has purported to register the change of name of a number of credit unions. It is not clear that such a power in fact exists. This Bill inserts a clear power and rectifies the position in relation to credit unions which have purported to change their name. The provision is similar to that applying in the Building Societies Act. I commend the Bill to the Council. I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 amends section 15 of the Act. The amendment requires the Registrar of Credit Unions to consider certain aspects of the proposed name of a credit union before registering the credit union: for example, whether the name is misleading as to the nature of the credit union or whether it is otherwise undesirable. Clause 3 amends section 19 of the Act. The amendment enables a credit union to change its name by an alteration to its rules and requires the Registrar of Credit Unions to consider certain aspects of the proposed name before registering such an alteration. The clause ratifies any changes of name purportedly made before the commencement of the Bill. Clause 4 repeals section 22 of the Act. The amended section 15 of the Act replaces the provisions of this section. Clause 5 amends section 24 of the Act which requires a credit union to publish its name in a certain manner. The amendment requires a credit union's change of name to be published as the Registrar of Credit Unions directs.

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

PUBLIC AND ENVIRONMENTAL HEALTH BILL

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

Page 18 after line 35—Insert new clause as follows:

41a. Where a person, in the course of official duties, obtains—

(a) medical information relating to another;

or

(b) information the disclosure of which would involve the disclosure of information relating to the personal affairs of another,

the person shall not intentionally disclose that information unless—

(c) the disclosure is made in the course of official duties;

(d) the disclosure is made with the consent of the other person;

or

(e) the disclosure is required by a court or tribunal constituted by law.

Penalty: $2 000.

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

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

This amendment extends the penalties for disclosure of a person's medical records beyond health personnel to anyone at all. I think there would be very little disagreement that anyone who divulges medical records in any way should be punished, and I have no difficulty in recommending that we accept the amendment.

The Hon. M.B. CAMERON: The Opposition accepts this amendment. It is sensible. It never ceases to amaze me that, despite all the work we do, people still manage to find the odd problem. I urge members to support the amendment.

Motion carried.

STANDING ORDERS

The PRESIDENT laid upon the table the report, together with the minutes of proceedings of the Standing Orders Committee, relating to changes in Standing Orders regarding Questions on Notice and other minor matters.

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

That the report of the Standing Orders Committee be adopted.

The Standing Orders Committee has worked on a number of issues in recent months which are designed to make the functioning of the Council more efficient. The results of its deliberations are contained in the report that you, Madam President, have tabled. The principal issues are as follows: first, we are recommending that the Council adopt a new system of dealing with Questions on Notice which, in simple terms, is similar to the system that operates in the House of Assembly. It will involve questions being placed on the Notice Paper by honourable members without their having to read them in the Council, and it will also enable replies to be given by Ministers without their having to read them in the Council. It should enable time to be saved in what I think has become, by consensus of the Council, a reasonably unnecessary and tedious procedure.

Another amendment is to enable us to proceed with Questions on Notice and Notices on Motion immediately following the conclusion of Question Time without the necessity for the Leader of the House to move a motion postponing Orders of the Day until Questions on Notice and Notices of Motion have been dealt with. Members will recall that we go through this rather odd procedure at the end of Question Time when Question Time takes up the full hour and there is a requirement that Orders of the Day be called on at 3.15—an hour after the commencement of Question Time. The Leader of the House then has to move that the Orders of the Day be postponed until after Questions on Notice and Notices of Motion. This simply requires that Business of the Day immediately follow Question Time and the change is from Orders of the Day to Business of the Day to ensure that that unnecessary motion does not have to be moved.

The next item dealt with is the method of presentation of petitions. It is presently a cumbersome procedure. It is anticipated that the normal procedure will be for the petitions to be lodged by the member with the Clerk who will then make an announcement at the time for petition of those received, the terms and the member who has presented the petition. It is a similar procedure to that adopted by the House of Representatives. However, if a member wishes to present a petition personally, that option is still available. With respect to the introduction of Bills received

from the House of Assembly, we are dispensing with the need for a motion to be put to read the Bill a first time—that will become automatic. We will enable the second reading introduction to proceed immediately upon the passage of the first reading without the necessity to obtain a suspension of Standing Orders or to have to go through moving a contingent notice of motion.

The final amendment basically deals with making the procedures more efficient and is to remove the absolute requirement of the President to leave the Chair forthwith after the second reading of a Bill and enable the Committee stage of a Bill to be postponed to a future sitting: that is, instead of going through the procedure after the second reading stage, when the President moves into Committee, clause 1 is dealt with and progress is reported on clause 2, after the second reading stage the Minister or member in charge of the Bill will then be empowered to move that the Committee consideration be made an Order of the Day for the next day of sitting, without having to go through the procedure of getting it into the Committee stage.

The PRESIDENT: Or on motion.

The Hon. C.J. SUMNER: Yes, or on motion. I commend those amendments to members. I think they will make the functioning of the Council more efficient without in any way derogating from the rights of members.

The Hon. I. GILFILLAN: In the main, the Democrats welcome these changes. They do seem to be sensible. I have one misgiving about a question on notice and suggest to the Council that it ought perhaps to be an option of a member whether or not to read a question on notice. My understanding of the recommendation in this case is that a question on notice would not be read by a member. I think it should be an option that a member can choose whether or not to read a question on notice. Apart from that, I have no complaint with the procedure.

From time to time a question put on notice deserves, and ought to have, the extra emphasis and attention that it would receive from the Council—and let us face it, also the media—by having it read. There is no guarantee that a question that is dealt with as recommended here will have anything like the prominence it could have by being read. It is unfortunate that the member does not have that option.

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

JOINT PARLIAMENTARY SERVICE

The PRESIDENT: I will read a letter I received from the Chairperson of the Joint Parliamentary Service Committee. It states:

> Under the new Parliament (Joint Services) Act the Parliamentary Library has become a Division of the Joint Parliamentary Service, and the staff of the library are formally employees of the Joint Parliamentary Service Committee.
>
> This leads to the difficult situation that the Librarian is currently responsible to both the Joint Parliamentary Service Committee, and to the Library Committee established under the Standing Orders of each House.
>
> To resolve this contradiction, at the first meeting of the Joint Parliamentary Service Committee, which was held on Thursday 19 March 1987, the committee passed the following resolution, namely, that this committee recommend to the two Houses of Parliament that Standing Orders be amended to formally abolish the Library Committee.
>
> It is requested that the Joint Parliamentary Service Committee's recommendation as set out above be communicated to your respective Houses.

I propose to refer this matter to our Standing Orders Committee to see whether it will report back to the Council supporting the abolition of the Library Committee from our Legislative Council Standing Orders. This, of course, will be debated in the new session later in the year, but I wish to draw it to the attention of members so that they can consider it and, if they have any strong views on the matter, either speak to me or any member of the Standing Orders Committee before that committee meets.

WRONGS ACT AMENDMENT BILL (No. 1) (1987)

Adjourned debate on second reading.

(Continued from 7 April Page 3846.)

The Hon. C.J. SUMNER (Attorney-General): I thank the Hon. Mr Griffin and the Opposition for their support of the second reading of this Bill. The Hon. Mr Griffin has raised a number of questions, with which I will now deal. The Hon. Mr Griffin has raised the question of whether the Bill in any way alters the *status quo* as it affects builders and owner builders in relation to trespassers on building sites. I wish to confirm that the Bill is not intended to alter the present law and that the honourable member is correct in suspecting that the present law already accommodates that position.

Secondly, the honourable member has raised the question of why vehicles, including aircraft, ships, boats or vessels, are included as premises for the purposes of the Bill. This is so from study of various cases and authorities, for example, in *Halsbury* (volume 34, 4th edition paragraphs 18 and following), that the liability of occupiers is not necessarily limited to premises which are simply land but can extend, for example, to the situation where a contractor is converting a ship into a troop ship in dry dock (*Hartwell v. Grayson* 1947 KB 901). It is admittedly not envisaged that the Bill would have a very large role to play in relation to ordinary motor vehicles. The ordinary laws of negligence do, as the honourable member has pointed out, apply in relation to the Motor Vehicles Act in its application of third party insurance. In relation to the liability of a passenger, the simple activity duty as opposed to a passive occupiers liability duty would prevail.

In relation to the point raised by the honourable member about a person stealing the motor vehicle (where that person is a trespasser) the question boils down simply to whether or not the presence of the trespassers in the vehicle was reasonably foreseeable. I refer the honourable member in particular to the discussion on this point by Lord Denning in the case of *Pannett v. McGuiness* 1972 2 QB 599 at 607, where the Master of the Rolls said 'a wandering child or a straying adult stands in a different position from the poacher or a burglar. You may expect a child when you may not expect a burglar.' The same consideration would apply to a thief of a motor vehicle.

On the matter of vehicles generally, I would also refer the honourable member to the discussion in Fleming's Law of Torts 6th Edition, pages 439-440, and in particular to the following passage:

> In its heyday the regime of occupancy duties was extended even to motor cars and other conveyances. This meant that a guest passenger, as a mere licensee, could complain only of structural defects actually known to his host; whereas in the operation of the vehicle the driver must observe the general standard of reasonable care for gratuitous and fare paying passengers alike. However, according to the better view, the latter rule now covers not only the actual mode of driving but also the mechanical condition of the vehicle (and therefore includes a duty of inspection), because once the car is set in motion it would be highly artificial to separate the two, since the passenger depends on the driver's care in both respects alike. It is only while the car is stationary that

the passenger's position is defined by the more circumscribed occupancy duty owed to a licensee.

Thirdly, the honourable member has further raised the question of exclusion of occupiers liability by notices. The Bill does refer to contract. A contract in the strict sense can reduce or exclude an occupier's duty of care to a person who is otherwise than a stranger to the contract. Again, I would refer the honourable member to the discussion in Fleming's text, the 6th Edition, pages 430-431. It is clear that the matters raised are not free from legal controversy.

As Fleming says, danger is avoidable by an informed and reasonably careful visitor, but notice does not necessarily and of itself discharge an occupier's liability. All the circumstances must be taken into account before an occupier can be said to have acquitted himself or herself of his duty by merely warning invitees or others of the existence of the danger. As Fleming notes (page 431), the Australian view of the law is that knowledge of the risk bars recovery only when the giving of notice would have discharged the occupier's duty, and the question of fact remains in each case whether in the special circumstances mere warning would have afforded adequate protection to a visitor using the premises in an ordinary manner and with reasonable care.

If the danger is simple, not hidden, and an easy manner for avoiding it is readily apparent, knowledge of its existence would be sufficient. In short, the honourable member's question is answered by the determination of liability under proposed section 17c (2), in particular the reference in paragraph *(c)*, to the fact that the court must take into account the circumstances in which the person became exposed to that danger and, obviously, notice of the danger being posted at or near it would be one of the circumstances the court should take into account as well as the knowledge that the entrant had of that notice and, indeed, of the danger itself.

Fourthly, the honourable member has raised finally the question of proposed section 17c (5) that is proposed in the Bill and I agree that the addition of the term 'rule of law' or such like in addition to statute and contract would be a useful device to ensure that the sorts of situations posed by the honourable member are met in this Bill.

Bill read a second time.

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Insertion of new part 1B.'

The Hon. K.T. GRIFFIN: Before I deal with any of the amendments, I notice that the Victorian Occupiers' Liability Act 1983 contains a special reference to the liability of the Crown and section 14C provides:

> Where the Crown is an occupier or landlord of premises, the Crown shall, in its capacity as occupier or landlord of premises, owe the same duty to persons and property on the premises as it would owe if it were a subject, and shall be liable accordingly.

I had a quick look at the principal Act, the Wrongs Act, to see whether the Crown was bound by this. I must confess that, with the pressure in relation to this and many other Bills with which we have to deal, I have not addressed the issue in as much detail as I would have liked. Can the Attorney-General indicate what is the situation in relation to this part of the Wrongs Act binding the Crown?

The Hon. C.J. SUMNER: Yes, it does. That was done when we dealt with the straying animals matter.

The Hon. K.T. GRIFFIN: I will deal with my first amendment, which relates to page 1, after line 24, and the insertion of the word 'or' and, directly related to that, to leave out all words in lines 27 to 29. This relates to the definition of 'premises'. It means land, a building or structure including a moveable building or structure, or a vehicle including an aircraft, ship, boat or vessel. I will move the amendments to have them on record. I still have some misgivings about leaving a vehicle in the definition of 'premises', but that is included in the Victorian Occupiers Liability Act in which reference to 'premises' includes a reference to any fixed or moveable structure including any vessel, vehicle or aircraft. It may be that my misgivings are not well founded.

It seems to me that it raises questions of potential conflict, if an occupier's liability under this Bill in relation to a vehicle in any way might conflict with the liability of a driver of a motor vehicle in which a person may be travelling, or more so in relation to a person who might have stolen a vehicle and not be alert to particular defects in that vehicle. Notwithstanding what the Attorney has said, I will proceed with the amendments, but I recognise that, on more detailed reflection, my misgivings are not sufficiently well-founded to delete it from the Bill. The reservations ought to be on record. I therefore move:

Page 1—
After line 24—Insert 'or'.
Lines 27 to 29—Leave out all words in these lines.

The Hon. C.J. SUMNER: The Government does not accept the reservations of the honourable member. Common law on this topic includes a vehicle within the notion of premises from which the rules of occupier's liability flow. This Bill has been distributed reasonably widely within the legal profession and no-one raised the point mentioned by the honourable member as a difficulty. I understand that the definition in the United Kingdom legislation, where this law has been reformed, also includes vehicle, aircraft, etc., as premises, and similarly in Victoria. One consequence of the honourable member's deleting this from the Bill is that it may result in a fairly anomolous situation in which the categories of entrants on premises—invitees, licensees and trespassers (the distinction between licensees and invitees being abolished by this Bill because of the very convoluted rules that apply to each category)—would continue to apply with respect to a vehicle if an issue of occupier's liability arose. That is not a question covered by third party insurance or a question of general negligence from the driving of a vehicle, but if an issue arose with respect to an occupier's responsibility for someone entering that vehicle in the passive situation, the rules that now apply for occupier's liability would continue to apply. That would be a potential anomaly if the honourable member's amendments were passed.

Amendments negatived.

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

Page 2, lines 34 and 35—Leave out 'by reason of any other Act or pursuant to contract' and substitute 'by contract or by reason of some other Act or law'.

This picks up the problem which I indicated in relation to the statute law providing a particular standard of care in the courts by judicial interpretation and legislation, and that concept has been widened and the standard of care increased. That would be a useful addition to the Bill.

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

Amendment carried.

The Hon. K.T. GRIFFIN: I will move the next two amendments together because they are consequential. I have included these amendments in an excess of caution to deal with the defence of *volenti*. From my discussions on the Bill it seems to me that whilst it probably is not a major issue, it is a defence of *volenti*. The voluntary assumption of risk will probably still remain. It ought to be put beyond doubt. To some extent it relates to the question of the notice on premises or at a hazard drawing attention to the particular risk. The Attorney-General said in respect of new section 17c (2) that the question of the warning is to be taken into consideration in determining the standard of care and, in addition, the circumstances in which the person is

alleged to have suffered injury, damage or loss is also to be taken into consideration. A warning sign is a relevant consideration.

If the warning sign is intelligible and, notwithstanding the warning, a person assumes a risk voluntarily, there ought to be no liability on the occupier. One of the topical fact situations where that might arise is on a private property in the Northern Territory where there might be crocodiles. Notwithstanding the warning not to swim in crocodile infested waters on that property (erected by the owner, knowing that people may swim there), if a swimmer voluntarily assumes the risk, there ought to be no liability on the part of the occupier. I therefore move:

Page 3, line 9—Leave out 'subsection (2)' and substitute 'this section'.

Page 3, after line 16—Insert subsection as follows:

(3) Nothing in this Part will be taken to exclude a defence based upon the voluntary assumption of risk by a person claiming to have suffered injury, damage or loss.

The Hon. C.J. SUMNER: The Government opposes these amendments, not for any particularly malicious or politically motivated reason but principally because it does not consider them necessary. This Bill had a fairly wide circulation in its preparation to the judiciary, Law Society, and other lawyers, and the point raised by the honourable member is a lawyer's law point. No-one has suggested that this is a difficulty. I point to new section 17c which states that in future the liability of an occupier is to be determined in accordance with the principles of the law of negligence. One of the principles of the law of negligence is the defences that might be available, and one of the defences is the question of the voluntary assumption of risk which the honourable member seeks to deal with in this amendment.

Given that the general principles of negligence are now applicable, I would have thought it necessarily follows that the principles applicable to possible defences that someone might have against a claim were also applicable. Our concern about accepting this amendment is that the honourable member deals with only one possible defence that an occupier might have to a claim brought against him for negligence. He refers only to the defence of the voluntary assumption of risk, the *volenti non fit injuria* defence.

There are other defences, such as contributory negligence, and it could be argued (although one cannot say with certainty) that by referring in this Bill to only one defence we are excluding the continuing application of other defences, the *expressio unius* principle. That being the case, I suppose that the Government is being cautious by contending that the amendments, while not containing any particular difficulty, if we consider that we are dealing with general principles of negligence and that there are other defences available to occupiers that are not mentioned, poses a potential risk, although perhaps only slight. In future it could be argued that the other defences no longer apply because this particular defence has been dealt with specifically in the legislation. It is for those reasons that the Government believes, as I said not with vicious motive, that as matter of drafting and to achieve the objectives, the amendment should not be proceeded with.

Amendments negatived; clause as amended passed.

Clause 4 and title passed.

Bill read a third time and passed.

BAIL ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 7 April. Page 3848.)

The Hon. C.J. SUMNER (Attorney-General): I thank the Hon. Mr Griffin for his contribution and support for this Bill in principle, and I will deal with his questions. The Hon. Mr Griffin has asked why the Bill seeks to extend from six months to one year the period within which an offence can be prosecuted. That was inserted at the request of the police authorities because they found or have found in some instances that the six-month period is insufficient to ensure vigilant enforcement of the existing Act, because knowledge of relevant circumstances may arise too late. The 12-month period should enable the police to more adequately enforce the provisions that are capable of criminal enforcement and not allow themselves to be out of time because of the simple expiration of the six-month period.

By their very nature sometimes breaches of conditions of bail agreements do not come to the attention of the police until too late, and this amendment should assisst them to some extent in overcoming the difficulties they have experienced. I point out to the honourable member that no objection has been raised to the proposed extension by any of the authorities involved in the working party.

The honourable member has raised the question of what is being done in relation to informing victims about the questions of bail. As the honourable member knows, when I introduced the Statutes Amendment (Victims of Crime) Bill last year, which subsequently passed Parliament, I outlined a series of rights of victims of crime that were, to a very large extent, designed to overcome problems that existed in the criminal justice system previously with respect to the lack of information available to victims about the processes in and the progress of particular cases in which they might be involved.

The question of communication to a victim at all stages of the criminal process is to the forefront of the rights of victims which were enunciated by me in that speech and which have now been distributed to all Government departments concerned. Those authorities should be acting upon those principles. Of course, the implementation of those principles in an administrative manner will be monitored over time. Thus the sort of question the honourable member has raised is not to be seen in isolation (that is, in the bail context only) but as part of the wider communication and information exercise that is very much integral to the rights of victims of crime exercise to which I have already referred.

I would expect the prosecuting authorities, when the question of bail comes up, to consult the victim and, if bail is to be granted, to obtain victims' views about conditions of bail with respect to contact with victims and the like. That is picked up in a later amendment proposed by the honourable member. The general principles of communication with victims are now to be applied throughout government, and I expect the prosecuting authorities to be doing that now in accordance with those instructions.

I point out in this context that obviously, regarding those rights of victims, to some extent we are feeling our way, and we will have to see how they operate over a period. The Office of Crime Statistics has carried out a survey on the needs of victims of crime and, no doubt, in two years or so when the results of that survey are known we will have a better idea how victims are responding to the initiatives which have been announced and which are now in place.

The Hon. I. Gilfillan: Does the Bill deal with consultation with victims?

The Hon. K.T. Griffin: I propose an amendment.

The Hon. C.J. SUMNER: Yes. I suppose that they are alleged victims at the time the procedures of this Bill operate. The question of victims has been dealt with already as

one of the factors that must be considered by a bail authority in the sense that the bail authority must take into account the victim's need, or perceived need, for protection from the alleged offender. That is already a provision of the legislation, and the Hon. Mr Griffin proposes another amendment dealing with conditions of bail, which the Government is prepared to accept with a minor textual amendment.

The third point the honourable member raised was the question of who ought to have power to give permission to leave the State to a bailed person. I shall be moving an amendment that I believe will meet the honourable member's concerns and that will ensure that any such decision will only be taken at the appropriate levels of the relevant departmental hierarchies. To remove this sort of power to grant permission from those who are supervising bailed offenders would, I think, substantially reduce the degree of flexibility that these amendments are seeking to incorporate.

The honourable member has also raised the question of the necessary discretion to be used in relation to remunerated employment for those on home detention. I am advised by the Department of Correctional Services that the home detention supervisors ascertain the place and times of employment of the person involved and mode of transport, and tie him or her down to specific times for leaving home, arriving at work, leaving work and arriving home, and make spot checks accordingly. Therefore, if the person is not obeying those strictures he or she would soon be caught out.

The honourable member's question does raise ethical considerations of whether the applicant's employer should be notified. This is something the Home Detention Unit of Correctional Services is currently coming to grips with but as yet has no specific answer. There is one school of belief that says an employer should be notified and others that say the person should be entitled to privacy to that extent and that the employer should not be notified. These matters are being addressed but no conclusive answer can be given other than in relation to the applicant's behaviour outside the remunerated employment hours, and those times are certainly the subject of stringent supervision and enforcement.

The honourable member has raised the question of the deferral of release on bail. The honourable member says that this part of the Bill needs to be changed so that the period of deferral lapses when the review is completed. This cannot be supported by the Government. The Government believes the present measure in the Bill is adequate. The problem is that when a review is completed is very largely guided by exigencies external to an individual who has already received a favourable decision. That is to say, if the time for completion of the review is left open then one can imagine incarceration by default, that is, deprivation of liberty on account of any resulting delays in the legal system.

We need to bear in mind that the initial decision in a case to grant bail that is being reviewed was favourable to the person, that is, to the accused person. The stricture of 72 hours is a very good discipline on the system to ensure that the review is carried out within that time.

The Hon. K.T. Griffin: There may be an order on a Friday and the 72 hours goes over the weekend. You have a problem there—courts don't sit on weekends.

The Hon. C.J. SUMNER: They can sit on weekends.

The Hon. K.T. Griffin: But they don't, but 72 hours would go over a weekend.

The Hon. C.J. SUMNER: It would go to 48 hours over a weekend.

The Hon. K.T. Griffin: You may have it on a Friday morning.

The Hon. C.J. SUMNER: The honourable member is saying that we could take another example, for example, Maundy Thursday at 9 p.m. The Government believes that the discipline needs to be in the Bill. There have not been any real problems—only one in the two years of the operation of the Act. I am concerned that without some time limit there is no strictly imposed discipline on the system to ensure that a person who has been granted liberty, albeit temporarily, by the court can be held in custody for possibly an extended period.

We can explore in Committee the different stages and difficulties that might arise with longer holiday periods and the like. The same could occur over the Christmas period when, as I understand it, judges take a longer break of a couple of weeks, like members of Parliament. They have a duty judge during that period, but some difficulties may need to be addressed. I am sure the Hon. Mr Gilfillan will bring his considerable wisdom and experience into the Committee stage, and enable us to come to a correct decision.

Finally, the honourable member has indicated that victims need to be consulted about bail conditions, and I would have no trouble in supporting any amendment to the effect that the honourable member has placed on file. Obviously, the community has to be wary that a bail application does not become a trial before a trial or a grandiose proceeding—it could have that sort of effect.

The honourable member's amendment is satisfactory but I would prefer to see a textual amendment which affirmed that the different views on this topic of conditions of bail relating to a victim would continue to be put to a court by the prosecutor. Subject to that I have no objection. If it is not to be a prosecutor putting the victim's views, it raises a broad philosophical debate on which we cannot embark in this Chamber at the moment. Subject to my amendment to the honourable member's amendment, I am prepared to support it.

Bill read a second time.

In Committee.

Clauses 1 to 6 passed.

Clause 7—'Guarantee of bail.'

The Hon. K.T. GRIFFIN: I did not raise this question during the second reading debate, but in subsection (6) is a provision that a guarantor of bail must be of or above the age of 18 years. Will the Attorney-General indicate what is the position if the guarantor asserts that he or she is over the age of 18 but is in fact not 18 or over? Are there any penal provisions to address the issue? Does it mean that the bail order is invalid?

The Hon. C.J. SUMNER: My advice is that we have to resort to the normal law of contract to resolve this problem. Unless there is some indication that a person under 18 cannot be a guarantor, then there would be a situation where people under 16—that is infants—are being guarantors, and my advice is that that leads to the difficulty, even under the existing law, of the infant being able to opt to avoid the contract on turning 18. In other words, the contract is voidable at the option of the infant on turning 18.

So, there is that problem anyhow. What we are trying to say is we ought to make it obvious that a person ought not be going guarantor if under 18, and entering into this sort of contract. If someone lies or misrepresents their age, then the position is really no worse than at present, although I guess perhaps it is slightly worse because it would be quite clear that an infant could not be proceeded against if the infant was a guarantor having misrepresented his age. The other way to handle it is to constitute an offence to misrep-

resent the age as over 18 if in fact the person is under 18. Whether it is worth that, I am not sure.

The Hon. K.T. GRIFFIN: I support the provision in the Bill. I do not think that a person under 18 ought to be a guarantor, and misrepresentation of age will probably not occur on many occasions. We know that it happens frequently with the liquor licensing laws. Although the penalties have been toughened up, it will probably still continue. All I ask the Attorney, without holding up the consideration of the Bill, is to have a look at the problem to see whether there is a need to deal specifically with the question of misrepresentation of age. It may be that something needs to be done about it in the future. At this stage, I merely draw it to his attention as a possible area of difficulties in some cases.

The Hon. C.J. SUMNER: I understand what the honourable member is putting. I am not sure that it is a major problem, and it is probably best to examine what the honourable member has said and monitor it to see if there is a problem. It has been included in the Bill at the request of clerks of court who said that there were minors being guarantors at present, and this enables the clerks statutorily to request proof of age. Administratively it ought to overcome the problems.

Clause passed.

Clause 8 passed.

Clause 9—'Conditions of bail.'

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

Page 4, lines 15 and 16—Leave out 'subsection' and insert 'subsections'.

This amendment to some extent depends on the acceptance of one or both of the next two amendments. One is to add a new subsection (2a) and the other is to add a new subsection (3a). If either one or both of those subsequent subsections are accepted, then the amendment which I now move will have to be included.

The next amendment, that is, inserting new subsection (2a), deals with the very matter of consulting victims and, in appropriate cases, making submissions to the court or bail authority with respect to any conditions that ought to be imposed in granting bail. I understand that that amendment will be accepted by the Government.

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

Amendment carried.

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

Page 4, after line 16—Insert new subsection as follows:

(2a) In deciding on the conditions to be imposed in relation to a grant of bail, a bail authority should give special consideration to any submissions made by the Crown on behalf of a victim of the alleged offence.

Adding the words 'by the Crown' to my amendment will overcome the problem to which the Attorney referred, that we do not have a whole string of victims wanting to make representations or seeking to be represented independently before a bail authority. That would create difficulties. I have always envisaged that it would be an obligation of the Crown to seek out information about the victim and make the submissions to the bail authority.

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

Amendment carried.

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

Page 4, after line 19—Insert new subsection as follows:

(3a) A bail authority should not impose a condition under subsection (2) (ia) without first obtaining a report from the Crown on the appropriateness of such a condition being imposed in the applicant's case.

The object of this amendment is to not make it mandatory but to indicate to the bail authority that it is desirable, that before a condition in relation to home detention is imposed on the alleged offender, the bail authority should obtain a report from the Crown on the appropriateness of such a condition being imposed in the applicant's case. That sort of procedure applies under the Correctional Services Act at present. Where home detention is to be considered, it is a prerequisite that a pre-sentence report is required.

I know that in this instance, home detention may only be ordered with the approval of the Crown, but it ought to be desirable to have made available to the bail authority a report on the appropriateness of the condition. It then puts everything before the bail authority. If the Crown raises no objection to it, there is then a report and the bail authority can act on the basis of all information being laid before it about the appropriateness of this condition. So, as I say, it is not mandatory, but it indicates that it is desirable that such a report should be considered before bail is granted where a condition is home detention.

The Hon. C.J. SUMNER: The Government does not object to the amendment in principle; there is one minor textual matter that I wish to take up. However, I would have thought that it was mandatory.

The Hon. K.T. GRIFFIN: It relates to grammar and whether 'should' means 'ought', or whether it should be 'shall'.

The Hon. C.J. SUMNER: Anyway, we are not bothered by that; we are happy to accept the amendment, with one alteration, namely, that in the second line the words 'whether oral or in writing', in brackets, be inserted after the word 'report'. The Department of Correctional Services believes that if someone from Correctional Services is there and able to give evidence orally then we ought not to insist on a written report. It may not be confined to a written report, anyhow, but this is just to make it clear that the bail authority can inform itself in terms of its report either in writing or otherwise.

The Hon. K.T. GRIFFIN: I am happy with that. I seek leave to move my amendment in the amended form.

Leave granted.

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

Page 4, after line 19—Insert new subsection as follows:

(3a) A bail authority should not impose a condition under subsection (2) (ia) without first obtaining a report (whether oral or in writing) from the Crown on the appropriateness of such a condition being imposed in the applicant's case.

The Hon. I. GILFILLAN: I think it ought to be clarified quite specifically: my reading is that it is mandatory, but elsewhere there may be a clear acceptance of the word 'should' meaning that it provides a clear option and that there will be no ramifications on the bail authority if it does not comply with it. I think the matter should be made specific. If the Attorney-General is prepared to have it as mandatory, why not use the word 'shall'? *Hansard* will read that the Hon. Mr Griffin has said that he does not want it to be mandatory, while the Attorney-General has said that he does not mind. Let's clear it up.

The Hon. C.J. SUMNER: It is not mandatory; we are happy with it as it is. It is not as mandatory as 'shall', but it will do.

The Hon. I. GILFILLAN: I indicate that it has come to me, by means that I will not specify, that the wording using 'should' is not to be generally regarded as being mandatory and that both the Government and the Opposition are content that this clause will not be a mandatory requirement on the bail authority; it is more or less an encouragement and an inducement.

The Hon. C.J. SUMNER: Almost mandatory; it is stronger than 'could' but not as strong as 'shall'.

Amendment carried.

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

Page 4, lines 25 to 35—Leave out paragraphs *(a)* and *(b)* and insert new paragraphs as follow:

(a) if the person is under the supervision of an officer of the Department of Correctional Services—without the permission of the Executive Director of the Department of Correctional Services, or his or her nominee;

(b) if the person is under the supervision of an officer of the Department of Community Welfare—without the permission of the Director-General of the Department of Community Welfare, or his or her nominee;

(c) in any other case—without the permission of—

(i) a judge or justice;

or

(ii) a member of the Police Force of or above the rank of sergeant or in charge of a police station.

This picks up the point made by the Hon. Mr Griffin. It does not go as far as his amendment which would mean that permission to leave the State could not be given by anyone but a judge or a member of the Police Force. This enables the permission to be granted by Correctional Services officers or Community Welfare officers at the level of Executive Director or Director-General, or their specific nominees, presumably.

The Hon. K.T. GRIFFIN: I prefer my amendment, although I acknowledge that the Attorney-General has at least picked up the concern that I expressed, a concern that has been expressed to me on other occasions where variations of conditions have been approved by officers of the department and not by officers in the higher echelons of the department. The difficulty that I have with the amendment is that it allows the Executive Director of the Department of Correctional Services and the Director-General of the Department of Community Welfare to appoint a nominee. My concern is that it may allow the respective permanent heads to appoint nominees who are not senior officers, thus finding a way around the constraint that the Attorney-General is picking up in his amendment. I realise that the permanent heads will not necessarily be around all the time; but I think that it ought to be a very senior officer (if this amendment is carried) who has the responsibility for making the decision. However, I prefer my amendment. To some extent it will depend on what the Australian Democrats do, but I would hope that they would see that it is preferable not to have departmental officers, even at the higher level, making decisions about bail conditions and variations of those conditions.

The Hon. C.J. SUMNER: We hope that the Democrats will see otherwise, but, of course, one never knows. It is intended to nominate senior officers; it is not intended to nominate everyone in the department at large, or all the parole officers. I am advised that the Director-General of the Department of Community Welfare or the Executive Director of the Department of Correctional Services would nominate some other senior officer, or officers, to do this if they are unavailable.

The Hon. I. GILFILLAN: Because of circumstances that are probably beyond anyone's control in my position here and that of the Messengers, I have only just received in my hand a copy of the amendment, and I have not had a chance even to read it let alone assess and compare it with the Hon. Trevor Griffin's amendment. I am not in a position to make a decision on it, certainly not spontaneously, as I have no idea what the position is in relation to the difference between the two amendments.

The Hon. C.J. Sumner: Read them.

The Hon. I. GILFILLAN: If the rate of work is such that we cannot even get the amendments before we are debating them it is a bit rough.

The Hon. K.T. GRIFFIN: I will briefly indicate what the difference is. The power is given in clause 9 for a condition in a bail agreement that the person released do not leave South Australia for any purpose unless permission has been given by a judge, a justice, a magistrate, a member of the Police Force of or above the rank of sergeant or in charge of a police station, or if a person is under the supervision of an officer of the Department of Correctional Services or the Department of Community Welfare, without the permission of that officer. So, the Bill presently provides that if a person on bail is not to leave South Australia—and that is a condition of the bail agreement—then among the persons who can give permission for a person to go interstate is an officer of the Department of Correctional Services or the Department of Community Welfare. What I am seeking to do is merely to delete the provision which allows an officer of one of those departments to say, 'Look, even though it is a condition of your bail agreement that you don't go interstate, in the present circumstances I am allowing you to go.' That is a variation of the condition.

The Attorney-General is not seeking to support that but to provide that the Director-General of the Department for Community Welfare or the Executive Officer of the Department of Correctional Services or a nominee of that person (he has indicated that it will be a senior person within the department) can say to a person on bail, 'Even though your bail says that you cannot go interstate, I am happy to vary it in certain circumstances.' The Attorney-General seeks to give senior departmental officers an opportunity to vary bail conditions. I am saying that it should be restricted to a judge or justice or a member of the Police Force of or above the rank of sergeant or in charge of a police station.

The Hon. I. GILFILLAN: I thank the Hon. Mr Griffin for a very lucid explanation of the amendment. I feel that I can make an opinion known to the Committee. It appears to me that the Attorney-General seeks to restrict consent to people who would usually be regarded as competent to make such decisions and who are comparable with a member of the Police Force of or above the rank of sergeant or in charge of a police station. With the restriction that it is to be the permission of the Executive Director of the Department of Correctional Services or the Director-General of the Department for Community Welfare, and his or her nominee, who must be a person whom the Director regards as responsible and competent, I am prepared to accept the Attorney-General's amendment. I am very grateful to the Hon. Trevor Griffin for putting the facts so impartially to me.

The Hon. K.T. GRIFFIN: Perhaps I should not have explained them after all. In the light of that indication, I will not call for a division if I lose my position on the voices.

Amendment carried; clause as amended passed.

Clause 10 passed.

Clause 11—'Stay of release on application for review.'

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

Page 6, lines 12 to 20—Leave out subsection (2) and insert new subsection as follows:

(2) The period of deferral ends—

(a) if—

(i) an application for review is not made within 72 hours;

or

(ii) a member of the Police Force or some other person acting on behalf of the Crown files with the bail authority a notice that the Crown does not desire to proceed with a review;

or

(b) when the review is completed.

This deals with the deferral of a bail order and it applies in circumstances in which there is an application for review of bail and, if there is an application, there is to be a stay of release. Under the Bill, the period of deferral or the stay of release ends when the review is completed (it could be

carried out by the Supreme Court) or when a member of the Police Force or some other person acting on behalf of the Crown files with the bail authority a notice that the Crown does not desire to proceed with the review or 72 hours elapse, whichever first occurs.

The point that I made during the course of the second reading debate is that if the review has commenced it may be that the judge, as happened last year, will adjourn the review to enable further information to be obtained. In that instance, if the matter is adjourned to a date beyond the 72 hour period, and if there is no other charge upon which the accused can be arrested and held, the accused can walk free on bail notwithstanding that a review is currently under way. The system should have some flexibility. I take the Attorney-General's point that pressure must be kept on the review authorities—the courts—but I do not think that the way it is drafted at present allows for the sort of situation to which I referred. In my amendment, the period of deferral ends if an application for review is not made within 72 hours, if notice is filed by or on behalf of the Crown that it does not intend to proceed with the review or when the review is completed. That allows the sort of flexibility which is important and it accommodates the Easter break, the Christmas break, weekends and public holidays and therefore it is an important amendment which ought to be carried.

The Hon. C.J. SUMNER: I have put my view on this in my second reading reply. I do not think that any real difficulty has been indicated so far with the operation of this section. In one case the judge did not make his decision on the review within 72 hours, and it ought to be incumbent upon judges to make a decision within that time, given that a bail authority—the lower court—has already made a decision to grant bail to an accused person.

The issues that were canvassed by way of interjection in my second reading reply as to the unavailability of judges present some problem, but there should as a matter of course be Supreme Court judges on duty no matter what the holiday period. As members who practise in the law would know, the famous *habeus corpus* proceedings can be taken at any time and dealt with by a judge. In the past, those proceedings have often been dealt with by a judge at very short notice.

A duty judge is available and the procedure for review is designed to enable a matter to be dealt with quickly. We are talking about an application for bail, not about the trial itself. We are talking about an accused person who at this point of the proceedings is still innocent. I feel that we should retain the discipline of 72 hours.

The Hon. I. GILFILLAN: Could the 72 hours elapsing be qualified to the extent that public holidays would not be counted? The only real problems I envisage would occur over extended holidays such as Christmas or Easter. I pose that question for discussion rather than proposing an amendment.

The Hon. C.J. SUMNER: That would be another option, I suppose, but we could still end up with a person being in custody for a period of seven days, given the four public holidays.

The Hon. I. Gilfillan: I am not including weekends: I referred purely to public holidays.

The Hon. C.J. SUMNER: I am not quite sure, but I think there would still be the same trouble. Presumably a judge could be available on a public holiday just as a judge could be available on a Saturday night. I do not see that this overcomes the difficulty. The point is whether a judge is available, and I understand that a judge would be available 24 hours a day and, if not, I will make inquiries. I do not see that the honourable member's proposition overcomes the problem. If a person was granted bail on Maundy Thursday, we could then say that a public holiday did not arise during the 72 hours.

The Hon. I. Gilfillan: I am not sure, but I imagine that technically Saturday and Sunday are not public holidays.

The Hon. C.J. SUMNER: That is right. That would mean that there would be 72 hours plus.

The Hon. I. Gilfillan: Is Easter Monday a public holiday?

The Hon. C.J. SUMNER: Yes.

The Hon. I. Gilfillan: In that case, it would take us to the end of the Tuesday.

The Hon. C.J. SUMNER: That extends the time. I am reluctant to agree to the amendment because, as I said, the principal decision would have been made granting bail and I believe that the 72 hour limit should remain as a discipline. I will make some inquiries of the court. I know that judges are available and there should be a judge on duty 24 hours a day, seven days a week. I believe that the courts make arrangements for that to happen.

The Hon. I. GILFILLAN: I take it that the Attorney will appraise the situation and ensure that judges are reasonably available.

The Hon. C.J. SUMNER: I am not prepared to accept the amendment at this stage.

The Hon. I. GILFILLAN: I will oppose the amendment under the circumstances. I believe there is good sense in the case put forward. I do feel that this exercise has served the purpose of alerting the Attorney to what may be a problem and I hope the matter will not be ignored.

The Hon. K.T. GRIFFIN: The problem must be recognised and I will not call for a division if I lose the vote on the voices. I hope that it will be carefully considered with a view to finding a provision with greater flexibility as the matter is monitored.

Amendment negatived; clause passed.

Remaining clauses (12 to 18) and title passed.

Bill read a third time and passed.

AUSTRALIAN MINERAL DEVELOPMENT LABORATORIES (REPEAL AND VESTING) BILL

Adjourned debate on second reading.

(Continued from 8 April. Page 3919.)

The Hon. R.I. LUCAS: I rise to support the second reading and in doing so I wish to trace in broad detail the background of the Bill's reaching this stage in the Parliament. I will summarise what I see as the pertinent facts on this point. On the information available we know and understand that Amdel approached the Government in approximately September 1984—some three years ago—with a proposal to sell some of the organisation to private interests as a means of improving its financial footing. We understand that Cabinet agreed to this proposal from Amdel on 2 April 1985—way before the 1985 State election. We understand that Cabinet agreed that the State Government would retain only a 26 per cent share, despite advice from Treasury and the Department of State Development that a 40 per cent ownership retention would be a more appropriate reflection of past Government capital contribution to Amdel and the proportion of Government ownership of Amdel assets.

Amdel's 1985-86 annual report reveals that following that Cabinet agreement of 2 April 1985 the Government had originally led Amdel to believe that changes to the organisation would be finalised by September 1985. However, as

we well know, nothing of this privatisation proposal of the State Government was announced by the Government before the 1985 State election.

So, it is clear from the information available, both publicly and as has been revealed by members in another Chamber, that the proposal before us had its formation in September 1984 with Cabinet approval in April 1985 and commitments revealed in Amdel's 1985-86 report from the Government that changes would be finalised by September 1985. That was the attitude of the Bannon Government. Everything had been set in train for this privatisation proposal of Amdel to have been finalised by September 1985. As members well know, an issue in the 1985 State election that developed through the latter part of 1985 with the late release of the Liberal Party's policy on privatisation—

The Hon. R.J. Ritson: Very good policy.

The Hon. R.I. LUCAS: Yes, in some respects, although perhaps not well sold in some ways as it was capable of abuse and misrepresentation. It is good policy and direction and the State Government is now pursuing it.

The purpose of my contribution to this debate will show that the State Government, led by the political pragmatists of the ilk of Premier Bannon and Attorney-General Sumner in particular—

The Hon. C.J. Sumner: Are you upset about it?

The Hon. R.I. LUCAS: No, we are supporting the Bill. We are saying that we are upset at the hypocrisy.

The Hon. C.J. Sumner: At our pragmatism?

The Hon. R.I. LUCAS: No, at the hypocrisy of a Government that can rail against privatisation proposals at a State election and through a third arm (the trade union movement) organise a massive misrepresentation program when we know—

The Hon. C.J. Sumner: A conspiracy.

The Hon. R.I. LUCAS: We know that Cabinet agreed to a proposal to privatise Amdel on 2 April 1985. Let me hear the Attorney-General deny that?

The Hon. C.J. Sumner: Restructuring it.

The Hon. R.I. LUCAS: The Attorney agrees. He calls it restructuring. We know that it is a privatisation proposal and the Attorney-General knows that it is playing with words to try to argue anything but the fact that this is a privatisation proposal in the classic sense of privatisation as practised by governments of all political persuasions.

The Hon. C.J. Sumner: Isn't it true that there are already private interests involved in Amdel?

The Hon. R.I. LUCAS: The Attorney can seek to muddy the waters, but I am putting quite simply that he knows that this is a privatisation proposal, exactly the sort of proposition that the State Liberal Opposition talked of prior to the State election. The Attorney will not deny, in the second reading debate, that what the State Government decided was contrary to the advice of Treasury and the Department of State Development that a 40 per cent ownership be retained by the State Government. So, his professional advisers—the experts within the Government departments of Treasury and State Development—said that it would be fair to retain a 40 per cent share by the Government because of past contributions to Amdel. Closet privatisers, Messrs Bannon and Sumner in particular, in the Labor Government rejected that advice and reduced the share to 26 per cent.

It is interesting to go back to the months leading up to the State election and look at some of the statements made by representatives of this Government. I refer to a report in the *Advertiser* of Monday 23 September under the heading 'Assets sales reckless, dangerous: Bannon', which states:

> The Premier, Mr Bannon, said the Liberal's reckless rush to sell off assets went completely against reality. He described it as a dangerous policy which would lead to higher State taxes and charges, not lower taxes as promised by Mr Olsen. I think the public had better count the cost, he said.

I refer also to an article of 27 August 1985 in the Adelaide *News* under the headline 'Privatisation is disaster policy—Bannon', which states:

> The Liberal Party's privatisation policy would be an economic disaster for SA, the Premier, Mr Bannon, claimed today.
>
> Privatisation is a trendy, short-term fix that the Liberals have dreamed up to pay for their election promises, Mr Bannon said.

I refer also to an article of 3 December 1985 in the *Advertiser* under the heading 'Bannon keeps the pressure on privatisation policies' which states:

> The Premier, Mr Bannon, said privatisation was hocus-pocus economics . . . . Their opinion polls are obviously telling them that South Australians are seeing privatisation for what it is—a gimmick.
>
> But it's a gimmick that will mean higher costs, higher fares and less jobs. I believe voters in their tens of thousands will tell Mr Olsen that S.A. is not for sale, he said.

I have pages and pages of other quotes from Premier Bannon and other political pragmatists within the State Labor Government—persons with no ideology at all within the State Labor Party, persons who for whatever reason, for whatever short term political gain, will change their political tune to win an extra vote or two without any qualm at all about defending any principles of their political Party. Attorney-General Sumner would be quite at home in any political Party in South Australia, because Attorney-General Sumner and Premier Bannon are political chameleons. They can change their colour to suit the political Party of the day and change their policies to suit the political situation of the day. So, if we are leading up to a State election—

The Hon. C.J. Sumner: Are you offering me membership?

The Hon. R.I. LUCAS: If the Attorney-General wants to seek membership of the Liberal Party (and he appears keen) he can go through the normal procedures and we will put in a little word for him in one of the sub-branches. Leading up to the State election on 2 April 1985 the political pragmatists—the chameleons of the Labor Party, Sumner and Bannon—approved proposals to privatise Amdel.

All of a sudden, they sniffed the political wind. They saw the Liberal Party heading down that direction and decided: let us misrepresent these privatisation policies; we will keep on ice until after the election our own privatisation policies such as Amdel and we will seek to misrepresent in a most foul way those policies of the Opposition. Of course, they won a few extra votes at the State election because of that misrepresentation policy. It was quite serious. During the State election, I had pensioners ringing in tears because they thought they would lose their concessions because the terrible Liberals were going to privatise the State Transport Authority or ETSA. That was the sort of message that the chameleons of the Labor Party and their agents were putting around the community: fear amongst the elderly members of our community that they would lose their concessions, when of course the Liberal Opposition had said nothing of the sort.

The Hon. G. Weatherill: What about the razor slashing of the State Government in 1979?

The Hon. R.I. LUCAS: The Hon. Mr Weatherill is a member of a faction, Ms Acting President, that you would know very well, within the State Labor Government, the Left faction, which is the out faction at the moment. His timely interjection leads me on to another point that I wanted to raise today. Let us look at another member of Mr Weatherill's faction, the Hon. Terry Roberts.

The Hon. G. Weatherill: A nice guy.

The Hon. R.I. LUCAS: Yes, a nice guy, Terry Roberts; no problems with that, other than his political philosophies

and his snooker ability. On Tuesday 7 April, I was discussing this matter on the Supply Bill, and I said:

> When the Hon. Terry Roberts was speaking on the Supply Bill last week, he might not have known what his leadership group was getting up to or perhaps he was aware of what it was getting up to and was laying down the position of the Left within the State Labor Caucus—a position of opposition.

What does the Hon. Terry Roberts say? 'Right the second time.' Then I continued:

> The Hon. Mr Roberts says, 'Right the second time.' That is good to hear. He is laying down a position of opposition to what he now knows the leadership clique within the State Labor Party is getting up to.

Then I went on to have a look at the privatisation debate in relation to the Woods and Forests area. The Hon. Terry Roberts has put on the record quite clearly the opposition of the Left faction within the State Labor Caucus to what the political chameleons, the political turncoats, Sumner and Bannon, have been up to in relation to privatisation.

On this occasion, we are only talking about the Amdel Bill, but on previous occasions we have gone through the whole range of policies that the State Labor Government is now adopting under what it likes to euphemistically call not 'privatisation' but 'commercialisation', if you talk to Premier Bannon, or 'sensible property rationalisation' if you talk to Minister Cornwall.

Call it what you like, there is no doubt in the world that the State Labor Government, now that it has won extra votes at an election attacking privatisation policies, is now without any fear or favour at all going down exactly the same direction and following exactly the same policies that the Liberal Opposition was talking about prior to the last State election, to the extent that it now even has a committee looking at the infusion of some private moneys into the South Australian Oil and Gas Corporation. Ms Acting President, as you would be well aware, that was a centrepoint of the State Liberal Party's policy at the last State election—a selling off of a minority shareholding in the South Australian Oil and Gas Corporation.

With those few words, I indicate my support for the propositions that we have before us in this legislation, but I only want to lay on the line my contempt for the utter hypocrisy of the political chameleons and turncoats within the State Labor Government. I can only hope that those few people of principle within the State Labor Party, who might want to follow the true democratic socialist principles of the State Labor Party, will have something to say within the fora of the State Labor Party about those within the State Labor Government who are not following the principles and the platforms of the State Labor Party. I support the second reading.

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

SELECT COMMITTEE ON ARTIFICIAL INSEMINATION BY DONOR, *IN VITRO* FERTILISATION AND EMBRYO TRANSFER PROCEDURES IN SOUTH AUSTRALIA

The Hon. J.R. CORNWALL (Minister of Health) brought up the report of the select committee, together with minutes of proceedings and evidence.

Report received. Ordered that the report be printed.

QUESTIONS

RANDOM BREATH TESTING

The Hon. M.B. CAMERON: Has the Attorney-General a reply to a question that I asked on 19 February on random breath testing?

The Hon. C.J. SUMNER: There has been a long-standing Operations Command directive to police patrols to 'alcotest' all drivers involved in road traffic accidents which police are called upon to attend between 1600 hours and 0600 hours. However, the vast majority of road traffic accidents are not attended by police. During the month of December 1986 (the most recent complete figures available), action was taken to breath test approximately 91 per cent of drivers involved in road traffic accidents. The Commissioner of Police has recently approved of action to extend the current operations directive to cover accidents occurring 'round the clock' and which police are called upon to attend.

The Hon. M.B. CAMERON: I seek leave of the Council to make a brief explanation prior to directing to the Attorney-General a supplementary question on the matter of random breath testing.

Leave granted.

The Hon. M.B. CAMERON: When I raised this matter some very specific questions were asked, and they were: how long will random breath testing under the new measures announced by the Government—that is, involving increased random breath testing and increased numbers of police doing random breath testing—continue, and what resources is the Government making available for the advertising of random breath testing (which was one of the very important recommendations of the select committee, and one which I believe is absolutely imperative if random breath testing is to work)?

The Hon. C.J. Sumner: The honourable member is talking about different questions.

The Hon. M.B. CAMERON: No, I asked that question about a month ago and the Attorney said that he would get an answer.

The Hon. C.J. SUMNER: I will refer the honourable member's question to my colleague and bring back a reply.

ABORIGINAL POLICE AIDES

The Hon. M.B. CAMERON: Does the Attorney have a reply to a question on Aboriginal police aides that I asked on 18 February?

The Hon. C.J. SUMNER: When the police project team negotiated the establishment of the Police Aide Scheme, verbal agreement was reached with each of the Aboriginal communities, that the commencement of the scheme was conditional upon the communities providing funds for their respective vehicles. The reasons for this requirement was that the Police Department was not in a position to make funds available for the provision of vehicles, and the prospective duties of the police aides were not of the same nature and scope as those ordinarily performed by police officers.

When the Aboriginal communities were unable to provide the necessary funding, the Police Department did make available, on a short-term basis, four vehicles which would have otherwise been re-sold. The Police Department is currently exploring a number of avenues in an endeavour to resolve this matter before the present vehicles are due to be withdrawn in October this year.

CHILD ABUSE LEGISLATION

The Hon. K.T. GRIFFIN: I seek leave to make an explanation prior to directing to the Attorney-General a question on the subject of child abuse legislation.

Leave granted.

The Hon. K.T. GRIFFIN: With a grand flourish in April 1986, 12 months ago, the Minister of Community Welfare foreshadowed major amendments in the law relating to child abuse. In February this year the Minister repeated previous statements made that the legislation would be introduced by his colleague the Attorney-General during this session. That most recent statement brought significant criticism from the Criminal Law Association, particularly in respect of the basic civil liberties of persons accused of a criminal offence.

The Attorney-General has also said that the legislation would be introduced in this session, but in the dying stages of the session we have not seen it. Has the Attorney-General got cold feet on it, and was the Government serious in saying that it was going to introduce so-called reforms to the law relating to child abuse? My questions are:

1. Does the Government still intend to introduce legislation relating to child abuse?

2. When will that occur?

3. What will be the content of the legislation?

4. Will a draft be released for public comment before introduction?

The Hon. C.J. SUMNER: The Government certainly intends to proceed with legislation based broadly on the recommendations of the Child Sexual Abuse Task Force, which report was made public by my colleague the Minister of Health. A Bill has been drafted and circulated to interested groups, including, I might add, the Criminal Lawyers Association, whose President I understand is one Kevin Borick—not QC.

The Hon. C.M. Hill: That is a nice comment coming from the Attorney.

The Hon. C.J. SUMNER: He is usually quoted in the newspapers as being Mr Borick, Queen's Counsel.

The Hon. C.M. Hill: You have got a set on him.

The Hon. C.J. SUMNER: No, I am just trying to put the facts straight. He is not a Silk, not a QC.

The Hon. C. M. Hill: You are having a shot at him.

The Hon. C.J. SUMNER: I am having a shot at him, yes. The fact is that Mr Kevin Borick, President of the Criminal Lawyers Association, has behaved in a most atrocious fashion over this whole issue. That is the fact of the matter. He has behaved dishonourably and disreputably and I have absolutely no compunction about saying it here or anywhere else. I certainly have no intention of dealing with Mr Borick's Criminal Lawyers Association in the future.

I will deal with the proper organisation—the Law Society of South Australia—and not some rump organisation which he happens to have established in order to peddle his own ideas in the community.

The Hon. C.M. Hill: You should be ashamed of yourself.

The Hon. C.J. SUMNER: That is Mr Borick for you. I have absolutely no compunction about saying it here or anywhere else. Mr Borick has behaved abominably over this issue and that is the fact of the matter.

The Hon. C.M. Hill: You should hand in your commission.

The Hon. C.J. SUMNER: Allow me to say why I say that Mr Borick has behaved abominably over the matter.

The Hon. C.M. Hill: The *Advertiser* is here.

The Hon. C.J. SUMNER: I am glad that they are here; I am happy for them to be present. They can print it. I said it before when he behaved in this atrocious fashion and he made a statement to the *Advertiser*. This is what this Mr Borick did: when the Government established the Child Sexual Abuse Task Force, it approached the Criminal Lawyers Association to ask it whether it would participate on the legal affairs subcommittee of that task force.

The Hon. C.M. Hill: You're just upset because he was a Liberal candidate; that's why.

The Hon. C.J. SUMNER: I could not care less whether he was a Liberal candidate.

The PRESIDENT: Order!

The Hon. C.M. Hill: Because he supported the Liberal Party.

The PRESIDENT: Order! Mr Hill, I call you to order.

The Hon. C.M. Hill: He should be ashamed of himself.

The Hon. C.J. SUMNER: I am not ashamed of myself. This is what Mr Borick did. We contacted his association—the Criminal Lawyers Association—and we asked whether he would participate on the subcommittee on legal affairs. He said that he could not, but he nominated a member of his association—the Criminal Lawyers Association—to participate and that was a Mr Gordon Barrett. He participated on behalf of the Criminal Lawyers Association on the legal subcommittee. The recommendations of the task force were then prepared by a subcommittee which had a representative from Mr Borick's organisation and the task force then produced its report.

The Hon. K.T. Griffin: Was it a unanimous recommendation of the task force?

The Hon. C.J. SUMNER: Yes.

The Hon. K.T. Griffin: And of the subcommittee?

The Hon. C.J. SUMNER: As far as I am aware, it was. Some compromises had to be made, but my understanding is that it was a unanimous recommendation. Furthermore, the task force had other lawyers on it, including Miss Rebecca Bailey-Harris from the Law School, who is an expert in family law and child protection law; Mr Matthew Goode, also from the Law School; and some prosecutors: in other words, the task force was a fairly representative group. It included also a representative from Mr Borick's organisation, Mr Gordon Barrett.

The report was brought down and it was released some time last year. There was not a squeak out of Mr Borick about the recommendations contained in the report. The Government then approved drafting of a Bill to give effect, I think, to most of the recommendations in the report. That Bill was drafted and sent out to organisations, including the organisations that had been asked to be represented on the subcommittee, which included Mr Borick's organisation, the Criminal Lawyers Association. That draft was sent to him. The day after he received it, he is mentioned in the press with a whole lot of misrepresentations about what is in the Bill and criticising the Government for taking action in this area. That is why I say that Mr Borick's behaviour has been abominable; it has been dishonourable and he deserves condemnation from anyone who has any concern about the reform of the law in this area. The Government has gone about reform in this area in a careful and consultative way which involved Mr Borick's organisation. However, he has jettisoned confidentiality; he has jettisoned any good manners in the way that these matters are dealt with (and ought to be dealt with and were dealt with, by the Government on this occasion).

That is why I say that Mr Borick deserves what I have said about him in this Chamber. I do not mind repeating those comments if the honourable member wants me to. The Government intends to proceed with legislation which will, in broad terms, implement the recommendations of

the task force. Obviously, there has to be some discussion about some aspects of the draft Bill. It has been referred to interested parties, including those groups and people who were represented on the task force, and I think that it has been sent to the Law Society as well as other people. Comments are being received, but when the Bill was sent out it was a confidential draft to enable comments to be made. Obviously, it is not possible to deal with the Bill in this session of Parliament, but a Bill has been drafted and I expect that it will be introduced very early in the budget sittings.

The Hon. K.T. GRIFFIN: As a supplementary question, will the Attorney-General make available to the Opposition a copy of such draft legislation?

The Hon. C.J. SUMNER: As Mr Borick, the former Liberal candidate—

The Hon. C.M. Hill: You've got your knife out: pull your knife out.

The Hon. C.J. SUMNER: That is only in response to the Hon. Mr Hill. I did not raise it.

The Hon. L.H. Davis: Do you know when it was? It was 1970. You've got a long memory. You're like an elephant.

The Hon. C.J. SUMNER: He has got the memory—I did not even raise it. To tell members the honest truth, his impression on the political scene in South Australia was so insignificant that I had completely forgotten that he was a Liberal candidate.

The Hon. L.H. Davis interjecting:

The Hon. C.J. SUMNER: I had forgotten until the Hon. Mr Hill reminded me.

The Hon. L.H. Davis: Let's just say you wouldn't have attacked him if he had been a member of the Labor Party.

The Hon. C.J. SUMNER: The fact that he was a member of the Liberal Party is of absolutely no concern to me at all. As I said, I had overlooked it until Mr Hill raised it by way of interjection.

The Hon. L.H. Davis interjecting:

The Hon. C.J. SUMNER: If the Hon. Mr Griffin had gone about dealing with the law reform issue in the way in which I did in this case, and anyone, whether Mr Borick or a member of Labor Lawyers, behaved in the way that Mr Borick behaved over the matter, then he would be as discontented about his behaviour as I am. The reality is that he has just behaved in a very bad fashion.

The Hon. J.C. Irwin: What if he's right?

The Hon. C.J. SUMNER: Even if he is right on the issues, that is fine. I do not mind if he is right on the issues. I do not mind having a debate with Mr Borick about issues. What I object to is the way in which he has gone about nominating someone on the committee from his association, getting a report prepared with the participation of this person, not saying anything about the recommendations when they came down, getting the draft Bill on the same basis (a confidential basis), and then going straight to the press with remarks about it. You just cannot conduct negotiations with organisations like that and I do not intend to do it in the future. In relation to the supplementary question, as the Hon. Mr Borick has made the Bill available to all and sundry through the media, I have no objection to making it available to the honourable member.

THEATRE PERFORMANCE

The PRESIDENT: The Hon. Ms Pickles.

The Hon. C.M. Hill: For two days I have been seeking to ask a question.

The Hon. CAROLYN PICKLES: I seek leave to make a short explanation prior to asking the Minister of Community Welfare—

Members interjecting:

The PRESIDENT: Order! There is questioning over who gets the call for questions. I have agreed that I will first recognise the Leader of the Opposition, whenever he chooses to get to his feet. Other than that, I give preference to the other two frontbench members of the Opposition and, apart from that, I go alternately from one side of the Council to the other.

The Hon. Diana Laidlaw: Even though others may have stood up before?

The PRESIDENT: Even if they have stood up before. The questions are to go from one side of the Council to the other.

The Hon. CAROLYN PICKLES: I seek leave to make a short explanation before asking the Minister of Community Welfare a question about infant involvement in a theatre performance.

Leave granted.

The Hon. CAROLYN PICKLES: I note in the *Advertiser* today that a complaint was received by the Department of Community Welfare regarding an eight month old baby being involved in a performance of a play at the Balcony Theatre by the Unley Youth Theatre Club. I note also that the Hon. Ms Cashmore raised this matter yesterday in the House of Assembly.

From the report in the *Advertiser* it appears that the Minister was approached and asked his reaction to this complaint to his department and he expressed some concern as I also have some concern in this matter. The Minister called for a report and I ask him: does he now have this report available?

An honourable member: It just so happens—

The Hon. J.R. CORNWALL: It does so happen that I have a report and once I have read it into *Hansard* I will seek leave to table it. I was concerned about this matter. It was drawn to my attention yesterday shortly after Question Time that the member for Coles had been on her feet and had made allegations of a serious nature concerning child abuse. If her allegations were correct, there is no doubt that they would have constituted child abuse and it may well have been that the department would have taken legal action. There was certainly a duty upon me as Minister of Community Welfare to call for a formal investigation, and I did just that. At about 10.20 this morning I received a minute from Mrs Leah Mann, the Acting Director-General of Community Welfare. I do not intend to comment on it, but I will simply read it *in toto* into the record. It is addressed to me as Minister of Community Welfare and reads as follows:

Following your request to immediately investigate the allegation made by Ms J. Cashmore that an eight month old baby was being inappropriately involved in a play being performed at the Balcony Theatre by the Unley Youth Theatre Club, *Seasonally Adjusted*, an immediate investigation was undertaken. Because of the urgency of the matter and the fact that the Adelaide Community Welfare Centre had no staff immediately available, I referred the matter to Crisis Care who undertook the investigation. Crisis Care staff contacted both the mother of the child, Ms Marcello O'Hare, and also a Mrs Helen Martin, the producer of the play in question. The information provided by both mother and Mrs Martin was consistent and as follows:

Chloe O'Hare, the baby involved, is 13 months of age. Her mother is involved in the theatre world and the child has already had experience in advertising and other publicity ventures, is generally an outgoing child and has never demonstrated any distress in these situations. During rehearsals for the play the child at all times was comfortable with the actress involved and mother was always present and it was not anticipated that there would be any difficulties as the total length of performance of

the child was somewhere between 1-2 minutes at the very opening of the play. However, after the opening night when the baby did evidence distress by crying and subsequently repeated this on the second night (which was Monday night), the parents decided not to proceed with the baby's participation as the baby was continuing to demonstrate some distress. They had discussed this with Mrs Martin and the baby did not appear in the performance on Tuesday night and there were no plans for her to appear in any subsequent performance.

Therefore the parents, together with the producer of the play, had taken appropriate action on their own behalf well before the matter was raised in Parliament and before we had approached them. From the report of the Crisis Care staff, both the mother and Mrs Martin demonstrated all the appropriate and due concern for the baby's well-being, both during rehearsal time and through subsequent actions. I would suggest that there is absolutely no concern for the well-being of this baby or for the parents' level of care and sensitivity in dealing with their baby.

I would suggest that Ms Cashmore received information which exaggerated the actual circumstances and from that created a story out of all proportion to its seriousness. It is regrettable that Ms Cashmore did not immediately raise the matter with the department before raising it in the House, as we could have assured her very quickly of the facts. In the event, it required valuable time of Crisis Care staff to undertake an urgent investigation of a matter that was very minimal.

I seek leave to table that memo.

Leave granted.

ETHNIC AFFAIRS COMMISSION

The Hon. C.M. HILL: I direct a question to the Minister of Ethnic Affairs. In view of the extremely heavy workload of commissioners on the Ethnic Affairs Commission, has the Minister filled all vacant positions on the commission? If not, why not?

The Hon. C.J. SUMNER: As I recall, at present there is only one vacant position, which has been caused by the recent resignation of one John Colussi. He resigned a short time ago and—

The Hon. C.M. Hill: Have you done anything about filling it? They are all complaining that they are overworked.

The Hon. C.J. SUMNER: I cannot possibly believe that.

The Hon. L.H. Davis: Are you suggesting that they are under worked?

The Hon. C.J. SUMNER: No, I am not suggesting anything of the kind. It depends on what the Hon. Mr Hill is suggesting. Is he suggesting that the addition of one extra person would mean that they would work less?

The Hon. C.M. Hill: Yes.

The Hon. C.J. SUMNER: That seems a very peculiar proposition. I would have thought that the addition of one extra person would prolong their meetings.

The Hon. L.H. Davis: You don't even know how the commission operates.

The PRESIDENT: Order!

The Hon. C.J. SUMNER: I assure the honourable member that I know very well how the commission operates. In this area South Australia and the Minister, in particular I might add, have an exceptionally good reputation.

The Hon. M.B. Cameron interjecting:

The Hon. C.J. SUMNER: I am not given to boasting.

The Hon. L.H. Davis: You have been sitting next to Cornwall for too long.

The Hon. C.J. SUMNER: Nor am I given to the hyperbole that some of my colleagues engage in from time to time. I do not necessarily refer to present company. In this area the reputation of the South Australian Government is good and I believe that I have made a modest contribution to that since 1975. In answer to the honourable member, only one position is vacant, caused by the resignation of Mr Colussi, and I am taking steps to replace him as soon as possible.

DEPARTMENT OF TOURISM

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before directing a question to the Minister of Tourism on the subject of the review of the Department of Tourism.

Leave granted.

The Hon. L.H. DAVIS: Last week the Minister announced a review of the South Australian Tourism Department notwithstanding the fact that the South Australian market research study, the Tourism Development Plan and the regional tourism review are all in pigeon holes and their recommendations are not being implemented because the Minister has failed to provide funds. The shadow Minister of Tourism (Ms Jenny Cashmore) has described the review of the Tourism Department as an exercise in navel gazing. In the past few days concern has been mounting in the tourism industry about the composition of the review committee. The Minister has placed a ministerial adviser, Mr Paul Sandeman, on the committee and the Director of Tourism—

Members interjecting:

The Hon. L.H. DAVIS: Peter Sandeman? The *News* calls him Paul Sandeman; perhaps he has an alias. The Director of Tourism, Mr Graham Inns, will chair this review of his own department. The Minister should now be aware that there is widespread criticism of Mr Sandeman, who has been discredited within the industry and whose handling of several issues has been ham-fisted and inappropriate. My questions to the Minister are as follows:

1. How can the Minister hope to have an objective, independent review of the Department of Tourism when it is being chaired by the head of the department?

2. Can the Minister advise whether there is any precedent for the head of a department to chair an important and, hopefully, independent review of his or her own department?

3. Will the Minister advise Mr Sandeman's qualifications for and experience in the tourism industry, and will she say whether or not the Premier approves of ministerial advisers (who, after all, are political appointments) being on such reviews?

The Hon. BARBARA WIESE: First, I would like to address a few of the important questions—

Members interjecting:

The PRESIDENT: Order!

Members interjecting:

The PRESIDENT: Order! We are approaching the end of the session, I know. I do not want to have to throw someone out, but I think there should be a little more decorum in Question Time.

Members interjecting:

The PRESIDENT: Order!

The Hon. J.R. Cornwall: I was just having a chat.

The PRESIDENT: Order! The Minister is not to have a chat. If he wants to have a chat, he should go outside.

Members interjecting:

The PRESIDENT: Order! And that applies to you, too, Mr Davis. I call on the Minister of Tourism.

The Hon. BARBARA WIESE: First, I would like to address the question of whether or not there are appropriate funds for the implementation of various reports that have been produced recently with respect to tourism in South Australia. A number of quite false and baseless allegations

have been made by members of the Opposition about this question and I would like to clarify the facts of the matter. First, there are things like the market research review that was undertaken for the Department of Tourism, the development of the Tourism Development Plan for the next three years and also the recent review into regional tourism.

Funding was made available during this financial year for the appointment of an Assistant Director of Regions who was to be responsible in the Department of Tourism for implementing the recommendations of that regional review. A sum was also made available to begin that process. Presumably and hopefully funds will be made available during the next financial year to continue the implementation of that review. It was not intended that the review be implemented overnight: most reviews that are fairly far reaching cannot be implemented overnight, and this is no exception. That is the first point.

Secondly, the Tourism Development Plan very clearly states that the recommendations incorporated within the plan can be implemented within existing resources. If we can obtain increased resources in some areas of tourism, we will be able to do more about some aspects of implementation of that plan, but it is designed specifically to be a realistic plan that can be introduced and implemented within existing resources, if that is what we have to do. Let us get that clear.

The third point is the question of the market research study and what might flow from it. If the honourable member knew anything about what is going on in tourism, he would know that a committee, established by the Department of Tourism, is looking at the market research study and its findings and developing a strategy for implementing the recommendations of that review. That committee comprises members of the department as well as representatives of industry, and I hope that it will be able to report to me fairly soon on how we can proceed with that matter. So now that is clear. We are dealing with all these issues. Work is being done on all the issues and anyone who knew anything about the matter would know that that is the case, as most members of the tourism industry do.

I refer now to the review of the Department of Tourism. The establishment of a committee to review the functions and structures of the Department of Tourism occurred in the context of the changes that have taken place recently in the tourism industry. It seems timely that we should consider whether the structures and the functions that we have determined for the department are, in fact, appropriate to lead us into the 1990s because, as I have said, various reviews have taken place.

Members interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: If the honourable member wants a reply, he should listen, otherwise I will not bother.

The Hon. L.H. Davis: You tell us why.

The Hon. BARBARA WIESE: Let me answer the question in my own time and in my own way. The honourable member should just sit quietly and listen. The review was set up because many changes have taken place in tourism in the past few years. It is about six years since the structure of the department was last looked at, and it is timely that we review the situation, given the changes that are taking place. In establishing a review committee, I intended to bring together people with a range of knowledge and expertise, people who would be in a position to provide the sort of input that is necessary to ensure that our department functions and responds to the various demands placed upon it, whether from within government, the industry or the political arena. Let us not forget that Governments are political Parties that are carrying out their policies.

The members of this committee represent the various strands of thought I am talking about. It is important that we should have people from industry, and thus there are industry representatives on this committee. I point out that the last review of the Department of Tourism, which took place about six years ago and which was set up by the Liberal Government, did not include any representatives from industry. It was a review committee made up of a consultancy company and members of what was then the Public Service Board. It was a very unrepresentative group of people, in my view. I wanted industry people to have an input, so there are industry representatives on the review. I believe that the head of the Department of Tourism should be involved in the review because, very clearly, he is in a key position in terms of implementing recommendations that might come forward.

The Hon. L.H. Davis: How can it possibly be an independent inquiry when it involves the head of the department?

The PRESIDENT: Order! The Hon. Mr Davis has asked his question.

The Hon. BARBARA WIESE: The head of the department, as one of a group of people considering issues on which there may be a vote, can easily be outnumbered, if that is the problem that the honourable member envisages. The issue should not be about whether or not the head of the department is on the review. If the honourable member is concerned about that, what is he saying? Is he questioning the ability or the integrity of the present head of the department?

The Hon. L.H. Davis: There is a conflict. You can't do it.

The Hon. BARBARA WIESE: Of course it can be done. There can be a review of the department by people entirely from the department, if that is what one chooses to do. The spread of people involved in this committee includes my ministerial adviser because, as I said earlier, a number of views must be represented if we are to implement a review of the Department of Tourism.

My ministerial assistant will be a member of that committee because he represents me on that committee. It is important that the department be involved in the review. It is also important that members of the industry reflect the various opinions that may prevail about the issues. Certainly I have views about those issues and my ministerial assistant will be there to reflect my views.

I happen to deal with the Department of Tourism too and it is fair and reasonable that my views be reflected in the review, just as it is important that members of the industry have an opportunity to put forward their viewpoints on the issue and it is important in my view that representatives of the department also be involved in that review. Let us come to the point, 'Tourism industry representatives are appalled by the decision'. Let us deal with that point, because yesterday morning I attended one of the regular meetings of the South Australian Tourism Industry Council. This is the body that is the umbrella organisation representing people in the tourism industry. We discussed a number of issues relating to tourism in this State and one of them, of course, was the review established into the Department of Tourism. We discussed the composition of the membership of the committee and the terms of reference of the committee as well as the various issues that might have to be addressed by that committee during the course of the review. Not one person at that meeting expressed any concern or reservation about the composition of that

committee and that was a meeting at which many issues were discussed in a very open and frank way. If there had been concern about those issues that the honourable member has raised in this place today, there is absolutely no doubt that they would have been raised at the meeting yesterday. The allegations being made are largely politically based. They are not industry concerns.

The Hon. L.H. Davis: They are not politically based.

Members interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: The only person, until today, who has made any public statement about this issue or raised the question of the composition of the committee is Ms Cashmore in another place. Yet, members tell me that it is not politically based! Do not be ridiculous!

The Hon. L.H. Davis interjecting:

The Hon. BARBARA WIESE: That is another point. The Hon. Ms Cashmore in making the statement last week about the review indicated that she was clearly out of touch with the industry and industry opinion, because the Chairman of the South Australian Tourism Industry Council is quoted in the very same article saying that she thought the review was a great idea. So, there you go! The Opposition spokesperson on tourism is out of touch with industry opinion on this issue, as is the Hon. Mr Davis. The sorts of issues being raised here are absolutely baseless and, if he has any problem about the nature of the review, he can wait for the results.

WASTE MANAGEMENT

The Hon. M.J. ELLIOTT: Has the Minister of Tourism an answer to my question of 26 November on waste management?

The Hon. BARBARA WIESE: I have a reply and seek leave to have it incorporated in *Hansard* without my reading it.

Leave granted.

I refer to your question asked on 26 November 1986 regarding waste management. The South Australian Waste Management Commission has not given consideration to implementing a scheme whereby vendors or producers of products that are potentially hazardous could provide a means of collection of the waste and subsequent correct disposal. However, I raised this issue with the Director of the commission who considers that there is considerable merit in having a facility at which small quantities of hazardous waste could be aggregated for re-use and disposal. Opportunities already exist for the recovery of oil through service stations and some waste disposal depots. Arrangements have been made between the commission and a company for the collection, treatment and disposal of mercury batteries.

To develop a system to collect all domestic hazardous waste would present some difficulties. The vendor may have no control over the waste to be received and their degree of contamination. It may not encourage waste minimisation. It would complicate the handling of many goods and place impositions on small business. In addition, due to differences in standards and the availability of disposal facilities between States, any labelling would, by necessity, have to be general. For example, a label could specify that a waste should be disposed of 'in accordance with the requirements of the local authority.' The commission already provides advice to the public on the handling, re-use and disposal of small quantities of hazardous wastes. However, it is seen as desirable to provide the public with as much information as possible on the disposal of these wastes and the commission will work towards the development of a suitable information package.

DUCK SHOOTING

The Hon. M.J. ELLIOTT: Does the Minister of Tourism have a reply to my question of 18 February on duck shooting?

The Hon. BARBARA WIESE: I have a reply and seek leave to have it incorporated in *Hansard* without my reading it.

Leave granted.

1. No.

2. (i) Random observation of hunters in the field

(ii) Systematic bag checks of hunters

(iii) Specific searches of Bool Lagoon at the completion of a proclaimed morning's hunt and

(iv) Observation of what is happening in the swamps when staff are on patrol.

Also Bool Lagoon, the prime hunting wetland in South Australia, is monitored for presence of Freckled Duck before scheduled opening. If 100 or more Freckled Duck can be counted on the lagoon, the wetland is not opened for hunting.

3. Generally wetlands in South Australia fill earlier and dry out earlier than those in Victoria and southern New South Wales. Duck breeding is correspondingly earlier in South Australia as well. Therefore, applying the principles of wildlife management, South Australia has the opening of the duck season two or four weeks earlier than the eastern States. This year (1987) the opening of the duck hunting season was split because predicted high water levels in the River Murray would produce a late breeding of duck while the predicted low water levels in the south east of the State would mean that breeding finished early and birds would be concentrated on the drying wetlands. The major opening date for duck hunting was 14 February 1987, four weeks in advance of Victoria, with the River Murray and Lakes held back three weeks to 7 March 1987.

4. Bool Lagoon is the major wetland that attracts hunters from Victoria to visit South Australia. The lagoon was deliberately kept closed until the Victorian opening so that there was not a large influx of Victorian hunters into South Australia prior to the Victorian opening. This has been a standard practice for several years that works successfully. The second date was also set according to standard practice of spacing open days throughout the season.

5. This is not known at present.

6. No.

7. It is too early in the investigations being conducted by National Parks and Wildlife Service staff to give a definite answer.

8. It is too early in the investigations to answer this question.

9. Almost one third of the geese died from lead poisoning during the period of low water levels during March-April 1986. The remaining 200 odd birds have bred this year but it is to early to assess their success.

10. Costs identified to the project are less than $10 000.

11. It has not yet been determined if the population of geese requires special treatment to save it.

12. No.

13. Yes.

14. Yes.

15. No.

PORNOGRAPHY

The Hon. J.C. IRWIN: I seek leave to make a brief explanation before asking the Attorney-General a question on pornography.

Leave granted.

The Hon. J.C. IRWIN: The Attorney and others would be well aware of the difficulty of proving or disproving a relationship between pornography and sexual offences. I will not go into the problems encountered or the pitfalls involved in research methodology used in the US, Britain and other countries. I am advised that one simple research method has not been tried here in South Australia. Police invariably search the premises of serious offenders. Could the police be persuaded to keep records of the pornography they find so that, for example, the collections found in the homes of sexual offenders could be measured relatively easily against the collections found in homes of males arrested for housebreaking and other offences? It is not good enough for me to cite one obvious case, but the well known and publicised case of Worrell and Miller and the Truro murders was one case where the police found pornographic material. It should not be dismissed lightly. Does the Attorney know whether simple records are kept by the police of pornographic material found when they search premises? If they are not kept, will the Attorney encourage the police to keep these records so that this evidence will form the basis of future research work in the area of pornography and sexual offences?

The Hon. C.J. SUMNER: As the honourable member knows, the question of video censorship is being dealt with by a joint select committee of the Federal Parliament. One of the issues it will be addressing is the link, if any, between pornography and sex related crimes. As the honourable member knows, a number of inquiries in the past have refuted that link, including the United States Presidential Commission on Pornography of 1970 and the Williams committee in the United Kingdom of 1978-79. There have been assertions to the contrary, too. I would expect the select committee to throw some additional light on that topic.

With respect to the honourable member's question, I do not believe that the police keep statistics of this kind. I am not sure what conclusions one could draw from them even if they were kept, but it is obviously a matter for the police principally and I will consider the honourable member's question, take it up with the police and let the honourable member have a reply.

FIELD CROP IMPROVEMENT CENTRE

The Hon. PETER DUNN: I seek leave to make a brief explanation before asking the Minister of Health, representing the Minister of Agriculture, a question on the South Australian Field Crop Improvement Centre.

Leave granted.

The Hon. PETER DUNN: In today's *Stock Journal* we see that the battle has re-opened with the Field Crop Improvement Centre at Northfield and the Waite Research Centre. I will quote from the leading article written by Jon Lamb which states:

> A major wrangle between the Waite Agriculture Research Institute and the Department of Agriculture is looming over who should be responsible for wheat and barley breeding in South Australia ... That now puts the institute on a collision course with the department because the Minister of Agriculture, Mr Mayes, wants all crop breeding in South Australia placed under the department's control at its Northfield research centre.

The newly appointed Professor of Agronomy at the Waite Institute, Prof. Marshall, stated:

> There is no valid scientific justification for the transfer of the programs.

I will now read a letter from Professor Sparrow, PhD, FTS, Reader in Plant Breeding at the Waite Research Centre, dated 5 March. He is writing to the Minister of Agriculture, Mr Mayes, as follows:

> With reference to your letter of 27 January, you will know I was never a willing participant in the Field Crop Improvement Centre (FCIC) Planning Committee because I believe the project is counterproductive to the long-term development of crop improvement in South Australia. The inclusion of my name on the report of the committee should not be taken as my agreement to the project or the report.

In large type he then states:

> In my view it is not in the best interests of the South Australian barley industry for the Waite Barley Improvement Program to be relocated at Northfield under the control of the South Australian Department of Agriculture.

The letter continues:

> For many reasons Northfield is an unsuitable site for plant breeding: the soil is poor and unrepresentative of barley growing soils; located in the centre of a residential area grain crops are likely to suffer considerable damage from birds; there is neither a research library nor the necessary scientific backup for crop improvement studies.

He further states:

> The plant breeding staff at the Waite Institute, both academic and technical, are contracted to the University of Adelaide. How is it possible for the Department of Agriculture to, unilaterally, decide that these people be moved to another organisation and another set of employment conditions?

Finally, he says:

> This project should now be dropped. It would be irresponsible to embark on a costly disruptive exercise in the current economic crisis in Australian agriculture.

My questions are:

1. Will the Minister now admit that his lunge for power and empire building will not work without the key plant breeders being part of the field crop improvement centre proposed at Northfield?

2. Will the Minister immediately cease further negotiations for the development of the field crop improvement centre at Northfield?

The Hon. J.R. CORNWALL: I will take these questions and refer them to my colleague, the Minister of Agriculture. In view of the lateness of the session, it is probably fair to say that I will have to undertake to write to Mr Dunn during the recess.

THE SECOND STORY

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation before asking the Minister of Youth Affairs a question about The Second Story.

Leave granted.

The Hon. DIANA LAIDLAW: The Second Story in Rundle Street, as all members would be aware, was opened by the Minister of Health with considerable fanfare on 9 September 1985 to provide health, legal and financial counselling and also recreation facilities for young people. At that time it cost $700 000 to establish and thereafter has cost the sum of $350 000 on an annual basis. When the Minister of Community Welfare was asked questions about this soon after the opening, he acknowledged that in the first instance it would be open two afternoons and two evenings a week, clearly intimating that after a honeymoon period to settle down, it would be open on a more regular basis as a drop-in centre. However, the opposite is the case.

The Hon. J.R. Cornwall: Not true.

The Hon. DIANA LAIDLAW: That is the case. Can the Minister explain why the centre is now only open one day a week (on Fridays) as a drop-in centre, a retraction rather than an expansion of its original charter? Does he admit that this change, among other changes from the original ideals of The Second Story, confirms initial fears expressed in this place and amongst youth workers elsewhere that the Government had been steamrolling ahead with the project irrespective of concerns by long working youth workers about the lack of methodology and consultation with people in the youth field? As this question is addressed to the Minister of Youth Affairs, is she aware of continuing disquiet of people in the youth field and youth groups about the operation and overgenerous funding of The Second Story while they and their young clients are neglected and continue to be neglected and find that they are now very badly underfunded?

The Hon. BARBARA WIESE: Ms President, I think this is a question much better directed to my colleague, the Minister of Community Welfare, since this is an agency which is under his control.

Members interjecting:

The PRESIDENT: Order!

Members interjecting:

The PRESIDENT: Order! I warn you, Ms Laidlaw. Another comment from you and I will name you. I had called for order and got to my feet. When that occurs, every member of this Chamber should cease speaking. I realise that the question was directed to the Minister of Youth Affairs. However, under all precedents of Question Time, Ministers are asked questions over areas of their responsibility. It may be that the Minister of Youth Affairs feels some responsibility for The Second Story—I am not able to comment—but I am sure that the ministerial responsibility for The Second Story lies with the Minister of Health, so it would seem to me appropriate for him to answer the question should he wish to do so.

The Hon. J.R. CORNWALL: Thank you, Ms President. What contemptible rabble they are! Only last Monday week, I was invited to chair a seminar at an international symposium on adolescent health in Sydney. One of the presentations at that seminar was made by Ms Judy Peppard, the founding director of The Second Story, and her staff, and one of the young people who has benefited so much from the comprehensive services provided by The Second Story.

The Hon. L.H. Davis: Deal with the facts.

The Hon. J.R. CORNWALL: We are dealing with the facts, are we indeed! You despicable creature! You are as despicable as your colleagues—dishonourable and despicable. Might I say, Ms President, that all of the people who attended that seminar, including the international representatives from Mexico, Israel, United States, Great Britain and West Germany, to name just a few, as well as all of the representatives from the other States of Australia, were extremely impressed by that presentation.

The Hon. Diana Laidlaw interjecting:

The Hon. J.R. CORNWALL: These poor, despicable wretches in Opposition, who sit in this place, in this C grade theatre of the absurd, have done nothing but knock The Second Story ever since it was established. The fact is that The Second Story is acknowledged nationally as being one of the great adolescent health initiatives in this country. That just happens to be a fact. The Australian Association for Adolescent Health wrote to me when they were organising this international symposium and personally invited me, as South Australian Health Minister, to chair that particular seminar because of what they characterised and called the outstanding contribution of the South Australian Government to adolescent health in Australia. So, why do you—

Members interjecting:

The Hon. J.R. CORNWALL: Why do you rabble keep leading with your collective chin? It is really quite extraordinary. The Second Story, of course, is the basis as to the fact—

The Hon. L.H. Davis interjecting:

The Hon. J.R. CORNWALL: Well, shut up you stupid fool and let me finish the answer. You are a disgrace to the Parliament. You are an absolute disgrace to this Parliament. This fellow gets paid $55 000 a year—

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: He steals the money. He takes it under false pretences.

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: He takes his salary under false pretences.

The PRESIDENT: Order! I ask the Minister to withdraw the allegation that certain members of the Opposition are fools. I feel that that is against Standing Orders.

The Hon. J.R. CORNWALL: I know it is. The truth is the first casualty, very often, under Standing Orders.

The PRESIDENT: I ask you to withdraw.

The Hon. J.R. CORNWALL: I do withdraw and I apologise. I would repeat that he takes his money under false pretences, however. He gets $55 000 a year to come in here and behave like that. That is extraordinary! As to the allegation that The Second Story now only provides drop in services one day a week, that is a black lie, a despicable lie.

Members interjecting:

The Hon. J.R. CORNWALL: The Second Story has been expanding the range—

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: —of its services ever since it opened its doors.

The PRESIDENT: Order! It is unparliamentary to cast aspersions on other members of Parliament, and that includes calling someone a liar. It is not unparliamentary to say a certain statement is a lie—there is a difference between a statement and a person. I point out that there is about only 30 seconds of Question Time left.

The Hon. J.R. CORNWALL: I know. I conclude by saying, *apropos* of what I have described as being a despicable lie, The Second Story has been expanding the hours of its operation ever since it opened in September 1985. A full range of services is provided, including now, of course, comprehensive medical services. A doctor attends for a number of sessions at The Second Story throughout the week. It is one of the real success stories of our time, and it is acknowledged by every intelligent person in the health industry to have been so.

QUESTIONS ON NOTICE

SPORTS POLICIES

The Hon. R.I. LUCAS (on notice) asked the Minister of Tourism:

1. *(a)* What status does the 'Sports Policy' document of the Southern Area of the Education Department have?

(b) In particular, are schools in the Southern Area required to adhere to the policies outlined in this document?

(c) Can schools adopt policies contrary to the recommendations of the department's policy document?

2. Has the Minister read this document and does he support the recommendations in this policy?

3. *(a)* Will the Minister provide copies of the sports policies of the other areas of the Education Department?

(b) If some areas do not have sports policies, are they preparing policies and, if so, when will they be available?

The Hon. BARBARA WIESE: The replies are as follows:

1. *(a)* The document was prepared specifically for use within the Southern Area. It contains both an outline of general policy on sports in primary schools and a set of guidelines on the administration and supervision of sport in primary schools. These have been welcomed by schools and have helped to put the management of sport in primary schools in that area on a sounder footing.

(b) The majority of the document consists of advice to schools on good management of primary school sport, based on extensive experience. Procedures are recommended or guidelines provided. Schools or school councils are encouraged to give full consideration to these suggestions but it is not obligatory for them to do so. In some instances however, schools are required to conform to particular requirements, for example, in management of finances of school sports teams.

(c) Schools are free to accept or reject (one would hope, after due consideration) from the extensive range of advice given on effective management of primary school sport, provided what is done is not in conflict with legislation, departmental policies or administrative instructions.

2. Yes, and the recommendations are supported in principle, however, while the Southern Area document was designed to assist schools in that part of the State, the matter is now being taken up on a wider front. The newly formed School Sports Advisory Council will assist the Education Department in reaching a position whereby sport policy can be put into perspective. The Southern Area Children's Sport Guidelines will then be subsumed into a wider, more categorical departmental statement with guidelines. This will then be made available to all schools in the State.

3. *(a)* See answer to 2 above.

(b) See answer to 2 above.

CHILDREN'S SERVICES OFFICE TEACHERS

The Hon. R.I. LUCAS (on notice) asked the Minister of Tourism:

1. *(a)* What is the number of full day teacher contract positions offered by the Children's Services Office for Term 1 in 1987?

(b) In which centres were those contract offered?

2. *(a)* How many full day teacher contract positions will be offered in Term 2?

(b) In which centres will those contracts be offered?

The Hon. BARBARA WIESE: The replies are as follows:

1. *(a)* Twenty-nine full day teacher contract positions have been offered by the Children's Services Office for Term 1 in 1987.

(b) The centres in which these contract positions were offered include:

Margaret Ives	Leigh Creek
St Paul's (Cowell)	Mobile—Berri
Snowtown	Streaky Bay
Clare Mobile	Moonta
Mount Gambier East	Tumby Bay
Jamestown	Elsie Ey
Wallaroo	Fulham Park
Kapunda	Lock
Naracoorte North	Risdon Park South
Riverton	Madge Sexton
Augusta Park	Cranston Street
Risdon Park	Mary Bywaters
Woomera	Woomera
Port Pirie Community	

2. Further contract positions will be offered as a result of individuals having leave during Term 2, for example, long service leave, accouchement leave, and special leave without pay. Applications for such leave will be received throughout Term 1 and will not be finalised until near the end of that term. In these circumstances, we are unable to answer this question.

CHILDREN'S SERVICES COMMITTEES

The Hon. R.I. LUCAS (on notice) asked the Minister of Tourism: Will the Minister provide for all advisory, consultative and standing committees in the Children's Services portfolio:

1. Names and occupations (or organisation represented) of all members.
2. Date of appointment and date of expiry of appointment.
3. Amount of fee or allowance payable to members.
4. Number of meetings conducted in past financial year.
5. Terms of reference for operation of each committee?

The Hon. BARBARA WIESE: The reply has been provided in the form of a schedule, which contains the information requested. However, due to the cost of printing it in *Hansard*, I seek leave to table it as a document. I indicate that I have a copy to be made available to the Hon. Mr Lucas.

Leave granted.

CHILD PARENT CENTRES

The Hon. R.I. LUCAS (on notice) asked the Minister of Tourism:

1. What new Child Parent Centres were established in 1986 and will be established in 1987?
2. What extra costs have been incurred or will be incurred?
3. What are the nearest kindergarten or Child Parent Centres to the proposed new Child Parent Centres?
4. *(a)* Was any consideration given to the effect of the new Child Parent Centres on the future enrolments of those nearby kindergarten or Child Parent Centres?

(b) If yes, what are the expected effects?

The Hon. BARBARA WIESE: The replies are as follows:

1. A Child Parent Centre was established at Ernabella in 1986. In 1987, a new centre will open at Houghton.

2. Extra costs incurred:

Ernabella

Capital costs incurred:

None from the Pre-school Budget through Children's Services Office/Education Department.

Staffing:

(1 FTE teacher): $26 000 (plus contingencies)

Houghton

Capital costs incurred: $5 000 (to date—expected to finally total around $7 000-$8 000).

Staffing:
(.4 FTE teacher): $10 500
Establishment grant: $3 000
Operating grant: $500 (recurrent)

Littlehampton (Proposed)

(At this stage, recurrent funding for this proposed centre has not been secured. It has been submitted as part of the Education Department Pre-school Budget Estimate for 1987/88).

Proposed capital costs: $25 000
Proposed staffing:
(.4 FTE teacher): $10 500
Proposed establishment grant: $3 000
Proposed operating grant: $500 (recurrent)

3. Ernabella is an Aboriginal settlement which is not near any other child parent centre or kindergarten location. There is a kindergarten at Leigh Creek, over 100 km away.

The nearest centres to Houghton are at Tea Tree Gully and Banksia Park.

4. *(a)* The Education Department's Regional Director and the School Superintendant assess any possible effects on nearby centres. Their feedback, together with relevant demographic, statistical and service data collected by the Education Department and the Children's Services Office is then assessed as part of the combined planning process.

(b) Having assessed the need for the service, the expected effects of establishing a centre are that it may meet all, or in part, the demand for that service at that location. As this need would have been identified as unmet demand in the planning process, little impact would be expected on the nearest kindergartens and child parent centres.

CORRECTIONAL SERVICES ACT AMENDMENT BILL (1987)

Adjourned debate on second reading.

(Continued from 8 April. Page 3921.)

The Hon. C.J. SUMNER (Attorney-General): The Hon. Ms Laidlaw supported this Bill on behalf of the Opposition, and I thank her for that. The Hon. Ms Laidlaw asked whether, when a body search is being undertaken by a medical practitioner, it could be carried out by a medical practitioner of the same sex as the person being searched. Why should there be an exception in relation to a medical practitioner in this case? I would have thought that it was fairly obvious that medical practitioners, in the course of their duties, examine both male and female patients as a normal part of their work. I do not think there is any case for making a distinction between male and female medical practitioners in this respect.

In principle, I do not see what the point is that the honourable member has raised. Acceptance of the honourable member's proposition would cause practical and resource problems in relation to always having two doctors available, one male and one female. However, if particular wishes are expressed in this regard by a prisoner, attempts will be made to accommodate them.

The Hon. Diana Laidlaw: That is all I wanted to know.

The Hon. C.J. SUMNER: I just do not think it is possible to guarantee that a doctor of the same sex as the prisoner involved could always be made available.

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

FAIR TRADING BILL

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

No. 1. Clause 3, page 3, after line 7—Insert new subclause as follows:

(2a) A reference in this Act to a person involved in a contravention of a provision of this Act is a reference to a person who—

(a) aids, abets, counsels or procures the contravention;

(b) induces (by threats, promises or in any other manner) a person to commit the contravention;

(c) conspires to effect the contravention;

or

(d) is in any other way directly or indirectly, knowingly concerned in, or party to, the contravention.

No. 2. Clause 43, page 20, after line 13—Insert new paragraph as follows:

(ca) communicate with a person where the person has notified the creditor or agent in writing that all communications in relation to the debt are to be made to a specified legal practitioner appointed to act on his or her behalf and the person has in fact appointed the legal practitioner so to act;.

No. 3. Clause 43, page 20, line 18—Leave out '11.00 p.m. of one day and 7.00' and insert '9.00 p.m. of one day and 8.00'.

No. 4. Page 21, after line 36—Insert new heading as follows:

PART IXA
TRADE PRACTICES—APPLICATION OF COMMONWEALTH PROVISIONS
DIVISION I—PRELIMINARY

No. 5. Page 21, after line 36—Insert new clause as follows:

45a. *Interpretation Trade Practices Act 1974. ss 4 (1) and (2) and 4E (Cth).* (1) In this Part, unless the contrary intention appears—

'acquire' includes—

(a) in relation to goods—acquire by way of purchase, exchange or taking on lease, on hire or on hire-purchase;

and

(b) in relation to services—accept:

'arrive at', in relation to an understanding, includes reach or enter into:

'business' includes a business not carried on for profit:

'covenant' means a covenant (including a promise not under seal) annexed to or running with an estate or interest in land (whether at law or in equity and whether or not for the benefit of other land), and 'proposed covenant' has a corresponding meaning:

'document' includes—

(a) a book, plan, paper, parchment or other material on which there is writing or printing, or on which there are marks, symbols or perforations having a meaning for persons qualified to interpret them;

and

(b) a disc, tape, paper or other device from which sounds or messages are capable of being reproduced:

'give effect to', in relation to a provision of a contract, arrangement or understanding, includes do an act or thing in pursuance of or in accordance with or enforce or purport to enforce:

'goods' includes—

(a) ships, aircraft and other vehicles;

(b) animals, including fish;

(c) minerals, trees and crops, whether on, under or attached to land or not;

and

(d) gas and electricity:

'market', in relation to goods or services, means a market for those goods or services and other goods or services that are substitutable for, or otherwise competitive with, those goods or services:

'price' includes a charge of any description:

'provision', in relation to an understanding, means any matter forming part of the understanding:

'require', in relation to the giving of a covenant, means require or demand the giving of a covenant, whether by way of making a contract containing the covenant or otherwise, and whether or not a covenant is given in pursuance of the requirement or demand:

'send' includes deliver, and 'sent' and 'sender' have corresponding meanings:

'services' includes any rights (including rights in relation to, and interests in, real or personal property), benefits, privileges or facilities that are, or are to be, provided, granted or conferred in trade or commerce, and without limiting the generality of the foregoing, includes the rights, benefits, privileges or facilities that are, or are to be, provided, granted or conferred under—

(a) a contract for or in relation to—

(i) the performance of work (including work of a professional nature), whether with or without the supply of goods;

(ii) the provision of, or of the use or enjoyment of facilities for, amusement, entertainment, recreation or instruction;

or

(iii) the conferring of rights, benefits or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction;

(b) a contract of insurance;

(c) a contract between a banker and a customer of the banker entered into in the course of the carrying on by the banker of the business of banking;

or

(d) any contract for or in relation to the lending of moneys,

but does not include rights or benefits being the supply of goods or the performance of work under a contract of service:

'supply', when used as a verb, includes—

(a) in relation to goods—supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase;

and

(b) in relation to services—provide, grant or confer,

and, when used as a noun, has a corresponding meaning, and 'supplied' and 'supplier' have corresponding meanings:

'unsolicited goods' means goods sent to a person without any request made by or on behalf of the person:

'unsolicited services' means services supplied to a person without any request made by or on behalf of the person.

(2) In this Part, a reference to engaging in conduct shall be read as a reference to doing or refusing to do any act, including—

(a) the making of, or the giving effect to a provision of, a contract or arrangement;

(b) the arriving at, or the giving effect to a provision of, an understanding;

or

(c) the requiring of the giving of, or the giving of, a covenant.

(3) In this Part, a reference to conduct, when that expression is used as a noun otherwise than as mentioned in subsection (2), shall be read as a reference to the doing of or the refusing to do any act, including—

(a) the making of, or the giving effect to a provision of, a contract or arrangement;

(b) the arriving at, or the giving effect to a provision of, an understanding;

or

(c) the requiring of the giving of, or the giving of, a covenant.

(4) In this Part, a reference to refusing to do an act includes a reference to—

(a) refraining (otherwise than inadvertently) from doing that act;

or

(b) making it known that that act will not be done.

(5) In this Part, a reference to a person offering to do an act, or to do an act on a particular condition, includes a reference to the person making it known that the person will accept applications, offers or proposals for the person to do that act or to do that act on that condition (as the case may be).

No. 6. Page 21, after line 36—Insert new clause as follows:

45b. *Application of provisions rendering contracts, etc., unenforceable. Trade Practices Act 1974. s. 4 (3) (Cth).* Where a provision of this Part is expressed to render a provision of a contract, or to render a covenant, unenforceable if the provision of the contract or the covenant has or is likely to have a particular effect, that provision of this Part applies in relation to the provision of the contract or the covenant at any time when the provision of the contract or the covenant has or is likely to have that effect notwithstanding that—

(a) at an earlier time the provision of the contract or the covenant did not have that effect or was not regarded as likely to have that effect;

or

(b) the provision of the contract or the covenant will not or may not have that effect at a later time.

No. 7. Page 21, after line 36—Insert new clause as follows:

45c. *Consumers. Trade Practices Act 1974, s. 4B. (Cth).* (1) For the purposes of this Part, unless the contrary intention appears—

(a) a person shall be taken to have acquired particular goods as a consumer if, and only if—

(i) the price of the goods did not exceed the prescribed amount;

or

(ii) where that price exceeded the prescribed amount—the goods were of a kind ordinarily acquired for personal, domestic or household use or consumption or the goods consisted of a commercial road vehicle,

and the person did not acquire the goods, or hold himself or herself out as acquiring the goods, for the purpose of re-supply or for the purpose of using them up or transforming them, in trade or commerce, in the course of a process of production or manufacture or of repairing or treating other goods or fixtures on land;

and

(b) a person shall be taken to have acquired particular services as a consumer if, and only if—

(i) the price of the services did not exceed the prescribed amount;

or

(ii) where that price exceeded the prescribed amount—the services were of a kind ordinarily acquired for personal, domestic or household use or consumption.

(2) For the purposes of subsection (1)—

(a) the prescribed amount is $40 000 or, if a greater amount is prescribed for the purposes of this paragraph, that greater amount;

(b) subject to paragraph *(c)*, the price of goods or services purchased by a person shall be taken to have been the amount paid or payable by the person for the goods or services;

(c) where a person purchased goods or services together with other property or services, or with both other property and services, and a specified price was not allocated to the goods or services in the contract under which they were purchased, the price of the goods or services shall be taken to have been—

(i) the price at which, at the time of acquisition, the person could have purchased from the supplier the goods or services without the other property or services;

(ii) if, at the time of the acquisition, the goods or services were not available for purchase from the supplier except together with the other property or services but, at that time, goods or services of the kind acquired were available for purchase from another supplier without other property or services—the lowest price at which the person could, at that time, reasonably have purchased goods or services of that kind from another supplier;

or

(iii) if, at the time of the acquisition, goods or services of the kind acquired were not available for purchase from any supplier except together with other property or services—the value of the goods or services at that time;

(d) where a person acquired goods or services otherwise than by way of purchase, the price of the goods or services shall be taken to have been—

(i) the price at which, at the time of the acquisition, the person could have purchased the goods or services from the supplier;

(ii) if, at the time of the acquisition, the goods or services were not available for purchase from the supplier or were so available only together with other property or services but, at that time, goods or services of the kind acquired were available for purchase from another supplier—the lowest price at which the person could, at that time, reasonably have purchased goods or services of that kind from another supplier;

or

(iii) if goods or services of the kind acquired were not available, at the time of the acquisition, for purchase from any supplier or were not so available except together with other property or services—the value of the goods or services at that time;

and

(e) without limiting by implication the meaning of the expression 'services' in section 45a the obtaining of credit by a person in connection with the acquisition of goods or services by the person shall be deemed to be the acquisition by the person of a service and any amount by which the amount paid or payable by the person for the goods or services is increased by reason of the person so obtaining credit shall be deemed to be paid or payable by the person for that service.

(3) Where it is alleged in any proceeding under this Part or in any other proceeding in respect of a matter arising under this Part that a person was a consumer in relation to particular goods and services, it shall be presumed, unless the contrary is established, that the person was a consumer in relation to those goods and services.

(4) In this section—

'commercial road vehicle' means a vehicle or trailer acquired for use principally in the transport of goods on public roads.

No. 8. Page 21, after line 36—Insert new clause as follows:

45d. *Acquisitions, supply and re-supply. Trade Practices Act 1974, s. 4C (Cth).* In this Part, unless the contrary intention appears—

(a) a reference to the acquisition of goods includes a reference to the acquisition of property in, or rights in relation to, goods in pursuance of a supply of the goods;

(b) a reference to the supply or acquisition of goods or services includes a reference to agreeing to supply or acquire goods or services;

(c) a reference to the supply or acquisition of goods includes a reference to the supply or acquisition of goods together with other property or services, or both;

(d) a reference to the supply or acquisition of services includes a reference to the supply or acquisition of services together with property or other services, or both;

and

(e) a reference to the re-supply of goods acquired from a person includes a reference to—

(i) a supply of the goods to another person in an altered form or condition;

and

(ii) a supply to another person of goods in which the first-mentioned goods have been incorporated.

No. 9. Page 21, after line 36—Insert new clause as follows:

45e. *References to purpose or reason. Trade Practices Act 1974, s. 4F (Cth).* For the purposes of this Part—

(a) a provision of a contract, arrangement or understanding or of a proposed contract, arrangement or understanding, or a covenant or a proposed covenant, shall be deemed to have had, or to have, a particular purpose if—

(i) the provision was included in the contract, arrangement or understanding or is to be included in the proposed contract, arrangement or understanding, or the covenant was required to be given or the proposed covenant is to be required to be given, as the case may be, for that purpose or for the purposes that included or include that purpose;

and

(ii) that purpose was or is a substantial purpose;

and

(b) a person shall be deemed to have engaged or to engage in conduct for a particular purpose or a particular reason if—

(i) the person engaged or engages in the conduct for purposes that included or include that purpose or for reasons that included or include that reason, as the case may be;

and

(ii) that purpose or reason was or is a substantial purpose or reason.

No. 10. Page 21, after line 36—Insert new clause as follows:

45f. *Leases and licences of land and buildings. Trade Practices Act 1974, s. 4H (Cth).* In this Part—

(a) a reference to a contract shall be construed as including a reference to a lease of, or a licence in respect of, land or a building or part of a building and shall be so construed notwithstanding the express references in this Part to such leases or licences;

(b) a reference to making or entering into a contract, in relation to such a lease or licence, shall be read as a reference to granting or taking the lease or licence;

and

(c) a reference to a party to a contract, in relation to such a lease or licence, shall be read as including a reference to any person bound by, or entitled to the benefit of, any provision contained in the lease or licence.

No. 11. Page 21, after line 36—Insert new clause as follows:

45g. *Loss or damage to include injury. Trade Practices Act 1974, s. 4K (Cth).* In this Part—

(a) a reference to loss or damage, other than a reference to the amount of any loss or damage, includes a reference to injury;

and

(b) a reference to the amount of any loss or damage includes a reference to damages in respect of an injury.

No. 12. Page 21, after line 36—Insert new clause as follows:

45h. *Severability. Trade Practices Act 1974, s. 4L (Cth).* If the making of a contract after the commencement of this section contravenes this Part by reason of the inclusion of a particular provision in the contract, then, subject to any rights arising under Part III or any order made under section 52c or 52d, nothing in this Act affects the validity or enforceability of the contract otherwise than in relation to that provision insofar as that provision is severable.

No. 13. Page 21, after line 36—Insert new clause as follows:

45i. *Representations. Trade Practices Act 1974, s. 51A (Cth).* (1) For the purposes of this Part, where a person makes a representation with respect to any future matter (including the doing of, or the refusing to do, any act) and the person does not have reasonable grounds for making the representation, the representation shall be taken to be misleading.

(2) For the purposes of the application of subsection (1) in relation to a proceeding concerning a representation made by a person with respect to any future matter, the person shall, unless the person adduces evidence to the contrary, be deemed not to have had reasonable grounds for making the representation.

(3) Subsection (1) shall be deemed not to limit by implication the meaning of a reference in this Part to a misleading representation, a representation that is misleading in a material particular or conduct that is misleading or is likely or liable to mislead.

No. 14. Page 21, after line 36—Insert new clause as follows:

45j. *Application.* (1) This Part applies to and in relation to transactions that take place, conduct that occurs and representations that are made within the State, whether wholly or partly.

(2) For the purposes of the application in relation to a provision of Division II or III of any other provision of this Act—

(a) this Division applies also to that other provision;

and

(b) words and expressions used in that other provision have the same meanings as in this Division.

No. 15. Page 21, after line 36—Insert new heading as follows:

DIVISION II—TRADE PRACTICES

No. 16. Page 21, after line 36—Insert new clause as follows:

45k. *Misleading or deceptive conduct. Trade Practices Act 1974, s. 52 (Cth).* (1) A person shall not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

(2) Nothing in the succeeding provisions of this Division shall be taken as limiting by implication the generality of subsection (1).

No. 17. Page 21, after line 36—Insert new clause as follows:

45l. *Unconscionable conduct. Trade Practices Act 1974, s. 52A (Cth).* (1) A person shall not, in trade or commerce, in connection with the supply or possible supply of goods or services to another person, engage in conduct that is, in all the circumstances, unconscionable.

(2) Without in any way limiting the matters to which a court may have regard for the purposes of determining whether a person has contravened subsection (1) in connection with the supply or possible supply of goods or services to another person (in this subsection referred to as the 'consumer'), a court may have regard to—

(a) the relative strengths of the bargaining positions of the person and the consumer;

(b) whether, as a result of the conduct engaged in by the person, the consumer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the person;

(c) whether the consumer was able to understand any documents relating to the supply or possible supply of the goods or services;

(d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the consumer or a person acting on behalf of the consumer by the person or a person acting on behalf of the person in relation to the supply or possible supply of the goods and services;

and

(e) the amount for which, and the circumstances under which, the consumer could have acquired identical or equivalent goods or services from a person other than the person.

(3) A person shall not be taken for the purposes of this section to engage in unconscionable conduct in connection with the supply or possible supply of goods or services to another person by reason only that the person—

(a) institutes legal proceedings in relation to that supply or possible supply;

or

(b) refers a dispute or claim in relation to that supply or possible supply to arbitration.

(4) For the purposes of determining whether a person has contravened subsection (1) in connection with the supply or possible supply of goods or services to another person—

(a) a court shall not have regard to any circumstances that were not reasonably foreseeable at the time of the alleged contravention;

and

(b) a court may have regard to conduct engaged in, or circumstances existing, before the commencement of this section.

(5) A reference in this section to goods or services is a reference to goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption.

(6) A reference in this section to the supply or possible supply of goods does not include a reference to the supply or possible supply of goods for the purpose of re-supply or for the purpose of using them up or transforming them in trade or commerce.

No. 18. Page 21, after line 36—Insert new clause as follows:

45m. *False or misleading representations. Trade Practices Act 1974, s. 53 (Cth).* A person shall not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services—

(a) falsely represent that goods are of a particular standard, quality, grade, composition, style or model or have had a particular history or particular previous use;

(b) falsely represent that services are of a particular standard, quality or grade;

(c) falsely represent that goods are new;

(d) falsely represent that a particular person has agreed to acquire goods or services;

(e) represent that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits that they do not have;

(f) represent that the person has a sponsorship, approval or affiliation that the person does not have;

(g) make a false or misleading representation with respect to the price of goods or services;

(h) make a false or misleading representation concerning the availability of facilities for the repair of goods or of spare parts for goods;

(i) make a false or misleading representation concerning the place of origin of goods;

(j) make a false or misleading representation concerning the need for any goods or services;

or

(k) make a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy.

No. 19. Page 21, after line 36—Insert new clause as follows:

45n. *Representations and conduct in relation to land. Trade Practices Act 1974, s. 53A (Cth).* (1) A person shall not, in trade or commerce, in connection with the sale or grant, or possible sale or grant, of an interest in land or in connection with the promotion by any means of the sale or grant of an interest in land—

(a) represent that the person has a sponsorship, approval or affiliation that the person does not have;

(b) make a false or misleading representation concerning the nature of the interest in the land, the price payable for the land, the location of the land, the characteristics of the land, the use to which the land is capable of being put or may lawfully be put or the existence or availability of facilities associated with the land;

or

(c) offer gifts, prizes or other free items with the intention of not providing them or of not providing them as offered.

(2) A person shall not use physical force or undue harassment or coercion in connection with the sale or grant, or the possible sale or grant, of an interest in land or the payment for an interest in land.

(3) Nothing in this section shall be taken as implying that other provisions of this Division do not apply in relation to the supply or acquisition, or the possible supply or acquisition, of interests in land.

(4) In this section, 'interest', in relation to land, means—

(a) a legal or equitable estate or interest in the land;

(b) a right of occupancy of the land, or of a building or part of a building erected on the land, arising by virtue of the holding of shares, or by virtue of a contract to purchase shares, in an incorporated company that owns the land or building;

or

(c) a right, power or privilege over, or in connection with, the land.

No. 20. Page 21, after line 36—Insert new clause as follows:

45o. *Misleading conduct in relation to employment. Trade Practices Act 1974, s. 53B (Cth).* A person shall not, in relation to employment that is to be, or may be, offered by the person or by another person, engage in conduct that is liable to mislead persons seeking the employment as to the availability, nature, terms or conditions of, or any other matter relating to, the employment.

No. 21. Page 21, after line 36—Insert new clause as follows:

45p. *Requirement to state cash price. Trade Practices Act 1974, s. 53C (Cth).* A person shall not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services, make a representation with respect to an amount that, if paid, would constitute a part of the consideration for the supply of the goods or services unless the person also specifies the cash price for the goods or services.

No. 22. Page 21, after line 36—Insert new clause as follows:

45q. *Offering gifts and prizes. Trade Practices Act 1974, s. 54 (Cth).* A person shall not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services, offer gifts, prizes or other free items with the intention of not providing them, or of not providing them as offered.

No. 23. Page 21, after line 36—Insert new clause as follows:

45r. *Misleading conduct in relation to goods. Trade Practices Act 1974, s. 55 (Cth).* A person shall not, in trade or commerce, engage in conduct that is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose or the quantity of any goods.

No. 24. Page 21, after line 36—Insert new clause as follows:

45s. *Misleading conduct in relation to services. Trade Practices Act 1974, s. 55A (Cth).* A person shall not, in trade or commerce, engage in conduct that is liable to mislead the public as to the nature, the characteristics, the suitability for their purpose or the quantity of any services.

No. 25. Page 21, after line 36—Insert new clause as follows:

45t. *Bait advertising. Trade Practices Act 1974, s. 56 (Cth).* (1) A person shall not, in trade or commerce, advertise for supply at a specified price goods or services, if there are reasonable grounds, of which the person is aware or ought reasonably to be aware, for believing that the person will not be able to offer for supply those goods or services at that price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the person carries on business and the nature of the advertisement.

(2) A person who has, in trade or commerce, advertised goods or services for supply at a specified price shall offer such goods or services for supply at that price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the person carries on business and the nature of the advertisement.

(3) In a prosecution of a person in relation to a failure to offer goods or services to another person (in this subsection referred to as the 'customer') in accordance with subsection (2), it is a defence if the person establishes that—

(a) the person offered to supply, or to procure another person to supply, goods or services of the kind advertised to the customer within a reasonable time, in a reasonable quantity and at the advertised price;

or

(b) the person offered to supply immediately, or to procure another person to supply within a reasonable time, equivalent goods or services to the customer in a reasonable quantity and at the price at which the first mentioned goods or services were advertised,

and, in either case, where the offer was accepted by the customer, the person has so supplied, or procured another person to supply, goods or services.

No. 26. Page 21, after line 36—Insert new clause as follows:

45u. *Referral selling. Trade Practices Act 1974, s. 57 (Cth).* A person shall not, in trade or commerce, induce a consumer to acquire goods or services by representing that the consumer will, after the contract for the acquisition of the goods or services is made, receive a rebate, commission or other benefit in return for giving the person the names of prospective customers or otherwise assisting the person to supply goods or services to other consumers, if receipt of the rebate, commission or other benefit is contingent on an event occurring after that contract is made.

No. 27. Page 21, after line 36—Insert new clause as follows:

45v. *Acceptance of payment. Trade Practices Act 1974, s. 58 (Cth).* A person shall not, in trade or commerce, accept payment or other consideration for goods or services where, at the time of the acceptance—

(a) the person intends—

(i) not to supply the goods or services;

or

(ii) to supply goods or services materially different from the goods or services in respect of which the payment or other consideration is accepted;

or

(b) there are reasonable grounds, of which the person is aware or ought reasonably to be aware, for believing that the person will not be able to supply the goods or services within the period specified by the person or, if no period is specified, within a reasonable time.

No. 28. Page 21, after line 36—Insert new clause as follows:

45w. *Misleading representations about business activities. Trade Practices Act 1974, s. 59 (Cth).* (1) A person shall not, in trade or commerce, make a representation that is false or misleading in a material particular concerning the profitability or risk or any other material aspect of any business activity that the person has represented as one that can be, or can be to a considerable extent, carried on at or from a person's place of residence.

(2) Where a person, in trade or commerce, invites, whether by advertisement or otherwise, other persons to engage or participate, or to offer or apply to engage or participate, in a business activity requiring—

(a) the performance by the other persons concerned of work;

or

(b) the investment of moneys by the other persons concerned and the performance by them of work associated with the investment,

the person shall not make, with respect to the profitability or risk or any other material aspect of the business activity, a representation that is false or misleading in a material particular.

No. 29. Page 21, after line 36—Insert new clause as follows:

45x. *Harassment and coercion. Trade Practices Act 1974, s. 60 (Cth).* A person shall not use physical force or undue harassment or coercion in connection with the supply or possible supply of goods or services to a consumer or the payment for goods or services by a consumer.

No. 30. Page 21, after line 36—Insert new clause as follows:

45y. *Pyramid selling. Trade Practices Act 1974, s. 61 (Cth).* (1) A person contravenes this section if—

(a) the person is a promoter of, or (if there are more than one) one of the promoters of, or is a participant in, a trading scheme to which this section applies;

and

(b) a person who is a participant in that trading scheme, or has applied or been invited to become a participant in that trading scheme, makes any payment to or for the benefit of the person referred to in paragraph *(a)*, being a payment that the person is induced to make by reason that the prospect is held out to the person of receiving payments or other benefits in respect of the introduction (whether by the person or by another person) of other persons who become participants in that trading scheme.

(2) A person also contravenes this section if—

(a) the person is a promoter of, or (if there are more than one) one of the promoters of, is a participant in, or is otherwise acting in accordance with, a trading scheme to which this section applies;

and

(b) the person, by holding out to another person the prospect of receiving payments or other benefits in respect of the introduction (whether by that other person or by another person) of other persons who become participants in that trading scheme, attempts to induce that other person—

(i) if that other person is already a participant in that trading scheme, to make any payment to or for the benefit of the promoter or any of the promoters or to or for the benefit of a participant in that trading scheme;

or

(ii) if that other person is not already a participant in that trading scheme, to become such a participant and to make a payment of a kind mentioned in subparagraph (i).

(3) A person also contravenes this section if the person promotes, or takes part in the promotion of, a scheme under which—

(a) a payment is to be made by a person who participates, or who has applied or been invited to participate, in the scheme to or for the benefit of the person or another person who takes part in the promotion of the scheme or to or for the benefit of another person who participates in the scheme;

and

(b) the inducement for making the payment is the holding out to the person who makes or is to make the payment the prospect of receiving payments from other persons who may participate in the scheme.

(4) For the purposes of subsections (1), (2) or (3)—

(a) a prospect of a kind mentioned in that subsection shall be taken to be held out to a person whether it is held out so as to confer on the person a legally enforceable right or not;

(b) in determining whether an inducement or attempt to induce is made by holding out a prospect of a kind mentioned in that subsection, it is sufficient if a prospect of that kind constitutes or would constitute a substantial part of the inducement;

and

(c) any reference to the making of a payment to or for the benefit of a person shall be construed as including the making of a payment partly to or

for the benefit of that person and partly to or for the benefit of one or more other persons.

(5) For the purposes of this section, a scheme is a trading scheme to which this section applies if the scheme includes the following elements:

(a) goods or services, or both, are to be provided by the person promoting the scheme (in this section referred to as the 'promoter') or, in the case of a scheme promoted by two or more persons acting in concert (in this section referred to as the 'promoters'), are to be provided by one or more of those persons;

and

(b) the goods or services so provided are to be supplied to or for other persons under transactions arranged or effected by persons who participate in the scheme (each of whom is in this section referred to as a 'participant'), being persons not all of whom are promoters.

(6) For the purposes of subsection (5)—

(a) a scheme shall be taken to include the element referred to in paragraph *(b)* of that subsection whether a participant who is not a promoter acts in relation to a transaction referred to in that paragraph in the capacity of a servant or agent of the promoter or one of the promoters or in any other capacity;

(b) a scheme includes any arrangements made in connection with the carrying on of a business, whether those arrangements are made or recorded wholly or partly in writing or not;

and

(c) any reference to the provision of goods or services by a person shall be construed as including a reference to the provision of goods or services under arrangements to which that person is a party.

No. 31. Page 21, after line 36—Insert new clause as follows:

45z. *Unsolicited credit and debit cards. Trade Practices Act 1974, s. 63A (Cth).* (1) A person shall not send a prescribed card to another person except—

(a) in pursuance of a request in writing by the person who will be under a liability to the person who issued the card in respect of the use of the card;

or

(b) in renewal or replacement, or in substitution for—

(i) a prescribed card of the same kind previously sent to that other person in pursuance of a request in writing by the person who was under a liability to the person who issued the card previously so sent in respect of the use of that card;

or

(ii) a prescribed card of the same kind previously sent to that other person and used for a purpose for which it was intended to be used.

(2) Subsection (1) applies only in relation to the sending of a prescribed card by or on behalf of the person who issued the card.

(3) A person shall not take any action that enables a person who has a credit card or a debit card to use the card as a debit card or a credit card, as the case may be, except in accordance with a request in writing by that person.

(4) In this section—

'article' includes a token, card or document:

'credit card' means any article of a kind commonly known as a credit card or any similar article intended for use in obtaining cash, goods or services on credit, and includes any article of a kind commonly issued by persons carrying on business to customers or prospective customers of those persons for use in obtaining goods or services from those persons on credit:

'debit card' means an article intended for use by a person in obtaining access to an account held by the person for the purpose of withdrawing or depositing cash or obtaining goods or services:

'prescribed card' means a credit card, a debit card or an article that may be used as a credit card and a debit card.

No. 32. Page 21, after line 36—Insert new clause as follows:

45aa. *Right to payment for unsolicited goods, etc. Trade Practices Act 1974, s. 64 (Cth).* (1) A person shall not, in trade or commerce, assert a right to payment from another person for unsolicited goods unless the first mentioned person has reasonable cause to believe that there is a right to payment.

(2) A person shall not, in trade or commerce, assert a right to payment from another person for unsolicited services unless the first mentioned person has reasonable cause to believe that there is a right to payment.

(3) A person shall not assert a right to payment from another person of a charge for the making in a directory of an entry relating to the other person or to the other person's profession, business, trade or occupation unless the first mentioned person knows or has reasonable cause to believe that the other person has authorized the making of the entry.

(4) A person is not liable to make any payment to another person, and is entitled to recover by action in a court of competent jurisdiction against another person any payment made by the first mentioned person to the other person, in full or part satisfaction of a charge for the making of an entry in a directory unless the first mentioned person has authorized the making of the entry.

(5) For the purposes of this section, a person shall be taken to assert a right to a payment from another person for unsolicited goods or services, or of a charge for the making of an entry in a directory, if the first mentioned person—

(a) makes a demand for the payment or asserts a present or prospective right to the payment;

(b) threatens to bring any legal proceedings with a view to obtaining the payment;

(c) places or causes to be placed the name of the other person on a list of defaulters or debtors, or threatens to do so, with a view to obtaining the payment;

(d) invokes or causes to be invoked any other collection procedure, or threatens to do so, with a view to obtaining the payment;

or

(e) sends any invoice or other document stating the amount of the payment or setting out the price of the goods or services or the charge for the making of the entry and not stating as prominently (or more prominently) that no claim is made to the payment, or to payment of the price or charge, as the case may be.

(6) A person shall not be taken for the purposes of this section to have authorized the making of an entry in a directory unless—

(a) a document authorizing the making of the entry has been signed by the person or by another person authorized by that person;

(b) a copy of the document has been given to the person before the right to payment of a charge for the making of the entry is asserted;

and

(c) the document specifies—

(i) the name of the directory;

(ii) the name and address of the person publishing the directory;

(iii) particulars of the entry;

and

(iv) the amount of the charge for the making of the entry or the basis on which the charge is, or is to be, calculated.

(7) For the purposes of this section, an invoice or other document purporting to have been sent by or on behalf of a person shall be deemed to have been sent by that person, unless the contrary is established.

(8) In a proceeding against a person in respect of a contravention of this section—

(a) in the case of a contravention constituted by asserting a right to payment from another person for unsolicited goods or services—the burden lies on the defendant of proving that the defendant had reasonable cause to believe that there was a right to payment;

or

(b) in the case of a contravention constituted by asserting a right to payment from another person of a charge for the making of an entry in a directory—the burden lies on the defendant of proving that the defendant knew or had reasonable cause to believe that the other person had authorized the making of the entry.

(9) In this section—

'directory' includes any publication of a similar nature to a directory but does not include a newspaper published in good faith as a newspaper at regular intervals or a publication published, or to be pub-

lished, by or under the authority of the Australian Telecommunications Commission:

'making', in relation to an entry in a directory, means including, or arranging for the inclusion of, the entry.

No. 33. Page 21, after line 36—Insert new clause as follows:

45bb. *Liability of recipient of unsolicited goods. Trade Practices Act 1974, s. 65 (Cth).* (1) A person to whom unsolicited goods are supplied by another person, in trade or commerce, is not liable to make any payment for the goods and is not liable for the loss of or damage to the goods other than loss or damage resulting from the doing by the first mentioned person of a wilful and unlawful act in relation to the goods during the period specified in subsection (4).

(2) Subject to subsection (3), where a person sends, in trade or commerce, unsolicited goods to another person—

(a) neither the first mentioned person nor any person claiming under the first mentioned person is entitled after the expiration of the period specified in subsection (4) to take action for the recovery of the goods from the person to whom the goods were sent;

and

(b) upon the expiration of that period, the goods become, by force of this section, the property of the person to whom the goods were sent freed and discharged from all liens and charges of any description.

(3) Subsection (2) does not apply to or in relation to unsolicited goods sent to a person if—

(a) the person has at any time during the period specified in subsection (4) unreasonably refused to permit the sender or owner of the goods to take possession of the goods;

(b) the sender or owner of the goods has within that period taken possession of the goods;

or

(c) goods were received by the person in circumstances in which the person knew, or might reasonably be expected to have known, that the goods were not intended for the person.

(4) The period referred to in subsections (1), (2) and (3) is—

(a) if the person who receives the unsolicited goods gives notice with respect to the goods to the sender in accordance with subsection (5)—

(i) the period of one month next following the day on which the notice is given;

or

(ii) the period of 3 months next following the day on which the person received the goods,

whichever first expires;

and

(b) in any other case—the period of 3 months next following the day on which the person received the goods.

(5) A notice under subsection (4) must be in writing and must—

(a) state the name and address of the person who received the goods;

(b) state the address at which possession may be taken of the goods if it is an address other than that of the person;

and

(c) contain a statement to the effect that the goods are unsolicited goods.

No 34. Page 21, after line 36—Insert new clause as follows:

45cc. *Prescribed information providers. Trade Practices Act 1974, s 65A (Cth).* (1) Nothing in sections 45k, 45m, 45n, 45r, 45s or 45w applies to a prescribed publication of matter by a prescribed information provider, other than—

(a) a publication of matter in connection with—

(i) the supply or possible supply of goods or services;

(ii) the sale or grant, or possible sale or grant, of interests in land;

(iii) the promotion by any means of the supply or use of goods or services;

or

(iv) the promotion by any means of the sale or grant of interests in land,

where—

(v) the goods or services were relevant goods or services, or the interests in land were relevent interests in land, as the case may be, in relation to the prescribed information provider;

or

(vi) the publication was on behalf of, or pursuant to a contract, arrangement or understanding with—

(A) a person who supplies goods or services of that kind, or who sells or grants interests in land, being interests of that kind;

or

(B) a body corporate that is related to a body corporate that supplies goods or services of that kind, or that sells or grants interests in land, being interests of that kind;

or

(b) a publication of an advertisement.

(2) For the purposes of this section, a publication by a prescribed information provider is a prescribed publication if—

(a) in any case—the publication was made by the prescribed information provider in the cause of carrying on a business of providing information;

or

(b) in the case of a person who is a prescribed information provider by virtue of paragraphs *(a)*, *(b)* or *(c)* of the definition of 'prescribed information provider' in subsection (3) (whether or not the person is also a prescribed information provider by virtue of another operation of that definition)—the publication was by way of a radio or television broadcast by the prescribed information provider.

(3) In this section—

'consortium' has the same meaning as that expression has in Part IIIB of the *Broadcasting and Television Act* 1942 of the Commonwealth:

'prescribed information provider' means a person who carries on a business of providing information and, without limiting the generality of the foregoing, includes—

(a) a person to whom, or each of the members of a consortium to which, a licence has been granted under Part IIIB of the *Broadcasting and Television Act* 1942 of the Commonwealth;

(b) the Australian Broadcasting Corporation;

and

(c) the Special Broadcasting Service:

'relevant goods or services', in relation to a prescribed information provider, means goods or services of a kind supplied by the prescribed information provider or, where the prescribed information provider is a body corporate, by a body corporate that is, by virtue of section 7 (5) of the *Companies (South Australia) Code*, related to the prescribed information provider:

'relevant interest in land', in relation to a prescribed information provider, means interests in land, being interests of a kind sold or granted by the prescribed information provider or, where the prescribed information provider is a body corporate, by a body corporate, that is, by virtue of section 7 (5) of the *Companies (South Australia) Code*, related to the prescribed information provider.

No. 35. Page 21, after line 36—Insert new heading as follows:

DIVISION III—OFFENCES AGAINST THIS PART

No. 36. Page 21, after line 36—Insert new clause as follows:

45dd. *Offences against this Part. Cf. Trade Practices Act 1974. s 79 (Cth).* (1) A person who contravenes, or is involved in a contravention of, a provision of this Part (other than sections 45k or 45*l*) is guilty of a minor indictable offence.

(2) A person guilty of such an offence is, subject to subsection (3), liable to a penalty not exceeding—

(a) in the case of a body corporate—$100 000;

or

(b) in any other case—$20 000.

(3) Where—

(a) a person is guilty of two or more offences against the same provision of this Part;

and

(b) the offences are of the same or a substantially similar nature and occur at or about the same time,

the aggregate penalty for all of those offences cannot exceed the maximum penalty for a single offence.

No. 37. Clause 47, page 23, after line 16—Insert new subclause as follows:

(3) A person is not required to answer a question or produce a book or document if the answer or the production of the book or document would result in or tend towards self-incrimination.

No. 38. Clause 52, page 24, lines 22 to 24—Leave out all words in these lines.

No. 39. Page 24, after line 40—Insert new heading as follows:

DIVISION IIA—CIVIL REMEDIES FOR CONTRAVENTION OF THIS ACT

No. 40. Page 24, after line 40—Insert new clause as follows:

52a. *Injunctions. Cf. Trade Practices Act 1974. ss 79 (4), 80, and 80A (Cth).* (1) If the Court is satisfied, on the application of the Minister, the Commissioner or any other person, that a person has engaged, or proposes to engage, in conduct that constitutes or would constitute a contravention of a provision of this Act or a related Act, the Court may grant an injunction in such terms as the Court determines to be appropriate.

(2) If the Court is satisfied, on the application of the Minister or the Commissioner, that a person has engaged in conduct constituting a contravention of a provision of this Act (other than section 45*l*) or a related Act, the Court may grant an injunction requiring that person to take specified action (which may include the disclosure of information or the publication of advertisements) to remedy any adverse consequence of that conduct.

(3) An injunction may be granted under this section—

(a) by the Supreme Court or a District Court in the course of criminal proceedings in which the defendant is alleged to have been guilty of conduct of the kind to which the application relates;

or

(b) by the Supreme Court.

(4) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised—

(a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind;

(b) whether or not the person has previously engaged in conduct of that kind;

and

(c) whether or not there is an imminent danger of substantial damage to any other person if the person engages in conduct of that kind.

(5) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised—

(a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing;

(b) whether or not the person has previously refused or failed to do that act or thing;

and

(c) whether or not there is an imminent danger of substantial damage to any other person if the person refuses or fails to do that act or thing.

(6) An interim injunction may be granted under this section pending final determination of the application.

(7) A final injunction may, by consent of the parties, be granted under this section without proof that proper grounds for the injunction exist.

(8) Where the Minister or the Commissioner applies for an injunction under this section, no undertaking as to damages will be required.

(9) The Minister may give an undertaking as to damages or costs on behalf of some other applicant and, in that event, no further undertaking will be required.

(10) An injunction under this section may be rescinded or varied at any time.

No. 41. Page 24, after line 40—Insert new clause as follows:

52b. *Action for damages. Cf. Trade Practices Act 1974, s. 82 (Cth).* (1) A person who suffers loss or damage by conduct of another in contravention of a provision of Part IXA (other than section 45*l*) may recover the amount of the loss or damage by action against that other person or against any person involved in the contravention.

(2) An action under subsection (1) may be commenced at any time within three years after the date on which the cause of action accrued.

No. 42. Page 24, after line 40—Insert new clause as follows:

52c. *Orders for compensation, etc. Cf. Trade Practices Act 1974, s. 87 (Cth).* (1) If in proceedings under this Act the Supreme Court or a District Court is satisfied that a person has suffered, or is likely to suffer, loss or damage by reason of a contravention of this Act, then whether or not any other order is made or relief granted in those proceedings, the Court may, for the purpose of compensating that person or preventing or reducing the extent of the loss or damage, make orders under this section against the person who committed the contravention or a person involved in the contravention.

(2) Whether or not other proceedings have been instituted under this Act in relation to a contravention of this Act, the Supreme Court may—

(a) on the application of a person who has suffered, or is likely to suffer, loss or damage by reason of the contravention;

or

(b) on the application of the Commissioner on behalf of one or more such persons made with the written consent of each such person,

make orders under this section, for the purpose of compensating such a person or preventing or reducing the extent of the loss or damage, against the person who committed the contravention or a person involved in the contravention.

(3) An application under subsection (2) may be commenced—

(a) in the case of a contravention of section 45*l*—at any time within two years after the day on which the cause of action arose;

or

(b) in any other case—at any time within three years after the day on which the cause of action arose.

(4) For the purpose of determining whether to make an order under this section in relation to a contravention of section 45*l*, the Court may have regard to the conduct of the parties to the proceedings since the contravention occurred.

(5) The orders that may be made under this section are of the following kinds—

(a) an order for payment of the amount of the loss or damage;

(b) an order avoiding, in whole or part, a contract or instrument (including a contract or instrument relating to real property);

(c) an order for the variation of a contract or instrument (including a contract or instrument relating to real property);

(d) an order directing the refund of money or the return of property (including real property);

(e) an order directing the repair of, or provision of parts for, goods or the supply of specified services.

No. 43. Page 24, after line 40—Insert new clause as follows:

52d. *Sequestration orders. Cf. Trade Practices Act 1974, s. 87A (Cth).* (1) Where—

(a) proceedings have been or may be commenced before the Supreme Court or a District Court against a person in relation to a contravention of this Act;

and

(b) the Court is satisfied, on the application of the Minister or the Commissioner—

(i) that certain money or other property may be required to satisfy an order that has been or may be made in those proceedings;

and

(ii) that the making of a sequestration order under this section will not unduly prejudice the rights or interests of any other person,

the Court may make an order for the sequestration of that money or other property.

(2) Subject to subsection (3), an order under this section may be made—

(a) for a specified period;

or

(b) until the conclusion of the proceedings referred to in subsection (1) *(a)*.

(3) An order may be made under this section on an *ex parte* application but in that event it will have a maximum life of 30 days.

(4) An order under this section may be varied or revoked at any time.

(5) A person who has notice of a sequestration order under this section shall not deal with property to which the order relates except as may be authorized by the order.

Penalty: In the case of a body corporate—$100 000. In any other case—$20 000.

No. 44. Clause 53, page 24, line 42—Leave out 'The' and insert 'Except as otherwise provided, the'.

No. 45. Clause 57, page 27, line 20—Leave out 'Registrar or an authorised officer' and insert 'Commissioner'.

No. 46. Clause 57, page 27, after line 26—Insert new subclauses as follows:

(8) A finding of fact made by a court in proceedings under this Act will, in the absence of proof to the contrary, be accepted as proof of that fact in other proceedings under this Act.

(9) A finding to which subsection (8) applies may be proved by production of a document under the seal of the Court by which the finding was made.

(10) In any proceedings in which a civil or criminal liability is dependent on a state of mind—

(a) the state of mind of a director, servant or agent of a body corporate will be imputed to the body corporate;

and

(b) the state of mind of a servant or agent of a natural person will be imputed to that person.

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

That the House of Assembly's amendments be disagreed to.

There is substantial agreement on these measures, but there are some outstanding issues which informal discussions have determined will need to go to a conference of managers of both Houses, so I do not want to get into lengthy debate about it at this stage. The amendments made by the House of Assembly do a number of things, but the principal issues are as follows: first, the amendments made by the House of Assembly incorporate two Bills that were previously before this Council (namely, the Trade Practices (State Provisions) Bill is incorporated into the Fair Trading Bill), so we now have one Bill with the provisions not in precisely the same form, but at least with respect to enforcement as were contained in the Trade Practices (State Provisions) Bill. Essentially, the same provisions as contained in the Trade Practices (State Provisions) Bill when it was previously before this Council are now incorporated in the Fair Trading Bill. Obviously, the Government has no objection to this and this Council will have no objection to it.

Secondly (and this issue is still in dispute), I refer to the times at which process may be served on a debtor or a creditor may approach a debtor in the debtor's home. The Hon. Mr Griffin wished to have no restrictions at all on the hours at which approaches could be made to debtors, the Hon. Mr Gilfillan had another view and the Government had yet another view. That issue is still in dispute and I believe it will have to go to a conference of managers in order to resolve it.

The third issue that will need to be addressed in a conference of managers is the issue raised by the Credit Reference Association relating to the obligation on traders to keep a written credit report made to the trader by a credit reference association or other like body. That may seem satisfactory, except the point has been raised that, in future, much of this obtaining of information on the credit ratings of a consumer will be accessed from the credit reference body to the trader by means of computer and the question of a report in writing now includes a report which may be in an electronic form by way of computer and therefore we have the difficulty whereby the trader, as the Bill presently stands, will have to keep a record of the report that it has received by computer from the Credit Reference Association (that is, through the terminal which the trader will have).

For the Act to be complied with, if it is passed in its existing form, it will be necessary for the trader to print that report from the computer terminal. I am further advised that that report may not mean anything to a consumer if it is given to the consumer, because it may be in code. What is the purpose of requiring a trader to keep a report of that kind? On consideration, I do not believe that there is any benefit to consumers in the trader having to keep such a report, particularly as the report may not be comprehensible to a consumer.

I believe the important point is that the Credit Reference Association or some other group will have to keep a copy of the report, whether it be in computer form or in a conventional typed form. The trader will be obliged to keep the name and address of the person from whom it got the credit report and will be obliged to make that information available to the consumer. I think that that adequately covers the situation because, once the consumer has the information, he can go to the source of the credit report and correct any misinformation that is contained either in the data held by the credit reference agency or that was in a report prepared by that credit reference agency.

I think that is agreed between the parties, but the problem is that that does not relate to any issue that is in dispute between the Houses. I believe that the only way that the matter can properly be resolved is for it to go to a conference. For those two reasons—first, to deal with the matter I have just outlined and, secondly, to enable negotiations to take place with respect to the hours at which a creditor or its representative can approach a debtor in his or her own home—I move that these amendments be disagreed to in the knowledge that we will proceed to set up a conference as quickly as possible.

The Hon. K.T. GRIFFIN: The Attorney-General has outlined the reasons for the motion. At this stage I do not wish to add anything, but I will address the issues if a conference is granted by the House of Assembly and the problems are resolved. They can be resolved in the knowledge that there is a lot of value in the Bill and even in the majority of amendments that have come from the other place. To enable us to get to the conference, I agree that the amendments of the House of Assembly be not agreed to.

Motion carried.

The following reason for disagreement was adopted:

Because the amendments do not adequately satisfy the Council's view on the question of creditors approaching debtors in their own homes.

CRIMINAL INJURIES COMPENSATION ACT AMENDMENT BILL

In Committee.

(Continued from 2 April. Page 3759.)

Clauses 2 to 5 passed.

Clause 6—'Repeal of sections 12, 13 and 14 and substitution of new sections.'

The Hon. K.T. GRIFFIN: The Attorney-General answered some questions that I asked at the second reading stage but not others, some of which were raised by way of interjection. Before I move my amendment, it would be appropriate for me to ask the Attorney-General for those answers.

The Hon. C.J. SUMNER: Most of the questions raised by the honourable member were answered in my second reading reply, but I can provide the following additional information. The honourable member asked what sort of expiatable offences are to be exempted. The basic rationale is that the levy should be applied to all expiatable offences which, if not paid, are heard and determined in the courts of summary jurisdiction. The Government considers that there should be some exemptions from the general application of the levy. Offences against local government and university by-laws will be excluded, as will parking offences under the Road Traffic Act. If it is suggested that any other offences should be excluded, they will be considered. Basically they are the only ones that will be exempted. The Government believes that, for this to be effective, it needs to be as all embracing as possible.

The second question was how much would be raised by the levy, and I answered that with a table.

The Hon. K.T. Griffin: About $1.8 million.

The Hon. C.J. SUMNER: Yes. The calculations that I included previously were estimates. It is not possible to calculate the exact amount that the levy will raise. If the Expiation of Offences Bill was passed (it does not look as though it will be this session), certain offences that must currently be dealt with in courts of summary jurisdiction would be able to be dealt with by an expiation notice. That will mean that less money will come into the fund from the $20 levy imposed for summary offences whereas more will come from the $5 levy on expiatable offences. The overall amount will probably be less. It is not possible to say exactly, and the amounts that might apply to expiatable offences and courts of summary jurisdiction will need to be reviewed from time to time.

The third question asked by the honourable member was whether the levy applies for each conviction or on the convicted person. The levy applies for each offence of which a person is convicted, 'convicted' being defined in the Bill as including someone who has been found guilty. The levy applies on each offence for which a person is convicted. It applies only where a person is convicted but will not apply to other offences which a person may ask to be taken into account on sentencing, as often happens in breaking and entering cases.

The honourable member raised a query regarding default in payment of the levy. The Criminal Law Enforcement of Fines Bill does not apply to the levy, that is, the capacity to do a community service order as an alternative to the levy. The definition of 'fine' used in the Bill, which we are still considering, specifically excludes the levy. Community service will not be available for non-payment of the levy. The ultimate sanction for non-payment of the levy will be imprisonment. It might need some refinements in that respect because if a person spent a long time in prison I presume that he would get some money back while he is in prison for the daily—

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: That is true, but whether that would apply in the case of non-payment of a fine I am not sure. Perhaps that does need to be looked at. The intention is that this levy be paid by everyone, including prisoners.

The Hon. K.T. GRIFFIN: Default in payment of the levy would, to a certain extent, defeat the object of the Bill regarding criminal convictions if the levy could be discharged by a person serving a period of time in prison. As I understand the concept of the Criminal Injuries Compensation Fund and this levy, it is not only to raise money to pay victims but also to ensure that the offender is compelled to make some contribution to relieving the distress and loss suffered by victims. If that is the object, given the rate of fine defaulters that has been identified to the Council and the extent to which offenders may be imprisoned as a penalty for their offences, it seems to me that a certain amount (which I cannot identify) will be avoided. I do not know whether the Attorney wants to consider that, but I believe that it is an important issue.

The other area that has not been addressed is whether the Government intends to maintain its contribution from Consolidated Revenue which, in the current year, I think, is budgeted to be about $1.37 million. It would seem to me to defeat the object of the legislation if the levy was to be used purely as a revenue raising exercise in substitution for moneys from general revenue. Will the Attorney indicate the Government's policy in this respect?

The Hon. C.J. SUMNER: Regarding the first point raised by the honourable member, there may be very few cases where the payment of the levy could be defeated by a person serving a period in prison. Obviously, if a person is imprisoned for any length of time they will pay the levy through deductions from their daily rate of pay while in prison. I suppose there could be the odd case where the amount of the levy that was due to be paid was $20 and was imposed when a bond was imposed. If that person was imprisoned, presumably he could get rid of it in one day. I dare say that that means that a person could not be forced to pay. I do not think there is any way around that. We will just have to monitor the situation to see whether it constitutes a large number of cases. Obviously, there must be some sanction and I do not really see that the matter can be dealt with in any other way.

The Hon. K.T. Griffin: Unless it was made a civil debt.

The Hon. C.J. SUMNER: Chasing criminal injuries compensation payments from offenders is a fairly thankless task and not particularly fruitful, as the honourable member would know from his time as Attorney-General. I understand the point that the honourable member is making. We will monitor the situation. If corrective action is required at some stage, we will take it.

Regarding the second point, the Government intends to retain its contribution to the fund from general revenue. If we decided against that, I suspect that the honourable member might have something to say about it. But it is not only for that reason that we will maintain the contribution. We believe that it is reasonable that the contribution from general revenue be maintained. The purpose of the levy is to increase the amount of the fund so that we can cover the increase in the amount of criminal injuries compensation from $10 000 to $20 000 and, hopefully—and this is an important point—increase it over time. That provides a way of protecting the fund and ensuring that there is always some money going into the fund that does not rely exclusively on general revenue.

The Hon. K.T. GRIFFIN: When the fund was established last year, one of the sources of revenue was to be a prescribed percentage of fines in a particular year. Is it proposed that the levy, when in force, will substitute for the prescribed percentage of fines, which is provided for under the principal Act?

The Hon. C.J. SUMNER: No. Obviously, that would still operate, but whether or not it is necessary is another matter. This is in addition to the contribution. Thus we will have the proportion of fines and the levy going into the fund and the balance between the amount that went into the fund from the proportion of fines and the amount paid from general revenue will also be paid into the fund, as well as anything that we can get from confiscation of profits.

A certain proportion of fines going into the fund from general revenue was designed to at least ensure that there was a firm legislative commitment to the Criminal Injuries Compensation Fund through fines, and that provision remains in place. Obviously, as a result of this, it becomes less important, and I suppose that it was always a means whereby we could establish the fund and ensure that it had a certain amount of money, perhaps built up over time. That now becomes less important. The proportion of fines was always seen as part of the general revenue component of the fund in any case. This measure adds another specific amount, but for the time being at least the certain proportion of fines will remain, although it will not be as significant as it was previously.

The Hon. I. GILFILLAN: I support the general intention of the Bill. Legislation which actually directs the gains made

by offenders into a compensation fund is admirable. However, I have misgivings, and I want to make quite plain the principle that leaves me a little uneasy. The assumption is that all offenders ought by conscience to contribute to a compensation fund, regardless of the offence, so that victims are compensated. It is on that basis that I make my only criticism of the measure. It is a difficult criticism to overcome because, quite obviously, it is easy to argue that anyone who has offended has been antagonistic to the State and it is a reasonable penalty that they should contribute. However, this is an extension of the penalty. The State should determine how much of a conglomerate penalty is used in an anonymous way to compensate. The bottom line still remains, in my view, that we are using what seems to be a comfortable way of extracting revenue from a group of people to make compensation. On that basis I am and remain critical of the Bill.

The Hon. C.J. SUMNER: The honourable member cannot have it both ways. He cannot be critical of the Bill on that point and still support it.

The Hon. I. Gilfillan: There is a lot in the Bill that is quite reasonable.

The Hon. C.J. SUMNER: But you are not supporting the levy system. I am saying that the honourable member cannot be critical of the levy system and still support that part of the Bill that imposes the levy system. The honourable member has to make up his mind, as does the rest of the Committee, on whether or not it is fairer for the general taxpayer to contribute to criminal injuries compensation or fairer for a category of people in the community—offenders—to contribute. In my view there is nothing logically wrong with saying a category of people should contribute to payment for criminal injuries compensation by way of this levy. The alternative, as the honourable member knows, is for the general taxpayer to contribute to criminal injuries compensation. It is fairer and more logical to say that a category of offenders ought to contribute to compensation for a category or class of people who are victims.

The Hon. I. GILFILLAN: If I was an offender who had been found guilty of driving a non-registered and non-insured vehicle and I contributed through the levy to the compensation, it is a roundabout way of taxing a target group. I have nothing to do with compensation for a rape victim although I have great sympathy and might not object to a certain amount of my overall tax going towards them if we are looking at the basic principles. It is a comfortable way to do it because offenders taken as a corporate group can be classified as villains and they should out of conscience contribute to compensation—

The Hon. C.J. Sumner: Are you suggesting that it is better for the general taxpayer to do it?

The Hon. I. GILFILLAN: The Hon. John Burdett has a clearer understanding. The general taxpayer is contributing to a certain extent already.

The Hon. C.J. Sumner interjecting:

The Hon. I. GILFILLAN: That is an inane analysis of the argument. It is selective taxation. If (as was the earlier procedure) the perpetrator of the offence was obliged to forfeit whatever assets for compensation, that is natural justice and should be carried out. Here the State is using fines as a form of levy into a fund which really is in effect general revenue because the Government—

The Hon. C.J. Sumner: It is not general revenue—it is going into the fund.

The Hon. I. GILFILLAN: Those funds are being augmented by general revenue. Do we have a different dollar—one dollar coming from the levy and another dollar from the taxpayer?

The Hon. C.J. Sumner: In this case you have an identifiable fund.

The Hon. I. GILFILLAN: If it is inadequate to match the amounts of compensation in the rest of this Bill, it will be topped up from general revenue—is that right?

The Hon. C.J. Sumner: So what?

The Hon. I. GILFILLAN: The dollars going to compensation would come from general revenue.

The Hon. C.J. Sumner interjecting:

The Hon. I. GILFILLAN: I have made my point and the Attorney understands it. If the Attorney could do it he would lift the levy to such an extent that it would cover the complete amount required for compensation with a little bit over to come into general revenue. That is taking the other side of the argument.

The Hon. K.T. Griffin interjecting:

The CHAIRPERSON: Order!

The Hon. I. GILFILLAN: I have made my point adequately. I will not go through it again. *Hansard* has it clearly in writing and those who want to look at it analytically can do so. It is a dangerous precedent and somewhat dubious principle.

The Hon. C.J. SUMNER: The principle is not dubious—it is perfectly logical and fair. The honourable member cannot have it both ways. To increase compensation for people injured as a result of a criminal act, you have to decide from where the compensation will come. If the honourable member does not want a levy for fines it must come from general revenue. Is it fairer for it to come from a category of offenders to ensure that compensation is increased, or is it fairer that it comes from the general taxpayer? It is more sustainable, fairer and more logical for it to come from a category of people—offenders. The honourable member cannot have it both ways. If he wants to increase the amount of compensation it has to come either from general revenue or from a scheme such as this. It is better to have an identifiable fund and that that fund be supplemented and fed by a levy of this kind.

The Hon. I. Gilfillan: It suits you better.

The Hon. C.J. SUMNER: It has to come from the general taxpayers otherwise. What is the justification for that?

The Hon. I. Gilfillan: I do not intend to take it any further.

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

Page 4—
Line 29—Leave out '(1)'.
Lines 32 to 36—Leave out subsections (2) and (3).

New section 15 empowers the Government to make such regulations as are contemplated by the Act or as are necessary or expedient for the purposes of this Act. I have no quarrel with that provision as it is a normal provision. However, I do have difficulty with subsection (2), which provides that a regulation may amend this Act for the purpose of altering a monetary amount not being a penalty. A consequential provision is contained in subsection (3), if such a regulation should be disallowed at some time in the future. Subsection (2) allows a regulation to amend the amount of compensation, the amount that is the limit on compensation, the maximum amount over which the Attorney-General may exercise discretion in relation to non-economic loss, and the levies.

We have had this argument over many Bills in relation to a regulation-making power. I have a basic objection to a regulation amending an Act. I have great difficulty accepting that any Government of whatever political persuasion should have power by regulation to alter the amount up or down that may be available to, in this instance, victims of crime. What amount should be levied on expiation fees and on convictions? I do not have any difficulty with a power by

regulation to prescribe out from the ambit of this Bill, but I do have very great difficulty in accepting that a regulation should be able to state that, instead of a $5 levy, it should be $10 or whatever and that the $20 for convictions in courts of summary jurisdiction should be able to be increased (it is most unlikely that it will be reduced), or that for an indictable offence the levy will be increased from $30. As I said in the second reading speech, those amounts are in effect minimum penalties. They certainly fall within the concept of minimum penalties, although they are described as a levy. I would not see it as appropriate for a regulation-making power to be applied to vary those amounts.

I do not see any great difficulty in a Bill being brought to the Parliament if there is an intention in the Government of the day to vary either the amounts of compensation or the amounts of the levies. It is then quite fully subject to debate in both Houses of Parliament and is not something which is in regulation which can be disallowed, but is effective until disallowed and is perhaps not so visible as legislation dealing with these issues, subject to debate in the Parliament. So, I do not want these to be varied by regulation. I think it is quite inappropriate and I move the amendment which will remove that power from proposed section 15 of the Act.

The Hon. I. GILFILLAN: I will not endeavour to go into the depths of debate on principle in this matter, because the Attorney has difficulty in understanding arguments on the basis of principle. I just make it quite plain that we support the amendment.

The Hon. C.J. SUMNER: The Hon. Mr Gilfillan's main problem is that when he discusses principles, he does not know which principle he wants to support.

The Hon. I. Gilfillan: There is more than one principle.

The Hon. C.J. SUMNER: He always tries to support two mutually inconsistent principles at the one time in order to ensure that he keeps as many constituents happy at the one time as he possibly can.

The Hon. R.J. Ritson: That is his principle.

The Hon. C.J. SUMNER: That is true. Is it the principle or is it just the principle of pragmatism?

The Hon. R.J. Ritson: The only one.

The Hon. C.J. SUMNER: The only one. Had the Hon. Mr Gilfillan not made that aside, I would not have entered the debate. The principle in this Bill is a very, very solid one. It is a matter of principle, and I believe that it is important.

The Hon. K.T. Griffin: We are discussing regulations.

The Hon. C.J. SUMNER: We are discussing clause 6. I want to repeat what I said before: the principle—and it is a very good one—of making offenders provide recompense to victims I would have thought in areas of restitution, as a philosophy in the criminal law, was a very good one. On this question of regulations, we have had the debate on many occasions previously and the numbers are not with me so I will not bother to divide.

Amendments carried; clause as amended passed.

Clause 7, schedule and title passed.

Bill read a third time and passed.

CRIMINAL LAW (ENFORCEMENT OF FINES) BILL

Adjourned debate on second reading.

(Continued from 7 April. Page 3868.)

The Hon. K.T. GRIFFIN: The Opposition supports this Bill. It provides that a person who has been fined but makes default in payment of the fine shall serve a default imprisonment at the rate of one day for every $50 of the fine or part thereof. Presently it is one day for every $25 of fine in respect of which default has been made. The second object of the Bill is to provide for community service orders for fine defaulters if the sheriff or a clerk of a Court of Summary Jurisdiction is satisfied that imprisonment would cause the fine defaulter severe hardship. The rate of imprisonment for fine defaulters, which is to be amended to 1 day for every $50 of fine, does not appear to be unreasonable. Quite obviously, this will have a significant effect in reducing the number of persons in gaol because they are unable or unwilling to pay fines. Hopefully, it will relieve both some of the pressure on the prisons as well as ensuring a more realistic amount is applied to the period of imprisonment. It should be noted that the $25 was fixed, I think, when I was Attorney-General, something like five years ago, so it is due for review.

There is one difficulty with that part of the Bill because it allows the amount to be varied by regulation, and I have a difficulty in accepting that for the reasons which I have just expressed in relation to the Bill just completed. Where a fine defaulter satisfies the sheriff or a clerk of the Court of Summary Jurisdiction, more properly called a Magistrates Court, that he or she or his or her dependents will suffer severe hardship as a result of being imprisoned for non-payment of a fine, the sheriff or clerk of court may forward a certificate to the Director of the Department of Correctional Services.

If the Director has community service opportunities available the defaulter can be required to undertake community service at the rate of eight hours for every $100 in fines or part thereof, up to a total of 160 hours, over a period no longer than 18 months. There is a right of appeal to the court which imposed the original fine in respect of the amount of community service, and, presumably, there is also a right to apply for an extension of time for payment of the fine, as presently exists.

The Bill provides for procedures for the administration of the scheme, and I do not see any difficulty with those provisions. If a person completes six months imprisonment in default of payment of a fine, the fine is entirely extinguished, even if it is more than $9 125, which is the sum of the daily rate for six months imprisonment. So, anyone who has fines in excess of $9 125 and wants to have them all taken out at one time can serve a maximum of six months imprisonment in default of payment and then the fines are extinguished.

As I have indicated, the regulation making power allows the regulation to increase that amount of $50 involved and also to impose a fine not exceeding $2 000 for a breach or non-compliance with the regulation. In relation to that, I think that $1 000 is sufficient, and I will move an amendment to reduce the figure from $2 000 to $1 000. There are some Bills on the Notice Paper that we have just considered which provide $1 000 as the maximum penalty that can be prescribed for breaches of regulations, and I believe that that is adequate for this Bill, too.

I would be a litle concerned to see the fines that regulations can impose getting to amounts which might be regarded as being too large. At one stage it used to be $100, then it went up to $500, and I think, generally speaking, $1 000 is about the rate, except in the sort of exceptional circumstances such as occupational health, safety and welfare, where there are other considerations to which the regulation making powers and the penalties to be imposed by regulations should apply. So, there will be two amendments.

The scheme for community service orders is acceptable to the Opposition. It really reflects a scheme which we

alluded to publicly earlier this year, when we criticised the Government, through the Department of Correctional Services, for releasing fine defaulters, in some instances even before the paperwork had been completed, after the police have delivered the defaulters to a prison.

Honourable members might remember that earlier this year I raised the issue of police officers, particularly from country areas, going to a great deal of effort to arrest defaulters and then transport them to prison. I pointed out that in one instance two police officers transported a fine defaulter from the country—I think it was from the North of the State—who was met at Port Wakefield and driven to Adelaide, where the prisoner was taken to the gaol, but before the police officers had completed the paperwork the fine defaulter was given a bus warrant back to the country and released without serving more than just a few minutes. I find that quite unacceptable.

Other instances have occurred in the South-East of the State where prisoners, who were in default of payment of a fine, were delivered to a gaol and then released after spending only one night notwithstanding the fact that they had something like 14 days to serve. I raised the matter publicly and the matter got a bit of publicity. However, I just do not believe that that is the appropriate way to treat the default system. The courts set a monetary penalty; it ought to be paid. If it is not paid, then the default penalty fixed by the courts ought to be served in lieu of payment of the fine. I do not think that it is good enough for administrative action, by in this instance Correctional Services officers, to be taken on an officer's own decision, which is effectively thumbing one's nose at the decisions made by the courts.

So, community work orders for fine defaulters might help to overcome this practice, and also to a limited extent the problem of crowding in gaols. Subject to the two matters that I have raised, which are the subject of proposed amendments, I support the second reading. This represents an important development in dealing with fine defaulters, of which there is a quite significant number in our prisons from day to day, month to month and year to year.

Bill read a second time.

In Committee.

Clauses 1 to 6 passed.

Clause 7—'Regulations.'

The Hon. K.T. GRIFFIN: As I have indicated, I have some amendments on file. However, it appears that they have not been circulated. Therefore, it might be prudent to report progress at this stage.

Progress reported; Committee to sit again.

The Hon. K.T. GRIFFIN: Mr Acting President, I draw your attention to the state of the Council.

A quorum having been formed:

POTATO INDUSTRY TRUST FUND COMMITTEE BILL

Consideration in Committee of the Legislative Council's amendments to which the House of Assembly had disagreed.

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

That the Legislative Council do not insist on its amendments.

It seems that the House of Assembly's approach to this matter is quite reasonable. I suggest that we do not insist on our amendments.

The Hon. PETER DUNN: Unlike the Attorney-General, I think that the potato growers would be extremely disappointed if we did not insist on those amendments and if we did not give them a fair opportunity to put their case in distributing the money that they think is rightfully theirs. I put their case very forcefully and say that we must insist upon our amendments. It is the only fair, honest and sensible way to distribute that pool of money and, if we do less than that, we would be derelict in our duty.

The Hon. M.J. ELLIOTT: I believe that a reasonably firm undertaking was given by the Minister when the abolition of the Potato Board occurred last year. Regardless of that undertaking I have made the point, along with the Liberal Party, that those assets belong to the growers and that there is nothing unreasonable about the growers having some say about the people who will advise the Minister as to how those assets will be distributed. I believe that we must insist upon our amendments.

Motion carried.

GOODS SECURITIES ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 7 April. Page 3869.)

The Hon. K.T. GRIFFIN: The Opposition is prepared to support the Bill. The principal Act was passed in late 1986 but, as I understand it, in the course of considering implementation certain difficulties have been identified with respect to securities. The principal Act sets up a system by which securities over goods presently limited to motor vehicles may be registered so that those who are dealing in those goods, whether in the course of a trade or business or as a consumer, may be able to gain some information as to what securities are over those goods. In the principal Act provisions were inserted relating to particulars of the debt and priorities that are apparently not in the legislation of some other States.

As I understand it, the Government has agreed to make amendments as a result of submissions of the finance industry to make the South Australian scheme closer to that which exists, particularly in New South Wales. In dealing with the implementation of the legislation, the Registrar of Motor Vehicles has identified a cost quoted by consultants of $16 000 to adjust the existing software package adopted from the New South Wales system to operate the register in South Australia. Obviously, if that cost can be saved, that saving ought to be effected. The amendments in the Bill are not what one would regard as an improvement to the scheme. Rather they detract from it. As the finance industry, which is likely to be the principal user of the scheme, is reasonably happy with the proposals, I am not in any position to object to the changes albeit that it is preferable not to make them. In the circumstances, the Opposition supports the second reading of the Bill.

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

PUBLIC FINANCE AND AUDIT BILL

In Committee.

(Continued from 2 April. Page 3755.)

Clauses 2 and 3 passed.

Clause 4—'Interpretation.'

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

Page 3, line 11—Leave out 'public money' and insert 'money from the State'.

I am moved to propose this amendment because it is important that we identify what public money really is. As I understood from the Minister's second reading reply, it was not intended to regard it as anything other than money from the State. I realise that money from the State can include money from the Commonwealth channelled through the State but I am not worried about that because that is encompassed by the amendment that I have moved. On the other hand, some moneys are made by way of grant to bodies within States which do not necessarily go through the State and I do not believe that it is appropriate for the Auditor-General to be involved in any examination of the accounts of a publicly funded body, an issue which the Hon. Legh Davis will take up later, and which ought to be excluded from the operation of this part of the Bill. My amendment is consistent with the response which the Attorney-General gave during his reply at the second reading stage.

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

Amendment carried; clause as amended passed.

Clauses 5 to 16 passed.

Clause 17—'Interpretation.'

The Hon. K.T. GRIFFIN: Will the Attorney clarify the definition of 'semi-government authority' which, I understand, could extend to universities, colleges of advanced education and Roseworthy Agricultural College? To what extent are those bodies likely to be declared by proclamation to be semi-government authorities for the purposes of this clause? In reply, the Attorney referred to the fact that the definition could extend to bodies such as the universities and Roseworthy Agricultural College. Will he amplify the circumstances in which those bodies might be proclaimed and therefore be subject to this provision?

The Hon. C.J. SUMNER: The Government intends to proclaim them.

The Hon. K.T. GRIFFIN: Will the proclamation of a university be an advantage or a disadvantage for the university? Why will they be proclaimed, and what will be the consequences of proclamation?

The Hon. C.J. SUMNER: I am advised that the universities, Roseworthy Agricultural College and the like would be proclaimed because, in the Government's view, that would benefit them. The Government believes that arrangements can be made centrally that would assist those bodies in achieving better terms and the like.

The Hon. K.T. GRIFFIN: Will the proclamation of the universities in any way impinge on their autonomy?

The Hon. C.J. SUMNER: No. It would allow them to take advantage of more efficient and centralised arrangements with respect to the issues dealt with under division IV.

The Hon. L.H. Davis: If they wished to.

The Hon. C.J. SUMNER: Yes.

Clause passed.

Clauses 18 to 26 passed.

Clause 27—'Vacation of office of Auditor-General.'

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

Page 13, line 2—After 'Commonwealth' insert 'or becomes a member of the Legislative Assembly of a Territory or the Commonwealth'.

This clause deals with the vacation of the office of Auditor-General. The office becomes vacant if the Auditor-General becomes a member of Parliament in this State, the Commonwealth or any other State of the Commonwealth. While it may not be likely that an Auditor-General will become a member of the Legislative Assembly of the Northern Territory or the Australian Capital Territory, for the purposes of completeness we should include those bodies, and that is what the amendment does.

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

Amendment carried; clause as amended passed.

Clause 28—'Appointment of Deputy Auditor-General.'

The Hon. K.T. GRIFFIN: I want to make an observation. In the second reading stage I referred to the question of a Deputy Auditor-General who holds office under the Government Management and Employment Act acting in the office of Auditor-General. I raised a question about the extent to which the Deputy Auditor-General acting in the office of Auditor-General may be directed under the Government Management and Employment Act. As I understand the Bill, the definition of 'Auditor-General' includes a person for the time being holding or acting in the office of Auditor-General. Therefore, when the Deputy Auditor-General acts in the office of Auditor-General, the protections against direction by any Minister or member of the Public Service granted to the Auditor-General extend to the acting Auditor-General.

In those circumstances, my concern about the likelihood of an Auditor-General being subject to direction when the person occupying that office was, in fact, acting as Auditor-General appears to be not well founded. If my understanding is not correct, will the Attorney indicate that? However, from the discussions I have had, my fears are not well founded and I believe that the acting Auditor-General will be protected.

The Hon. C.J. SUMNER: On the advice of Parliamentary Counsel, the Government believes that the Deputy Auditor-General would have the same protection as the Auditor-General when acting in the higher capacity and that, therefore, there is no need for any amendment.

Clause passed.

Clauses 29 to 31 passed.

Clause 32—'Examination of accounts of publicly funded body.'

The Hon. L.H. DAVIS: I move:

Page 13, line 41—After 'publicly funded body' insert 'that relate to public money granted or lent to the body'.

As the clause presently stands, the Auditor-General must, if requested by the Chief Secretary, investigate the accounts of a publicly funded body. Under clause 4 a publicly funded body is defined as including a municipal council, a district council or, particularly, any other body corporate which carries out functions that are of public benefit and which has received public money by way of grant or loan.

Therefore, as the clause now stands the Auditor-General can examine the accounts of a publicly funded body in full. He does not have the power to examine only the particular grant or loan that has been given to the publicly funded body. Both the Hon. Trevor Griffin and I in the second reading debate indicated concern with the fact that this was so broad. We believe that the amendment ensuring that the Auditor-General has power to look only at publicly funded bodies in relation to public money granted or lent to the body restricts his powers.

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

Amendment carried; clause as amended passed.

Clauses 33 to 43 passed.

New clause 44—'Proposals for amendment of this Act, etc., to be submitted to Public Accounts Committee.'

The Hon. L.H. DAVIS: I move:

Page 18, after clause 43—Insert the new clause as follows:

44. (1) The Treasurer must submit all Government proposals for the amendment of this Act or for regulations under this Act to the Public Accounts Committee.

(2) The Treasurer must not proceed with a proposal referred to in subsection (1) until the Public Accounts Committee has been given sufficient time to examine the proposal and the Treasurer has considered any recommendations or comments of the Committee in relation to the proposal.

(3) The Public Accounts Committee may report to the House of Assembly the recommendations and comments made by it to the Treasurer and any other matters that it considers relevant in relation to a proposal submitted to it under this section.

This is a novel suggestion, certainly novel to South Australia. I was interested in looking at the existing legislation in New South Wales and Victoria as it relates to public finance and auditing arrangements as well as annual reporting provisions. I notice that in New South Wales specific power exists for the Public Accounts Committee to examine proposed legislation, Acts and amendments to the Act as well as regulations. The Public Finance and Audit Bill is a step forward and both my colleague the Hon. Trevor Griffin and I have made that quite clear.

There is a certain bipartisan approach in this area and that can be underlined by referring proposals to amend this legislation and regulations under the Act to the Public Accounts Committee which, after all, is a committee made up of representatives from both Parties in another place. Certainly there can be arguments against it in so far as it would delay legislation, but I would hope that that delay would not take away the Government's enthusiasm for the proposal. Certainly a counter-balancing argument is the fact that the Government of the day would always have the numbers on the committee. Nevertheless, it is a helpful suggestion.

I have not had the opportunity of seeing how well it works in New South Wales or indeed whether it has had an opportunity to be tested, but to give the Public Accounts Committee the opportunity is a useful step forward in public accountability and giving the committees of the Parliament some say in this important area.

The Hon. C.J. Sumner interjecting:

The Hon. L.H. DAVIS: It gives them some say. The Attorney-General interjects, but obviously they can only comment on a proposal. Regulations still have to run the gamut of the Subordinate Legislation Committee and perhaps the risk of being overridden by the Legislative Council or the House of Assembly. The Public Accounts Committee, under proposed new clause 44, will only have the opportunity of making suggestions and comments to the Treasurer. It is not to say that the Treasurer will necessarily accept its advice, but certainly the Public Accounts Committee can be well satisfied that it has had the opportunity to comment on legislation before it comes into the Chamber and indeed also to comment on regulations.

The Hon. C.J. SUMNER: The Government opposes the amendment. It is quite unnecessary. The reality is that if a Bill is introduced into the Parliament each House of Parliament can do what it wishes with the Bill. If it believes that the Bill needs to be referred to a committee of the Parliament for examination and a report, it can do that. To fetter the right of a member of Parliament to introduce a Bill into the Parliament by this mechanism is an unjustified fetter on the rights of members, whether in Government or otherwise. I oppose the amendment.

In respect of the question of regulations, if a regulation is promulgated under this legislation and the Subordinate Legislation Committee is examining it and feels that it needs to get comments from the Public Accounts Committee, I am sure that it would be able to do that. In summary, once a Bill is introduced, if a House of the Parliament wants to refer it to the Public Accounts Committee for examination it can do so. If it is a regulation, the Subordinate Legislation Committee can refer it to the Public Accounts Committee. Indeed, if one House wants a regulation referred to the Public Accounts Committee for comment before determining whether or not to disallow the regulation, it can do so.

The Hon. L.H. DAVIS: I accept what the Attorney has said, namely, that with respect to an amendment to the Public Finance and Audit Bill, Parliament has the power to refer the matter to the Public Accounts Committee. The Attorney-General knows full well that that rarely occurs. In my time that has not occurred. Similarly, the Attorney-General says that the Joint Committee on Subordinate Legislation can refer a matter to the Public Accounts Committee. Similarly, that does not occur.

The Hon. C.J. Sumner: You can.

The Hon. L.H. DAVIS: Yes; but it has not occurred.

The Hon. C.J. Sumner: So what! Has any problem occurred with that? You are simply creating a problem.

The Hon. L.H. DAVIS: The point I am simply trying to make is that the Public Finance and Audit legislation and any other legislation in this area hopefully will have genuine support from both sides of the Parliament. To give both sides of the Parliament in the Public Accounts Committee—the Parliament's expert committee in this area—the opportunity to comment on this legislation before amendments are made and the opportunity to comment on regulations before they are gazetted certainly is a step forward in a bipartisan approach. It will mean that perhaps the passage of any controversial amendments will be easier if there has been the opportunity for input ahead of the actual presentation of the legislation or the regulations. The Attorney will accept that some of the best work in the Parliament is done through the committees.

The Hon. C.J. Sumner: If the Parliament wants to refer a Bill to a committee, let it do it, but do not put this barrier on the introduction of legislation.

The Hon. L.H. DAVIS: I do not believe it is a barrier—it is a constructive suggestion. It will not be triggered every month of the year. One can imagine many years passing without the provision being triggered at all. I do not know whether the Attorney has had an opportunity to examine how the proposal operates in New South Wales, but I do know that it was a Labor Government in New South Wales that introduuced this measure. I would have thought, given the tendency of Labor Governments around Australia to drip feed ideas such as workers compensation, that the Attorney would not have been exactly as hostile as he now is, given that the Liberal Party in South Australia is stealing the clothes straight from his own Party's New South Wales body.

The Hon. I. GILFILLAN: I would like to indicate, as the Hon. Legh Davis said when introducing the amendment, that it is a novel idea and I certainly have not had adequate time to consider or consult on its ramifications. It appears that there is more of a broader analysis of the possible economic consequences of legislation and it may well in the fullness of time be accepted into legislation. However, at this stage, we cannot support it.

New clause negatived.

Schedule and title passed.

Bill read a third time and passed.

POLLUTION OF WATERS BY OIL AND NOXIOUS SUBSTANCES BILL

Adjourned debate on second reading.

(Continued from 8 April. Page 3969.)

The Hon. J.C. BURDETT: The Opposition supports this Bill. The Pollution of Waters by Oil and Noxious Substances Bill incorporates annexes 1 and 2 of the international Maritime Organisation's International Convention

for the Prevention of Pollution 1973 (known as Marpol) into South Australian legislation. It repeals the Prevention of Pollution of Waters by Oil Act 1961 and provides for continuity of provisions of the Act which are not superseded by Marpol. The International Convention for the Prevention of Pollution of the Sea by Oil (1954) has been superseded by Marpol. Annexes 1 and 2 are compulsory for adopting countries. The Commonwealth has adopted these provis ions in the Protection of the Sea (Prevention of Pollution for Ships) Act, which also provides for its provisions to apply to State waters until State legislation is introduced.

The model Bill was prepared under the auspices of the Standing Committee of Attorneys-General. It will enable uniform laws to apply to ships using our ports. The Pollution of Waters by Oil and Noxious Substances Bill, in addition to formalising the provisions of Marpol, incorporates those provisions of the Prevention of Pollution of Waters by Oil Act which relate to discharges occurring other than from ships, removal and prevention of pollution and recovery of costs. I support the second reading.

The Hon. PETER DUNN: I just wish to bring to the attention of this Chamber a couple of things that have occurred. Since it is my habit to go home most weekends, I fly across both of the Gulfs and have witnessed the odd pollution of those waterways. One in particular that seems to occur about a mile out to sea (and it is very obvious in line with Grand Junction Road) appears to be from the release of a substance which is very dark in colour and, depending on which way the tide is flowing, seems to travel on the sea floor for up to four to five miles in either direction from that discharge. I have observed it on at least a dozen occasions in the last three to four years and I sometimes wonder whether the Government will find itself in a bind because of it.

It is not obvious from the shore and it is not obvious from a boat, but it is very obvious when flying across those waters. At first sight it looks like an oil slick, but I believe that it is some form of raw sewage or something similar that is discharged into that area. I do not know whether the Minister has an answer to it—I guess not—but I hope that a Bill like this stops that sort of pollution. I estimate that it would travel up and down the fishing lanes and the reefs put in by fishing bodies to attract fish seem to be in line with this pollution. It disturbs me to think that such pollution runs both north and south, depending on the flow of the tide. It appears to be released when the tide is running out—

The Hon. C.J. Sumner: From where?

The Hon. PETER DUNN: I would estimate about a mile out to sea in line with Grand Junction Road.

The Hon. C.J. Sumner: Where is it released from?

The Hon. PETER DUNN: I have no idea, but I have observed it maybe a dozen times in the last three years, and usually in the summer time it is visible because the seas are usually smoother. It is quite visible. I do not think it can be seen from a ship and it certainly cannot be seen from the shore because it tends to run along under the water. When it is first observed from an aircraft, it looks like an oil slick. I have heard other aircraft reporting an oil slick but, on closer examination, it is on the floor of the ocean. It goes up and down in line with the reefs. I do not know whether it is raw sewage but it is something very black. I wonder whether it does not pollute the areas where fish abound and where they are caught. However, it points out the fact that we need regulations to see that those sorts of things are not continued because these waters are very heavily fished, a lot of people enjoy them, and I believe that they need to be kept to a standard.

During the period that I have been flying across those gulfs, I have also observed a number of oil slicks. Quite obviously, they are from tankers or boats that pump out their bilges when out in the middle of the gulf. I daresay it does not do a great deal of harm, but I have on one occasion reported a rather large oil slick which was subsequently investigated. The ship was found and, I believe, fined. I agree that this State should fall into line with world standards in this case.

The Hon. C.J. SUMNER (Attorney-General): The honourable member has raised an issue which I can only suggest be referred to the responsible Minister. I will draw his attention to the remarks of the honourable member. If he wished to take it up, no doubt he could also pursue it with the relevant Government authority.

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

MARINE ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 8 April. Page 3969.)

The Hon. J.C. BURDETT: This Bill supplements the Pollution of Waters by Oil and Noxious Substances Bill, with which we have just dealt. The ship construction provisions of MARPOL, more germane to the Marine Act, are covered more appropriately by this Bill than by the Pollution of Waters by Oil and Noxious Substances Bill. The Opposition supports the second reading of this Bill.

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

FAIR TRADING BILL

The House of Assembly intimated that it insisted on its amendments to which the Legislative Council had disagreed.

Consideration in Committee.

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

That the Legislative Council insist on its disagreement to the House of Assembly's amendments.

Motion carried.

A message was sent to the House of Assembly requesting a conference at which the Legislative Council would be represented by the Hons J.C. Burdett, I. Gilfillan, K.T. Griffin, C.J. Sumner, and G. Weatherill.

POTATO INDUSTRY TRUST FUND COMMITTEE BILL

The House of Assembly requested a conference, at which it would be represented by five managers, on the Legislative Council's amendments to which it had disagreed.

The Legislative Council agreed to a conference, to be held in the Legislative Council conference room at 12 noon on Tuesday 14 April, at which it would be represented by the Hons Peter Dunn, M.J. Elliott, J.C. Irwin, T.G. Roberts, and Barbara Wiese.

VALUATION OF LAND ACT AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 2 April. Page 3760.)

The Hon. C.J. SUMNER (Attorney-General): The members who contributed to the debate raised a number of questions, which I shall answer. The Valuer-General has always provided a separate valuation of each unit within the strata plan providing an assessment of site values and capital values. This Bill does not change the method of valuation of land which has been divided under a strata plan. What the Bill does is to enable the Valuer-General to apportion the total site value for the site subject to strata plan between each of the separate units within the strata plan. In the past this apportionment was fixed for all time by the unit entitlement determined under the Real Property Act. As valuations are not static, this procedure resulted in incorrect apportionments of site values in a subsequent general valuation.

The Bill does not affect the impost of land tax any more than a general valuation of any property does at the present time or has in the past, nor does it have any effect on any unit entitlement as determined under the Real Property Act. At present individual site and unimproved values for individual units are determined by, first, determining the total value of the whole site and then apportioning that total value to each individual unit in accordance with each unit's entitlement. What is proposed is simply this: individual site and unimproved values are determined by apportioning the total site and unimproved values in accordance with the relativity that the capital or market value of each unit bears to the total capital or market value of all the units.

In many instances unit entitlements have proved to be an inequitable basis for apportioning site and unimproved values because they are determined prior to the lodgment and registration of a strata plan and reflect the relativity between each individual unit and the total valuation of all the units within the complex at that point in time only. This relativity may subsequently change due to any of the following circumstances:

1. Fluctuations in the real estate market.
2. Additions and alterations have been made to one or more of the units.
3. Changes in the use of one or more units.
4. One or more of the units are included on the State Heritage Register.

However, unit entitlements as originally determined are not often amended to reflect these changes due to the inability of the individual unit owners to reach agreement. Consequently, an anomalous situation arises in the determination of these values, with the result that rates and taxes are incorrectly apportioned.

I now give the details of the answers to questions raised by members. The Hon. Mr Griffin stated that the Land Brokers Society asked whether, in consequence of the Bill, there is any intention to enable a change in the value of the respective unit entitlements. There is no such intention, as existing unit entitlements will not be amended as a result of this legislation.

It was also contended that the Law Society had made the point that this proposal will reduce the value and therefore the tax payable where the owner of a unit allows the unit to become run down, and will increase the value and tax of an owner who maintains and cares for his or her property. It is pointed out that this situation is no different from that of any other property owners. Rates and taxes are based on valuations and valuations reflect the condition and nature of the properties. However, it is highly unlikely, due to maintenance procedures and payments, that one unit in a group would be in a substantially poorer condition than the others.

As to the allegations that the Bill will substantially increase the cost of the valuation of a block of units, this is not so. The Valuer-General has always provided a separate site and capital value for each unit within a strata plan. The Law Society has also suggested what is in effect a compromise, namely, that the present method of valuing units be retained but, where the Valuer-General considers that the present method is inappropriate or where a strata corporation so requests, the method of valuation proposed in the Bill be used. It is pointed out that, where existing unit entitlements accurately reflect the relativity between individual units, the apportionment of the total value will be the same apportionment as determined under this Bill. The Government therefore sees no reason for any amendment.

The Hon. Mr Hill has expressed concern that this Bill may incur increased land tax for owners who lease their units. While such an owner would be liable for the payment of land tax as it is not his principal place of residence, the passing of this Bill will not increase the overall valuation of the total complex and consequently land tax, but it will increase the individual site and unimproved values of some units within the complex and reduce others. It is only the method of apportionment that is being altered by this Bill.

Bill read a second time.

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Interpretation.'

The Hon. K.T. GRIFFIN: I thank the Attorney-General for clarifying various matters which were raised during the second reading debate. There is a matter of drafting to which I want to draw attention. It does not affect the substance of the Bill but I draw his attention to a piece in brackets on page 2 which reads:

[For definitions of 'unit', 'deposited strata plan' and 'parcel' see Part XIXB of the Real Property Act 1886]

That is the first time that I have seen that used. If it is intended to mean that definitions in the Real Property Act apply to the Valuation of Land Act for the purpose of this section, it may be that those definitions are already incorporated in the principal Act. If they are not, the difficulty that I have is that I do not think that the bit in brackets (unless I have missed something) is effective in referring the definitions to this provision in the Bill. I wonder whether the Attorney-General can clarify why it is in brackets and what is believed to be the effect of that.

The Hon. C.J. SUMNER: I note the point raised by the honourable member. Parliamentary Counsel is of the view that this is sufficient to, in effect, incorporate into the Valuation of Land Act the definitions of 'deposited strata plan' and 'parcel' contained in the Real Property Act.

The Hon. K.T. GRIFFIN: I will not debate this issue at length but I draw attention to section 5(2) *(b)* of the Valuation of Land Act. That provision is being repealed and contains a reference to 'strata units'. It provides:

. . . in this paragraph the terms 'unit', 'deposited strata plan', 'parcel' and 'unit entitlement', mean respectively unit, deposited strata plan, parcel and unit entitlement as defined in Part XIXB of the Real Property Act, 1886-1980.

Quite clearly that reference incorporates the definitions in the Real Property Act. I have some reservations about whether that actually happens with the reference in the Bill. I will not raise a great problem about it, but I have not seen it happen before.

The Hon. C.J. Sumner: It is plain English drafting.

The Hon. K.T. GRIFFIN: I think that plain English drafting might slip up occasionally. I draw attention to it and put on record my reservation about whether it is effective.

Clause passed.

Title passed.

Bill read a third time and passed.

STATUTES AMENDMENT (CONSUMER CREDIT AND TRANSACTIONS) BILL

Adjourned debate on second reading.

(Continued from 7 April. Page 3871.)

The Hon. K.T. GRIFFIN: The Opposition is prepared to support the second reading of this Bill, which seeks to increase the figure of $15 000 (below which the Consumer Credit and Consumer Transactions Acts apply) to $20 000. The $15 000 has not been increased for several years and with the depreciation in the value of money it is appropriate that that figure be increased. What that will do is to give protection to consumers who are presently outside the protection of the Act between $15 000 and $20 000 where the purchase is a consumer item or the amount of funds borrowed is consumer credit. The Australian Finance Conference, which has the principal involvement in this area of the law, indicates that it is not unhappy with the increase. It would have been a matter of grave concern if the other figure in the principal Act had been increased (that is, $30 000) where security is taken over land used by a consumer as a dwelling house for the consumer's own personal occupation.

As a result of discussions with the Government, the $30 000 limit will remain for the time being. The increase in the $15 000 to $20 000 limit is supported by the Opposition. However, we will not support the Government having the power to increase by regulation the various monetary amounts in the principal Act. It is even more important in this case than in relation to other legislation, because it affects citizens' rights significantly—the rights of consumers and those who provide consumer credit. It seems to me that this is one area above many others where, if there is to be a significant variation to the monetary limits that are provided under the principal Act, they should come back to Parliament and not be implemented by regulation which, while being subject to disallowance, is not subject to the same sort of scrutiny and debate in both Houses of Parliament and is unlikely to have the same public profile as a provison of statute.

All my amendments relate to the power of the Government to increase these limits by regulation. Although doing it by regulation is a way of overcoming the difficulties that may present themselves from time to time, the area of the law is significant enough to require that they be attended to by amendment to statute and debated in both Houses. Subject to that issue, the Opposition supports the second reading.

Bill read a second time.

In Committee.

Clause 1 passed.

New clause 1a.

The Hon. K.T. GRIFFIN: I would like to ask a question about this new clause, which is on file. Will the Attorney say whether it was intended that as soon as this measure is assented to it will come into operation? It seems to me that, without the usual provision whereby the Act comes into operation on a date to be fixed by proclamation, this measure will come into effect immediately it is assented to. I wonder what sort of difficulty that might create in the community. The measure might be assented to next week without any public warning, and the credit providers in particular would be required to have all their documentation amended immediately and to change all their procedures to accommodate the change in the limit. I would have thought it was preferable to give some period of notice to enable them to get their own procedures in order sufficiently to ensure that no inconvenience was caused as a result of the increase of the limit being brought into effect.

The Hon. C.J. SUMNER: The measure would come into effect as soon as it was assented to. The limit in this Bill is the limit in the eastern States. If the honourable member is concerned or if he has received representations. I have no objection to inserting the usual proclamation provision.

The Hon. K.T. GRIFFIN: That would be helpful only so that the Government as an executive act was able to have control over when the measure is brought into effect. I am sorry that I did not prepare an amendment, but members will realise that the volume of work that faces us precluded that.

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

Page 1, after clause 1—Insert new clause as follows:

1a. This Act will come into operation on a date to be fixed by proclamation.

The Hon. K.T. GRIFFIN: I support the amendment.

New clause inserted.

Clause 2—'Amendment of Consumer Credit Act.'

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

Page 1, lines 17 to 20—Leave out subparagraph (i) of paragraph *(a)* and insert new subparagraph as follows:

(i) the principal exceeds $20 000;

This amendment removes any reference to any other limit being fixed by regulation. I believe that those limits which are substantive limits affecting a wide range of people in the community should be brought in by amendment to statute.

The Hon. C.J. SUMNER: Before members get carried away on their little hobby horse in this matter—

Members interjecting:

The Hon. C.J. SUMNER: There are probably more substantive reasons why this should be done by regulation in future than might be the case in relation to other measures that we have considered. Before the Hon. Mr Gilfillan and the Hon. Mr Burdett have a pavlovian reaction to this amendment, I point out that the limits can be varied only by amending the Act.

The reason for providing that it be done by regulation in the future is to enable such changes to be made quickly but, more particularly, to enable us to maintain uniformity with interstate legislation. Of the States that currently have consumer credit legislation, South Australia is the only one in which monetary limits cannot be varied by regulation, In comparable interstate legislation, the New South Wales, Victorian and Western Australian uniform credit acts of 1984, the monetary limits can already be varied by regulation. The credit Bill currently before the Queensland Parliament also allows for variation by regulation. In this area regulations would obviously be and are always the subject of consultation with industry, consumers and other States. This would be particularly so when the uniform system is in place and is subject to scrutiny in the way mentioned. All States are working towards uniform credit provisions, which will then provide a code within Australia on credit.

The problem with this is that if South Australia hangs out and insists that this be done by legislation, I suspect that industry will not be very happy because we will then have a dog's breakfast around Australia as to when increases in these limits come into effect. The beauty of doing it by

regulation is that we can all agree that it comes in on a certain date and promulgate the regulation to take effect from that date without the need to come back to Parliament.

One of the main thrusts I have had over the last few years in this area is to produce uniform legislation so as to reduce the burden on business of having to deal with different sets of forms, rules and regulations in different States. What I suspect will be happening with the uniform Bill when it comes into place is that these amounts will be able to be increased by regulation. That will happen so that we can easily pick the same date so the law can change uniformly throughout Australia without undue trouble. I am sure that, if that does not happen, industry will complain, and quite rightly, that legislatures and politicians cannot seem to get their act together with respect to uniform approaches to these matters.

So, that is one reason why I put to the Committee that the usual insistence that these things not be dealt with by regulation be altered. I point out that when the uniform Bill is prepared it will have to come back to the Parliament so that there will be another occasion to debate the matter. I give members that indication at this time, so that they can be aware of why the Government, rather than considering it less important, considers it more important that the amounts be lifted by regulation so it can be done on a uniform basis without any mechanical difficulties and knowing, of course, that before the amount will be increased under the uniform system there will have to be extensive consultation in any event with industry, consumers and all other States.

The Hon. J.C. BURDETT: I support the amendment. As I recall in the past, the amounts above which the Act does not apply have always been fixed by Parliament. There has not been any problem about that at all as far as this Parliament in South Australia is concerned, whether or not it has been uniform. I am simply pointing out that there has not been any problem. As there has not been any problem, I do not see why we should change now. I recall that on several occasions in the past when the limit has been increased there has been considerable discussion about it. Whether the discussions have occurred in Parliament or not, I do not recall. Sometimes they have been quite extensive and quite controversial and matters that ought to be properly and completely within the control of Parliament as by having to change the Act and bring in an amending Bill, rather than the less complete method of control offered by regulation.

I am not bothered about the other States—they are not always correct, especially Queensland. We are told by the Attorney that there will be a uniform Bill brought before this Parliament. I say leave it until then. In the meantime, let us use the method of fixing the limit as we have in the past. Let us leave it the same, namely, that it be determined by Parliament directly.

The Hon. I. GILFILLAN: It is fascinating to hear the Attorney once again on his centralist, Whitlamesque 'abolish the States' type legislative crusade.

The Hon. C.J. Sumner: What a ridiculous thing to say!

The Hon. I. GILFILLAN: It is not—it is right. Why should there not be individuality? The way to express our individuality is to have individual legislation. It is unfortunate that we have to continue to frustrate this gung-ho thrust towards abolition of the significance of each individual State, on which the Attorney seems to be hooked. In this case I have been approached by Mr Geoff Holden, who I understand is representative of, if not speaking officially for, the Australian Finance Conference. He pleaded ardently with me to remove this ability to change the figure by regulation—and emphasised the position that the Hon. Trevor Griffin has so sensibly moved. The Democrats have no hesitation in supporting the amendment.

Amendment carried.

The Hon. K.T. GRIFFIN:

Page 1, lines 24 to 27—Leave out subparagraph (i) of paragraph *(b)* and insert new subparagraph as follows:

(i) the principal exceeds $20 000;.

Page 2, lines 4 to 6—Leave out paragraph *(c)* and insert new paragraph as follows:

(c) where the amount of the principal exceeds $30 000.

The same principle applies.

Amendments carried; clause as amended passed.

Clause 3—'Amendment of Consumer Transactions Act.'

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

Page 2—

Lines 10 to 14—Leave out paragraph *(b)* and insert new paragraph as follows:

(b) under which the consideration to be paid or provided by or on behalf of the consumer in money or money's worth (excluding any credit charge) does not exceed $20 000;.

Lines 20 to 25—Leave out subparagraph (i) of paragraph *(a)* and insert new subparagraph as follows:

(i) under which the principal does not exceed $20 000;.

Lines 31 to 36—Leave out subparagraph (i) of paragraph *(b)* and insert new subparagraph as follows:

(i) under which the principal does not exceed $30 000;.

Page 3, lines 2 to 6—

Leave out subparagraph (i) of paragraph *(c)* and insert new subparagraph as follows:

(i) the amount of the principal exceeds $20 000;.

These amendments also follow the same principle.

Amendments carried; clause as amended passed.

Title passed.

Bill read a third time and passed.

CORONERS ACT AMENDMENT BILL (No. 1) (1987)

Returned from the House of Assembly without amendment.

LOCAL AND DISTRICT CRIMINAL COURTS ACT AMENDMENT BILL

Returned from the House of Assembly without amendment.

BAIL ACT AMENDMENT BILL

Returned from the House of Assembly without amendment.

CROWN PROCEEDINGS ACT AMENDMENT BILL

Returned from the House of Assembly without amendment.

FAIR TRADING BILL

A message was received from the House of Assembly agreeing to a conference, to be held in the House of Assembly conference room at 12.30 p.m. on Tuesday 14 April.

INDUSTRIAL CONCILIATION AND ARBITRATION ACT AMENDMENT (STATUTE LAW REVISION) BILL

Adjourned debate on second reading
(Continued from 7 April. Page 3870.)

The Hon. K.T. GRIFFIN: The Opposition is prepared to support the second reading of this Bill. It is essentially a Bill to effect statute revision. In that context, ordinarily it does not affect the substantive law. From time to time, though, perusal of the statute revision proposals does bring a difference of opinion in respect of drafting and a concern that a change to a provision of a statute which has been in effect for a long period of time might in fact signal to the courts that there is a change of intention of the Legislature and that for that reason it is inappropriate to proceed with an amendment to such an important section of a principal Act.

The bulk of these statute provision amendments have been the subject of close scrutiny by my colleague, Mr Stephen Baker, the shadow Minister of Industrial Affairs, and I must commend his diligence in scrutinising the Bill. There are, however, several matters which come to my attention. Although they are perhaps minor in some respects, I would suggest that, for reasons which I will indicate during the Committee consideration of the Bill, it would be safer to accept my amendments.

I was just a little concerned with the attitude of the Minister in the other place. Rather than take the time to reflect on that in this place, I suggest that we will have a much more flexible attitude towards the consideration of these amendments and, hopefully, a Minister responsible for the Bill in this Chamber who will be more amenable to reasonable discussion on the amendments. Subject to those amendments which are, as I say, essentially of a drafting nature but which may relate to amendments proposed in the Bill which we believe could have a substantive effect, I support the second reading.

Bill read a second time.

In Committee.

Clause 1 passed.

Progress reported; Committee to sit again.

[Sitting suspended from 6.13 to 8 p.m.]

PITJANTJATJARA LAND RIGHTS ACT AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 8 April. Page 3968.)

The Hon. M.B. CAMERON (Leader of the Opposition): The Opposition supports this Bill. In doing so, I must congratulate the Pitjantjatjara Council and its legal representative for the way in which they have gone about their discussions on this Bill. The original discussions with this side of the Council commenced some time ago, when the lawyer for the Pitjantjatjara people, Mr Richard Bradshaw, and members of the council sought to meet with us and to discuss certain items that they wanted changed in the Bill. As a result of that, further discussions were held at Ernabella, present at which were the Hon. Peter Dunn, the member for Eyre (Mr Graham Gunn) and I. They were the most constructive discussions that I had taken part in for a long time. We met with the full Pitjantjatjara Council, the members of which knew exactly what they wanted. I must say that I was most impresssed with the way in which they approached the subjects, the end result of which we now see in this Bill. They clearly identified to us certain things that they wanted changed and, as I have said, the Opposition is certainly prepared to back those changes.

The changes proposed were agreed to by the Government at that stage. They relate to reimbursement of reasonable expenses when mining companies seek to undertake exploration on Pitjantjatjara lands. I understand that one of the problems with the provisions as they stand has been that if, for example, representatives were required to attend a meeting in Sydney to discuss matters associated with exploration on the subject land, before they could go to Sydney they had to approach the Minister to obtain his approval for certain expenses involved. The result of that was that the Minister began cross-examining them as to why they had to go to Sydney, what were the expenses, and so on. That become a sort of block to the negotiations because, rather than concentrating on the negotiations, those involved were worried about whether they would obtain permission from the Minister for reimbursement of expenses. It became a rather ridiculous system. I believe that this provision concerning reimbursement of reasonable expenses is sensible, and the Opposition certainly has no objection to it.

The other matter that has been raised with me on each occasion that I have visited the Pitjantjatjara area concerns the question of roads. A real problem in those lands has occurred in relation to accidents, to the need to have licences and to the need for vehicles to be registered. This has really caused some very severe problems indeed. Other members on this side of the Council who have been up there—and I refer to the Hon. Peter Dunn, the Hon. Mr Irwin, the Hon. Mr Davis, the Hon. Mr Lucas and the Hon. Ms Laidlaw—would also confirm that each time we have been up there this matter has been raised.

It was obviously a matter of real concern, particularly if there were accidents within the lands, because they had no way of claiming on third party, even though vehicles might have been registered. There was a real block. The amendments put forward are long overdue, long sought and sensible. It is inevitable with pioneering legislation such as this that there would be some hiccups, and this was one of them. The Opposition supports the amendments, which will enable people in those areas to make third party insurance claims. I can assure members that it is inevitable that there will be accidents on roads up there even though it is a remote area and traffic levels are not high.

The other matter of grave concern for some time has been the supply of liquor on the lands. The Pitjantjatjara people have banned liquor from their lands, but that does not stop people trying to get it into those areas: there is always somebody who is prepared to supply liquor and somebody who is prepared to buy it. Such action will now be subject to heavier penalties and vehicle confiscation as a result of committing certain offences. I think that that is sensible and needed, because matters have reached a stage in some areas where tempers have become frayed, and on some occasions the vehicles of people supplying liquor have actually been burnt. This is because the Aborigines themselves have a strong desire to stop this very grave offence occurring, and certainly to stop it increasing.

The other area of real concern which has been raised with us, and which I have raised in this Chamber on numerous occasions, is the problem of petrol sniffing. Whenever I have raised this matter the Minister of Health has immediately launched into an attack on me for politicising the matter, or for making political capital from it.

The Hon. R.J. Ritson: That's not fair. It's a very grave problem.

The Hon. M.B. CAMERON: That has never been my intention, which has been to try to help cure this problem. Anything that I have done in relation to this matter has been done following a request from people in the area. It is, as the Hon. Dr Ritson has said, a serious problem. It has been a most disturbing part of my visits to the people in that area to see the extraordinary effect of petrol sniffing on young people: it has been a very disturbing experience for me and other members on this side of the Council who have been into those areas. It is with considerable pleasure that I note that the Aboriginal people have decided that positive steps have to be taken by them about this problem. It is one thing for us as an outside community to say that something should be done, but it is very encouraging to see that the Aboriginal people, as they have said to us, want to do something about this problem.

The people responsible for the police aid scheme deserve real credit for the effect that that scheme is having. I say to the Government that it should do everything possible to encourage that scheme. There will be some problems, and that is inevitable, but it is absolutely essential that, having taken that very real step forward, we do everything possible to ensure that this scheme is a success.

The community has selected very good people to implement this scheme and I know from direct conversations with people in the community that there has been a drastic reduction in the problem of petrol sniffing. In fact, in one of the worst communities for petrol sniffing, Amata, my information from people directly associated with the community is that the problem has been virtually wiped out. Anyone who has been to the community previously must surely be impressed by that. There are people who say that all that has been done is to shift this problem out to the homelands: that is not correct. They have taken the young people out of the communities and given them something positive to do.

In the long run, even that will not be good enough. We must assist the Aboriginal communities to provide something for people to do. We must ensure that the young people in those communities do not succumb through sheer boredom, and that is the major part of the problem. The Aboriginal people asked us to assist them by legislating that petrol sniffing be made an offence. That concept was proposed by the Aboriginal communities and the Anangu Pitjantjatjara council, and we agreed to assist them.

Even though the police aids took positive steps to assist in the reduction of the incidence of petrol sniffing, they really had no power. Petrol sniffing was not an offence so, even though they took action, in the form of removing petrol from the young people and shifting them out to the homelands, there was nothing to stop the young people coming straight back to the community and starting again. The only real deterrent posed by the police aids was their uniforms and perhaps the discipline that attached to them, so it was essential that they also had some legal backup. If they said to the young people, 'You will go out to those homelands and stay there,' they really needed the authority to be able to threaten charging them with some sort of offence so that they could enforce what they said.

The second aspect is the supply of petrol to young people who were sniffing. That is a very important area and one which has our full support. We put forward those amendments to the select committee and the Anangu Pitjantjatjara people supported that proposition, because of course it was not our idea—it was their idea and their moves which led to those amendments.

The last and most important aspect is the power that we have given to the Anangu Pitjantjatjara council to make its own by-laws in relation to certain matters pertaining to petrol sniffing and liquor control. For the first time these people will have the opportunity to virtually make their own laws. Any by-laws that they make will have to come before Parliament, but it is important that they have been given the power to do that. By doing so, we have said to them, 'You are a responsible group of people' (and I can assure the Council that they are) 'and you are able to take this responsibility and to make decisions for your own people.' That is a big step forward. I do not know, but I would imagine that it is the first time that that has occurred in Australia. That has occurred not at our instigation but, rather, as a result of a request from the people themselves. I think it is time that we realised that many of their problems will not be cured until we give them the responsibility to conduct their own affairs and to make their own decisions.

In a way, I suppose it is very similar to local government, because in our society local councils make decisions for themselves. The introduction of legislation which empowers them to make by-laws is a very important matter and one which has our full support. I congratulate the Aboriginal people for seeking that right, and we are pleased that the Government has agreed with us that they should be granted that right.

I understand that when this Bill was discussed in the other place and during the select committee, the discussions were conducted on a bipartisan basis, and I am very pleased that that was the case, because for a long time I have felt that the Aboriginals and their problems were subject to some political manoeuvring. I hope that that time has passed (I am sure it has) and I trust that, when this Bill has passed, whenever any matters pertaining to Aboriginal people are raised, there will be a bipartisan approach. I also support the amendments relating to the parliamentary committee which will now visit the Pitjantjatjara lands on a regular basis. It is important that members of Parliament visit those lands to see the problems and have discussions.

The Hon. J.R. Cornwall interjecting:

The Hon. M.B. CAMERON: Yes, I agree with that, and it wouldn't do you any harm to have a look, because it is a very important part of our society. It would be better if you went outside while I discuss this matter, because you do not understand a bipartisan approach, and I am really trying to do that. If you just disappear, it would make the debate a lot better.

It is important that members on both sides go up there at the same time, because then we can discuss the matter together and do not have the silly nonsense of having 'you' and 'us': 'We think this—you think that.' If we are sitting there together, discussing these things with the Pitjantjatjara Council together, we will find that we develop a bipartisan approach to problems. The most important thing to realise is that they are a responsible group of people. They do have leaders, and those leaders are very sensible people.

If we sit down and discuss matters with them, they take a little time, but they do come to very sound conclusions. They know what they want for their people. They know what will cure their problems. For too long we—and I say both sides of politics—have assumed that we know best: that is not the case. They have to live there; they have the problems; they have the health problems; they have the end result of petrol sniffing; and they have to put up with the problems they have and we do not. Unfortunately, what we do—and I and other members on this side are as guilty as anyone—is go up there, with not very much time; we fly

in and out and we assume at the end of that that we know what is best for them, and it is very difficult to do that.

We really have to listen to them, because they are there 100 per cent of the time. I believe that it is an excellent approach for us to finally give them some rights, give them a by-law making power, listen to them about petrol sniffing, listen to what is needed to cure their problems, listen to them about their alcohol problems and what will cure them and, finally and most importantly, give them the resources they need to have police aids selected from their communities by them and backed up by us.

If that means providing vehicles, etc, then it is absolutely essential that we do it. For too long public servants and others have been telling them the cure for their problems. That is not the way it should be. So, we support this Bill with enthusiasm, particularly in those areas that finally give the Aboriginal people some responsibility for their own affairs.

The Hon. R.J. RITSON: My contribution will be very brief, but I must say that I was deeply disturbed a couple of minutes ago when a member of this House, who had walked in 30 seconds prior to the end of the Hon. Mr Cameron's speech, made a disparaging, partisan, adversary, political remark about what the Hon. Mr Cameron said. I fully endorse everthing the Hon. Mr Cameron said. No member of the Parliament of South Australia has invested as much genuine, sincere care and concern for the Aboriginal people; no-one in this Parliament has visited the outback so many times; no-one has understood the harshness and richness of those lands as has the Hon. Mr Cameron.

The Hon. Mr Cameron has enough material collected from much outback travelling to write a substantial learned book about the centre of this country, its anthropology, culture and history, the land from which the Aboriginal people came, and the land which they inhabit.

He has invested a lot of non-political and very caring effort in coming to a very sensitive understanding of the roots of our history and its Aboriginal people. For someone to walk into the Chamber, having been out of it for his entire speech, and in passing from one door to the other to chat to you, Madam President, and make disparaging political remarks before going out the back door was disgraceful. That is the end of my speech. I support the Bill, but I had to say that the Hon. Mr Cameron knows more about these matters than anyone else and, whilst he may be outrageously partisan on some issues, on this issue he is not partisan—he is sincere, and he understands.

The Hon. PETER DUNN: In supporting this Bill I must say that, although the Hon. Martin Cameron has made a substantial contribution, I will make a couple of other comments. When I first came into the Parliament the Hon. Martin Cameron said to me, 'Will you come up north and we will have a look at the Aboriginal situation?' I accepted his invitation. I was shocked but not because of the conditions. I thought that it was the most beautiful country that one could come across. Indeed, it is some of the most beautiful country in South Australia and I advise anybody who has the opportunity to do so to have a look at the Musgrave Ranges, the Mann Ranges in the north of the State, and nearby Petermann Ranges, because it is some of the most superb country that one would every come upon.

However, the poison shown towards us by the human beings in the area was quite incredible. You could not make conversation. You could not get to base one, and that was more with the white people than with the indigenous people. It has taken us some time and many visits to get to the stage where we are accepted. One of the reasons for that was that the advisers in the area, I believe, tried to poison the people against our side of politics, so it is with great delight that I note that a bipartisan approach is being used at last, and it is proving to be successful. I do not believe that this Bill could have been introduced in any way into this place three or four years ago. It just would not have got through here.

Many advances have been made in the last three or four years. That is not because of Mr Cameron, me or others who have been there, but we have been back a number of times. In fact, two or three times every year we go back because we are concerned about what has been happening, particularly in the last two years, with petrol sniffing and its effect on that community. I have some strong ideas about that, but they were not as effective as the introduction of police aides. They have definitely been very successful.

Boredom, in my opinion, has caused these people to develop the habit of petrol sniffing. I have made a similar speech in this Chamber previously. Years ago they spent their whole time searching, chasing, cooking and eating their food. Today they wander down to the refrigerated van that turns up, buy all of their food out of the van or the canteen, and in 10 minutes they have enough food to keep them going for three or four days. What do they do the rest of the time? To put it crudely, they contemplate their navel. So they get into mischief. I do not blame the kids for petrol sniffing. That has resulted from what is happening and the changes that have taken place up there.

This Bill will help in a very strong sense to alleviate that situation, because it contains some very sensible provisions. First, it changes the name, but that is not terribly important. It may be important to them but I do not understand their language well enough to be able to give the Council a 20 minute speech about it. I do know that entry into that land will give them more contact with the white people so that in turn we might appreciate their problems and that may help to cure them.

Freer entry to the land will be to their benefit and not their detriment, as alleged by the former lawyer and adviser in that part of the country. Under no circumstances did he want white people to go there, and I believe that that was because he thought it was his patch and no-one should be allowed in there. However, the present adviser is a most sensible man and he can see the wisdom of allowing further contact with white people. The Hon. Martin Cameron talked about mining and other operations on the land. Fundamentally, this Bill embodies the provisions under the Maralinga legislation, and that is an advantage. That area is probably the most intensively prospected area in the State. It includes the Officer Basin. It is a very old area and I anticipate that it contains gas or petrochemicals. The Aborigines stand to gain from exploration.

The Bill applies the Pastoral Act to the area so that there cannot be overstocking, and I am delighted about that. It demonstrates that the Government is considering something that will occupy the people's time, that is, the raising of stock. Apart from a couple of areas, that part of the State is fundamentally TB and brucellosis free, and, when those diseases in those few areas are eliminated, the people can start a decent herd. That will occupy some of their time, and I refer particularly to the young people. They could keep a camp of horses. That can only do them good.

The Hon. Mr Cameron referred to the reason why vehicles will be denied entry—because people might carry in alcohol. But the honourable member did not say that the people are fair dinkum about this—they really are. They

are talking about fines of $4 000 and imprisonment for six months, and they are significant penalties. I believe that it will be effective. I foresee only one problem: if there is a repeated offence and a vehicle is seized (and they may sell those vehicles, so, if any member is thinking of grog running in the area, they should think again) the moneys raised from the sale of those vehicles goes to the Crown. I would have thought that it would perhaps be better to adopt the Northern Territory scheme whereby the money would go back into the Pitjantjatjara Council.

The Hon. M.B. Cameron: I think it will.

The Hon. PETER DUNN: It may, but that is not what the Bill provides. I would push for the provision, because I believe that it would be a very sensible course. The money could be used to treat people affected by alcohol and related diseases. Previous speakers have referred to petrol sniffing and the associated health problems. The Minister made a brief entry and left again, saying that we were irresponsible, but I do not believe that the Minister has been to the area recently to look at the health improvements in relation to sexually transmitted diseases and the upper respiratory diseases from which those people tend to suffer. We must now take into account that AIDS is likely to be a problem in that area and, if it is, it could be devastating for those people.

I am sure that we have now got to spend some time looking at curing this problem and trying to prevent it from getting into that community. Finally, let me say that the Aborigines indicated to us while we were there that there was a problem with gambling. They indicated that some of them are losing their money—one to the other—playing cards and the like (mostly cards). We were asked whether we could do something to help. I presume that by providing by-laws these people could use police aides to resolve that problem. However, I think that an education process would not go amiss.

At present we have a problem in South Australia in the rural community with farmers not being able to handle their money properly. It is said by some of the banks that they are not programming themselves, and I believe that the same thing is occurring here. Perhaps a small education program in the Aboriginal community could assist them and could perhaps stop the gambling. It has been indicated to us that there will be more legislation in Parliament in the future to help overcome the gambling problem.

I am delighted to see the Bill here. I am even more delighted at the contact that we are having with those people. As I have said, it is because we have made an effort to go to see them. When we first went there we were like poison: people did not want to know us. At least now when we visit they want to sit and talk to us and, as the Hon. Mr Cameron explained, they have people with basic honesty and knowledge about how such a community should run. I am delighted to see that. Certainly, to be in contact with some of these people is indeed a joy. That beautiful country up there needs all the assistance we can give it. I support the Bill.

The Hon. M.J. ELLIOTT: I support the second reading. I would like to begin with a criticism of the Minister of Aboriginal Affairs. Last year, not long after I was elected , I had my first conversations with the people from the Pitjantjatjara lands and we discussed many of the issues that have now found their way into this Bill. I was informed at that time that the Minister had said to them that the reason they had not proceeded was that they would get no support from the Liberals or the Democrats. I thought that was interesting, considering the fact that the Minister had on no occasion spoken with me as the Democrat spokesperson on Aboriginal Affairs, yet he was willing to tell the Pitjantjatjara people that neither we nor the Liberals would be supportive. That is absolutely outrageous. In fact, he was using that as an excuse for inaction.

Then only some months back I was informed that a certain clause probably could not be included because the Democrats were divided over it, that the Hon. Mr Gilfillan and I could not agree. Again, that was interesting because the Minister had not spoken to either of us. I must condemn the Minister for trying those sorts of lines with the Pitjantjatjara people—it is absolutely disgraceful.

That aside, this Bill is a good one and it contrasts rather greatly with other things which are happening in Aboriginal matters involving the Government. Generally speaking, the Government has tended to be paternalistic. One need only look at the draft Heritage Bill that was circulated about six weeks ago. The Bill leaves to the Minister the decision to prosecute a person who interferes with Aboriginal heritage items. No power at all is to be given to the Aboriginal people themselves to defend their own heritage.

The Bill is absolutely riddled with that sort of thing. We can even look at what has happened in Port Augusta with Woma and Pika Wiya. Woma was supported by the local community. Pika Wiya is a group set up by the Minister with a board nominated entirely by the Minister. The Minister has effectively allowed Woma to be closed down and for Pika Wiya to dominate the health services in Port Augusta. Once again we see paternalism at its very worst.

Let us return to this Bill. Somehow the Government has got things right here. It is not a paternalistic Bill. It is now allowing the people to have much more control of their own destiny. Most of the clauses in the Bill were at the initiative of the Pitjantjatjara people. The initiatives in relation to alcohol and petrol sniffing are moves made by the community. In fact some of the powers such as the taking away of cars are things that we probably would not tolerate within our community, but it is not our community. They have requested these things. I had some doubts about gaol terms. I said that in our community we would not send people to gaol for selling alcohol to someone else. I said that banishment would be better, but they said that banishment was worse punishment for a person than a term in gaol.

The Hon. Diana Laidlaw: A term in gaol is sometimes seen as a holiday for some of the youths, I'm told.

The Hon. M.J. ELLIOTT: I cannot comment on that. Certainly to be banished from the lands is the worst possible punishment. Most importantly, I am pleased to see that the Aborigines are to be given the power to make by-laws on their own lands. What we are seeing now is a progression towards a form of local government and I hope that that trend continues. It is to be applauded. I will make a couple of other comments on the Bill—most have been covered. Clause 10 relates to stocking rates and is a very sensible move, again suggested by the people themselves. They recognise that overstocking can be a problem and they believe that the laws which apply throughout the pastoral lands should also apply in their areas. Clause 12 straightens out some anomalies that occurred in the Motor Vehicles Act that left people injured in accidents uninsured. That anomaly is at last to be rectified.

My last comment is in relation to mining in the areas. It may indeed be true that there is an incredible mineral wealth in that area, but I am more than happy for the decision on whether or not mining is to occur to be left to the people themselves. I consider strongly that land to be primarily Aboriginal land which, incidentally, happens to be in South

Australia. It is Aboriginal land and they, as controllers of their own destiny, should have a say on whether or not mining companies should come in. It is interesting that most of the whinges and screams in Australia are coming from the Australian companies. Overseas companies in relative terms seem to understand much better how to work with indigenous people as they have done it right around the world. The Australian companies scream 'This is Australia, this is ours, we should be able to get in there and take what we want regardless of the effect on the people there.' No doubt exists that unfettered mineral development would indeed be the final destroyer of the communities up there. I applaud the further reinforcement of the rights of the people in those lands to determine their own destiny. I support the second reading of the Bill.

Bill read a second time.

In Committee.

Clauses 1 to 9 passed.

Clause 10—'Pitjantjatjara Lands Parliamentary Committee.'

The Hon. M.B. CAMERON: This is an unusual situation because at the end of the session, when we are putting enormous pressure both on the parliamentary staff and on the Government Printer, the Bill available to you, Ms President, is in a new form as a result of amendments made in the Lower House. Certainly, amendments that have been inserted in the Lower House set out clearly what has occurred there as a result of the select committee's report. Those amendments are important amendments indeed, but members will not see them in the Bill that is in front of them although they are now a part of the Bill.

Those amendments relate, first, to clause 10 concerning the Pitjantjatjara Lands Parliamentary Committee. They lay out the same things as are in the Maralinga Land Rights Bill and indicate that a parliamentary committee will attend in the area annually and report to the Parliament on the visit. The duties of the committee are as follows: to take an interest in the operation of the Act, matters that affect the interests of the traditional owners, the manner in which the lands are being managed, used and controlled, and to consider any other matter referred to the committee by the Minister.

That committee will cease to exist five years after the commencement of this section, unless Parliament decides that it should be continued. Frankly, I believe that it will be important at that stage, unless dramatic events occur, for the Parliament to continue that committee. However, I make the further point that, although it is being provided that the committee to which I refer shall be a committee from the House of Assembly, it is important that members of this Chamber shall also go to the area and perhaps gain some knowledge of the area and of the problems there.

As I have described those problems before, I do not wish to go through them again, but they concern health, the sort of problems that affect all people including youth, and indeed the normal problems of our society that exacerbate the problems in the area beyond anything that can possibly be comprehended. Members on this side have visited those areas regularly and, if on our next visit members from this place, no matter from which Party, wish to go with us, I will ensure that we indicate to those members that we are to visit the area so that, if any person of any other Party wishes to go with us, that opportunity will be made available. It is a matter of how one gets to the area. It is a long way to go either by plane or by motor vehicle. Fortunately, due to the change in the status of the road, it is much easier to get to Marla Bore, but from then on it can be a very difficult journey, as the journey into the lands is fairly lengthy and the roads are not always in 100 per cent condition.

The Hon. R.J. Ritson: Would the Labor people have to pay a share of the Avgas?

The Hon. M.B. CAMERON: I think so.

The Hon. Barbara Wiese interjecting:

The Hon. M.B. CAMERON: Well, it is. That was just a reasonable aside. It is important that we go to the area and not only have a look but also get an idea of the sorts of problems that these people face, particularly in relation to health. I assure members that, despite the Ngmampa Health Council, which is doing the best possible job it can, there are still some extraordinary long-term health problems. That will not be cured overnight, no matter what is done by any person or group of people.

The Hon. Mr Bruce indicated across the Chamber that he would be interested in visiting the area. I assure him that on the next occasion that any of us go I will extend an invitation to him, as I am sure he would to us, if he decided to go. These people appreciate seeing members from all sides of Parliament together, as they have some suspicion of individual Party members. I assure members that that offer will be made.

The Hon. I. Gilfillan: That is very gracious. It is appreciated up the top of this Chamber.

The Hon. M.B. CAMERON: It is a long way, and it is very difficult for individuals to get there. It is important that we share the costs of the visits.

The Hon. I. Gilfillan interjecting:

The Hon. M.B. CAMERON: I make that point, too, while I am on the subject. We are members of the Opposition and do not have the same facilities as other people. Amendments have been made to this clause in the Lower House, including the following:

> A person shall not be in possession of petrol on the lands for the purpose of inhalation.

That is important and indicates that at last there is a penalty for petrol sniffing. People might think that that is a little draconian on the young people or whoever might be sniffing. However, it is necessary so that police aids and others can have some mobility so that they can discourage petrol sniffing. Another amendment was as follows:

> A person shall not sell or supply petrol to another person on the lands if there are reasonable grounds for suspecting that the purchaser—
>
> *(a)* intends to use the petrol for the purpose of inhalation; or
>
> *(b)* intends to sell or supply the petrol for the purpose of inhalation.
>
> Penalty: $2 000 or imprisonment for two years.

That penalty is fairly severe, but it is essential. Power is also provided for Aboriginal people to make by-laws in relation to this, but these provisions will stay in place until by-laws are made by the Aboriginal people themselves. Therefore, we have the situation of a legal provision and, if the Aboriginal people decide to have by-laws, such by-laws will take over from these present provisions, and that is appropriate.

THE CHAIRPERSON: Order! I am in a dilemma. I do not have a copy of a Bill from the Lower House. I have been provided with a copy of the amendments which were to be moved in the Lower House, but I have no indication whether or not they have been, or what has been passed and what has not. I do not think that I can put clauses when I do not know what I am putting. I understand that when Bills have gone from this Council to the Lower House, and amendments have been made, our staff have inserted all the amendments so that at least the table in the other House has a correct copy. However, the Bill that we have received does not have any amendments indicated, and I

think I will ask the Minister to report progress until we can get a Bill.

The Hon. M.B. CAMERON: I understand your problem, Madam Chair, because when I looked at this Bill I had the same problem. I opened the Bill and realised that there was a severe problem. There seemed to be no amendments in the Bill dealing with the matters that were in the second reading explanation made in this Council. I went to some trouble to obtain copies of the amendments that I assume were moved in the Lower House. I had the same problem as you, Madam Chair, and it was only in the last few minutes that I received a copy of those amendments. So I am one of the few members who have some knowledge of the amendments that were supposedly moved in another place. I support your suggestion that it would be better to adjourn the debate until we know what is in the Bill.

May I say that I appreciate the work done by the staff in this Chamber in relation to Bills sent to the other House. I know that on the Public and Environmental Health Act Amendment Bill, I picked up the very next morning a copy of the Bill from this place which included all the amendments, and I was most impressed by the work done overnight on that matter. Therefore, I certainly support your view.

The CHAIRPERSON: The work done not only overnight but all night.

The Hon. M.B. CAMERON: Yes.

The Hon. BARBARA WIESE: I agree with the remarks that have already been made. It was not until the debate proceeded here that I realised that the amendments were not included in the Bill that we had before us. I have no hesitation in accepting your recommendation.

Progress reported; Committee to sit again.

DEER KEEPERS BILL

Adjourned debate on second reading.

(Continued from 7 April. Page 3867.)

The Hon. J.C. IRWIN: The Opposition supports this Bill. In relation to health and other protective measures, this Bill will enable the deer industry to be on a similar footing with the cattle and pig industries. Although deer have been around for many, many years in South Australia, as I am sure most members in this Chamber would know, the industry could be called a sunrise industry. It is becoming a significant industry and has many facets such as meat, hide and velvet, with significant associated sales. As the industry grows, so does the need for an organisation and the position that that organisation must place itself in to deal with problems.

I am happy with the organisation of the Deer Breeders Association, as I have attended some of its meetings and had quite considerable contact with some of its members and office bearers. It is the problem of bovine TB which undoubtedly brought this Bill to the attention of the Parliament. I will try to background that situation. An outbreak of bovine tuberculosis in the deer herd was detected in the Gawler area in May 1986, when 47 of the 51 deer slaughtered as suspects had active infection.

This was the first recorded outbreak of bovine tuberculosis in deer in Australia and was the most heavily infected population seen in any species for over 30 years. Subsequent testing of two other contact properties detected further infection in deer. Tuberculosis in deer being a zoonotic disease (that is, transmissible to humans) and the State being in the final stages of eradicating bovine tuberculosis from cattle as part of the national eradication program, early resolution of the current problem becomes a matter of urgency.

The Bill provides for a number of things, and I will briefly comment on them. First, it provides for the collection of a levy in the form of a registration fee to form a trust fund. There is a requirement for all deer breeders and producers to be registered so that a levy can be collected from each producer. The levy per farm will be collected as an annual registration fee on deer farms and, to use the words of the Minister's second reading explanation, it will be calculated in accordance with regulations. I have not seen the regulations, nor have I seen any proposed regulations. However, I understand and guess that they will come before us later on. I imagine that the collection process will begin by registering the number of deer per farm with some regard for age differences, that is, between adults and calves—and I point out that I am not certain about how one describes the offspring of deer.

The Hon. K.T. Griffin: A fawn.

The Hon. J.C. IRWIN: The Hon. Mr Griffin suggests that it is a fawn, and I think that is probably right.

The PRESIDENT: Bambi.

The Hon. J.C. IRWIN: I think all fawns would be called Bambi, Madam President. This figure would then be multiplied by the fee per animal to give a final per farm fee. It must be understood in this Council that many of the deer farms (so called) carry only five or six deer. Many of these properties are very small. I do not expect the Minister of Tourism (who is handling this Bill) to answer these questions, but I want them recorded, anyway. Perhaps someone can get back to me with an explanation during the break after the Bill has passed. I want to know whether what I have just said is correct in relation to the calculations that I have made.

When can we expect to see the regulations, and will there be, somewhere down the track, an initial registration fee for deer farmers coming into this industry? In other words, I would expect the people who are registered first up to pay a higher fee, and that that would reduce to an annual fee. As I mentioned to the Minister before the debate began, the briefing paper that I was fortunate enough to receive with the Minister's approval answers some of my questions. The briefing paper states:

> Deerkeepers in South Australia, through their members on the working party, were involved in the development of and approved a lay draft of the legislation agreed as necessary. This legislation will:
>
> (1) require all deer owners to register their properties annually; make an annual return of the number of animals owned as the basis for paying a duty for the establishment of a compensation fund; provide adequate fencing to contain deer; provide holding and restraining facilities for the testing of individual animals; and identify all animals prior to leaving the property with an approved tag bearing the registered number of the property.

At the moment it is very difficult. Members of the Council who have kept sheep or cattle will realise that their tagging systems are reasonably simple: sheep have ear tags and cattle have tail tags. However, it is not that easy when it comes to a deer tag, and I am not sure where one would put a 'Bambi' tag. The briefing paper continues:

> (2) The legislation will provide for the establishment of a compensation fund for the payment of compensation to owners of animals destroyed or condemned at slaughter because of a specified disease with all deer owners being required to contribute to the fund through an annual duty based on the number of animals owned; compensation payments being for specified diseases only; there being a limit on the maximum amount of compensation payable on any one class of animal; and the Department of Agriculture being responsible for administering the fund on behalf of deer owners.

The registration fees recommended by the industry are: large species, for example, Red, Rusa, Wapiti, and Sambur males,

$2 and females, $6. It is interesting to note the difference. The difference is greater for small species; for example, the registration fee for Fallow and Chittal males is $1 and for females it is $3. The maximum compensation payable for any one animal is: for males of large species, $400, and for females, $1 200—and that certainly looks like discrimination! For small species, compensation payable for males is $200 and for females, $600. These amounts are calculated on meat value for males and three times the meat value for females because of their breeding potential.

Provision is made in the legislation to vary, on the recommendation of the industry, the regulation fee and the level of compensation payable. I think that all these matters will be dealt with by regulation and thus they are not in the actual Bill. No doubt, we will deal with this subject again later if deer industry producers are not happy with the regulations that are made. I think I have said before that I expect that the initial registration fee will be higher than the subsequent annual fee, but that is a matter for the industry to sort out. The Opposition has some problems with the arrangements for annual licensing of properties, as it will be one of the only industries to require registration right from the beginning on a per property basis.

Meat producers in the cattle and sheep industries are not required to pay a property registration to produce their product, although almost all rural meat sales require some sort of identification or registration for disease trace-back. Contributions to the Cattle Compensation Fund are made not by a levy on a property but from sales of the product produced. Similarly, ministerial approval is not required to grow, for example, wheat, barley, small seeds or wool—and I and a number of other members in this place hope that we never have to. However, those in the deer industry are happy with this arrangement, and thus the Opposition is happy to support the proposition.

The registration of deer producers and the identification of all meat sold will provide an adequate trace-back mechanism to control bovine tuberculosis. We need TB free cattle herds, and we are working well towards that end in South Australia and indeed in Australia. It follows that TB in deer must also be identified and eradicated. I understand that in South Australia there are about 130 deer producers. The identification and levy system will enable the fund to be set up from those 130 contributors.

That fund will be set up to compensate producers for any stock that are destroyed because of disease or suspicion of disease. From meetings that I have attended, I understand that there has been considerable comment among those in the industry and among veterinarians (and I am sorry that the Minister of Health, as a veterinarian, is not here to give his advice) about the fallibility of TB testing in deer. I will not go further into that.

I might add that the industry and the Minister are thinking of planning beyond TB: the fund is ready to use in case diseases are identified. That is a commendable project. When set up, the fund will be able to be used for other things. Clause 8 provides that where, in the opinion of the Minister, the amount standing to the credit of the fund on 30 June in any year exceeds the amount necessary to meet any claims or other payments likely to be payable during the following 12 months the Minister may direct that the amount of excess be allocated to such programs for the benefit of the deer industry in the State as he thinks fit. I imagine that the Minister will direct those funds to other matters on advice from the committee to be set up under clause 9. The functions of the committee, as set out in clause 10, are as follows:

(a) to advise the Minister in relation to the management of the fund;

(b) to make recommendations to the Minister in relation to the allocation of any surplus;

and

(c) to investigate and report to the Minister on any matter referred by the Minister to the Committee for advice.

Clause 11, which relates to inspections, is somewhat softer than the requirements we have come to expect in other Acts, such as the Pest Plants Act. The Opposition supports the provisions in clause 11. I will not go through them, but suggest that they are softer than those we have been debating here on a number of recent issues.

I refer members to the provisions of clause 9, which relate to the committee, which will comprise five people. The clause provides:

(a) one (the Chairman) will be the Chief Inspector;

(b) three will be persons who, in the opinion of the Minister, are suitable persons to represent the interests of those engaged in the deer industry in this State;

and

(c) one (the secretary) will be a person holding a position in the Department of Agriculture.

We see here a compromise between the provisions of some of the legislation that we have had before us recently, such as the Potato Industry Trust Fund Committee Bill which is passing backwards and forwards between the Houses like a ping pong ball and will have to be resolved by a meeting of managers at a conference. That legislation comes readily to mind. That provides a compromise between the various provisions, giving ultimate control of growers' funds to the Minister. In these provisions the growers ostensibly have a majority of three to two. I wonder why we have to do battle on other Bills, as the Hon. Mr Dunn and other members and I have been doing for a considerable time.

There is an example where funds that are 100 per cent growers' funds should be managed by a committee comprising a majority of growers. The Minister has come to a sensible decision here. He has the power to appoint the three industry members, and we hope that he will take that responsibility. Clause 9 (2) *(b)* states:

(b) three will be persons who, in the opinion of the Minister, are suitable persons to represent the interests of those engaged in the deer industry in this State;

It will be on the Minister's head if he offends the deer industry by not using the persons whose names are put forward by that industry to represent it. It might be drawing a longbow, but if sections of the industry, such as butchers and cosumers, wish to have a chance to sit on the committee then they should also be paying a levy before they have a chance to do so. The Minister has a freedom here that I hope he does not abuse. If he does, I have no doubt that the industry will make enough noise for us to hear it here, and we will seek to tie the Minister down further to appointing as a majority on the committee those members the industry wants advising the Minister on expenditure of their funds. The Opposition supports the Bill.

The Hon. BARBARA WIESE (Minister of Tourism): I thank the Hon. Mr Irwin for his contribution to this debate. I will be very happy to undertake to refer those questions which he raised and which have not yet been answered to my colleague the Minister of Agriculture. I am certain that during the coming recess he will provide answers to the Hon. Mr Irwin.

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

CREDIT UNIONS ACT AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).
(Continued from page 4012.)

The Hon. K.T. GRIFFIN: At the risk of incurring the wrath of my colleagues on this side of the Chamber, I indicate that the Opposition will support this Bill. The normal practice and procedure of the Liberal Party has not been followed in the sense that, generally, we like to have a good look at these Bills and, usually, we do not debate them on the day that they are introduced but, in this instance, I had the advantage yesterday of seeing a preview of a much more substantial Bill than this one and part of that draft Bill contained provisions for changing the names of credit unions. It is with something of a sense of relief that I do not have to consider that more comprehensive Bill that I very eagerly now support this very brief Bill.

This Bill is designed to empower credit unions to change their names and for the Registrar of Credit Unions to register those changes of name. There are certain constraints on the change of name which a credit union may make: that is, the name—

> . . . is not such as to be misleading as to the nature, objects or purposes of the credit union; is not such as is likely to be confused with the name of any other body corporate or any registered business name; is not undesirable as a name for a credit union—

I suppose that is a bit vague, but there may be certain names which, quite obviously, we could not anticipate which may offend public decency or in some other way be undesirable, and I am happy that that proviso be in the Bill. It must also conform—

> . . . with any direction of the Minister relating to the names of credit unions.

They are all provisions in the Companies Code and, I recollect, in the Building Societies Act, and this brings credit unions into line with that. Where there is an alteration to the rules of a credit union which consists of or includes an alteration to the name, then again the Registrar is not to register the alteration unless he is satisfied that the criteria to which I have referred are satisfied. If the Registrar registers the alteration, the Registrar may, on the appliction of the credit union, amend its certificate of incorporation or issue a fresh certificate.

My discussions with representatives of the Credit Unions Association this afternoon indicate that they are happy to indicate their support for this Bill. They have been recently involved in consultations on this issue, and they are satisfied that it is necessary to provide this power. I understand also that the Registrar of Credit Unions has been registering or purporting to register changes of name of a number of credit unions over the years, and it is believed that there may not be such a power for him to do that. So, this Bill not only gives power in the future but ratifies past changes of names of credit unions. To that extent it is retrospective, but I see that there is merit in that proposal on this occasion. I therefore support the second reading.

The Hon. R.I. LUCAS: I only want to ask a simple question of the Minister: what have been the problems in relation to the naming of credit unions which have resulted in the need for this legislation at this stage of the session? Have there been problems in relation to credit unions trying to name themselves inappropriately or being confused with anything else? Can the Minister give the rationale for this legislation?

The Hon. C.J. SUMNER (Attorney-General): I thank honourable members for their effusive support of the Bill. In response to the Hon. Mr Lucas, there is no problem except the doubt about the power of the Commissioner of Corporate Affairs to approve a change of name of a credit union. He has done it or has purported to do it under the existing Act. Some question has been raised as to whether that power actually exists.

The Hon. R.I. Lucas: Has that question been in the courts?

The Hon. C.J. SUMNER: No, I do not think so. It has just been drawn to their attention, and there may be a problem with the powers. It is really just clarificatory in that sense, and this is all it does. That is the sole reason for its introduction at this stage.

The Hon. K.T. Griffin: Credit unions have raised some concerns about it, too.

The Hon. C.J. SUMNER: The credit unions are concerned that the procedures are proper, and this picks up that issue and introduces a similar provision to that which exists in the Building Societies Act. It is just clarificatory. It changes no policy; it is purely a technical, drafting matter.

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

RETIREMENT VILLAGES BILL

(Continued from 2 April. Page 3765.)

Bill recommitted.

Clauses 1 and 2 passed.

Clause 3—'Interpretation.'

The Hon. K.T. GRIFFIN: This is the appropriate time for me to make a comment, and I hope that members will bear with me. The Bill came in in December prior to rising for the Christmas break and it was then available for comment. As a result of that, quite a large number of people made submissions both to the Corporate Affairs Commission and to me. Since that time I understand that the Corporate Affairs Commission has quite extensively consulted with interested parties and that the amendments which were moved as a whole last week and resulted in a Bill largely came from that consultation process. Although I have had limited opportunity to look through the Bill, it is very much an improvement on the Bill that was before us in December. I will raise some issues during the course of the Committee stage, but it may be that once the Bill is in effect other issues will come to light which may need to be the subject of amendments.

Whilst I understand that there is to be extensive consultation between the Corporate Affairs Commission and interested parties in regard to regulations and that there may well have to be exemptions in a variety of cases from one or more provisions of the legislation, I would hope that the Government will be willing to consider proposals for amendment if unintended consequences result from this Bill. Everyone will recognise that it is difficult to come to grips with all the practical aspects in the short time that has been available, certainly to the Opposition. I do not criticise the Government for that, but I make the point so that if something comes to our attention that must be reviewed we will have the cooperation of the Corporate Affairs Commission. I want to be assured that that will occur.

From all reports, officers of the Corporate Affairs Commission have gone out of their way to endeavour to understand the representations made to them and to explain their own attitude. The officers of the commission should be commended for that. To a certain extent, the limited number of amendments on file from members may be taken as

a reflection of the extent to which the views that I and others presented in December have been accommodated.

The Hon. C.J. SUMNER: I acknowledge what the Hon. Mr Griffin has said and I would certainly agree with him regarding the endeavours of the officers of the Corporate Affairs Commission who have been involved in extensive consultations on this Bill and who, I believe, have arrived at a position that satisfies most parties who put submissions to the commission. Disparate views on the Bill were certainly presented.

Regarding the first point, there is no doubt that when new legislation is introduced there is a settling in period, and this legislation may require examination in the future. I do not dispute that. The fact is that we must get something passed before 30 June or this area will be completely untouched by legislation. I believe it is the wish of the community as expressed to me and, I suspect, as expressed to all members, no matter what their views about deregulation, that this is one area where some regulation is necessary. The honourable member will be fully cognisant of the fact that pragmatic Labor Governments (as members have described us) are always prepared to deal with the unintended consequences of legislation, and if difficulties arise I am sure that the commission and the Government will be prepared to consider. I move:

Page 2, lines 41 and 42—Leave out 'for the provision to a resident of a retirement village' and substitute 'between an administering authority or former administering authority of a retirement village and a resident for the provision to the resident'.

The amendment will ensure that contracts for the provision of services entered into between a former administering authority and a resident where no new contract has been negotiated with a new administering authority can be enforced.

The Hon. K.T. GRIFFIN: I am prepared to support the amendment.

Amendment carried.

The Hon. M.J. ELLIOTT: I move:

Page 3, lines 14 to 16—Leave out paragraph *(b)* and substitute:

(b) the number of votes cast in favour of the resolution must equal or exceed three-quarters of the total number of votes that could have been cast if all residents entitled to vote had voted on the resolution:

I am very pleased with the way that the Bill has turned out. The people with whom I have spoken have had no major problems at all, which is obviously reflected in the amendments which I am moving. Although they are relatively minor amendments they are suggestions as to the way things might be improved. I intended that this amendment would also tie in with the amendment to clause 10 which is also on file. The amendment can stand on its own, but the intention is for the two to stand together.

If decisions are going to be made that could result in a levy, there should be a definite majority of people in favour. I do not think it should be three-quarters of those who attend—it should be three-quarters of the residents. As there could be difficulty in achieving that number at a meeting, proxy votes overcome any difficulty that could occur if a few people are away. I believe that people who cannot attend meetings should still be entitled to vote.

The Hon. C.J. SUMNER: The Government opposes the amendment, which would make it almost impossible to pass a special resolution. The provision in the Bill is identical to the Companies Code special resolution provision and accordingly I do not believe that the amendment is justified.

The Hon. K.T. GRIFFIN: I have difficulty with the amendment. Although I can see what the honourable member is seeking to do, I think we have to remember that retirement villages are not the property of residents: they have been funded perhaps significantly by persons or bodies other than residents. Residents have a stake in them and the interests of residents are to be balanced against the wider interests of those who have been prepared to build and operate the facilities of a retirement village.

To require a three-quarters majority of all the residents, regardless of whether or not they attend the meeting, would be difficult to achieve and, as the Attorney says, it is likely to mean that few, if any, special resolutions will be passed. It gives to residents the capacity to frustrate the legitimate, proper and reasonable objectives of the administering authority. All that needs to happen is for a number of residents to stay away from the meeting to frustrate the objective of a special resolution.

I have difficulty with it, just as I have difficulty with the concept of proxies, which introduces the possibility of campaigning and canvassing and certainly opens the way for manipulation. In the charitable and religious resident villages with which I have had any contact there is a sensitivity towards the interests of residents, and I would find quite abhorrent to the whole concept of such a service the idea that it is the residents who actually run the show and who are able to frustrate reasonable and proper objectives of the administering authority. I am not able to support the amendment for those reasons.

The Hon. M.J. ELLIOTT: I will take up two of the points made by the Hon. Mr Griffin. First, he said that it is possible to frustrate a decision by non-attendance. I suggest that non-attendance at a meeting and not voting has the same effect as going to a meeting and voting. By going to a meeting and voting against something it would make it less possible to achieve a three-quarter vote. I do not really think it is a problem. The point has been made clearly. As there will be no support, I will not pursue it.

Amendment negatived; clause as amended passed.

Clause 4—'Application of this Act.'

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

Page 3, lines 20 and 21—Leave out subclause (1) and substitute:

(1) Subject to this section—

(a) this Act applies to retirement villages established either before or after the commencement of this Act;

and

(b) this Act binds the Crown.

My amendment is to ensure that the Crown is bound. It seems that particularly the Housing Trust's involvement in homes for older citizens, retirement villages, ought to be bound by similar provisions as the private, charitable and religious sectors. If the Crown was not bound, it would give to the South Australian Housing Trust what I would regard as an unfair advantage in the marketplace. There is a power later in the Bill to grant exemptions.

I hope that the power to grant exemptions, if this amendment is carried, will not mean an exemption out of all of the principal obligations. I do not think that that is the way it would be administered, anyway. However, I see that the power of exemption could be used with restraint and in appropriate circumstances to assist the Housing Trust and other bodies if there are difficulties that might not have been foreseen by us in applying any of the provisions of this Bill.

The Hon. C.J. SUMNER: The Government will not oppose this amendment. The intention of the Bill not to bind the Crown was based on one general issue which I know has been overridden by the Parliament on a number of occasions, the general proposition being that the Crown is responsible to the public through the Parliament in any event for what happens and therefore is accountable, irrespective of whether or not a specific provision is included in legislation requiring the Crown to be bound. I do concede

that in recent years more and more legislation has included a provision to bind the Crown.

The second reason for its not being included in the Bill was the concerns of the South Australian Housing Trust, which did not want to have retirement villages in which it was involved bound by legislation, in particular because it did not consider it appropriate for the charging provisons in the Bill to apply to Crown lands. That argument was put on the basis that the Crown would honour its responsibility to repay premiums. There is not much argument about that. The Government's position now is that the Crown could be bound with the Housing Trust specifically exempted from the charging provisions of the legislation.

This would mean that in any case where the Housing Trust actually managed a village it would be bound by the other provisions of the Bill. Furthermore, the Housing Trust would then be subject to the same exempting provisions as would apply to any other exemption seekers under the Bill; that is, exemptions will be available if it can be demonstrated that a scheme is in place which provides the same type and extent of protection as is provided in the Bill.

In conclusion, it is not considered appropriate that lands owned by the South Australian Housing Trust should be subject to the charging provisions of the Bill and it is therefore intended that the Housing Trust will be specifically exempted from the charging provisions. Additionally, the Housing Trust will be able to apply for any other exemptions where it is able to demonstrate that residents in retirement villages sponsored by the Housing Trust are given protection consonant with the protection in the Retirement Villages Act.

The Hon. K.T. GRIFFIN: I do not have any difficulty with that. It is really consistent with my earlier proposition that, generally speaking, the Crown—and in this case the South Australian Housing Trust—could be dealt with in a similar way to other agencies, whether they be the private, charitable or religious sectors. I understand the argument about the charging provisions, and I have no difficulty about that because, if the Housing Trust did not honour its commitments, everyone could be assured that there would be a ruckus in this or the other place.

Amendment carried; clause as amended passed.

Clauses 5 and 6 passed.

Clause 7—'Termination of residence rights.'

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

Page 4, line 22—After 'breach of' insert 'the residence contract or'.

This clause deals with the termination of residence rights and it provides that a resident has a right of occupation that cannot be terminated unless certain events occur. Paragraph *(c)* provides that if a resident commits a breach of the residence rules and the administering authority terminates the resident's right of occupancy on that ground, then the right of occupation is terminated.

It seems to me that we must also insert that where a resident commits a breach of the residence contract it is permissible for the administering authority to terminate the right of occupation. My amendments in both paragraph *(c)* and later in line 41 are designed to include the reference to a breach of the residence contract.

The Hon. C.J. SUMNER: This amendment is not opposed.

Amendment carried.

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

Page 4, line 41—After 'breach of' insert 'the residence contract or'.

The Hon. C.J. SUMNER: This amendment is agreed to.

Amendment carried.

The Hon. K.T. GRIFFIN: Before I deal with my next amendment, I wish to raise a question in relation to subclauses (3) and (4). My interpretation is that, where the administering authority decides to terminate a resident's right of occupation on the ground of a breach of the resident's contract or the rules, that is not effective unless the tribunal has in effect approved it, so that on each occasion that there is a termination before it becomes effective the administering authority has to apply to the Residential Tenancies Tribunal. Is that the position?

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

The Hon. K.T. GRIFFIN: I hope that will be monitored, because I can foresee that there may end up being a lot of those applications. It may be that in some instances the resident will agree. It seems that even in the event of a resident agreeing, that termination has to be approved by the Residential Tenancies Tribunal. If that is so, I hope that appropriate procedures can be adopted to, in effect, rubber stamp them if the tribunal is satisfied that both parties are of one mind on that issue. I move:

Page 5, after line 3—Insert:

(4a) Where an application is made to the Tribunal under this section the Tribunal must fix a date within 21 days from the date of the application for the hearing and must proceed with the hearing and determination of the application with as much expedition as is reasonably practicable in the circumstances.

One of the concerns I have with the Residential Tenancies Tribunal acting in this area is that there may well be an additional volume of work, and without additional resources it will end up delaying important decisions which have to be made, decisions affecting not only the interests of the administering authority but more particularly the interests of the resident. It would seem to me, therefore, that there ought to be a requirement that the tribunal deal with any application expeditiously. I have some reservations about the tribunal, anyway, in its operations in other areas, but I do not think that now is the appropriate time to voice them. I must say that in the short time we have had this amended Bill I have not been able to think of an alternative to the Residential Tenancies Tribunal, but I think we therefore have to monitor the way it operates, the speed with which it makes its determinations and the equity which is evident in the decisions that are made.

Therefore, my amendment will require the tribunal to fix a date within 21 days from the date of the application for the hearing and the tribunal must proceed with the hearing and determination of the application with as much expedition as is reasonably practicable in the circumstances. That is a mandatory requirement to get on with the job. Whilst there may be some difficulty with the 21 day period, I think something has to be in there to demonstrate to the tribunal that, when Parliament considered this Bill, it believed that the matters had to be dealt with promptly and expeditiously.

The Hon. C.J. SUMNER: The Government opposes this amendment, which would require an application to be heard initially within 21 days of the application being made. This has been discussed with the Acting Consumer Affairs Commissioner who has indicated that the 21 day period would be extremely disruptive. At present, urgent matters are heard within seven days, administratively, and less urgent matters within 28 days. It would not be appropriate that all retirement village matters, many of which would not be urgent, should be disposed of within 21 days.

I do not believe that inserting a special clause for retirement village matters would be equitable given the other work of the Residential Tenancies Tribunal. All matters should be dealt with in the same way, and the current

situation is that an urgent hearing takes place within seven days and less urgent matters up to 28 days. Generally, we anticipate that retirement village matters would not be dealt with any differently. However, I repeat: it would be unfair to insert a special legislative regime (if you like) for retirement villages and leave the other matters perhaps with less priority. By way of compromise, I propose to amend the Hon. Mr Griffin's amendment. Accordingly, I move:

Leave out the words 'fix a date within 21 days from the date of the application for the hearing and must'.

It then becomes an exhortation to the tribunal to hear matters as expeditiously as is reasonably practicable in the circumstances.

The Hon. K.T. GRIFFIN: I would prefer to have the period of 21 days in there, but I can see and will concede that there may be some difficulties. I think the additional difficulty with the retirement village area is that, generally speaking, it involves elderly people. I think that puts it in a special category as far as expedition is concerned. For that reason, I believe there should be a special provision requiring the tribunal to deal with matters expeditiously. While I would prefer to see the period of 21 days in there, I can see why the Attorney-General has moved for its deletion. I indicate that I will not divide on the amendment if I lose on the voices.

The Hon. M.J. ELLIOTT: The only debates that I enjoy in this Chamber are those between the Attorney-General and the shadow Attorney-General, because one sees a bit of genuine give and take. It is the only time that I see that in this place. I am stuck with a very exacting decision. In fact, on the balance of the argument, I am convinced by the Attorney-General, so I will support his amendment to the Hon. Mr Griffin's amendment.

The Hon. C.J. Sumner's amendment to Hon. K.T. Griffin's amendment carried; Hon. K.T. Griffin's amendment as amended carried.

The Hon. M.J. ELLIOTT: Before proceeding to formally move my proposed amendment to line 5, I wish to refer generally to this matter. The original Bill originally stipulated a 60 day period, but I understand that that has now been deleted. Can the Attorney explain why that has occurred? This might save my having to move my amendment.

The Hon. C.J. SUMNER: The reason is that the Residential Tenancies Tribunal is now involved in the decision to remove someone from a village. That is basically the reason for the changed structure. We consider that it should now be left in the hands of the Residential Tenancies Tribunal to determine, in the particular circumstances of a case, an appropriate ejection date. It may be that a period of 60 days is too long in relation to a person who might be destroying the physical or social fabric of the village in relation to whom that is universally agreed and not in dispute. So, taking out the period of 60 days and putting in the Residential Tenancies Tribunal as a safeguard is to ensure fair play.

The Hon. M.J. ELLIOTT: What is the reaction to the suggestion of making a slight modification to give some sort of guideline that in general one should aim at having at least 60 days, except in certain circumstances.

The Hon. K.T. Griffin: I wouldn't accept that.

The Hon. M.J. ELLIOTT: You don't like guidelines? A maximum penalty is usually set as a guideline and the courts move around that, but here the tribunal is to make a decision in a complete vacuum.

The Hon. C.J. SUMNER: I think that probably the only thing worth saying is that the Residential Tenancies Tribunal operates under an Act to which it probably resorts to determine these sorts of criteria, unless in exceptional circumstances, in which case it would then be up to the adminstering authority, perhaps with the support of other residents, to determine that a person ought to be removed immediately. The precise time escapes me, but under the Residential Tenancies Act now if non-payment of rent occurs or there is some other major breach of the tenancy agreement I think people can be removed within 14 days.

The Hon. K.T. GRIFFIN: I think the difficulty with the previous provision was that 28 days notice had to be given first up, and then there was another 60 days on top of that; some 90 days could elapse before any action was taken. I criticised that period of time last December. In talking about retirement villages, generally speaking, one is talking about an older group of people, some of whom might suddenly become mentally or physically incapacitated and in that context might be quite a disruptive influence in the very close confines of a retirement village, perhaps requiring removal to a nursing home or to some other place for more specialised care.

During the course of my consultations on this matter it was drawn to my attention that in the case of a country unit an older lady paid some money, went in and promptly started to wreck the place, and would not move out. In such circumstances it would be a very great pity if it was necessary to wait 60 days to get that person out. The whole unit could be demolished before the matter even got to the Residential Tenancies Tribunal. As the Attorney said—and I interjected at the time—I think that the interposition of the Residential Tenancies Tribunal does provide the safeguard, which I think is appropriate for residents, and it also takes into account the position not only of the administering authority but also the other residents in a resident funded or other retirement village.

The Hon. M.J. ELLIOTT: I will not proceed further with my amendment. I wanted to air the issue first, and I am satisfied with the explanations that have been given.

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

Page 5, after line 8—Insert subclause as follows:

(7) If the administering authority decides to terminate a resident's right of occupation it must give the resident, personally or by post, a notice—

(a) setting out the grounds of the administering authority's decision;

(b) informing the resident that the decision is subject to review by the Tribunal;

and

(c) informing the resident of his or her rights with regard to such a review.

Penalty: $5 000.

The idea of this amendment is that where a resident's right of occupation is being terminated he or she is fully aware of their rights to have a dispute in relation to the termination heard by the Residential Tenancies Tribunal.

The Hon. K.T. GRIFFIN: I think it is reasonable that a person be given that notice, so I support the amendment.

Amendment carried; clause as amended passed.

Clause 8—'Premiums.'

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

Page 5, line 9—Leave out 'A' and substitute 'Subject to subsection (1a), a'.

Clause 8 deals with premiums. One of the concerns expressed to me by a number of people is that in small community based organisations, particularly in country areas, a community organisation may receive a request from a local resident to construct a unit on the campus of a series of residential retirement units; or the governing body of such a campus may receive requests from a number of people over a period of time for residential retirements units.

Their only sources of income to do that are donations, subscriptions or gifts from persons who desire to have those units. The placing of those subscriptions, either the up-front lump sum or progress payments, in a trust account not to be used until the units are ready for occupation and are in fact occupied would mean that in those country areas in particular there would be no units built, because the community based organisation would not have the funds to do it unless the donation, the resident's fee, was paid in advance.

I think that there may well be occasions where the Corporate Affairs Commission would be satisfied that appropriate safeguards have been provided to ensure that the construction is completed and the unit is available for occupation by a prospective resident. In those circumstances, I do not think that the organisation ought to be required to put the money into a trust account in the way envisaged by the clause.

The Attorney has an amendment which will provide for exemptions to be granted on a conditional or unconditional basis, and I accept that. I think that that is an appropriate provision. There is already a general power exemption in the Bill, but it seemed appropriate to me that there be something specified in relation to clause 8 to deal with the situations to which I have referred. The last thing that we want to do is to prejudice small community based organisations where there is no problem with application of the premiums in the construction of units. As I say, provided that there are adequate safeguards, I think that exemptions should be granted.

The Hon. C.J. SUMNER: It appears that agreement has been reached on this matter. The exemption provisions contained in the Bill as it presently stands would have enabled the Minister to use the power of exemption in any event, but that would have required the exemption to be published in the *Government Gazette*. We have no difficulty with giving the Corporate Affairs Commission the power to authorise the exemptions. In any event, the Corporate Affairs Commission is presumably subject to the direction of the Minister in that respect. We support this amendment on the understanding that subclauses (1a) and (1b) will be inserted as moved by me, which will mean that an exemption can be conditional or unconditional and an offence would be committed if there were a contravention by the administering authority of any of the conditions of the exemption.

Amendment carried.

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

Page 4, lines 46 to 48—Leave out subclause (1) and substitute:

(1) A premium paid to the administering authority must be held in trust (in a bank account or in a form of investment in which trustees are authorised by statute to invest trust money) until—

(a) the person by or on whose behalf the premium was paid enters into occupation of a unit;

or

(b) it becomes apparent that that person will not enter into occupation of a unit.

Page 5, lines 1 and 2—Leave out subclause (2) and substitute:

(2) If the prospective resident does not enter into occupation of a unit, any question affecting entitlement to or disposition of the premium will be determined by reference to the residence contract subject to the following qualifications:

(a) if the prospective resident's failure to enter into occupation of the unit is attributable to a failure on the part of the administering authority to carry out contractual obligations, interest and accretions arising from investment of the premium must be paid to the prospective resident;

(b) in any other case, the administering authority will be entitled to retain any such interest and accretions.

Amendments carried; clause as amended passed.

Clause 9—'Contractual rights of residents.'

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

Page 5, before line 40—Insert paragraph as follows:

(aa) the owner is a party to the contract under which the premium is repayable;.

Clause 9(3) as presently drafted could be interpreted to mean that a resident, in circumstances where the owner was the party with whom the resident entered into the contractual relationship but who was not the sole administering authority of the retirement village, would nevertheless be required to take action against the administering authority other than the owner. It is considered to be more equitable that, where the privity of contract exists between the resident and the owner, the resident should be able to sue the owner without first being required to bring an action and obtain judgment against some other administering authority.

The Hon. K.T. GRIFFIN: I am prepared to support the amendment.

Amendment carried; clause as amended passed.

Clause 10—'Meetings of residents.'

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

Page 6—

Leave out subclause (2) and substitute subclause as follows:

(2) The annual meeting must be held not more than four months after the end of the financial year in relation to which accounts are to be presented under this section.

Line 33—Leave out 'the next financial year' and substitute 'a period of not less than 12 months and not more than 16 months commencing within four months before or after the date of the meeting'.

The present draft of clause 10 requires the administering authority to present accounts for the previous financial year at a meeting 21 days prior to the end of the financial year. This means that residents would be receiving accounts almost 12 months out of date. It has therefore been decided to return to the original draft, where accounts have to be presented at an annual meeting after the end of the financial year. The previous draft required that that meeting be within six months of the financial year. The amendments being presented now require the meeting within four months. That time period has been discussed with industry representatives. It should be noted that the accounts are not full accounts of the administering authority but 'accounts showing the gross income derived from recurrent charges during the previous financial year and the manner in which that income has been applied'. There should be no difficulty in preparing these accounts within four months.

Further, clause 10 is amended to require the presentation of estimated income from recurrent charges and expenditure of that income for a period not less than 12 months and not more than 16 months, commencing within four months after the date of the meeting. This has the effect of divorcing the estimates from the financial year but ensuring residents still get estimates at regular intervals. Subclause (8) still requires that recurrent charges cannot be increased beyond a level shown to be justified by estimates of expenditure presented to a meeting of residents. The amendments are necessary because of the impossibility of requiring accounts for one financial year and estimates for the following financial year to be presented at the same meeting.

The Hon. K.T. GRIFFIN: I think I picked up the relevance of the amendments. It took a little working out as to exactly what was meant, but I think it is reasonable and, as I interpret it, it facilitates the consideration of estimates of income and expenditure. It will be very difficult before the commencement of a financial year to actually have all the relevant estimates prepared. In fact, it would probably be a physical impossibility, and I think that the amendments just allow some greater flexibility which would be of assistance not only to the administering authority but to the

residents in obtaining the correct information. So, as I said, the amendments can be supported.

Amendments carried.

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

Page 7, lines 1 to 6—Leave out subclauses (8) and (9) and substitute:

(8) Subject to any contrary provision in a residence contract—

(a) the recurrent charges payable by a resident cannot be increased beyond a level shown to be justified by estimates of expenditure presented to a meeting of residents under this section;

and

(b) a special levy cannot be imposed on a resident unless authorised by a special resolution passed at a meeting of residents.

It may be that in the contract between the administering authority and the resident there is a provision which establishes a formula by which charges may be increased which overcomes the vagueness of the reference in subclause (8) to the level shown to be justified by the estimates of expenditure. In addition, it may be that the contract provides for a special levy in circumstances which are clear and which put the residents on notice, for example, for specific items of common property and furniture or some other facility of benefit to the residents in a retirement village. It seems to me that it is appropriate to have some reference to the contract in dealing with the question of the recurrent charges and the special levy.

The Hon. C.J. SUMNER: The amendment moved by the Hon. Mr Griffin seeks to amend subclauses (8) and (9) to provide that the recurrent charges cannot be increased beyond a level shown to be justified by estimates of expenditure presented to a meeting of residents subject to any contrary provision in a resident's contract. The Government opposes the amendment because it would render ineffective the policy of the provision that residents should not be subject to changes in recurrent charges over a 12 month period without a special levy being authorised by special resolution passed at a meeting of residents.

The administering authority has the power to set the recurrent charges at the beginning of the period and that gives the resident a measure of comfort. The administering authority can already say that recurrent charges may rise in the 12 month period in line with CPI or pension increases. The Government does not believe that by agreement with the residents the administering authority should be able to contract out of this particular restriction on its capacity to raise charges. The Government believes that the administering authority has adequate power to raise charges at the beginning of the 12 month period including at that time a resolution to cope with CPI, pension increases and the like. To allow the authority to contract with the residents to have no restraint on increases in charges would negative the effect of the legislation as introduced. Therefore, the Government does not support the honourable member's amendment.

The Hon. M.J. ELLIOTT: I do not support the amendment.

Amendment negatived; clause as amended passed.

Clause 11—'Unreasonable residence rule.'

The Hon. M.J. ELLIOTT: I take this opportunity to raise a couple of questions, and I might as well do it now as later. These are the sort of questions that one would usually like to ask during the second reading stage but, given the way things have proceeded, they need to be asked now. A couple of questions have been passed on to me and because I could not answer them I will address them to the Attorney-General. In the event of a long resale period, what happens in terms of maintenance? Is that paid by the village owners?

The Hon. C.J. SUMNER: That situation is specified in the contract when the resident enters the village, so it may or may not. Presumably, the administering authority would try to ensure that the resident continued to pay the charges until the unit had been sold, but that would be agreed at the time of entry.

The Hon. M.J. ELLIOTT: It might be worth making it consistent one way or the other. All sorts of warnings will be given to residents when they enter, and perhaps that is another thing that should be checked. Is misleading advertising adequately covered by other legislation?

The Hon. C.J. SUMNER: I do not think there is a problem with that. The Federal Trade Practices Act and the State Fair Trading Bill, which is before the Parliament at present, deal with misleading advertising.

The Hon. M.J. ELLIOTT: In the second reading stage, I suggested that plain English be used as much as possible. What is the progress of that? It has been suggested to me that, if lawyers vet contracts, people will have to pay $270 and, in fact, lawyers themselves often have to telephone the office of the Commissioner for the Ageing for clarification.

The Hon. C.J. SUMNER: That is a reasonable point, but we cannot resolve it in the context of this Bill. The question of plain English in the drafting of contracts is very vexed and applies to a large number of areas. There are difficulties because, if a particular interpretation has been given by the courts to a form of words, it is not always easy to change it. I note the honourable member's comments, and I do not disagree with them in principle, but I do not think that we can tackle that problem just in the context of this Bill.

Clause passed.

Clause 12—'Copies of residence rules to be supplied.'

The Hon. M.J. ELLIOTT: I move:

Page 7, after line 27—Insert paragraph as follows:

(d) a statement of any further building development currently proposed in relation to the retirement village and, if any part of the cost of any such development is to be raised by a special levy on residents, a statement of the amount to be raised in that way.

Some retirement villages grow in stages, and new developments which cannot be justified at an early stage are justified as the village becomes larger. It would be useful if the likely future developments and, more importantly, whether or not special levies might be necessary to cover future development were clearly spelt out in the contract.

The Hon. C.J. SUMNER: The Government does not disagree with the honourable member's intention, but our view is that it is already covered. Clause 10 (5) requires the amount to appear in the accounts for the previous financial year and in the estimates of income and expenditure for the next financial year. Special levies cannot be imposed on residents of retirement villages unless authorised by special resolution passed at a meeting of residents. I think that the matter is probably adequately covered, without really wishing to disagree with what the honourable member is intending to do.

The Hon. K.T. GRIFFIN: The clause is really designed to provide a resident virtually on request with certain basic documents, a copy of the residence contract, the residence rules and a statement of the amount to which the resident would be entitled by way of a repayment of premium if the resident were to cease to reside at the retirement village. They can be obtained at any time. The question of further building development is more appropriately dealt with in the accounts.

I am not sure whether from a practical point of view it is something that ought to be available upon demand. It may be that today a particular building development may not even be in contemplation, but next month it could be

proposed. One can have a changing situation. If you look at the accounts—past and expected—it would seem to me that that puts it into a proper context. The accounts are then available as at a particular date, historical or prospective. That seems to be a better way to deal with it, rather than including it in this clause.

The Hon. M.J. ELLIOTT: It was located in this clause because I said that I wanted an amendment that did the following things. True, I did not pull the Bill inside out to decide where it should go: I was more concerned about the principle than where it should go. If the amendment happens to be defeated, will the Attorney consider whether there is some other place in the Bill where it would sit more comfortably so that its inclusion in another place might be contemplated?

The Hon. C.J. SUMNER: If it will satisfy the honourable member, my advice from the officers is that the situation is adequately covered, in that any levy on the residents for further development would have to be done by a special resolution.

Amendment negatived; clause passed.

Clause 13 passed.

Clause 14—'Tribunal may resolve disputes.'

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

Page 7, line 44—Leave out 'or between residents of a retirement village'.

Page 8—

Line 1—

Leave out 'any' and substitute 'either'.

After line 13—Insert subclause as follows:

(6) This section does not derogate from the jurisdiction of any court.

These amendments remove from the restriction of the Residential Tenancies Tribunal disputes between residents of a retirement village. The tribunal is not considered an appropriate body to resolve disputes between residents. It is outside its normal area of operation, which is resolving disputes between contracting parties. Disputes between residents would be best left for resolution by the administering authority under any dispute solving mechanism that it might wish to initiate. Clause 14 is amended by including new subclause (6) to clarify that the right to apply to the tribunal to resolve a dispute does not affect the rights of any person to take actions in any court.

The Hon. K.T. GRIFFIN: I support the amendment. It is appropriate to remove from the Residential Tenancies Tribunal disputes between residents rather than disputes between residents and the administering authority. As the Bill is drafted at the moment, it is quite possible that there might be something quite unrelated to the village which might result in a dispute between residents of the village and, merely because they were residents in the village, the tribunal would then have jurisdiction. I do not think that that was even intended, and I do not think appropriate, anyway. Therefore, I support the amendment.

Amendments carried; clause as amended passed.

Clause 15 passed.

Clause 16—'Lease of land in retirement village.'

The Hon. K.T. GRIFFIN: Will the Attorney-General say why clause 16 (2) is in the Bill? I can envisage a situation where we have a large tract of land, perhaps all one title, and only part of it comprising the village, yet the balance might be leased after 10 to 15 years to some other person for other purposes. Under this clause, the commission has to authorise any lease for a term longer than two years. Will the Attorney say why that provision is in the Bill?

The Hon. C.J. SUMNER: We are talking about retirement villages, and people go into them on the basis that it is a retirement village and that that is what they are contracting to get. It was thought that this might impose some difficulties for the developer. I understand that it is particularly the voluntary care sector that is concerned.

The Hon. K.T. Griffin: Kiosks and shops?

The Hon. C.J. SUMNER: No. They want the capacity to lease out some part of the village possibly for other purposes. That should only be for a period of up to two years. In other words, unless there is a provision so that one can lease it out, one may be stuck with an unused asset. That is the reason for it. If the honourable member has any further comment, we will listen to it.

We are advised that the reason for the provision is concern that the village might be established, some people might take up their residence in the village but the whole village might not be utilised. I understand that, if this clause was not present, nothing else could be done about the unutilised part of the premises. This will enable it to be leased out, but only for a period up to two years.

The Hon. K.T. GRIFFIN: I have not come to terms with it yet. It means that if you have a large retirement village with a kiosk it cannot be leased for longer than two years unless the Corporate Affairs Commission approves. The same applies to a newspaper kiosk, delicatessen or whatever. Most leases are for longer periods than for two years—they are usually for three to five years with the right of renewal for another period. It seems to be a bit heavy-handed to have to go along to the Corporate Affairs Commission to get approval for a lease of, say, a kiosk, delicatessen or some other facility that provides a service to local residents.

Likewise, if a country retirement village with a large tract of land is all on one title, I would have thought that there need not really be any restriction on the extent to which that other part of the land can be leased. I am still wrestling with the concept; that is the difficulty. I have some difficulty in accepting that there ought to be that level of involvement in leasing parts of a retirement village which do not have any effect on the residential units.

The Hon. C.J. SUMNER: I understand what the honourable member is saying. The purpose of this is really to put a restriction of two years on leasing out so that those people who have gone into the retirement village on the basis that that is what it is going to be, do not find that the developers (or whoever they are) have leased out half of it for a clothing factory, a Chinese restaurant or something.

The purpose of this legislation is to deal with retirement villages. The Corporate Affairs Commission believes that those residents who go into it ought to expect to get a retirement village and not a Chinese restaurant. Unless there is some restriction on the extent to which the unoccupied part of the village, or perhaps the unoccupied land adjacent to the village, can be leased for those other purposes, the people's intention for going into the retirement village could be defeated. The problem that the honourable member pointed out is real, and that is noted. However, the Corporate Affairs Commission believes that that can be dealt with by exemption.

The Hon. K.T. GRIFFIN: I can understand what is being dealt with by exemptions, but I wanted to highlight what I saw was a difficulty with it. I hope that, in the development of the expertise in regulating retirement villages, there might be an appropriate set of guidelines available which would indicate what may or may not be subject to exemption or require approval. I do not really think that anyone wants to get the Corporate Affairs Commission or anyone else involved in minutely checking leases of shops and things like that in a retirement village. If the Attorney-General can monitor that during the course of the implementation and after it has been put into effect, I think that would probably achieve some useful purpose.

The Hon. C.J. SUMNER: We agree.

Clause passed.

Clauses 17 to 19 passed.

New clause 19a—'Appeal.'

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

Page 9, after clause 19—Insert new clause as follows:

19a. (1) An appeal lies to the Supreme Court against any decision of the Tribunal under this Act.

(2) The appeal must be instituted within 28 days after the appellant receives notice of the Tribunal's decision unless the Supreme Court, in its discretion, allows a longer period for instituting the appeal.

(3) On an appeal under this section, the Supreme Court may—

(a) confirm, vary or quash the Tribunal's decision;

(b) make any decision that should have been made in the first instance;

(c) make any incidental or ancillary orders.

I think that there ought to be an adequate right of appeal from a decision of the tribunal. The right of appeal under the Residential Tenancies Act is somewhat limited. As I do not think that it really applies in some respects to the issues which are likely to be the subject of consideration by the Residential Tenancies Tribunal, I wish to insert an appeal mechanism. In the amendment which I have circulated, I have provided that that should be the Supreme Court.

The Hon. C.J. SUMNER: I accept that.

New clause inserted.

Clause 20 passed.

Clause 21—'Offences.'

The Hon. K.T. GRIFFIN: I do not necessarily want to move any amendment to subclause (3), but I just want to draw attention to the fact that, whilst that is the form which is generally included in legislation to make a director or manager liable, where the body corporate of which he or she is a director or manager is guilty of an offence, we have had some discussions about that during the debate on the occupational health and safety legislation and also, I think, the workers compensation legislation. I would hope that over a period there might be some further discussion by the Government of some modification of the liability of a director or manager, because it is becoming more prevalent and it seems to me that there could well be some injustices in the reverse onus provision which is included here. I merely want to flag it now, because it is likely to come up again in other legislation and it is something that we ought to be looking at.

The Hon. C.J. Sumner: It is being included in a lot of legislation.

The Hon. K.T. Griffin: It is not always consistent, actually.

Clause passed.

New clause 21a—'Exemption.'

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

Page 10, after line 2—Insert the following suggested new clause:

21a. Land in a retirement village is exempt from land tax.

One of the major issues which has been raised over the last two or three years is the question of land tax on retirement villages. Those retirement villages which are run by charitable and religious organisations are already exempt. Those which are strata titled would be exempt because the occupants of the strata titles are using the units as their permanent place of residence. We are really talking about those retirement villages which provide a right of occupancy of units for people who wish to occupy those units as their principal place of residence but where there are not strata titles and where the owner is not a charitable or religious organisation entitled to an exemption from land tax.

The issue has been raised principally by the private sector which is developing resident funded retirement accommodation, and it is an issue on which all members of Parliament would have received representations from a whole range of people. It seems appropriate that there be an exemption from land tax for those retirement villages which currently do not attract that exemption, and a relatively simple way of doing it is by this suggested new clause. The member for Hayward in another place, during the course of a debate recently, made reference to this and in fact called for this sort of exemption. While we have the Bill before us I think there is an opportunity to air the issue and, it is to be hoped, gain enough support to have land in a retirement village exempt from land tax.

The Hon. C.J. SUMNER: The honourable member has said that this can be done simply. The problem is that it is too simple.

The Hon. L.H. Davis: Is that a problem for the Government?

The Hon. C.J. SUMNER: In this context it is. The Government cannot accept the amendment and, in any event, it cannot be inserted as a clause in the Bill by this place. I suggest that the matter should be left alone at the moment in the light of the statements that I am about to make. This matter will be addressed in the budget. It is clearly a money matter. It is clearly a matter of Government revenue and it should be dealt with in the proper way, which is by the Government introducing a Bill in another place beginning with a message from the Governor, and it can then proceed through Parliament.

The Government understands the issue. Representations have been received and the Government accepts in principle that retirement villages in general need to be exempt from land tax because the situation is obviously unacceptable in that a person can leave their principal place of residence, which they own by freehold (which would be exempt for land tax), to go into a retirement village only to find that the developer has passed the land tax on to them. So they would be paying land tax in the retirement village while they were not paying it in their own home. We accept that that needs to be dealt with. However, I do not believe that it is appropriate to deal with it by simply moving in this place to insert a new clause in this Bill, which does not really deal with revenue raising matters.

It may be that the exemption from land tax policy will not be as all embracing as to exempt the various operations that fall within the wide definition of 'retirement village' in this Bill. I expect the definition of 'retirement village' in the Bill to be used as a basis for the exemption from land tax, but it may not be appropriate to exempt from land tax all retirement villages as defined in the Bill. For instance, an example put to me is that boarding houses for people who are in retirement may be picked up by this legislation. It may not be appropriate, where no specific land tax can be attributable to those boarders, that such boarding houses should be covered. There may be other areas where the precise definition in the Bill would not be applicable for the imposition of land tax.

The State Taxation Office believes that the matter should be dealt with in the Land Tax Act, which is the appropriate Act for the imposition of land tax in this State. To do it in this Bill is not appropriate. I can understand why the honourable member has moved his amendment, and I can understand why members would be attracted to supporting

it. However, the Government will deal with the matter in the budget. If members are not satisfied with the way that the matter is dealt with in the budget and in legislation introduced to give effect to the budget, then that will be the appropriate time for Parliament to deal with it.

The Hon. L.H. DAVIS: The response from the Attorney was fairly unconvincing. This matter has been with us for some time, and in recent months it has been a matter of some public interest. The Attorney would perhaps be aware that I have issued more than one press release on this matter. I can instance several specific examples of people who have been greatly distressed not only due to the sudden imposition of land tax but also about the fact that the Government has been so slow to respond. For example, residents of Kensington Mews Pty Ltd, at Kensington, suddenly found that they were up for at least $5 a week in land tax due to the fact that that retirement village was structured in such a way that it attracted that impost. A representative of Kenginston Mews wrote to the Premier on 18 July 1986 objecting to this. A response was not received until 20 February 1987: that is notwithstanding that a follow up letter had been written to the Premier on at least one occasion or that I had raised the matter publicly early in 1987. The letter, dated 20 February 1987, from the Premier to the representative of Kenginston Mews, states, in part:

> Liability for land tax rests with the owner of the land. Although residents may regard themselves as 'owners' of the units, in the sense that they have paid for the right to occupy the units exclusively as their place of residence, the legal owner remains the company, Kensington Mews Pty Ltd. The legal position of the residents is that of licensees, not owners. The residents' status as licensees is clearly spelt out in licence agreements which residents have signed.
>
> There is, nevertheless, a provision in the Land Tax Act exempting retirement villages under particular circumstances. These include that the land be owned by an association and that the whole of the net income (if any) of the association be applied for furtherance of its objects and not for securing a pecuniary profit for the association. As Kensington Mews Pty Ltd is a company, it fails to qualify for this exemption.
>
> I can appreciate that the significance of the distinction between owner and licensee may be difficult for residents to accept. I am also aware that it is a common practice for land tax levied on the legal owner of retirement villages to be passed on to residents.
>
> The Government has, for some time, been concerned about the adequacy of the legal protection given to residents of retirement villages.

It is rather strange that the Premier says that the Government had been concerned for some time—having taken six or seven months to respond to the correspondence received from the Kensington Mews representative. The letter continues:

> Currently, there is a Bill before the Parliament which is intended to regulate the operations of retirement villages and to protect the rights of the residents. Once Parliament has considered the Bill, the separate issue of land tax exemptions will be examined.

This is what the Attorney has said, but here is an opportunity to consider the matter now, as the Hon. Mr Griffin has said. It is unsatisfactory for the Attorney to say that matters of definition have to be worked through. The Government has known about this for nine months, yet it is still working through it.

The Hon. C.J. Sumner: We have said to anyone making representations that we are dealing with it in the budget; it is as simple as that.

The Hon. L.H. DAVIS: The Government's response in this matter has been very disappointing and has caused great distress to residents of the retirement villages involved.

The Hon. M.J. ELLIOTT: I take it that the Attorney is giving us a rock solid promise here that it will be incorporated in the budget—is that correct?

The Hon. C.J. SUMNER: The budget decisions have to be taken. I do not have the precise formulation of undertakings of the Premier, but my view is that the matter needs to be dealt with. We cannot have a situation where people are moving from their own homes, exempt from land tax, into retirement villages for which land tax is levied. It will be dealt with. The only way that I can get a firmer undertaking than that is to discuss the matter with the Premier. As far as I am concerned, the matter does need to be dealt with: it will be dealt with in the budget. If the Parliament is not happy when the budget comes in that this matter has been addressed properly and to its satisfaction then it can be raised at that time. It really is a matter of Government revenue and the budget that ought to be dealt with in an appropriate way by the Government in another place.

I am not trying to get out of it: I understand why members have moved it, and I am not critical of that, but it is not quite as simple as putting this clause in as it is. From the point of view of dealing with land tax, it ought to be in the appropriate Act. It is a budgetary measure and will be addressed in the budget. I am optimistic that the exemption will be provided for. As the honourable member has said, the member for Hayward has already called for it. She is a Labor member in the Lower House who has been very interested in this area. Also, I have received deputations about this matter and my response has been that it will be dealt with in the budget.

The Hon. M.J. ELLIOTT: As long as we can take it that this undertaking is more rock solid than some Labor Party policies, I will accept the Attorney-General's word.

The Hon. C.J. SUMNER: I fully anticipate that an exemption will be granted, but the precise terms of that exemption are still to be determined. It is not appropriate for it to be in this Bill.

The Hon. K.T. GRIFFIN: I suppose the consolation is that the Attorney says that this matter will be addressed in the budget. I am disappointed that the Hon. Mr Elliott will not support the amendment. If I lose on the voices, I do not intend to call for a division on the matter.

New clause negatived.

Clause 22—'Regulations.'

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

Page 10, line 9—Leave out '$2 000' and substitute '$1 000'.

Clause 22 deals with regulations. Subclause (2) *(c)* provides for the prescription of penalties not exceeding $2 000 for breach of a regulation. My amendment seeks to leave out $2 000 and substitute $1 000, consistent with an amendment made to a Bill earlier today which the Hon. Mr Elliott's colleague, the Hon. Mr Gilfillan, supported. It is inappropriate to have large penalties fixed for breaches of regulations. As I said this afternoon, $1 000 appears to be the norm, rather than $2 000 and that is why I have moved this amendment.

The Hon. C.J. SUMNER: The Government opposes the amendment. It should be noted that a fine for breach of regulations will be determined by the court, which will take into account the seriousness of the offence. The regulations will, among other things, require that certain documents be given to residents before cooling off can commence. Breach of such a provision could seriously disadvantage retirement village residents. Therefore, I suggest that it is appropriate that the penalty remain at $2 000.

The Hon. M.J. ELLIOTT: In what circumstances did the Hon. Mr Gilfillan agree to that? I am not familiar with the other Bill.

The Hon. K.T. GRIFFIN: I am trying to find it. It was a regulation making power. This deals with penalties for breach of a regulation. Until a year or so ago it was $500 and now it is creeping up to $1 000. The Government now seeks to insert the amount of $2 000, but even in some of

the Government's own Bills the penalty for breach of regulation is only $1 000, but others are $2 000. In the Public and Finance Audit Bill which we have just resolved, the penalty provided is to not exceed $1 000 for contravention of or failure to comply with a regulation. As I said, earlier today we moved some others.

The Hon. Mr Gilfillan supported the reduction from $2 000 to $1 000. Could I urge the Hon. Mr Elliott to favourably support my amendment? The clause about which we are speaking is a regulation-making power and it provides:

22. (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the regulations may—

Then a number of things are listed, including to prescribe penalties not exceeding $2 000 for breach of a regulation.

I recollect that a Bill came before the Council this afternoon where the Hon. Mr Gilfillan supported the reduction of the penalty from $2 000 to $1 000. The Public Finance and Audit Bill, which the Government introduced, provides for a penalty of $1 000. I seek to obtain some consistency and to not allow a wild fluctuation in maximum penalties which may be imposed.

The Hon. M.J. ELLIOTT: In relation to consistency, the Pitjantjatjara Land Rights Act Amendment Bill, upon which we voted a short while ago and which was supported by all sides of the Council, gave regulating and by-law making powers to the Pitjantjatjara people and it provided for a penalty not to exceed $2 000. Regardless of whatever the Hon. Mr Gilfillan supported before, it seems that the Liberal Party might already be suffering from some inconsistency.

The Hon. I. GILFILLAN: We have consistently supported the removal, where it seemed appropriate, of regulating powers. I think that the Hon. Mr Griffin may be recalling the deletion of the capacity to change a limit; that was the case to which we referred. As the Hon. Mr Elliott is dealing with this legislation, I have full confidence in his decision.

The Hon. M.J. ELLIOTT: These days $2 000 hardly pays for a front fender on even a modest car and hardly seems an unfair penalty and, as such, I will not be supporting the amendment.

Amendment negatived; clause passed.

Schedules passed.

Title.

The Hon. M.J. ELLIOTT: Earlier in the Committee stage I had some amendments in relation to special resolutions, in particular relating to how a decision might be made whether or not there would be a levy. I wonder whether the Attorney-General might consider a requirement for a quorum for the meeting. We are talking about three-quarters of those present, but I think at the very least a quorum mechanism might have solved the problems I was originally worried about. I would like to get his reaction to that.

The Hon. C.J. SUMNER: It is not contemplated that that should be in the Act. That should be a matter left to the residents to determine by way of the residents' rules. The rules would be established by the administering authority when the residents entered the village, and that could provide for a quorum, although it may not. It is a matter of whether people determine to enter the buildings on those terms.

Title passed.

Bill read a third time and passed.

LIQUOR LICENSING ACT AMENDMENT BILL (1987)

Adjourned debate on second reading.

(Continued from 7 April. Page 3870.)

The Hon. K.T. GRIFFIN: The Opposition is not very happy with this Bill. It seeks to deal with producers' licences particularly as they relate to those who are brewers of beer. In August 1985, following the introduction of Commonwealth sales tax on wine, the State Government altered the basis of fees for producers licences to give relief to wine-makers. The licence fee is currently $100. So, cellar door sales of wine and brandy are not included in the amount upon which licence fees were assessed.

Since that amendment, the second reading explanation indicates that five beer brewers have obtained producers' licences: one for each of the South Australian Brewing Company Ltd and Cooper and Sons Ltd and three for small breweries attached to hotels. The second reading explanation also indicates that the three small breweries attached to hotels are not affected by this Bill, nor are wine and brandy producers. The two large breweries supply beer to persons other than liquor merchants and those sales are not subject to the annual licence fee of 11 per cent. The Government's Bill requires them to pay 11 per cent on these sales.

The history is that the South Australian Brewing Company received a telephone call from the superintendent of licensed premises (whatever he is now called) on Thursday 26 March—two weeks ago—to seek an early meeting to discuss proposed amendments to the Liquor Licensing Act. The matter was considered urgent and State Cabinet was to consider the amendments four days later—on Monday 30 March.

The Hon. Diana Laidlaw: Not much notice.

The Hon. K.T. GRIFFIN: Not much notice at all for a Bill which seeks to place a very significant impost on certain of the sales of both the South Australian Brewing Company Ltd and Cooper and Sons Ltd. A meeting occurred on 26 March between the department and representatives of the South Australian Brewing Company. They were told that the proposal being considered by Cabinet involved a number of issues: first, the effective removal of the producers' licence granted to the South Australian Brewing Company in December 1985, just 15 months before, a licence in respect of which a fee of $100 a year was payable; secondly, no change to the wine or spirit producers' position; thirdly, an 11 per cent licence fee to be charged for sales by the South Australian Brewing Company to unlicensed customers, including sales to the armed forces and to employees; and fourthly, the amendments to come into effect from 1 July 1987 and to apply to the following financial year. In effect, the Bill applies from 1 January 1988, from memory, and the fees are based on the sales in this current year, 1987. Fifthly, the changes were brought about because of complaints by an opposition company—the South Australian Brewing Company had an unfair advantage in sales to Commonwealth properties—and because of the Government's need for additional revenue.

My understanding is that one of the interstate brewing companies which does not have a plant here but which trucks its product from interstate complained, and the Government jumped immediately. Within two weeks we had before us a Bill, which has already passed the House of Assembly, to apply a significant impost. It seems to me to be quite extraordinary that the Government should be reacting in this way to protect interstate brewers against the interest of South Australian brewers. The matter has been

so rushed that the Government has really not considered the full implications of this Bill.

I have received a copy of a submission from the South Australian Brewing Company Ltd and I have had discussions with Cooper and Sons Ltd, and the concerns are significant. I will indicate, from that submission, the position of the South Australian Brewing Company. As I said previously, it was granted a producer's licence on 28 December 1985, and that effectively enabled the company to sell its products, which were produced at the Southwark Brewery, to specific non-licensed customers without the addition of a licence fee.

Since obtaining a new licence, the brewing company, I am told, has had sales in this category amounting to only 1.15 per cent of its total sales volume, and of that only .15 per cent comprises sales to employees and directors. Prior to the commencement of the Liquor Licensing Act in 1985, the South Australian Brewing Company paid the equivalent of 80 per cent of the standard licence fee for sales to specific non-licensed customers.

On 1 July 1985 the licence of the former brewer, Australian Ale, which was held by the South Australian Brewing Company, was converted into a wholesale liquor merchants licence. The fee applicable to the wholesale licence was 11 per cent of the gross amount paid by non-licensed customers. But for the amendment of the new Act, the four-fifths rule would have applied to producers' licences, the fee being 8.8 per cent on the value of sales. That licence was surrendered on 28 December 1985 when the producers licence was granted.

The proposal that was put to Cabinet to make amendments to the Act is of extreme concern to the South Australian Brewing Company for a number of reasons. First, the extremely short notification for the company to consider and respond, the company believes, is totally inadequate and unfair, and I agree.

Secondly, the proposal to single out South Australian brewers and to leave the wine and spirit producers alone is discriminatory and illogical, that is, from the perspective of the brewers. Thirdly, it immediately affects the company's credibility and sales future with the larger non-licensed customers which have supported the company in the past. Fourthly, it penalises company employees and staff and prevents any future benefit in the form of privilege purchase being part of their employment entitlement.

The South Australian Brewing Company, in its submission to the Government (hurriedly put together because it did not have much time, members must recall), included the following comments. The company recommended that the Government reconsider the proposal to amend this part of the Licensing Act. The producers' licence arrangement had been in force for just over 12 months and had been of some benefit to the company and its staff.

The brewing company put the view that it would be in the best interests of the State and the company if the present system was retained. They say that it is in the State's interests that brewers actually produce within this State, thereby creating employment, providing investment opportunities and marketing a product that is clearly associated with South Australia.

The same argument of course applies to wineries and distilleries producing in this State. At the moment the major competitive brewers do not produce within South Australia but either hold a wholesale liquor merchants licence or trade through an agency that already holds such a licence. If the interstate brewer were to produce in South Australia, then it would also expect to have the same benefits that are granted to other producers. By the same token, it would have the same obligations imposed by the Act on a producer and would contribute to a much greater degree towards employment and investment within the State, things in which the South Australian Brewing Company excels.

The South Australian Brewing Company would also be able to continue to give to its employees the same privileges which are enjoyed by the employees of all other holders of producers licences. The brewing company says that it was clearly anticipated under the new Liquor Licensing Act that breweries would take up producers licences. This was expressly anticipated by the authors of the review in the case of the brewing company. Therefore, when the Act was amended in October 1985 to introduce a minimum prescribed fee in respect of producers licences from the beginning of 1986, it would have come as no surprise to find that the breweries in this State would ultimately hold producers' licences.

The brewing company says that the only argument in favour of making beer produced in this State the subject of a licence fee and not other liquors is the alleged disadvantage to an interstate competitor and, as has been pointed out, such disadvantage can be remedied by that competitor seeking a producers licence with this State.

At the very least, the brewing company is suggesting that employees, staff and directors be exempted from the new provisions and that the licence fee, if there must be a fee for sales to non-licensed customers, be reduced to the 80 per cent level which existed prior to the commencement of operation of the Liquor Licensing Act 1985.

The brewing company says the 80 per cent level, or four-fifths of the standard fee, is consistent with the provision in the new Act relating to producers licences before a prescribed minimum fixed fee came into operation. That amount of 8.8 per cent of the gross amount paid for the sale of liquor is a fairer amount and takes into account the inevitable adjustment in the retail price when a fee has to be added after the calculation of that price. For example, if the fee were 11 per cent and the brewery proposed to sell $100 worth of beer, its price would have to be $112.36 in order that it might still obtain $100 after paying the 11 per cent fee. It is particularly unfair that a brewing company employee should have to pay a greater retail price than, say, the employee of a hotel, assuming that both buy at cost plus licence fee.

The brewing company made a further submission to the Government only a few days ago. That supplementary submission makes the point that the sales which will be affected by the introduction of the pro rata licence fee are principally sales to employees and to Commonwealth agencies licensed under Commonwealth legislation to sell liquor, such as the Armed Forces and airports. The South Australian Brewing Company does not sell directly to the public from Southwark Brewery, and there are obvious practical difficulties in its beginning to do so. This is not so, perhaps, with the boutique breweries which may well wish to establish a cellar door outlet. That is not exactly the same position with Coopers, which does have substantial cellar door sales. The supplementary submission says:

> If the aim of the original alteration to the fee was to bring relief to wine makers as a result of the introduction of sales tax, it must have been an advantage *vis-a-vis* their competitors interstate. Not only do brewers deserve similar relief, but they should also as producers within this State expect to be given equivalent treatment *vis-a-vis* producers in other States. It is as important to South Australia that it has beers recognised as made in this State as it is that it has wines recognised as being made in this State.

The other point made in the submission from the brewing company is that there really is nothing to stop an interstate brewer selling directly to a Commonwealth agency from its

own State. These are the only major sales being caught by the new fee. The submission states:

> The company understands that in Queensland, Tasmania and the ACT no fee is charged against producers of liquor (whether it be wine or beer) on sales to Commonwealth instrumentalities. There is an express exclusion. In New South Wales no fee is charged in practice, the Act being silent. In Victoria since 1984 the practice has grown up to require wholesalers to pay fees on sales to the Army and other Commonwealth instrumentalities although the Act is silent and does not specifically deal with that question. In Western Australia and the Northern Territory it seems that no distinction is made between sales to the Commonwealth as against any other retailer.
>
> In certain States, and in particular New South Wales and Queensland, if sales were made directly to Commonwealth agencies in South Australia rather than through an intermediary no licence fee would have to be paid to the Government of that State. Certainly, no fee would be paid to the Government of this State. The argument therefore that other brewers are disadvantaged is a red herring. Worse still, the new fee would disadvantage South Australian brewers *vis-a-vis* their interstate competitors.

A proposition is also put in the submission that an impost may be unlawful as an excise because the fee discriminates against one product in favour of another with a likely effect on the market. The submission continues:

> It may have been for this reason that under the Act repealed in 1985 no fee was charged where sales were made to Commonwealth agencies. It may also have been because such fee is indirectly a tax on the Commonwealth. If Commonwealth agencies are not caught the only impact of the fee is on cellar door and mail order sales (of potential importance to the smaller breweries) and on sales to employees. This distinction between the employees of wineries and of breweries is highly discriminatory.

This Bill has been cobbled together at very short notice in response to a big interstate brewer. I am disappointed to see the Government reacting so quickly to that interstate pressure. I would have thought that, if there is to be such a dramatic increase in what is in effect a tax on the brewers, it should not be thrown together and introduced in this place with only a few days notice. Least of all, it should not be in reaction to some interstate brewer who is not brewing in this State. It seems that there must be some consideration for those who are prepared to establish a business in South Australia, such as the two major brewers, and to carry on that business here rather than merely transporting product into South Australia.

So, the plea that I would make to the Attorney-General is not to rush ahead with this proposition but to give fair and reasonable consideration to the submissions that have been made and to carefully consider the impact on the South Australian brewers which are carrying on business in this State and which have a very substantial investment here. The point has been made with respect to the Commonwealth that, because in New South Wales, Queensland and the Australian Capital Territory there is no licence fee on sales by brewers to the Commonwealth, there is nothing to prevent a brewer from one of the other States trucking in product direct to the Army at Keswick Barracks, to the Commonwealth Railways or to some other Commonwealth agency and to do so at a price, notwithstanding the freight, much cheaper than can be sold by the two major brewers in South Australia.

My plea to the Attorney-General is to defer consideration of this and, even though it is another four months, to give those who are to be the subject of this very significant impost a proper opportunity to make fair and reasonable submissions: and for the Government to carefully assess the impact on South Australians and on South Australian companies, rather than rushing ahead with it now. I am not going to say that I will support the second reading because I have some concerns about the Bill. I hope that the Attorney will take those matters into consideration.

The Hon. C.J. SUMNER (Attorney-General): The honourable member has made a spirited bid to have the Bill delayed. I can tell the honourable member that the Government has considered the submissions of the South Australian Brewing Company, that I received a deputation from the lawyers acting for the brewing company and that I have received the supplementary submission which it made to me and which it also made to the honourable member. Having given consideration to those matters, I still do not see that there is a cause for delaying the Bill. The honourable member has really been quite unreasonably emotive about the effect that this will have on South Australian companies. The question that the honourable member has not answered and cannot answer is this: why should those people who purchase liquor through a Commonwealth agency, that is, the Army, get the benefit of the fact that the South Australian Brewing Company is using its producers licence (for which it pays $100) to supply liquor to that outlet?

The reality is that the honourable member cannot answer that question because there is no answer to it; and there is no answer to it because those people ought not to be entitled to that exemption from payment of the licensing fee. The only potential validity in the honourable member's argument is that the suppliers of liquor in some other States to Commonwealth agencies in South Australia or in other States are not subject to a liquor licensing fee in the supplying State. The honourable member has mentioned a number of States. My advice from the Liquor Licensing Commissioner is that there is only one State and one Territory in that category, that is, New South Wales and the Northern Territory. In fact, Queensland does impose a licence fee on liquor supplied from that State to Commonwealth agencies.

I am further advised that the Northern Territory and New South Wales have agreed that this is a loophole that should be closed. That being the case, there would then be no disadvantage to the South Australian company. I do not believe that what the honourable member says has any validity. There is no case for the consumers of liquor on Commonwealth property to get in their price an exemption of liquor fees in South Australia, and the honourable member cannot really dispute that.

The second reason is that there is no valid comparison between the wineries, brandy producers and the breweries. The producers licence, with the fee of $100, was introduced with the wineries particularly in mind, and a specific exemption was made for a lesser fee to be paid to try, for social and economic purposes, to attract people to go to our wine producing areas and to spend at the cellar door. It was a specific policy initiative taken and it did not include the breweries. I do not accept the propositions of the honourable member. I ask the Council to support the second reading.

Bill read a second time.

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Licence fee.'

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

Page 1, line 16—Leave out '11' and insert '9'.

It seems to me on the arguments presented in the submissions that it is more appropriate for this producer's licence that the amount be 9 per cent rather than 11 per cent on the problem of compounding the licence fee which is charged to those who purchase from the brewers. They gave the calculation which I have not had time to check. If they propose to sell $100 worth of beer, the price would have to be $112.36 in order that they might still obtain $100 after paying the 11 per cent fee. It seems to me that that really

puts them in a different category from others in the same area and that 9 per cent would be a more appropriate fee. They did suggest 8.8 per cent somewhere, and maybe that is the correct calculation, but I would have thought 9 per cent would be equitable, fair and reasonable, and would not disadvantage them *vis-a-vis* others such as interstate brewers trucking their product into South Australia and the wineries.

The Hon. C.J. SUMNER: The Government opposes this amendment. There is no case for making a distinction with the licensing fee. The fee is 11 per cent—that is the basic fee and that is what it should remain.

The Hon. I. GILFILLAN: Perhaps I can make some comments in general as well as specifically covering the intention of the amendment. The issue is one where the South Australian breweries may feel that they are slightly hard done by, and I think the Hon. Trevor Griffin has argued their case eloquently. As far as we are concerned, there is a prerogative that the Government has in this matter. It is very much a revenue and equity decision as far as the application of the licences is concerned. As the wholesale liquor licence is at 11 per cent, it is at least being considered with that.

The local breweries may be feeling somewhat at risk and discriminated against. I am not certain of the details there because the Attorney has advised that there are only two areas, one State and one Territory, where he sees that interstate competition would be getting an unfair advantage, and his advice is that that State and Territory will be moving to close that loophole. The Democrats were at the forefront of an initiative to correct what may have been a discrimination the other way with the deposits on the cans, by correcting what we felt was an unfair advantage as far as the deposits were concerned. So we have been considerate of the brewery situation. Clause 3 *(c)* provides:

> . . . in relation to a producer's licence—11 per cent of the gross amount paid or payable otherwise than by liquor merchants for the sale of liquor (not being wine, brandy or low alcohol liquor) during the relevant assessment period.

I think it is important that not only in this area but also in other areas the Government continues to look for ways to reduce the cost of low alcohol liquor to consumers with the general intention that it becomes more attractive to South Australian drinkers to consume low alcohol drinks. I commend that aim, and I encourage the Government to look for other ways of reducing the over-the-counter cost of low alcohol drinks. I indicate that we will not support the amendment but we intend to support the Bill in its original form.

The Hon. K.T. GRIFFIN: I am disappointed to hear that. I agree that the Government must live or die by its taxing decisions, and that is why I said that, while I was not prepared to support the second reading, I was not prepared to oppose it, either. He who lives by the sword must die by the sword. In these circumstances the Government must live by its decisions in relation to revenue. The Government is keen on raising revenue by imposing high taxes and high charges, and this is another area where it seeks to supplement its budget income.

I think that from all the information provided to me there is inequity in the 11 per cent, *vis-a-vis* other people engaged in the industry; and I believe that 9 per cent would have been more appropriate. In view of the indication by the Hon. Mr Gilfillan that the Democrats will not support my amendment, if I lose it on the voices I will not divide.

Amendment negatived.

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

Line 17—After 'liquor merchants' insert 'or any of the producer's employees'.

I see no reason why the producer's employees should be denied a privilege which is available to the employees of other producers in the industry, such as wine and brandy producers. I do not see why the brewery should pay licence fees on what it provides to its employees. At one stage I thought it might be appropriate to also deal with Commonwealth agencies. However, I think the focus should be on the producer's employees.

The Hon. C.J. SUMNER: It does not seem to me that any exemption should apply in this case. The employees were not given an exemption before this loophole was discovered by the brewing company. Under the old regime no exemption was given to employees. If the brewing company wants to provide cheaper beer for its employees, as a matter of goodwill and industrial relations, then it ought to do it. I do not think that the general taxpayers of South Australia should subsidise that policy of the brewing company.

The Hon. I. GILFILLAN: I support the Attorney's position on this.

The Hon. K.T. GRIFFIN: I indicate that I do not intend to call for a division if I lose on the voices.

Amendment negatived; clause passed.

Clause 4 and title passed.

Bill read a third time and passed.

CRIMINAL LAW (ENFORCEMENT OF FINES) BILL

Adjourned debate in Committee (resumed on motion).

(Continued from page 4041.)

Clause 7—'Regulations.'

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

Page 4, lines 17 to 21—Leave out subclauses (2) and (3).

This clause provides for the Governor to make such regulations as are contemplated by or as are necessary or expedient for the purposes of this legislation. It further provides that a provision of the Bill relating to a monetary amount may be amended by regulation. We have already debated the issue involved at length earlier in the day in relation to other Bills. I do take exception to a regulation amending an Act, even if it is in relation to a monetary amount. Therefore, I do not believe that subclauses (2) and (3) of this clause ought to be supported, and the purpose of my amendment is to delete them.

The Hon. I. GILFILLAN: I support the deletion of subclauses (2) and (3) as that is consistent with a regular point of view that we express here.

The Hon. C.J. SUMNER: It seems to me that honourable members opposite are taking an absolutist view of this particular issue. I say this because there are some monetary amounts that appear in legislation that it is not appropriate to change by regulation, but there are others which are relatively minor, and I would have thought that this fell into that category of being relatively minor: that is, the amount of money that one in effect uses up by one's day in prison is not a matter that on every occasion requires the full attention of the 69 members of the South Australian Parliament.

Honourable members have expressed their view and I have lost, but I think that if they sit down at some stage and think about this issue they will find that it is not a matter of objecting to this sort of clause in every Bill that comes in, because clearly there are some things of a relatively minor nature that ought to be able to be altered by regulation. I think that this is one of them.

The Hon. I. GILFILLAN: It is really just an emphasis. It is very glib to say that this is only a minor matter. So

far as the provision goes there is not only the $25 to $50 but also the $100 or less so far as community service goes. It seems to me that the actual point of this Bill is virtually the same as that which the Hon. Trevor Griffin and I would expect if there is to be a change in it. There have not been any great hassles about this matter. The only hassle was that it came through too quickly from the House of Assembly and we did not have amendments drafted in time. We did not cause much fuss. The Government knows how we will react to it.

The Hon. C.J. SUMNER: I did not say anything about causing a fuss: I said that there is no point in adopting a completely absolutist view with regard to this kind of clause. With comparatively minor amendments, which we are dealing with here, after all, it is appropriate to do it by regulation. To have to bring to bear the full weight of the 69 members of this Parliament on this issue seems to me to be getting things a little out of proportion.

Amendment carried.

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

Page 4, line 22—Leave out '$2 000' and insert '$1 000'.

This amendment was discussed earlier. It relates to the question of the maximum amount that may be prescribed in a regulation for a breach or non-compliance of a regulation. I think that the amount ought to be $1 000 and not $2 000.

The Hon. C.J. SUMNER: I oppose the amendment. I think that $2 000 is quite reasonable.

The Hon. I. GILFILLAN: I do not see any argument for reducing the amount to $1 000. The amount of $2 000 is the top of the range and it seems reasonable for it to remain at that amount. I oppose the amendment.

Amendment negatived; clause as amended passed.

Title passed.

Bill read a third time and passed.

CARRICK HILL

Consideration of the House of Assembly's resolution:

That this House resolve to approve, in accordance with the requirements of section 13 (5) of the Carrick Hill Trust Act 1985, the sale by Carrick Hill Trust of that portion of the land comprised in Certificate of Title Register Book volume 2500 Folio 57 that is marked 'A' and shaded in red on the plan and laid before this House on 2 April 1987.

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

That the resolution be agreed to.

This matter has been dealt with in the House of Assembly and the arguments put forward on behalf of the Government in favour of the disposal of some of the land which constitutes Carrick Hill should be supported. It should be pointed out that this proposal is by the Carrick Hill Trust with which the Government has agreed, and it is the trust which believes that this is in the best interests of Carrick Hill. I ask members to give serious attention to this matter. I think the simple issue is: does the Parliament wish Carrick Hill to be improved as a facility, to continue to develop and therefore offer continuing options for visitors within South Australia and for tourists to enjoy, or does the Parliament want it to stagnate and in effect remain as it is, with the inevitable effect that, over time, there will be a loss in the number of people who attend Carrick Hill, and I believe also, a decrease in its capacity to be a tourist attraction and an important heritage item for the State of South Australia?

[Midnight]

The Hon. L.H. DAVIS: Carrick Hill is situated seven kilometres from Adelaide with a house and 39 hectares of land at Springfield. The house was begun nearly 50 years ago and is in the style of an Elizabethan manor house. It can quite truthfully be said that it boasts the oldest interior fittings of any house in Australia, given that the Haywards acquired the wooden panelling and magnificent staircase of the historic Elizabethan manor Beaudesert in England over 50 years ago, and had it shipped to Australia. In 1970 Sir Edward and Lady Ursula Hayward executed a deed which bequeathed the magnificent property of Carrick Hill to the people of South Australia.

Lady Ursula died in 1970 and a life interest in Carrick Hill was left to Sir Edward Hayward. He died in 1983 and, at that time, the property passed to the State. The deed and wills provided that the residence, grounds and suitable contents should be used in the following manner: either as a home for the State Government or as a museum, art gallery, botanic garden, or any one or more of these purposes. A committee in 1974 and a further committee in 1984 examined the options. It is well known, of course, that the option of using Carrick Hill as a residence for Governors was abandoned because the house was simply not big enough and to add to or alter the house in any way would be to disfigure the proportions of that quite distinctive mansion.

Eventually, the Parliament a little more than two years ago passed the Carrick Hill Trust Act to give legislative effect to the late Sir Edward and Lady Ursula Hayward's wishes. Two years ago it was said that the estate was worth $20 million in terms of the very valuable land of 39 hectares and, in addition, the magnificent art collection, valuable European and Australian paintings, antique English furniture, sculptures and many other art objects.

It would be fair to say that today the value of the property, buildings, art and furniture at Carrick Hill would be at least $30 million. It would also be true to say that this is the most generous bequest this State has yet seen. When the Premier moved for the Carrick Hill Trust to be established in 1984, in his second reading explanation he noted:

Carrick Hill presents an unrivalled opportunity to develop a unique tourist asset of wide community interest, embracing the arts, recreation, leisure, educational and creative activities. While the house and immediate gardens are English in style and content, an effective and contrasting Australian accent will be developed in the surrounding landscape, to include picnic and recreation areas and a sculpture park.

The Premier added:

The sculpture park will provide a superb site for the public exhibition of sculpture by leading South Australian, Australian and overseas artists, and will add another dimension to this fascinating complex.

So, the very challenging project at Carrick Hill was under way in 1985, headed by the former Director of the Art Gallery of South Australia, David Thomas, and a very strong trust consisting of Dr Chris Laurie as Chairman; David Dridan, Deputy Chairman; Lynn Parnell, representing the Mitcham council; Mrs Harbison; Mrs Nina Dutton and Susie Roux. To develop the garden and grounds there was an equally strong and respected group of people headed by Dr Brian Morley from the Botanic Gardens; David Ruston, a well known rose grower from Renmark; Rodney Beames, landscape architect; and Diana Davidson, a horticultural consultant. So, the quality of the leadership at Carrick Hill was undoubted. The development of Carrick Hill became a major Jubilee 150 project, and Carrick Hill was officially opened little more than 12 months ago by the Queen when she was here for the Jubilee 150 celebrations.

It is quite clear that the sculpture park has always been central to the development of Carrick Hill. I understand that the house has had more than $1 million spent on cleaning the exterior and upgrading the interior. A very complete collection of paintings at Carrick Hill has been rearranged, and I believe that some are in storage, together with some magnificent European furniture and other art objects. The interior of the house presents very well, and very little more needs to be done to it.

One of the problems that confront the people managing Carrick Hill is that because the house is not large, although it gives that appearance, it can accommodate no more than 400 people at any one time. So, the thrust of the development of Carrick Hill has turned away from the house to the grounds. One of the most impressive features of the house, apart from arguably one of the finest private collections of art in Australia, is 10 sculptures by Epstein, the leading English sculptor. That is arguably the largest collection of Epstein sculptures outside England. It provides a very good basis for the sculpture park. Admittedly nine of the 10 Epsteins are in the house.

At Carrick Hill attention has been focused on the exterior, and already the traditional gardens have been improved greatly. Immediately outside the house a maze is being established, and new plantings will enhance the very significant grounds at Carrick Hill. The official brochure makes reference to the sculpture park as follows:

> This in one of the most exciting features of Carrick Hill. The large gardens and grounds provide an unrivalled setting for the creation of Australia's premier sculpture park. Already some works are in place, including Jacob Epstein's bronze *Mother and Child.* The park will be developed over the years to show works by Australia's finest sculptors, together with important pieces from overseas.

There is only one other park in Australia that could be called a sculpture park, and that is Heide, in Melbourne, which covers three acres and has about 20 pieces. Obviously with the much larger grounds at Carrick Hill there is enormous scope for the development of an international sculpture park which will add a new dimension to Carrick Hill as a visitor attraction.

One of the dilemmas facing the trust at Carrick Hill is the fact that funds are tight. The Government has given the Carrick Hill Trust start-up funds to upgrade the house and to do work in the garden. One cannot reasonably expect the moneys coming in initially from admissions and rentals from private functions to offset the heavy start-up expenditure that necessarily goes with developing such a substantial project.

The board has looked at the options that exist in developing this international scale sculpture park. It has decided that the best option is to sell off a parcel of land, which will net $1 million, to establish a capital fund for the development of the sculpture park. If that capital fund is invested at 15 per cent per annum, it will provide $150 000 per annum which will be available for the purchase of sculptures although, of course, at least part of that $150 000 realistically must be an offset for inflation. However, the sale of any real or personal property at Carrick Hill requires the approval of both Houses of Parliament.

There was some debate in both Houses about the Carrick Hill Trust Bill when it was introduced two years ago, and the Liberal Party insisted on strengthening what is now section 13 (5). The requirement was that, if the Minister approved, the Carrick Hill Trust could sell off real or personal property. The Liberal Party at that time strongly believed that the Parliament should scrutinise any intended sale of real or personal property; thus section 13 (5) provides that the trust shall not, without the approval of both Houses of Parliament, sell or otherwise dispose of any of its real property. That is the situation in which we now find ourselves.

We are here as trustees of the people of South Australia in respect of the proposed sale of a portion of land at Carrick Hill. The trust has in fact unanimously agreed that that is the best way to raise funds for this purpose and proposes to sell off 2.7 hectares of land in the south-eastern corner of Carrick Hill. That represents only 6.8 per cent of the total land area at Carrick Hill.

It is proposed that that land will be subdivided into eight blocks for housing development. They will be very large blocks indeed, some being up to three-quarters of an acre. Access to the proposed development would be via Oakdene Road, and five of the blocks in the subdivision would overlook the back of houses that face on to Hillside Road. However, the land is fairly steep in that area—I have inspected it—and it is reasonable to assume that the houses on the proposed subdivision will be built to the back of the block to maximise the view.

The blocks will cost about $130 000 to $150 000, so they will not be easily purchased by anyone. They will be expensive blocks, and I am told that the trust will develop the site to maximise the net proceeds to the trust and also to ensure the sensitive development of the area. I also understand that the trust has proposed that covenants would attach to those blocks of land to ensure minimum standards for housing on those blocks, as is the case in the remainder of the Springfield estate.

To give some perspective to the proposed subdivision, I point out that it is at least 400 metres, according to my judgment, from the back of the house at Carrick Hill. Any proposed building on the nearest block would not be easily visible from the house. In fact, there is a very large row of pine trees between the house and the proposed housing blocks, and new plantings of many trees at the rear of the house will ensure that in a very short time the proposed development is totally obscured from view from the house. There will therefore be a complete visual barrier between the proposed housing development and the house. Certainly, it is true that existing houses on Fullarton Road are much closer to and much more visible from the front of the house at Carrick Hill where, I suspect, more people will tend to go.

It is also true that the trust canvassed many options for the sale of land in other parts of Carrick Hill but rejected all those options because it was believed that they would be too close to the house or visually unattractive. I am also led to believe from discussions with trust members that the board sees this sale as a one-off to raise funds to give effect to the Haywards' very strong wishes for the development of a sculpture park. It is also believed that, because money is not available from the Government and because private sponsorship of that magnitude is most difficult, this is the best option.

It is also pertinent to note that the board is very keen on maximising the very Australian nature of the area behind Carrick Hill, quite rugged bushland rising into the hills face zone. The intention is to develop walking trails and picnic areas. As I mentioned, they have a very strong garden and grounds committee that is currently working on that project. That is the background.

Already Carrick Hill has proven to be a most popular visitor attraction: notwithstanding that it is seven kilometres from Adelaide it attracted 46 000 visitors in its first year of operation. That is commendable given that visitor attractions much closer to the centre of the city such as Old

Parliament House, as I understand it, would only attract between 110 000 and 120 000 visitors a year.

Carrick Hill is rapidly becoming a popular visitor attraction. I would hope that most members would have been there. The sensitive development of Carrick Hill, both presentation within the house and the very dramatic improvement in the garden immediately outside the house, is a tribute to the leadership of the Director, David Thomas, and to the board chaired by Dr Chris Laurie.

Two Liberal Premiers and two Labor Premiers have been involved in negotiations involving Carrick Hill over the past two decades. There has been bipartisan support for the State's accepting the magnificent bequest of the late Sir Edward and Lady Ursula Hayward. That should be stressed: it was not just Sir Edward but also Lady Ursula who had a great sensitivity and feel for the arts, who was very much involved in the purchase of art for the house and also in the decision to leave this magnificent property to the State for the people to enjoy down through the years.

The Liberal Party is anxious to ensure that the bipartisan approach over the past two decades continues. Certainly, since I became shadow Minister for the Arts little more than a year ago I have stated publicly on more than one occasion that politics ranks a long second to the promotion and welfare of the arts in South Australia. That was certainly the policy pursued so successfully for more than a decade by my colleague the Hon. Murray Hill in his distinguished contribution as a Minister and shadow Minister for the Arts. Museums, art galleries, the Festival Theatre, performing arts companies, visual and community arts and the thousands of individuals involved in the arts industry in South Australia should not be political playthings.

Certainly, there are occasions when the Opposition will be bound to criticise, to oppose a Government action or lack of action. The shameful treatment of The Stage Company is a recent example of that very point, but the overall view of the Liberal Party, and I would also believe the Labor Party, is to avoid politicising the arts. Therefore, the Liberal Party has examined the proposal to sell off a small parcel of land at Carrick Hill with an open mind.

The Premier and Minister for the Arts (Hon. J.C. Bannon) introduced this motion in another place last Thursday and scheduled it for debate this Tuesday. Over the weekend and on Monday I spent several hours examining the proposal, talking to members of the Carrick Hill Trust, residents in houses close to the proposed subdivision, lawyers and other interested parties. As I mentioned, I inspected the area proposed to be sold.

Some of the facts are straightforward, and I have mentioned them. There are other matters that are much more complex. Madam President, there are several options available to the Council. First, it can agree with the motion carried in another place. If the Council supports the resolution, this will fulfil the conditions of section 13 (5) requiring both Houses of Parliament to approve any sale of real or personal property. This course of action will allow the sale of the land to take place. Secondly, the Council could disagree with the resolution and reject it out of hand. That will put an end to the unanimous resolution of the Carrick Hill Trust. It would not be able to sell the land. The Liberal Party does not want to put an end to the matter at this time. It recognises that the proposal is a result of careful consideration by the trust and no doubt not a little anguish in recommending the sale of a small parcel of land in preference to other options. The Liberal Party also recognises that the Haywards' great wish was to develop a sculpture park in the grounds of Carrick Hill. This is not a novel proposal: the concept of the sculpture park had been endorsed by the 1974 and 1984 reports on the development of Carrick Hill.

As I have mentioned, there are 10 bronze sculptures by the British sculptor Epstein, with only one located in the grounds. That underlines the great love of sculpture by the Haywards. The 10 Epsteins will provide a magnificent springboard for developing the first international scale sculpture park in Australia. It certainly is an exciting concept and has my warm endorsement. The views of the trustees deserve to be given serious consideration.

The third option is that the Legislative Council could defer consideration of the resolution until the budget session in 14 or 15 weeks time. The deferral would certainly better enable members to research the matter but would not provide an opportunity for the formal collection and sifting of evidence or for the bipartisan approach which is vital for the successful promotion and advancement of the arts in South Australia.

The fourth option is very much the Liberal Party's preferred position, namely, to refer the matter to a select committee. Before any real or personal property can be sold by the Carrick Hill Trust the sale must be approved by both Houses of Parliament. Section 13 (5) of the Carrick Hill Trust Act of 1985 was strengthened by the Liberal Party when legislation was introduced. It required both Houses of Parliament to approve any proposed sale, rather than leaving it in the hands of a Minister without any scrutiny whatever by the Houses of Parliament.

The Liberal Party recognises that the Parliament has the status of a trustee on behalf of the people of South Australia in the matter of a proposed sale of real or personal property by the Carrick Hill Trust. Every time an individual piece or item of real or personal property is proposed for sale it must be scrutinised by the Parliament. The Liberal Party accepts the dilemma facing members of the Carrick Hill Trust. In their judgment the best way of giving effect to the wishes of Sir Edward and Lady Ursula Hayward in establishing a sculpture park was through the sale of the 2.7 hectare parcel of land which is just 6.8 per cent of the total area of Carrick Hill.

The Liberal Party also recognises the views and concerns of the executors of the estate of the late Sir Edward Hayward and the solicitors representing the trustee of the estate of the late Lady Ursula Hayward. The executor and trustee have expressed concern that the sale of land is at variance with both the intention and direction of the wills. We recognise that section 13 (5) arguably gives Carrick Hill Trust the legal right to sell real property subject to the approval of both Houses of Parliament. We also note that residents of the nine houses adjacent to the proposed subdivision have expressed concerns. I have met with those residents and discussed those concerns with them. I have listened to their arguments. We appreciate also that persons who have made bequests or gifts to the State or who are contemplating such will be concerned that the intention concerning a bequest or gift can be varied in later years.

The Liberal Party is also cognisant of the fact that the provisions of Acts incorporating National Trusts in several States provide for the variation of the conditions of a will in certain circumstances. In other words, the National Trusts in many States which have property, both real and personal, are given legislative ability to vary the terms of a will which may have provided bequests of real or personal property.

This is not an open and shut case; it is not black and white, but shades of grey. The fact that the six members of the Carrick Hill Trust unanimously recommended the sale of property cannot be ignored, nor can the comments of those who act on behalf of the estates of the late Sir Edward

and Lady Ursula Hayward. There are some facts and anecdotal evidence which I know about the Carrick Hill bequest, and I do not think that it is advantageous to trail that information through the Parliament at this time.

I am sure that other people have knowledge of, and an interest in, the bequest made by the Haywards. Therefore, I believe that a select committee is a perfect device for taking evidence from all interested parties, including evidence (where appropriate) off the record. A select committee will do the Carrick Hill Trust's request justice in a bipartisan fashion. It will also provide a welcome opportunity to explore a fundamental issue which, perhaps surprisingly, was barely canvassed when the Carrick Hill Trust legislation was debated in the Parliament little more than two years ago.

I am not interested in point scoring, but I am interested in the development of Carrick Hill in accord with the wishes of the late Sir Edward and Lady Hayward. A select committee will buy time, will gather information and, I believe, provide a fair answer to this most important matter. It is better to take 15 weeks to get it right than attempt to accept or reject this proposal in five days and get it wrong. I foreshadow that I will be moving an amendment to the motion, in the sense that I will be seeking to establish a select committee to examine this matter. I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

ADJOURNMENT

At 12.32 a.m. the Council adjourned until Tuesday 14 April at 2.15 p.m.