LEGISLATIVE COUNCIL

Wednesday 2 December 1987

The PRESIDENT (Hon. Anne Levy) took the Chair at 2.15 p.m.

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

PETITIONS: ADOPTION

Petitions signed by 866 residents of South Australia praying that the Council would legislate to amend the Adoption Bill to ensure that only a suitable couple married for at least five years was eligible to adopt a baby in South Australia were presented by the Hons. J.C. Burdett and J.C. Irwin.

Petitions received.

PAPERS TABLED

The following papers were laid on the table:

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

Pursuant to Statute—

Department for Community Welfare—Report, 1986-87.

By the Hon. J.R. Cornwall on behalf of the Minister of Tourism (Hon. Barbara Wiese):

Pursuant to Statute—

Adelaide Festival Centre Trust—Report, 1987.

Eyre Peninsula Cultural Trust—Report, 1986-87.

QUESTIONS

COUNTRY HOSPITAL CLOSURES

The Hon. M.B. CAMERON: I seek leave to make a statement before asking the Minister of Health a question about country hospital closures.

Leave granted.

The Hon. M.B. CAMERON: I have been informed that Health Commission officers have been to the Mid North region and have advised representatives at both the Laura and Crystal Brook hospitals that those hospitals will be closed. I understand that that occurred last week; that on Wednesday next a further meeting is to be held with five hospitals in the region to confirm these moves; and that it is hoped that a submission on these closures will be able to be put to Cabinet in February and the hospitals closed and changed into accommodation for the elderly in June next year.

I understand that there are also moves afoot to close the hospitals at Peterborough and Booleroo Centre, but apparently they have been put on the backburner at this stage. I am told that the Health Commission officers concerned have given hospital administrators and the communities little option but to accept the closures because the attitude has been 'This is what will happen.' This is somewhat contrary to the views expressed by the Chairman of the Health Commission during the Estimates Committee, when it was clearly stated that there would be full consultation with the communities, hospital administrators and board members. It would appear that that consultation process has consisted of their being told what is going to happen.

Will the Minister assure the people of Laura and Crystal Brook that they will not have their hospitals closed without the community's consent, and is the Minister aware that the closure of these two hospitals would result in the loss of all doctors in the two towns concerned?

The Hon. J.R. CORNWALL: The answer to the second question is that that is a lot of nonsense. With regard to the other question, the honourable member is at it again, trying to create mischief.

The Hon. M.B. Cameron: Not me, people in the community.

The Hon. J.R. CORNWALL: What, trying to create mischief?

The Hon. M.B. Cameron: No, just trying to find out what is going to happen.

The Hon. J.R. CORNWALL: If you would be quiet you might learn something. You are a bit old to be reconstructed, but it is never too late, they tell me. The present situation is that the strategy or the discussion paper and the discussions which are occurring, and will occur in 14 areas around the State, are being led by the South Australian Health Commission. It has no ministerial imprimatur; it has no Cabinet imprimatur; and it does not at this stage even have the status of a Government green paper. That point must be made very clear. I have made clear to the commission that these discussions with hospital boards, service providers, consumers and local communities must proceed to a point where there is at least clear majority support in any one of the areas for the initiatives that they propose.

The Hon. M.B. Cameron interjecting:

The Hon. J.R. CORNWALL: Read *Hansard* tomorrow. So, the position at the moment is that specifically the commission—led in this particular case by the Chairman himself, Dr Bill McCoy, with other senior officers—has been talking on that particular area. In fact, a few weeks ago a major seminar was held at Mintaro, involving people from the Port Pirie area, which of course includes Laura and Crystal Brook.

At the moment, those discussions are continuing on a quite constructive basis. For example, discussions are being held in the Copper Triangle about ways of consolidating a three hospital campus, involving the recognised hospital at Wallaroo and the private community hospitals at Moonta and Kadina, thereby providing more public beds that would be accessible to local populations, and about ways to upgrade services generally. The whole developing pattern is about looking at ways in which to improve health services.

The Hon. M.B. Cameron: Cutting services.

The Hon. J.R. CORNWALL: It is not about cutting services at all. If you would only listen, you might learn. Stop playing your dirty bear pit politics and lift your game just for once. The whole strategy as it develops is about upgrading country health services generally within existing resources. Everybody would know that it is extremely unlikely that in the next three to five years any additional moneys will be available in State or Federal budgets—that is a practical reality of life. So the sensible thing to do is to look at—

The Hon. M.B. Cameron interjecting:

The Hon. J.R. CORNWALL: Why don't you listen and shut up, you silly fellow. The sensible thing to do is to look at each area based on Murray Bridge, the Riverland, the lower South-East, and the West Coast (Port Lincoln, and so on), and investigate how services can be upgraded and how they can be redirected. There are a number of quite outstanding examples. The hospital at Port Lincoln has *de facto* subregional status, but there are deficiencies in primary

health care and community health care, there are real problems with providing specialist services (and Port Pirie and the Port Pirie Hospital certainly have those sorts of problems), and there are defined deficiencies in the provision of services by allied health professionals such as physiotherapists and podiatrists, to name but two. In that situation, sensibly, you should look at the whole area and ask how those services can be enhanced and how more specialists—either resident or visiting—can be attracted so that people from Port Pirie do not have to traipse down to Adelaide whenever they need specialist surgery. It makes a lot of sense, and that is what we are about.

The Hon. M.B. Cameron interjecting:

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: Obviously Mr Cameron is advocating working on the lowest common denominator theory where you have no specialist services and you keep 16 or 20 bed hospitals open no matter the cost.

The Hon. M.B. Cameron interjecting:

The Hon. J.R. CORNWALL: I am doing nothing of the sort; I am a bystander in the matter. I made it clear to the Council—but obviously I was not clear enough for the Hon. Mr Cameron; he is as thick as a can of Heinz pea soup—that there is no Government endorsement on these discussions at the moment, and there is no ministerial endorsement, but when—

The Hon. M.B. Cameron interjecting:

The Hon. J.R. CORNWALL: You want the sort of level of services in country hospitals generally which can only be described as being the lowest common denominator. If you simply—

The Hon. M.B. Cameron interjecting:

The PRESIDENT: Order! If the honourable member wants to ask another question, he can.

The Hon. J.R. CORNWALL: By and large, the services in areas like Port Pirie, as the local doctors will tell you, are not as good as the doctors would like to see them. The number of visiting specialists has not reached the level that the people of Port Pirie would like to see and should be able to expect—and not only Port Pirie, of course, but the surrounding areas. That is a simple, well defined fact of life. There is no contest about that by anyone who knows anything about the system. So it is about the local communities, the local health service providers and the local hospitals working out between them how they can enhance and upgrade their services within existing resources.

By quirks of historical fate, a number of small hospitals throughout the State are within 12, 15 or 20 minutes drive from subregional hospitals. Some of these subregional hospitals—and two that come immediately to mind are Murray Bridge and Clare—have had a good deal of money spent on them upgrading them to subregional status. At this moment plans are afoot for a major regional hospital at Berri—I am fighting very hard to ensure that it is on the capital works program in 1988-89. Those sorts of initiatives can only result in better services, because specialists will visit where better facilities are available. Specialists are far more likely to reside in towns and cities where the hospital has subregional status. Community health services can be created only where they currently do not exist as a result of cost savings in other areas. They are the sorts of things being looked at: how to enhance health services, including health promotion and women's health services. As you would know, Ms President, there is currently a significant move towards creating women's health services specifically in the Iron Triangle.

You can only create those better services and a wider range of services, and get more into social health, health promotion, health advancement, rather than simply treating sickness after the event, if you can save money in some other areas. Where there is a small hospital 12, 15 or 20 minutes drive—not four hours in the buggy with the horse—by normal road transport, some degree of rationalisation of those hospitals does make sense. I repeat: at this stage they are discussions being led by the Health Commission with local hospital boards, with local service providers and with local communities.

As each of those areas resolve their own problems, proposals will pass through the executive of the Health Commission to the Commissioners to me and, if I am convinced at that point that there is a significant measure of agreement within those communities, I shall be happy to take the matters to Cabinet. Let me repeat: at the moment there is no formal ministerial imprimatur on any particular strategy in any particular area.

The Hon. M.B. CAMERON: I desire to ask a supplementary question—

The Hon. J.R. Cornwall: Incidentally, we have no intention of closing the Peterborough hospital.

The Hon. M.B. CAMERON: At this stage, I think the Minister had better reinstruct some of his officers—

The PRESIDENT: Your supplementary question.

The Hon. M.B. CAMERON: I am asking it.

The PRESIDENT: No. A supplementary question is just a question.

The Hon. M.B. CAMERON: I am asking it now, Madam President. My question is: the Minister indicated that the proposals must have the support of the majority of the area. Does he mean by that the majority of the people in association with the individual hospital, the majority of hospitals, or the majority of the people in the whole zone? Who will have the opportunity of voting to support or otherwise the proposals put forward?

The Hon. J.R. CORNWALL: I am being misquoted, Ms President. I chose my words very carefully and I reiterate: unless there is significant community support for these initiatives, I do not believe that I could give them my support. That means in turn that Cabinet will not give them its support because they will not get to Cabinet. It will remain theoretical. I said, 'Unless there is a significant community support.'

PUBLIC LIBRARIES

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Minister of Local Government a question about public libraries.

Leave granted.

The Hon. L.H. DAVIS: The Minister would be aware that the Chief Librarians Association of South Australia has recently released a survey of over 500 adults and children in the metropolitan area which was conducted in September 1987 by McGregor Marketing Pty Ltd. The results show that 41.5 per cent of adults and 55.4 per cent of children aged seven to 17 use public libraries; 48.3 per cent of adult library users were blue collar workers; and 52.2 per cent of adult library users were married females. The survey showed that the local libraries are used by nearly every second household and that children, women and lower income people are high user groups. The association claims that the public library is a very effective conduit for information, education and recreation. However, there is widespread concern among the network of 132 public libraries in the metropolitan area and rural centres that the State Government is making public libraries the meat in the sandwich

in a battle with local government over the funding of public libraries.

The funding of public libraries has been based on a 50:50 subsidy between the State Government and local government. However, under the current Minister of Local Government (Hon. Ms Wiese) this cost sharing arrangement has been varied, with the State Government trying to shift an increasing financial burden on to local government. In the 1987-88 financial year the State Government's maintenance subsidy of $7.71 million effectively provided only a 2.9 per cent increase in money terms after allowing for increased costs associated with four new libraries. In other words, that was a real decrease in funding of about 5 per cent. In 1986-87 there has been a 25 per cent to 33 per cent increase in the price of hardback books because of devaluation, with at least 70 per cent of books being imported. A further 15 per cent to 20 per cent increase in the price of hardback books is expected in the current year.

This, in turn, has forced a 21 per cent cut in expenditure on paperback books in the 1987-88 year. To aggravate this already critical situation, the council gets no assistance from State Government to cover increases in normal operating costs, 60 per cent of which are salaries. By changing the rules of the game, the State Government has seriously embarrassed many councils.

For example, in the area of capital subsidy, Kensington and Norwood opened a public library in 1985-86 on the promise of a State Government capital subsidy of $120 000 for the building, but the State Government has apparently reneged on that commitment and the Kensington and Norwood council has received only $15 000 of the $120 000. I understand that the Noarlunga council has had a $70 000 cut in subsidy, and many other councils have found their budgets thrown into disarray when they have discovered too late that the State Government is changing the financial sharing arrangements for public libraries.

Given that the Chief Librarians Association survey shows the widespread use of public libraries in this State, does the Minister accept that the State Government's variation of funding arrangements for public libraries has caused great financial hardship for local government and will also adversely impact on the many public library users throughout the State?

The Hon. BARBARA WIESE: The short answer is 'No'. I would like to comment about the State Government's relationship with local government and, in particular, the development of the public libraries system. The Hon. Mr Davis, by brushing over very quickly the various aspects of the public libraries program, seeks to suggest that the commitment that the State Government has made to public libraries in some way has been diminished during this financial year. He does that by combining the public libraries development program with the moneys that are allocated for the public libraries system as a whole. It is quite wrong and quite outrageous that those two separate funding arrangements should be drawn together in the way that he has.

It is certainly true that the public libraries development program this year has not proceeded at the same sort of pace as it has during previous years, but that is a capital development program and, as the honourable member would be aware, the State Government is not in a position to embark on a whole range of capital works programs that we previously might have liked to have embarked upon right across—

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: Listen to me, will you!

The PRESIDENT: You have asked your question, Mr Davis.

The Hon. BARBARA WIESE: The point is that there are a number of things right across the areas of Government that we were not able to achieve this year that we otherwise might have liked to achieve. This year we have been able to provide funding for the capital development program for only two libraries. However, I have certainly indicated to those libraries, which have not yet been funded in stage 1 of the public libraries development program, that I am still committed to that stage 1 program being completed. As and when funding becomes available, they will be provided with the subsidy that they have expected.

As to the library at Kensington and Norwood, whilst it is absolutely true that it has expected a subsidy, we have not at any time indicated during what year that subsidy would be payable and, in fact, very recently, I wrote to the council to let it know that it is still my intention that funding should be provided at a time when the Government is in a position to provide that funding. I have also written a similar letter to a number of other libraries that were not able to be included in the development program this year.

It is certainly my intention to pursue that matter during the next round of budget discussions, and I hope that some funding will be made available. I have already indicated to local government and the libraries movement that the problem we face at present is a scarcity of funding and, although we would have liked to complete the libraries development program during this financial year, we will have to push out that program by a few more years. Nevertheless, I am committed to its completion.

In the past the State Government has stuck by the comitment for 50:50 funding for public libraries, and we have done so this year; I will certainly be doing whatever is in my capacity as Minister of Local Government to ensure that we stick to that funding arrangement next year and beyond. It is very important that we maintain the very healthy relationship that we have developed with local government in the development of the most extensive public library system in Australia. It is a public library system that is second to none in this nation, and it is something of which this State Government is very proud in terms of the achievements we have made in that area.

Regarding the funding arrangements during the course of this financial year for the maintenance programs of libraries, if the honourable member cared to really consult with people about what has happened he would find that during this year we have streamlined the maintenance program considerably. That gives much greater flexibility and autonomy to individual libraries and councils so that they can make decisions at the local level as to how the money will be spent and whether books will be purchased through the central purchasing arrangement or locally. All of the feedback I have received about that arrangement has been very positive. People feel that it gives them much greater autonomy over their local affairs and that they can develop their library system as they would like to see it developed.

In relation to the book purchasing power of libraries in this State, it is important to remember that, although we have been affected by the devaluation of the dollar, during the past two years Treasury has compensated the library system for the money lost through devaluation, and we are now investigating ways and means of protecting our dollar even further so that the purchasing capacity of libraries is not eroded. It is important also to realise that libraries in this State are better off than those in any other State of Australia, because we have a well developed central book purchasing scheme which means that individual libraries

are protected extensively and can stretch their dollar much further than other library systems around this country.

In conclusion, I would say that, in relation to the South Australian library system, the joint commitment of the State Government and local government in this State has been a very successful partnership. We have achieved enormous results in the past 10 years in the development of this library program. The development program will proceed for as long as I can obtain the support of my Cabinet colleagues and Treasury. It may be that the program will be slowed down, but I am committed to its completion. There are very few areas in this State that do not have a public library, and that is a great credit to everyone involved, particularly to the commitment of this State Government.

UNPAID MAINTENANCE

The Hon. K.T. GRIFFIN: I seek leave to make a statement before asking the Attorney-General a question about imprisonment for unpaid maintenance.

Leave granted.

The Hon. K.T. GRIFFIN: I have raised on several occasions the matter of a Mr Phillip Wayne Rogers, who was imprisoned on 20 September 1987 for seven months for arrears of maintenance. In earlier questions I have pointed out that he is permanently disabled and is on a modest superannuation pension. I have also pointed out that information about earnings was used by the Department for Community Welfare in one of the many hearings in the Magistrates Court and information was applicable not to him but to another Phillip Rogers.

The matter has been raised by me with the Minister of Community Welfare by letter of 2 September, and all that I have received is an acknowledgment from the Minister's chief administrative officer.

The Hon. J.R. Cornwall interjecting:

The Hon. K.T. GRIFFIN: I haven't got it.

The Hon. J.R. Cornwall: It was a Question on Notice, wasn't it?

The Hon. K.T. GRIFFIN: Not at all.

The Hon. J.R. Cornwall: I have certainly signed an answer to you.

The Hon. K.T. GRIFFIN: Well, I haven't got it, and I have cleared my box.

The Hon. J.R. Cornwall: Be careful not to make a fool of yourself.

The Hon. K.T. GRIFFIN: I am not making a fool of myself: you are making a fool of yourself. I have not received from the Minister of Community Welfare any substantive response to the letter which I wrote to him on 2 September and which, within a few days, was acknowledged by his chief administrative officer—but it was acknowledged only.

Mr Rogers wrote to the Minister of Correctional Services several days after being imprisoned and has only received an acknowledgment and no substantive reply. The Attorney-General said on 7 October that he would investigate Mr Rogers' case, but nothing has been reported so far. Mr Rogers sought legal aid, but that was declined on the basis that he did not have a chance of getting out—so the Legal Services Commission said.

He also saw a legal aid lawyer at the Adelaide Gaol, but was told that she was not a family law lawyer and that he needed one and would arrange for one to see him at the gaol, but no-one ever came. Then, after his case received some publicity, Mr George Romeyko went to see him, arranged for him to lodge an appeal with the Family Court, and Mr Rogers was out on 17 October 1987, two days after Mr Romeyko had called to see him. Mr Rogers was granted bail on 16 October but, because of a bungle in the gaol, he was kept overnight and released on 17 October.

One can appreciate that Mr Rogers is not at all impressed by the lack of responses by the Ministers and the lack of assistance from the lawyers of the Legal Services Commission when it appears that Mr Romeyko, who is not a lawyer and who I think is well known to everyone (including successive Attorneys-General) can get some procedures moving within two days on the road to Mr Rogers getting some justice. This suggests that there is something basically wrong in the system. My questions are:

1. As Leader of the Government in the Legislative Council and the chief law officer of the Crown, will the Attorney-General investigate what went wrong in this case and determine what procedures can be put in place to ensure that the off-hand treatment and apathy does not occur again in relation particularly to *bona fide* maintenance and fine defaulters in genuine need of help?

2. Will the Attorney-General investigate the case of Mr Rogers as a matter of more urgency than his agreement to do so on 7 October 1987 has so far reflected?

The Hon. C.J. SUMNER: I do not concede that anything has gone wrong, and I am happy to examine the questions and bring back a reply. My colleague, the Minister of Health, tells me that he has prepared a reply for the honourable member, but this apparently has not yet found its way to him. I can pursue that matter.

The Hon. M.B. Cameron interjecting:

The Hon. C.J. SUMNER: I think he has gone out to find out where it is, just to prove how efficient and concerned he is about the questions that the honourable member has asked.

An honourable member: Here he is.

The Hon. M.B. Cameron: His hands are empty.

The Hon. C.J. SUMNER: Well, he doesn't have the reply in his hands. I am sure that he has taken steps to ensure that it arrives.

The Hon. J.R. Cornwall interjecting:

The Hon. C.J. SUMNER: The Hon. Dr Cornwall interjects that the Hon. Mr Griffin has got it wrong. I will make some inquiries and get a reply for the honourable member.

STATE EMERGENCY HELICOPTER

The Hon. R.J. RITSON: I seek leave to make an explanation before asking the Attorney-General, representing the Minister of Emergency Services, a question about State emergency helicopter services.

Leave granted.

The Hon. R.J. RITSON: For several years now it has been common knowledge that all the users of the State emergency helicopter services are of the view that the Bell 206 that has been used is not adequate for a number of the tasks that it is required to perform. In 1986, as a result of persistent lobbying on this subject, notices were gazetted inviting tenders for upgrading the service with new aircraft.

At the time that the notices were gazetted, the Hon. Dr Hopgood was apparently unaware of the gazetting of the tenders and made a statement that there would be no new helicopter. When he heard of the calling for tenders, he reportedly said that he would not necessarily accept any of them. The closing date for those tenders was January 1987.

Following subsequent questions in this Council about the result of those tenders, a newspaper announcement was made that the Government was to look at a new helicopter. That confusing report indicated that the Government was

considering the purchase of a twin engine helicopter at a cost of about $70 000 a month. That prompted a critical letter from a representative of the aviation—

An honourable member interjecting:

The Hon. R.J. RITSON: I am correctly advised that it was for the lease. A letter appeared in the *Advertiser* that was critical of a number of inaccuracies in that report. My criticism was that it was really quite deceptive because the Government had in fact accepted none of the tenders that were submitted in January and had taken no further action to call for tenders or for expressions of interest.

My investigations now in December 1987—as recently as last week—indicate that to this moment there has still been no further call for tenders or for expressions of interest. By its actions the Government appears to have done nothing to indicate that it is really serious about this matter. In the meanwhile there have been a number of incidents. The tragic loss of life as a result of a canoeing accident on Lake Alexandrina was a case in point. The usual aircraft, the Bell 206, which was leased for emergency work, was out of action due to maintenance. Even had it been in service, my advice is that the visability and weather conditions of that night were such that it would not have been capable of the search and rescue task required, any more than any other aircraft. It was fortuitous that the Royal Australian Air Force was able to provide an aircraft suitable to the task, consequently saving life that would have otherwise been lost.

During the Grand Prix there was a tragic accident at the Edinburgh airfield in which a young airman lost both legs and was exsanguinated nigh into death. The retrieval team flew to the airbase in the present retrieval helicopter but was unable to take on board the patient and the retrieval team required to treat the patient in flight. This resulted in a high speed road dash, which was accompanied by four police cars, to the Royal Adelaide Hospital, subjecting not only the patient to delay but everyone concerned to the risk of a road accident during that high speed road dash. These incidents continue. In view of the complete lack of signs of action by the Government since the rejection of the tenders in January, does the Government actually intend to call for tenders and, if so, when?

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

TOPLESS WAITRESSES

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation before asking the Minister of Tourism a question about topless waitresses.

Leave granted.

The Hon. DIANA LAIDLAW: Late last month the Liquor Trades Union threatened to publish the names of VIP clients who go regularly to Cobbs restaurant—an Adelaide restaurant that employs topless waitresses—in the latest round of its long running battle to close restaurants of that nature in this State.

The Hon. J.R. Cornwall interjecting:

The Hon. DIANA LAIDLAW: I don't know what you are talking about. With specific reference to the latest initiative of Cobbs restaurant to invite VIP clients to join in the fun of topless boxing, the secretary of the Liquor Trades Union is reported as saying that these topless restaurants seem to be becoming a bit more depraved all the time. 'What we are saying,' says the secretary, 'is that they are promoting their waitresses as sex objects rather than skilled professionals.' The secretary indicated that part of the union's campaign would be to lobby a number of sympathetic State parliamentarians in a bid to have topless waitressing outlawed completely. As an aside, I am rather disappointed that I have not yet been lobbied on this subject; I could certainly tell the union that I am sympathetic to its cause. Does the Minister agree with the statement by Mr Drumm that waitresses are in the front line of the tourism industry and we simply cannot tolerate the profession being degraded in this way at a time when it is upgrading its skills and the status of the whole industry? Also, does she believe that there is any merit, in respect to this subject of topless waitressing and its reflection on the tourism industry, in seeking to completely outlaw the practice?

The Hon. BARBARA WIESE: I am happy to report that I am one of the MPs that the Liquor Trades Union felt was a sympathetic member of Parliament with whom it could discuss this issue. In fact, I recently met with representatives of the Liquor Trades and Shop Assistants Unions and other Labor parliamentary colleagues—all female, I might say—when we discussed these issues that were originally raised with us, not by the Liquor Trades Union, but by others in the community who were concerned about the jurisdiction or powers available to the Commissioner for Equal Opportunity in the area of employees and their various states of dress or undress within the hospitality industry. We have discussed those matters that relate to the equal opportunities legislation, and we have also discussed with the union the methods that have been considered or adopted in other States to attempt in some way to control the situation that occurs in some work places. It is a matter that is of concern to me, more particularly as a woman and as a member of Parliament, than as a Minister of Tourism, in the sense that I do not believe that the practice of employing people as topless waitresses greatly affects tourism one way or another.

However, as Minister of Tourism I would be very concerned if people were employed for the various physical attributes that they might have at the expense of or instead of their professional skills as waitresses, or whatever the positions might be, in hotels and restaurants. If that practice should grow and people without appropriate training and skills were employed in those positions, it would most certainly reduce the level of competence of people in our hospitality and tourism industries and that would be of considerable concern to me as Minister of Tourism. This very vexed area will be very difficult to address for both the union and any members of Parliament who might be interested in this topic. First, it is important that, if we are looking at legislative means, we should identify appropriate pieces of legislation that might address the question. I suppose the equal opportunities legislation is one Act that could be looked at. I understand that in Western Australia, for example, some amendments were made during the past 12 months to the licensing laws whereby individual establishments must meet certain criteria before they are able to become licensed premises.

The Hon. Diana Laidlaw: Has that stopped any of these restaurants in Western Australia?

The Hon. BARBARA WIESE: As I understand it, moves have been taken to prevent some practices in Western Australia. The Minister who is responsible for licensing laws in Western Australia, during the past 12 months, has mounted something of a campaign in relation to various hotels that have been holding functions known as lingerie parades where young women parade scantily clad for patrons in hotels.

The point that the Minister was making during the campaign in Western Australia was that, far from being a minority practice for a minority of people in the community, it had in fact become a very common practice. In fact, 75 per cent of hotels in Perth were staging one of these lingerie

parades at least one night a week, which was a matter of some concern to the Minister in Western Australia because it then starts calling into practice the qualifications that are being asked, in a wide cross-section of places of employment, of people who are interested in being employed in the hospitality industry.

So, as I understand it, amendments are being made to the licensing laws in Western Australia designed to stamp out some of that activity in hotels. I also understand that measures are available under the Federal award, to which the Liquor Trades Union is party, which have been employed in Queensland to outlaw some of these practices. That is certainly a matter which I understand the South Australian branch of the Liquor Trades Union is investigating as a means by which it might take some action to deal with the problem. So, a number of issues are being looked at by various industrial organisations and members of Parliament in this State at the moment to ensure that appropriate work practices exist in South Australia which will allow people who are interested in entering the hospitality industries the opportunity of having a real choice about taking on that work and the nature of the work that they perform, and to ensure that women, in particular, who are employed in that industry are not forced into a position of being exploited by virtue of their gender.

CONCERT PROMOTERS

The Hon. R.I. LUCAS: I seek leave to make an explanation before asking the Attorney-General a question about a voluntary code of practice for concert promoters.

Leave granted.

The Hon. R.I. LUCAS: In February this year, following a range of complaints—one being that having purchased tickets for about $30 each they could not see the performers—by concertgoers who had attended the Dolly Parton/Kenny Rogers concert in Adelaide, I raised with the Attorney-General the possibility of exploring the notion of a voluntary code of practice for concert promoters to provide a fairer deal for concertgoers in South Australia. Briefly, some of the suggestions that I made at the time for possible discussion with concert promoters included, first, a guarantee that having paid about $30 for a ticket, concertgoers would have an unobstructed view of the stage and performers; secondly, the possibility that concert tickets and promotional material could indicate at the time of purchase the time that the performer would be on stage; and, thirdly, details, at the time of purchase, about the distance between the patron's seat and the stage.

On 17 February the Attorney-General responded in the press, and I think in Parliament (although I am not sure about that), and said that he would ask the Commissioner for Consumer Affairs to instigate urgent discussions with concert promoters about the suggestion of a voluntary code of practice. In fact, soon after that I was contacted by either the Commissioner for Consumer Affairs or one of his senior officers, in following up the Attorney-General's suggestion, seeking further information and details about a possible voluntary code of practice. So, conceding that it is a difficult area—and I am sure that there will be many discussions with concert promoters—my questions are as follows:

1. Has the Attorney-General received a report from the Commissioner for Consumer Affairs on this matter?

2. If so, what was the nature of the response from the Commissioner for Consumer Affairs?

3. If the Attorney-General is not aware of having received a report, will he undertake to pursue the matter with the Commissioner and provide me with a response, perhaps during the sessional break?

The Hon. C.J. SUMNER: I will obtain some information on the topic for the honourable member and bring down a reply.

DIMETHOATE

The Hon. J.C. IRWIN: I think I can get a final question to the Minister of Health before Christmas and, accordingly, I seek leave to make a brief explanation before asking him a question about dimethoate.

Leave granted.

The Hon. J.C. IRWIN: Last week the Hon. Mike Elliott asked a question of the Attorney-General about dimethoate and Queensland tomatoes with particular reference to the withholding period. To my knowledge that question has not been fully answered. An article in the *Advertiser* this morning, referring to a spokesman for the Minister of Agriculture, states:

> . . . tests had shown that dimethoate treated tomatoes were not dangerous and the chemical did not damage tomatoes.

While I was in the library a short time ago I heard the Minister of Agriculture in another place discussing this question, and he said that the Minister of Health has responsibility for the safety of this chemical.

At lunchtime today I attended a meeting of tomato growers in front of Parliament House, and I heard a Dr Lamont, who has previously made public statements, repeat that there was ample evidence both here and overseas to show that dimethoate can produce cancer and birth defects in the long term. Dr Lamont suggested that there should be a minimum withholding period of seven days for tomatoes on the vine. The safety of this chemical is obviously largely tied up in the length of the withholding period, and that is why the Hon. Mr Elliott's question should be fully answered. My questions are:

1. What is the minimum withholding period for dimethoate?

2. Should tomatoes be sprayed or dipped on the vine or in some other way and, if so, how?

3. Will the Minister, with more than a little responsibility in this area of chemicals, make a clear statement about dimethoate and publish supporting evidence that the chemical is safe?

4. In view of the discussions last night on the Agricultural Chemicals Act Amendment Bill, will the Government act quickly to let treated Queensland tomatoes, or any other product for that matter, into South Australia in order to bring down the high local market prices?

The Hon. J.R. CORNWALL: I have not specifically asked for a brief on dimethoate, and I have not spontaneously received one. The public health authorities are always vigilant and, if anything does arise—whether in the public arena or otherwise—I am normally briefed as a matter of course. If the Public and Environmental Health Division of the Health Commission had any concerns about this matter, I would have been very surprised indeed—given that the matter has been one of controversy for some time—if it did not draw it to my attention. I cannot answer the specific questions about the minimum withholding periods and whether tomatoes should be sprayed or dipped on the vine and, if so, how, and so on, but I undertake to ask the Executive Director of the Public and Environmental Health Division to issue a statement, within the next 48 hours, about dimethoate and its use and relative safety or otherwise in relation to tomatoes.

WORKCOVER

The Hon. DIANA LAIDLAW: Has the Minister of Community Welfare a reply to a question I asked on 21 October about Workcover?

The Hon. J.R. CORNWALL: Yes, and I seek leave to have the detailed reply incorporated in *Hansard* without my reading it.

Leave granted.

The Workers Rehabilitation and Compensation Act 1986 introduced an entirely new system for the rehabilitation and compensation of injured workers, and the WorkCover system is funded on a different basis to that which previously applied.

The former workers compensation system, operated by the private insurance industry, was funded from premiums paid by employers, based on wages paid to workers according to the occupational grouping in which each worker was engaged. A single employer may have had a premium calculated in relation to a number of occupations undertaken by its workers. The occupational grouping of workers was not necessarily indicative of the risks involved in the business undertaking of the employer.

The new WorkCover scheme has been designed to be funded from levies paid by employers according to industrial activity undertaken by the business. The Workers Rehabilitation and Compensation Act gives the corporation power to divide the industries carried on in the State into different classes.

The corporation has developed the South Australian WorkCover Industry Classification (SAWIC), which is derived from the Australian Bureau of Statistics (ASB) and the Australian Standard Industry Classifications (ASIC). Every employer in South Australia has been allocated into one of the appropriate SAWIC classes.

The Act requires the corporation to fix percentages (in rates) applicable to the various classes of industry and, further, requires that the rate fixed must be one ranging from .5 per cent to 4.5 per cent. To derive the appropriate rate for each class, the corporation obtained data from the ABS relating to claims experience, number of employees and average wages in each of the ASIC classes. The average levy rate for all employers in the State is 2.75 per cent, and, because the maximum and minimum levy rates have been fixed by legislation, it was necessary to adjust the indicated levy data to fit within the prescribed levy limits while retaining the required average levy rate.

Based on ABS data, a levy rate of 3.8 per cent has been calculated for classes 83401 and 830501, which are both in the broad division of community services under the title welfare and religious institutions. They appear to be correctly classified in this broad grouping.

Notwithstanding the above, WorkCover is currently investigating the rate that has been applied to welfare services, and has arranged discussions with SACOSS to this end. If an adjustment is actuarially justified having regard to the requirements of the Act, a correction will be made on a retrospective basis.

In addition, the classification and levy rates will be kept constantly under review and, as claims experience data becomes available under the new WorkCover system, the corporation will be in a position to refine the industry rate.

PORT ADELAIDE VIP VISIT

The Hon. L.H. DAVIS: Does the Minister of Tourism have a reply to a question I asked on 6 October about a Port Adelaide VIP visit?

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

Leave granted.

My colleague, the Minister of Marine, has advised me that it is a matter of regret that the MV *Des Corcoran* was not available as originally planned for the transportation of visiting VIP's at Port Adelaide recently. However other arrangements were made which proved quite satisfactory.

For the information of the honourable member the crew of the vessel were not on strike. It transpired that work and servicing had been carried out on the engines of the vessel which had not been test run in the presence of qualified mechanics. At the particular time some industrial unrest arose at the dockyard, Glanville, and workshop personnel imposed certain work bans which prevented the testing of the engines.

To have used the vessel without that being done could have resulted in serious damage to the engines. It is believed that this minor incident will not have any long term effect on the State's excellent industrial relations reputation and it is not expected that a similar incident will occur in future.

MENTAL HEALTH SERVICES

Adjourned debate on motion of Hon. M.B. Cameron:

That this Council is concerned by the announcement by the Minister of Health of the amalgamation of the Glenside and Hillcrest Hospitals, the sale of land at Carramar Clinic, and the setting up of the South Australian Mental Health Services because of:

1. The lack of consultation with the boards, staff and patients of the health units concerned.
2. The lack of consideration for patient care and the welfare of the care givers, and
3. The fact that the decision has been taken and announced without any strategic plan having been produced.
4. And that care-givers have been given only until March 1988 to produce a strategic plan for clinical services.

(Continued from 25 November. Page 2034.)

The Hon. M.J. ELLIOTT: I have given this motion much consideration, and I can support certain parts of it but not others and, in fact, I intend to move an amendment. I will indicate which parts of the motion I support and those parts that I do not support. During the Minister's response he referred to the fact that a number of reports, including those of Touche Ross, Uhrig, and Taeuber, had recommended amalgamation.

Clearly, the concept of amalgamation had been floated, and it is also true that there have been some meetings. The question that needs to be asked is whether that constitutes consultation. How much information did they get? How much did they actually know? How detailed were the conversations that occurred? On the evidence that I have—I have copies of letters—I suggest that consultation had been lacking at least in the sort of depth that I would normally consider acceptable.

On many occasions in this place we have had the question of lack of consultation raised until it has become almost monotonous. Unfortunately, that seems to be the *modus operandi* of this Government. Consultation clearly has been lacking, and it really has been evidenced by one letter written to Dr McCoy by Dr D.I. Ben-Tovin, Chairman, Policy and Planning Committee. This letter is significant because in general terms the Royal Australian and New Zealand College of Psychiatrists, of which he is Chairman,

is willing to support the need for a strategic plan, and expresses a willingness to be extremely cooperative.

What I also find interesting is that despite this level of support and willingness to cooperate, at a meeting of psychiatrists from public hospitals a motion calling for a moratorium that might need to last as long as 12 months was passed unanimously. I do not believe that such a motion would have been passed if those involved had been confident that full consultation had taken place and that all matters had been fully thrashed out. There is no doubt that it is the Government's responsibility finally to determine the direction of the various services that it controls, but I do not believe that any responsible Government takes that power to the extent that it refuses to consult as fully as possible with all various interest groups.

After all, bodies such as the Royal Australian and New Zealand College of Psychiatrists must have a great deal to contribute. After all, Touche Ross and Professor Uhrig, for example, are not medical or psychiatric specialists in the first instance. They have come up with reports that are in essence administrative and it is very important that we do not take all of our various Government departments and look at them just as administration units and not look at the various services that they provide. It is a nonsense to do a time and motion study of the Education Department and forget that it is teaching children. Likewise, it is a nonsense to look purely at simple efficiency of the psychiatric service of South Australia and not take into account the fact that it is looking after the mental health of the people of South Australia.

I believe there is ample evidence in documents that have been been brought before this place already that I have seen that the level of consultation has been extremely poor. Therefore, I will be supporting the first paragraph of the motion. The second paragraph refers to the lack of consideration for patient care and the welfare of care-givers. That is rather judgmental. I am not going to say that the Minister does not care or has not considered patient care or that he has not considered the welfare of care givers. That is far too judgmental a view about his motivations. I have not had evidence that that is in fact the case. Indeed possibly at a philosophical level I might find myself agreeing with the Minister on many occasions. The problems I have with the Minister concern the way he goes about achieving his goals.

It is there that I have got into dispute with him on several occasions, particularly over the last couple of months on matters such as Aboriginal health and other areas. The Minister may be setting out to achieve something worth while, but he stands condemned as to the mechanisms of how he does it, including lack of consultation, I will not support paragraph two because I have no desire to ascribe motivations to him that I do not believe to be the case. The third paragraph states:

> The fact that the decision has been taken and announced without any strategic plan having been produced.

In my amendment to the motion I will be referring to any strategic plan that has been publicly produced. There have been many occasions when I felt that the Minister has a plan, and it is just that we do not really see the plan until it has been put into effect.

The Hon. M.B. Cameron: We need FOI.

The Hon. M.J. ELLIOTT: We certainly do. I am not sure how much of the plan is in writing. At times there seems to be a grand plan, but it is not a public plan until it has been put into effect and, in essence, by calling for the plan to be made public we are allowing what we are complaining about in the first part of the motion, that is, the need for consultation to occur. If one does not know what the plan is, how can people contribute towards it? It is important that the plan is publicly produced. The fourth paragraph provides:

> And that care-givers have been given only until March 1988 to produce a strategic plan for clinical services.

In the absence of the overall strategic plan and in the absence of consultation the time allowed is indeed short, and I have no problems in supporting that part of the motion. In summary, I support the general thrust of the motion, which calls for greater consultation and which calls for the Minister to make the plans public and to allow more time in the production of strategic plans for clinical services. My amendment will delete the second paragraph dealing with the Minister's motivation, which I do not wish to bring into question. Therefore, I move:

> To amend the motion, as follows:
>
> Paragraph 2—Leave out this paragraph.
>
> Paragraph 3—After the words 'having been' insert the word 'publicly'.

The Hon. M.B. CAMERON (Leader of the Opposition): If no other members are going to speak, I will close the debate. First, I indicate to the Hon. Mr Elliott that I appreciate his support. I seconded his amendments, not because of any reason that I felt they were justified, but because I can understand that the Hon. Mr Elliott has not had the same opportunity to obtain the information that I have because of the nature of the last weeks of the sitting, and I do not in any way criticise him about that.

The reason for the second paragraph of the motion is that in the case of one institution that I had the opportunity of visiting—Carramar—the staff were in a state of complete demoralisation because they had had no consultation whatever before the announcement was made to sell Carramar, which is in a strategic area, covering the seats of Unley and Mitcham. When they asked significant questions such as, 'If we are going to be relocated, will it be as a whole?' There was no answer. There was the question, 'To where are we to be relocated?' Again, no answer. Even the patients who are coming in obviously have some concerns about whether this institution will continue to be available, and whether they will be placed in a difficult situation.

When I moved this motion, I indicated that the Minister had announced plans to amalgamate Glenside and Hillcrest Hospitals, to sell the Parkside land on which Carramar Clinic is sited, and to set up the South Australian Mental Health Service. The Minister has told this Chamber that there are no plans to amalgamate the two hospitals, and what is in fact proposed is an amalgamation of the two hospital boards.

He claims that a 'consultative process' had been established with the boards of both hospitals and their chief executives about this issue since early 1987. That appears to be a joke, because consultation there might have been, but the amount of input by medical staff to date, and the depth of information that they have been able to obtain about some of these proposed changes, has been virtually nil. In fact, they were continually told until about three weeks ago that the amalgamation was to be administrative only and would not affect clinical services. That information has proved to be a lie. Why else would members of the South Australian Salaried Medical Officers Association

last week have passed eight resolutions—one of them calling for a 12 month moratorium on Health Commission plans to create a South Australian Mental Health Service—if there had been long-running and far-reaching consultation? These resolutions are as follows:

1. That this meeting expresses grave concern at proposed changes to current mental health services in this State, presently recognised as the best in Australia. It is concerned that the lack of consultation and adequate planning could result in a system of care which seriously disadvantages those people most in need.
2. That this meeting opposes the dissolution of the Boards of Management of Glenside and Hillcrest Hospitals and the imposition of SAMHS at this time.
3. That this meeting suggests that the South Australian Branch of the College of Psychiatrists and SASMOA request a moratorium on the imposition of SAMHS for at least 12 months, during this moratorium adequate consultation must occur between the SAHC and mental health clinicians of all disciplines to develop a strategic plan which is then known and agreed to before any administrative structure is established to implement it.
4. That this meeting requests that in any administrative structure established there be College of Psychiatrists representation.
5. That this meeting requests that any medical health services steering committee established have clearly delineated terms of reference agreed to first by all Mental Health Service delivery units, and that such a steering committee include College of Psychiatrists representation.
6. That these resolutions be made known to the RANF, the FMWU and the PSA and joint meetings be set up to seek their support.
7. That these resolutions be made known to the AMA.
8. That this meeting requests the College of Psychiatrists (S.A. Branch) to communicate our concerns about SAMHS to the South Australian community.

The meeting of SASMOA mental health members on 25 November 1987 agreed to all those proposals unanimously. The passing of these eight motions occurred on the same day that the Minister stood in this Chamber and made reassuring noises about the board merger and the creation of the SAMHS. Last Wednesday, the Minister also pleaded ignorance about a plan to establish a structure of 10 zones and 30 units to administer the South Australian Mental Health Service. Well, if he has never heard of the plan, perhaps he should speak to Miss Judy Hardy, acting Director of Mental Health Services with the South Australian Health Commission, because she is the person who has been outlining some of these plans, and who made the statement about 10 regions and 30 units. She is the person who has been making it plain to everyone that the SAMHS is an accomplished fact. There are, according to Miss Hardy, no grounds for negotiation on that issue. So, this so-called consultation merely becomes advice to the meetings that are called—this is what will happen. That is what is said.

I am afraid that the ego-tripping by the Minister is apparently filtering down to his senior staff at the commission, and I can assure him that it is concerning mental health professionals and members of the SASMOA who obviously have not been adequately consulted about the matter, and do not believe that a mere four months—from now until March, including the Christmas break—is sufficient time in which to formulate their submissions towards the framing of a draft strategic plan for South Australia's future mental health services.

Let us examine some of the truths and half-truths that have been put forward on this subject. The Minister claims that the boards of both the Hillcrest and Glenside hospitals have from the outset been in on the proposal to merge the two hospital boards. In fact he claims the move was driven by the boards themselves. Well, the Minister has already conceded that the move towards the merger has been driven more by the Hillcrest board than that of Glenside. The Minister also says that a consultative forum of 50 people met in June to discuss the upgrading and reorganisation of South Australian Mental Health Services.

The Minister says that the meeting was attended by chief executive officers, heads of various hospital departments, the director of nursing, non-medical staff representatives to the boards, as well as representatives from the mental health accommodation program, community health groups and the Royal Australian and New Zealand College of Psychiatrists. But what he does not tell us is that at the forum, and one in October where a draft policy and service development guideline was presented, the parties have still not been supplied with enough information to determine even why the SAMHS or an amalgamated board of mental hospitals is needed. Everyone is told, and the Minister has even told us here, that South Australia has the best mental health services in Australia. That is the opinion not just of the Minister but also that of Professor Ross Kalucy and Dr Norman James from whom the Minister, I gather, takes a good deal of advice. I will speak more a little later about the opinions of those two men.

So, if we have such a good mental health service here, why do we need to alter it so radically? The Chairman of the SAHC, Dr Bill McCoy, has been unable to tell mental health professionals why there is a need for the SAMHS. He was asked that question directly. All Dr McCoy has said is that it will enable savings to be made and bring into focus community services. According to the Minister, internal mechanisms have been developed by both Glenside and Hillcrest hospitals to ensure that all staff have the opportunity to take part in the consultative process. We are 'literally consulting people to the point of exhaustion', the Minister told this place last week. He also claimed that Miss Hardy had consulted the medical staff.

Well, if that is the case, it poses the question why SASMOA members, including the College of Psychiatrists, were so concerned that they had to pass those eight resolutions which I have quoted. Why is there so much concern from mental health professionals working at Glenside who are clearly worried about whether the amalgamation of the boards and the creation of the SAMHS will really benefit patients or mental health services in this State. I made those statements available last week in the Chamber. Why has it been necessary for the SASMOA to call for adequate consultation between the Health Commission and mental health clinicians in framing a strategic plan, if this so-called 'consulting to the point of exhaustion' had been going on?

Perhaps the reasons for these concerns are the same unanswered questions that have worried mental health professionals working at Glenside. Questions such as what is wrong with mental health services in South Australia at present; why a merger of the two hospital boards is necessary; what specific things will be achieved by merging Hillcrest and Glenside hospital boards which cannot be achieved with separate boards, and why we need the formation of a body to be called the South Australian Mental Health Service? Also, why do we need the so-called 10 areas divided into 30 units? We already have 900 general practitioners providing mental health services in this State. I do not know whether the Minister is aware that general practitioners do have training in this field and do provide service to the community.

Of course these questions have already been asked but no-one, not even Dr McCoy, appears yet to have the answers. All that these people get in reply is that the SAMHS is seen as a way of making financial savings within the mental health system and bringing community services into focus. Dr McCoy could not even give any assurance on Glenside's future, or even that of Hillcrest. In summary, there simply are no answers at this stage to the many questions that staff and patients are asking about these changes. This whole

dabacle has all the markings of an *ad hoc* plan, with some vague proposals to rationalise mental health care in this State and sell off some valuable pieces of real estate and, if patients and medical staff get in the way, that is too bad. Yet, despite the lack of any fully fleshed out details being available on where this grand plan is headed, mental health professionals are being asked to embrace the scheme warmly.

The Minister stood in this Chamber last week and said the amalgamation of Hillcrest and Glenside hospitals was not on. There would be, in his time as Minister, he said, no mass movement of patients from Glenside to Hillcrest. But, virtually in the next breath he was unable to say what Glenside's long-term future would be. That, he said, would be determined as part of a five-year strategy. There is no doubt that there is a hidden agenda to sell off Glenside. I do not believe that anybody in the system would deny that. When the Minister talks about St Corantyn's and Carramar Clinic being located within properties each worth $1 million, and he also talks about the inappropriateness of their delivering services from large mansions, it is obvious that this Government and this Minister are more concerned about the dollars to be made from the sale of such valuable real estate, particularly when that sell off can be justified as a part of a decentralisation of services.

Carramar Clinic is to be sold off, and there is some belated talk of its services possibly being relocated elsewhere. Where was the consultation on that? Staff could not even get any answers on the relocation of services. Why not? Surely the commission has some ideas on that subject. How long will it be before the decentralisation of Glenside's facilities gives the State Government an excuse to sell off another piece of real estate in pursuit of the holy dollar?

Of course, the Minister will argue that the closure of institutions such as Glenside will not be a day too late. After all, he will argue that it is simply part of the overall de-institutionalisation of South Australian mental health services—a method of getting the institutionalised back into the community. Well, those are admirable aims, provided that the patients, their families and the general public do not become the victims of what can so easily become just another cost cutting exercise involving mental health care.

De-institutionalisation has also been a popular theme of the Unsworth Government in New South Wales, but I note that the *Weekend Australian* last week reported that that program has not been without its casualties. The article points out that under the NSW Government's program nine of the State's 15 mental hospitals will be closed during the next eight years, with the other six being upgraded. Patients, deemed suitable by medical authorities, will be discharged compulsorily and sent out into community care or half-way houses.

The *Australian* reports—and this is important—that the plan will cost $325 million, but the NSW Government stands to reap a healthy return from the sale of various properties. The price of the scheme, the *Australian* reported, however, has also been measured in deaths, bashings, a knifing and even a mass poisoning attempt as both the community and the de-institutionalised try to come to terms with the new scheme. Patients have tragically died only days after being released; others have attacked unsuspecting members of the public after being discharged prematurely from care; and one group of former mental hospital patients was put into a half-way house that had its water supply poisoned by locals who were opposed to their accommodation being sited nearby.

The Hon. J.R. Cornwall interjecting:

The Hon. M.B. CAMERON: Somewhere in New South Wales. And only today the *Advertiser* reports that at least 27 mental patients have killed themselves after being discharged from one mental hospital in NSW in the past two years. The report has one Medical Officers Association representative saying that none of the patients who died should have been released, and that an unacceptably high number of suicides had occurred in the past six months. That representative said that the NSW Government's Mental Health Act made it difficult for doctors to keep patients in hospital, even in cases where it was in the patients' best interests.

Might I say that there is no indication on my part that such problems have occurred here, because de-institutionalisation has occurred at a sensible rate. I am not denying that: I accept it. But, unfortunately, I believe there is an increasing desire to do this, and it would appear, certainly from the information I have received, that medical staff are not being involved in the further changes. That is the danger that we face—that we will go too far. So it seems that we in the edge of de-institutionalising our mental health services in this State to a degree that perhaps we should be wary of and that it might be the patients, families and the public who might not, but should, benefit from such a program. It should not be bureacrats who want to change the empire in some way.

Returning now to the concerns of medical staff at the amalgamation of the two hospital boards and the creation of the SAMHS, I gather that they again this week have reiterated their concerns. The South Australian branch of the College of Psychiatrists this week also declared its support for a moratorium on all administrative changes, including any merger of hospital boards and the creation of the SAMHS to enable further and fuller consultation to take place. That call for a moratorium was sent to the Chairman of the South Australian Health Commission and to psychiatrists, and I gather that a copy has been sent to the Minister. I will quote that letter, because I believe it is an important document and should be recorded in *Hansard*. Addressed to Dr McCoy, the letter states:

> Dr Czechowicz has passed on to us your letter of 23 November. The Policy and Planning Committee of the South Australian Branch of the College of Psychiatry strongly support the need for a strategic plan for mental health. We agree entirely that the development of such a plan is dependent on the expertise of clinical staff. We are sure that clinicians from all disciplines, both medical and non-medical, will have important contributions to make.
>
> We feel it important to convey to you the increasing anxieties felt by the membership of the college over the proposed modifications to the existing administration of psychiatric services. Our experiences is that the structure of a health care service cannot be seperated from the functions that the service is expected to perform. The administration of a health service cannot therefore be seen as neutral in terms of the functional activities of that service. You are asking for extensive and intensive input by clinicians into the consultative process. We believe the best atmosphere for such input would be created by the Health Commission declaring a moratorium over all administrative changes, including any merger of hospital boards and the creation of SAMHS, whilst that consultation is under way. This call for a moratorium has been endorsed by a group of senior psychiatrists, including Dr's Vaughn Carr, Norman James, Ray Chynoweth, Andrew Czechowicz, Graham Martin and Professor Ross Kalucy.

Two of those people, the Minister claimed in his contribution, fully supported his plans. He claimed that he had consulted at length with them. The letter further states:

> A larger public meeting of psychiatrists from several public hospitals was held on Wednesday 25 November. A resolution calling for a moratorium, which might need to last for as long as 12 months, was passed unanimously at that meeting.
>
> In the context of amoratorium the college would be happy to participate in consultation about the future administrative structures for mental health services. In particular we are concerned that the College of Psychiatrists is adequately represented on any decision making bodies that are formed. For instance, it is not yet clear whether the proposed Mental Health Services Steering

Committee is essentially an implementation or a policy forming body, and we would be grateful for further information on its terms of reference. If the steering committee is an implementation group, where will policy be formulated and what is the envisaged input of the college into that level of decision making?

We feel the identification of target groups and small expert committees is a potentially useful strategy. It does, however, carry the danger of fragmentation, and the needs of the seriously mentally ill can often be lost sight of in settings where thjere is no clear overview of service structure and function. It is precisely in helping to frame that overview where the college feels the expertise of our fellows, with their experience in other states and countries, may be of greatest value.

We look forward to your reply to the proposals we have made. We intend them to be constructive and hope they will be received in that light.

That letter was signed by the Chairman of the Policy and Planning Committee of the Royal Australian College of Psychiatrists. Members should read that letter very carefully and realise that these are not people who are setting out on a course of destruction. They want to assist in the upgrading of mental health services.

The Hon. J.R. Cornwall: They are very moderate in—

The Hon. M.B. CAMERON: Extremely moderate. I believe that is why they should have been involved in the process over the last 18 months when this matter was being discussed, because that is where the problem lies. It is even more extraordinary when we remember that Professor Kalucy and Dr James are people from whom the Minister seeks advice. I trust that he now takes their advice along with the unanimous view of the College of Psychiatrists, which is a very moderate group indeed within the medical profession. The Minister indicated last week that we have the best mental health service in the nation (and I do not need to quote his words from *Hansard*, because that is clear).

The Hon. J.R. Cornwall: And you support that?

The Hon. M.B. CAMERON: Yes, I do. The College of Psychiatrists is concerned, quite rightly, that it is represented on any decision-making bodies that are formed. But, as it points out in the letter to Dr McCoy, it is still not clear yet whether bodies such as the Mental Health Services Steering Committee is an implementation or a policy-making body. The fear is that it is just an implementation body.

I trust that members have listened very carefully to what I have said. The motion is a very moderate one, but it calls on the Minister to take steps to consult people who have expertise. It is a very serious step indeed to make radical changes to the health system just because the Minister sees himself as some sort of reforming angel. I do not believe that that is a reason for leaving aside the people who really have the knowledge in this area. There is a great danger in Ministers of Health, whether from our side or from the other side, starting to believe that they are infallible and that their point of view is the only one that should be considered in matters such as this. I ask the Council to support the motion.

The Hon. M.J. Elliott's amendments carried.

Motion as amended carried.

WORKCOVER

Adjourned debate on motion of Hon. Diana Laidlaw:

That with respect to the 3.8 per cent levy imposed by the Workers Rehabilitation and Compensation Board on organisations classified as 'welfare and charitable services', that this Council—

1. Registers its concern that such organisations are being required to subsidise premiums levied from industry;
2. Records its disquiet that the clerical nature of the duties of employees of most such organisations have been classified as high risk work;
3. Recognises that the levy will force charitable and welfare organisations to cut programs and/or staffing levels at a time of unprecedented demand for services; and
4. In view of the Government's social justice strategy, calls on the Government to—
   (a) impress upon the board the need to review the equity and fairness of the levy, or
   (b) alternatively, to determine the feasibility of augmenting the funds of each welfare and charitable service by the difference in the sum each service allowed for workers compensation premiums in their budget for 1987-88 and the sum determined subsequently by the board.

(Continued from 25 November. Page 2042.)

The Hon. I. GILFILLAN: In speaking briefly in support of the motion I make two specific points. The speech of the Hon. Miss Laidlaw when moving the motion included comments and observations with which I do not agree. I make plain that my support for the motion is specifically for the wording as it is printed on the Notice Paper. I acknowledge that the injunction that this Parliament imposed on the Workers Rehabilitation and Compensation Board was that it must run a fully funded operation. I believe that no-one in this place should in any way attempt to persuade or pressure the board to resile from that.

We have seen the disastrous economic consequences that the unfunded Victorian scheme has quickly led into and we must not go down that path. As a consequence of that, the board sought actuarial advice to set the premiums at rates which, to the best of its knowledge, reflected the experience of each classification in relation to accident and cost of injury. That has been smudged somewhat by the coagulation of different types of activities in certain industries being on a common premium, and that may, in the fullness of time, prove to be a mistake. However, I think that that is too early to judge.

The intent of the motion is appropriate and should be brought to the attention of the board. The bureaucracy and the Parliament should be sensitive to the board's decisions that affect the operation of these welfare and charitable organisations. I indicate the Democrats' support for the motion which recognises the burden that an increased workers compensation premium will impose on these organisations. We urge the board to take the contents of this motion seriously and to take what steps it can to make adjustments, if that fits within its guidelines. We urge it to review the classification that it has imposed on the work force in these organisations. If that does not prove to be possible, I believe that paragaph 4 of the motion (which urges the Government to look at the effect of the levy on particular services) should be taken up by the Government. The Democrats support the motion and hope that relief will be provided to these organisations for their workers compensation premiums.

The Hon. DIANA LAIDLAW: I thank all members who have contributed to this debate, including the Minister and the Hon. Mr Gilfillan. I believed that this was an extremely important motion to bring before the Council. When speaking last week I indicated a range of organisations—small to large, welfare and charity based—in this State that have been deemed by WorkCover to be levied at a rate of 3.8 per cent for workers compensation. These organisations passionately believe that they will have to cut services or staff to pay the massive increase in their workers compensation.

Since moving that motion, I have received at least a dozen more letters about it and they highlight the plight of organisations that have been forced to pay the levy. If they do not do so, a fine of about $5 000 is provided under the Act,

and these organisations can ill afford such a penalty. They certainly must pay up, even though it is such a massive imposition on their services and there is considerable concern about the future quality of those community based services. In his contribution, the Minister acknowledged that there was an anomaly with respect to welfare and charitable organisations and noted that, if WorkCover did not move to correct or adjust that anomaly and classify these organisations at a lower percentage rate, an amount of $200 000 a year would be found by the Department for Community Welfare (I trust) to support these organisations—that amount being the difference between what the organisations budgeted this financial year for workers compensation and the percentage that they have since been told by WorkCover that they will have to pay.

I applaud that decision of the Minister. I am pleased that this motion has encouraged him to make that public commitment and he did give 'an unequivocal guarantee that either the levy will be adjusted or the Government will find the $200 000'. I will be interested in the Minister at some stage providing members with a breakdown of how that $200 000 was arrived at and which welfare and charitable organisations (or maybe all) will benefit from that funding if WorkCover does not adjust the levy. I suspect that there will be some fallout from such a decision because I am conscious that many other organisations, from community centres to child-care centres and sporting groups, plus some professional groups, are also very angry about what they perceive to be anomalies in their levy rate.

It will be interesting to see whether the Government is fighting as hard to have those adjusted, and if they are not adjusted if the Government will be making a commitment to support those organisations in the way the Minister has given a commitment to support welfare and charity organisations.

Finally, I make a comment in respect to the Hon. Mr Gilfillan's contribution. It is certainly the view of all Liberal members that WorkCover should be a fully funded operation. We support that very strongly and it is not our intention by this motion to suggest otherwise. We do, however, bring to the attention of this Council the plight that will be forced upon charitable and welfare organisations if this levy of 3.8 per cent is imposed upon them. If it is not readjusted the Minister has made a commitment that in this financial year $200 000 will be found. Whether that commitment will be guaranteed for further years is a matter that I am sure the organisations, and I, will keep an eye on. I thank members for their contributions and I welcome the fact that this motion will pass the Council.

Motion carried.

CRIMINAL LAW (SENTENCING) BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to consolidate and amend the law relating to sentencing and the enforcement of sentences; and to provide for other related matters. Read a first time.

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

The broad aims of this very important Bill are three-fold. It seeks to consolidate nearly all the existing statutory measures, dealing with the sentencing options available to the courts of this State, into one item of legislation. They are presently to be found scattered throughout the statute books in such diverse enactments as the Criminal Law Consolidation Act 1935, the Offenders Probation Act 1913, the Justices Act 1921, the Correctional Services Act 1982, the Criminal Law (Enforcement of Fines) Act 1987 and the Local and District Criminal Courts Act 1926. Remarks in the Federal context, by the Australian Law Reform Commission, have direct relevance to the situation in South Australia:

> There is a need to simplify and to consolidate into one ... Statute all general sentencing provisions ... At present [ready] access is possible only through the acquisition and use of a detailed knowledge of the criminal law, and following reference to an array of statutory and common law authorities scattered in many places. Such a restricted and cumbersome process does not accord with the principle that the law, and particularly the law relating to crime and punishment, should be clear, precise and widely available and known.
> (report No. 15: para. 397)

Secondly, it seeks to ensure, as far as practicable, that all available sentencing options can be utilised by all the courts of this State that exercise criminal jurisdiction with the exception of the Children's Court, which is not to be covered by the provisions of this Bill. Thirdly, the Bill seeks to introduce a number of reforms, with particular reference to the powers of the courts of the State in relation to imprisonment, fines and community service orders.

The Bill was prepared against a background of a number of developments, in recent years, at the theoretical and practical levels both in this and in other jurisdictions. Thus, a number of recommendations of the (1973) First Report of the Criminal Law and Penal Methods Reform Committee of South Australia ('the Mitchell Committee') are to be implemented. In 1980 the Australian Law Reform Commission published its Report No. 15 on 'Sentencing of Federal Offenders'. The Victorian Parliament enacted the Penalties and Sentences Acts of 1981 and 1985 which substantially rationalise the relevant law in that State; and in New Zealand similar legislative consolidation and rationalisation were undertaken in 1985.

Locally, a number of studies of the Research and Planning Unit of the Department of Correctional Services have highlighted concerns in the administration of sentencing options, particularly in relation to the use of imprisonment for persons who are in default of payment of fines. Those studies followed close on the heels of similar detailed research in Tasmania.

In addition, there is the overriding interest of this Government to ensure that the prisons of the State are reserved for real malefactors and the perpetrators of the more serious crimes. The Government and in particular the Department of Correctional Services is (and has been for a not inconsiderable period of time) confronted by the burgeoning problem of overcrowding in correctional institutions occasioned and exacerbated by the presence of offenders who ought not to have been there in the first instance. Therefore, many of the reformative measures in this Bill are directed specifically towards redressing such injustices and imbalances.

I now turn to a discussion of the import of each of the more substantial provisions of the Bill.

Imprisonment: Clause 10 finds its philosophical rationale in the ALRC's Report on Sentencing. This type of provision is designed to ensure that the sentencing court's discretion is in all cases clearly directed and articulated. It will ensure non-custodial sentencing options are given due and proper consideration with a view to utilising deinstitutionalised modes of punishment. It makes it abundantly clear that,

imprisonment is generally a punishment which is to be used only where, in all the circumstances of a particular case, it is the most suitable and appropriate form of punishment. This will be assured by clause 10 being read in conjunction with the rest of the Bill where there is provision for a wide range of non-custodial options.

Fines: Clause 12 requires courts to have regard to a defendant's means to pay when determining whether or not to impose a fine and, if it is imposed, the manner in which it is to be paid by the defendant. One writer has made several observations on the situation in New South Wales which are, on close reflection, particularly apposite to that which obtains in this State:

> The fine is the most frequently used sentencing alternative. Historically, fines have become the 20th century substitute for imprisonment. The attractions are that fines are:
> - flexible, given they can be adjusted according to both the severity of the offence and the financial circumstances of the offender;
> - economically attractive, given their low administrative costs and revenue producing functions;
> - considered to be no less 'penologically effective' than other sentencing opions; and
> - considered preferable to custodial sentences on both economic and humanitarian grounds.
>
> Problems are also apparent. A considerable number of defendants end up in prison in default of payment; there are administrative and financial costs associated with enforcement mechanisms; there are jurisdictional variations in enforcement practices and in the period of imprisonment to be served in default of payment; there are variations in the amounts of fine able to be imposed for different offences which appear to bear no uniform or principle relationship to the nature or the severity of the offences in question; and there are strong grounds for questioning the suitability of fines, or at least the predominant use of fines, for certain types of offenders at both ends of the financial spectrum (for example, social security offenders and corporate offenders).
>
> (see Zdenkowski Legal Service Bulletin (1985) Vol. 10 p. 102.)

In terms of elementary notions of justice, a $2 000 fine will have a considerably greater specific deterrent effect (and concomitant hardship) on an offender who earns $200 per week than it will on an offender who has committed the same offence and who earns $1 000 per week. And of course, in the former case the effect on the offender's dependants will be vastly greater especially if they are not earning any income additional to that of the offender.

In a leading text book by Thomas on the 'Principles of Sentencing' it is observed in relation to the question of an offender's means:

> 'It is considered incorrect to impose a fine which is beyond the offender's ability to pay, as this is likely to result either in his serving a sentence of imprisonment in default, or possibly committing further offences to raise the money.

The Bill before you does not empower the courts to reduce or increase a fine according to the defendant's means; the severity and circumstances of the offence must remain the principal yardstick. However, having determined what would be an appropriate fine, the courts must then look at the evidence placed before it (if any) as to the defendant's means and the probable effect a fine would have on his or her family. If it then appears that the defendant could not pay the fine or the family's welfare would be prejudiced by payment of the fine, the court must find an alternative sentence.

Community Service: Presently, community service orders are made only ancillary to a bond. This Bill empowers the courts to order a defendant to perform community service as a sentence in its own right as well as by way of a condition of a bond. Clause 17 also sets out the place of community service, as a sentence in its own right, where a special Act already prescribes various forms of punishment and the court thinks it is appropriate to sentence the defendant in some other way. It is the Government's intention that community service orders will become more generally available as a direct alternative to the powers of courts to impose fines where the latter simply cannot be discharged by virtue of the impecuniosity of offenders.

Victims: The Government's ongoing commitment to the improvement of the lot of victims of crime is accorded further recognition in this Bill. One of the matters to which a sentencing court is to have regard is the nature and extent of injury, loss or damage resulting from the offence (clause 9). Preference is to be given to compensation to victims, over the imposition of a fine, where a defendant simply cannot afford to pay both (clause 13). A court may also order, as a condition of a bond, that the defendant make reparation, restitution or compensation to a victim of the offence (clause 32). This is a new provision in the law of this State and is intended to focus the attention of the courts on the position of victims so that their plight is not ignored in the quest for deterrence or rehabilitation of the offender.

Variation of Manner of Payment of Moneys: Clauses 25, 44, 45 and 49 are wholly new provisions. They respectively enable a defendant who has been fined or ordered to pay compensation, costs (in a court of summary jurisdiction) or a sum of money pursuant to a bond to apply to the appropriate officer of the court for an order varying the time or manner of payment of the fine or other pecuniary sum. Where real hardship is being experienced, these provisions should ensure that the genuine defaulter, or potential defaulter, can obtain some degree of necessary relief.

Enforcement Procedures: Part IX of the Bill simplifies the enforcement procedures in relation to each of the heads of sentence open to the courts. However, the laws relating to contempt of court are not affected. Whether enforcement is in relation to a bond, a pecuniary sum (which includes fines, compensation orders, costs or the victim's levy) community service orders and other orders, the powers of the courts are clearly spelt out.

The power of courts to enforce orders by sale of a defendant's land is also extended. Presently, that power is only available in relation to indictable offences. It is now also to be available in respect of the most serious summary offences where the pecuniary sum, or the aggregate of a number of pecuniary sums exceeds $10 000. Hard labour is to be formally abolished as a concomitant of a sentence of imprisonment as it is now, for practical purposes, defunct. Work in prisons is wholly regulated by the provisions of, and regulations under, the Correctional Services Act 1982. Hard labour was abolished under British law in 1948.

Remaining Provisions: Nearly all the remaining provisions of this Bill either merely restate relevant areas of the common law or reproduce *verbatim* statutory provisions that are to be repealed by the accompanying Statutes Amendment and Repeal (Sentencing) Bill 1987.

Conclusions: In preparing this Bill the Government has been most concerned to ensure that a proper balance is struck between competing and often contradictory societal and individual interests and concerns. On the one hand there is the community's concern to see itself protected from those who insist on perpetrating serious crimes. There is the community's interest to ensure that certain anti-social behaviour continues to be the object of opprobrium and appropriate punishment.

There is also society's belief that many offenders are worthy of attempt to rehabilitate them not because a blind eye is turned to their criminal conduct, but because a clear sighted eye is not turned away from their essentially good character, antecedents, economic circumstances or whatever. That is why there should be an appropriate range of

non-custodial options such as fines, bonds, community service orders, and the like. There is also the victim's need for protection and informed participation in the processes that culminate in sentencing. That is why a priority is accorded to dispositions for restitution and compensation for loss or injury suffered.

These broad considerations can be mustered in favour of this Government's preferred approach to imprisonment generally and imprisonment, for default in payment of fines, in particular. Too often, cases arise under the present law which can give cause for disquiet. There is a belief, for example, that the law may only be incarcerating an offender for his or her poverty, his or her lack of means. There is a strong moral justification for many of the reforms sought by this Bill; as one commentator has noted:

> The sanctions available to the law are only effective to the extent that they operate within a set of shared definitions of appropriate and inappropriate behaviour in the specific community within which it operates. The law should not be merely a reflection of public opinion in a particular community for it then would fail to fulfil its essential conservative function of linking past values to present concerns. On the other hand, if the values imbedded in law are antithetical to present needs, the law loses its moral force. While one cannot expect the law to be identical to social mores at a given time, one can demand that it be able to coexist with them.
> (see 'Studies on Sentencing' Law Reform Commission of Canada (1974) p. 39.)

This Bill, by seeking to rationalise, reform, and unify the law on sentencing in this State should go a long way towards meeting both the moral and legal justifications for its introduction. In a recent article one British member of Parliament, in my view quite properly, pointed out the growing (if not imminent) crisis in the prisons of England and concluded:

> ... considerations other than the efficacy of imprisonment in the prevention of crime may reasonably be invoked in support of the reduction of the prison population. In these circumstances, it is relevant to look at the final cost to the taxpayer of imprisonment as opposed to alternative penalties. It is also reasonable to consider such matters as whether or not society's purposes would be better served by giving greater emphasis to reparation for injury to an individual or the community in its sentencing policy.
> (MacLennan: April 1986 Contemporary Review pp. 198-204.)

Moreover, research has clearly demonstrated that flexibility is the key to ensuring pecuniary sums are paid by that minority of offenders who currently do not pay them as a matter of course. Setting realistic fines and requiring them to be paid immediately, or in such a way as to emphasise their punitive function, are crucial to the fine's success. To back them with a range of flexible default options also ensures the use of fines is fair and just.

In conclusion, honourable members should note that this Bill has been the subject of exhaustive consideration and comment by the judiciary at all levels, the Law Society, the Legal Services Commission, prosecutors, the police, defence lawyers, and affected or interested Government departments.

The provisions of the Bill are as follows: clauses 1 and 2 are formal. Clause 3 provides essential definitions. The definition of 'court' excludes the Children's Court, as the Bill does not impinge upon the sentencing code provided for juvenile offenders by the Children's Protection and Young Offenders Act. The definition of 'pecuniary sum' includes a reference to a Criminal Injuries Compensation Fund levy, payment of which is to be enforced as if it were a fine. The definition of 'prescribed unit' relates to the enforcement of fines, etc. Where non-payment of a fine results in imprisonment, the fine will be 'worked off' at the rate of $50 per day. If the offender works the fine off by performing community service, the fine is reduced at the rate of $100 for each day (eight hours) of community service. The definition allows for the impact of inflation by contemplating that these amounts can be altered by regulation. Subclause (2) provides that a person is found guilty if he or she pleads guilty. Subclause (3) provides that a Criminal Injuries Compensation Fund levy is deemed to have been imposed by the court that found the person liable to pay it guilty of the offence in respect of which it is payable.

Clause 4 makes it clear that the sentencing powers given to a court by this Bill are additional to any other powers it may have under other Act or law, except where the Bill expressly provides otherwise (for example, as it does in relation to bonds). Clause 5 provides that powers of a court to punish a person for contempt of court are not affected by the Bill.

Part II contains provisions that deal with general sentencing powers. Clause 6 sets out the evidentiary burdens involved in determining sentence. The court is not bound by the rules of evidence. If any matter relevant to determining sentence is the subject of dispute between the prosecution and the defence, then the burden of proof on the prosecution is the criminal burden (beyond reasonable doubt) and the burden on the defence is the civil burden (balance of probabilities). This clause merely sets out the present common law.

Clause 7 empowers a court to order pre-sentence reports, both medical and social, and indicates that reports should not (but can, if appropriate) be ordered if it would cause unreasonable delay or if the sentence is a mandatory one. Reports can be oral or written. Pre-sentence reports prepared otherwise than by a medical practitioner must contain particulars of injury, etc., suffered by any victims of the crime in question. Both parties must be given copies of any written report and a person giving a report is liable to examination or cross-examination on its contents. Disputed facts must be substantiated on oath if the court is to have regard to them in fixing sentence.

Clause 8 requires a court to give its reasons for imposing a particular sentence if the defendant is present in court, and must also explain the effect of the sentence. Clause 9 sets out a comprehensive (but not exclusive) list of the matters that a court should have regard to in fixing sentence, but only if those matters are known to the court and are relevant. Punishment, deterrence, rehabilitation and protection of the community are all included. The court has also to look at such factors as the circumstances of the offence and the offender's behaviour since committing the offence.

Clause 10 gives a direction to courts that imprisonment is to be regarded as a punishment that is to be imposed only for 'serious' crimes, for persons who repeatedly offend or for persons who have violent tendencies. This stricture does not apply where imprisonment is for non-payment of fines, etc. Clause 11 provides that a court must have regard to the remission that a prisoner can earn, when fixing the length of a prison term or a non-parole period.

Clause 12 directs that a court must not require a defendant to pay a fine or other pecuniary sum if the court is aware that the defendant could not pay the fine, or if payment of the fine would cause undue financial hardship for his or her dependants. This stricture does not oblige a court to carry out an inquiry into a defendant's means.

Clause 13 provides that preference is to be given to making an order for compensation to victims of crime where the offender cannot afford to pay both a fine and compensation. Clause 14 provides for trifling offences—the court may dismiss a charge (without any conviction being recorded), or may record a conviction but impose no actual penalty. This enables a court to go below a minimum pen-

alty (except of course where the particular Act that creates the offence or sets out the penalty expressly forbids a court to do so).

Clause 15 provides a new power for a court to impose a fine without recording a conviction, thus providing for immediate punishment without the long-term prejudice (particularly in the job market) of having a conviction against one's name. This power may only be exercised where the offence was trifling and the court believes that the person is not likely to commit the offence again.

Clause 16 gives a court a general power to impose a penalty that is lower than a specified minimum, if the court thinks it appropriate in view of the offender's background, character, age, health or other extenuating circumstances. Clause 17 is the provision that gives a court the very necessary flexibility in sentencing an offender. Fines or community service may be substituted for imprisonment, and community service may be substituted for fines. Community service can be added to a fine, but not to imprisonment. These powers may be exercised notwithstanding the penalties provided by any particular Act, but of course imprisonment can only be imposed if the special Act so provides.

Clause 18 repeats the limitations on the sentencing powers of courts of summary jurisdiction that currently appear in the Justices Act. Only a magistrate can sentence a person to imprisonment for a term longer than seven days. A court of summary jurisdiction cannot impose a sentence for a minor indictable offence beyond the Division 5 limits.

Clause 19 provides that the mandatory sentence of life imprisonment for murder and treason is not affected, and that any special Act may expressly prohibit the exercise of any of the powers in the preceding clauses.

Part III contains special provisions for the sentence of imprisonment. Clause 20 sets out the obligation on a court to specify the date or time at which a sentence is to commence or, if back-dated, is to be deemed to have commenced. Where a court has a power to impose a sentence of imprisonment *ex parte*, the sentence will commence when the defendant is taken into custody for the offence or, if already subject to some other sentence of imprisonment, at such other time as the court directs. Similarly, the court must specify the commencement of non-parole periods. Where a sentence of imprisonment is back-dated, any non-parole period fixed in respect of that sentence is similarly back-dated.

Clause 21 gives all courts the power to make any number of sentences of imprisonment cumulative. Offenders sentenced to imprisonment for another offence committed while out on parole or while back in prison for breach of parole conditions will serve that sentence cumulatively upon the existing term or terms.

Clause 22 provides for the fixing and extending of non-parole periods for sentences of imprisonment that alone, or in aggregate, are for one year or more. This provision is identical to the non-parole provision currently appearing in the Correctional Services Act.

Part IV contains special provisions relating to fines. Clause 23 directs a court, when determining how a fine is to be paid, to look at the effect of the fine on the defendant's family and on his or her ability to pay compensation, if ordered. Fines may be paid in instalments if the court so orders. A court is not obliged to inquire into a defendant's means.

Clause 24 provides certain limits on the amount of a fine that may be imposed by a court where the special Act does not provide a fine as the penalty for the offence in question. If the fine is being substituted for a sentence of imprisonment expressed in years (that is, under the current system), then the Supreme Court can go up to a Division 1 fine, a District Court can only go up to a Division 3 fine, and a court of summary jurisdiction can only go up to a Divison 5 fine. Clause 25 provides that a defendant can apply for a variation in the time or manner in which a fine is to be paid. Such an application will be dealt with by the sheriff or clerks of court.

Part V deals with bonds. Clause 26 limits the power of courts to impose bonds—only a bond under this Part may be imposed in respect of offences. Clause 27 makes it clear that a bond can be substituted for any other sentence, notwithstanding that a minimum penalty is prescribed by the special Act. However, bonds are not available in the case of murder or treason or where a special Act expressly prohibits any mitigation of penalty.

Clause 28 is a repeat of the present Offenders Probation Act provision for the suspension of a sentence of imprisonment on condition of the defendant entering into a bond. Clause 29 provides that any court may refrain from imposing a penalty on a defendant (whether or not the offence carries a penalty of imprisonment) on condition that the defendant enter into a bond. If the defendant complies with the bond conditions throughout the term of the bond, no conviction will be recorded and no penalty will be imposed. A court may exercise the powers under this section wherever it considers it appropriate to do so. Clause 30 provides that a bond may be for any term not exceeding three years.

Clause 31 provides that a bond may contain a provision that requires the probationer to pay a sum of money if he or she breaches the bond at any time. Guarantors of this obligation may be required. A defendant may also be required to find persons willing to 'guarantee' his or her compliance with the conditions of the bond.

Clause 32 sets out all the conditions that may be included in a bond. The usual conditions relating to supervision, residence, community service, medical treatment and abstinence from drugs or alcohol are provided for. A new condition relating to the restoration of stolen property and the payment of compensation to victims is provided for. Any other condition that a court thinks appropriate for a particular defendant may also be included in a bond. Community service may only be required in the case of a bond entered into on suspension of a sentence of imprisonment.

Clause 33 obliges a court to furnish the Minister of Correctional Services with copies of bonds and any variation to or extension of a bond. Clause 34 provides for variation of bond conditions, either on the application of the Minister or of the probationer. Supervision may be waived by the Minister where the Minister is satisfied that it is no longer necessary and is counter-productive for the probationer. The court that imposed a bond may discharge the bond if the court is satisfied that it is no longer necessary for the probationer to be subject to a bond.

Part VI contains special provisions dealing with community service (whether ordered as a separate sentence or as a bond condition) and with supervision. Clause 35 requires a court to be satisfied that there is a placement for a defendant before community service is ordered. Clause 36 provides that a court may order that a defendant be subject to the supervision of a probation officer where the court has sentenced the defendant to community service.

Clause 37 sets out the conditions under which community service is to be performed. These provisions are essentially the same as those currently in the Offenders Probation Act (which of course is to be repealed). The maximum number of hours of community service is increased from 240 to 320. A person may be required to perform up to 24 hours per week, and attendance at certain approved educational

or recreational courses may qualify as performance of community service.

Clause 38 provides that a person subject to supervision by a probation officer must first report to the department within two working days and must obey the probation officer's directions. Clause 39 provides for the assignment of defendants to probation officers or community service officers. Clause 40 sets out the directions that a probation officer may give a probationer in the course of supervision, and the directions that a community service officer may give during the course of community service.

Clause 41 continues the Minister's present powers upon a probationer breaching a bond by failing to obey an officer's directions. The Minister (of Correctional Services) may increase the hours of community service to be performed by up to an extra 24 hours. This power may also be exercised where a defendant is serving an actual sentence of community service.

Part VII deals with orders for restitution and compensation. Clause 42 provides for the restitution of misappropriated property.

Clause 43 empowers the court to order payment of compensation to any person who suffers injury, loss or damage as a result of the defendant's offence. An order for compensation may be made in addition to, or instead of, any other sentence. This provision repeats the compensation provision recently inserted in the Criminal Law Consolidation Act.

Clause 44 provides for the variation of an order for compensation, but only in relation to the time and manner for payment.

Part VIII (clause 45) continues the present provision in the Justices Act empowering a court of summary jurisdiction to make orders for costs against defendants.

Part IX deals with enforcement of sentences. Clause 46 makes it clear that this Bill alone will provide the code for enforcement of sentences. Clause 47 deals with enforcement of bonds. This provision essentially follows the current enforcement provisions of the Offenders Probation Act. Superior courts may deal with breaches of bonds entered into before inferior courts.

Clause 48 sets out the orders that may be made upon a court being satisfied that a probationer has breached his or her bond. Again, this provision is virtually the same as the present provisions of the Offenders Probation Act. Clause 49 provides for variation of the time or manner in which any sum of money payable under a bond, or a guarantee ancillary to a bond, is to be paid.

Clause 50 provides that if a defendant defaults in paying an instalment, the whole pecuniary sum becomes due and payable. Clause 51 provides for the imprisonment of a person who defaults in paying a fine or other pecuniary sum. Imprisonment may be imposed by the court at the time of imposing the fine, or may be imposed subsequently by the appropriate court officer upon the defendant making default in payment. Imprisonment will be fixed according to a set scale of one day of imprisonment for each $50 of the amount outstanding, but cannot exceed six months in total.

Clause 52 provides for the taking of a defendant's land or goods in order to meet an outstanding fine or other pecuniary sum. The goods that can be taken are the goods that could be taken in bankruptcy proceedings. This type of enforcement is not to be used unless the major proportion of the amount outstanding would be covered by doing so. The power to sell land will only be exercisable for the purposes of recovering sums in excess of $10 000.

Clause 53 provides that court costs of issuing and executing warrants will be added to the sum in default. Clause 54 provides for the discharge of a warrant if the person executing the warrant is paid the outstanding amount of the fine, etc. Clause 55 repeats the present provision in the Justices Act that empowers the appropriate court officer to postpone or suspend warrants where appropriate.

Clause 56 provides that enforcement orders may be made in the absence of the person in default in certain circumstances. If this is done, the order must be served on the person, who is then given 10 days in which to make good the default. Clause 57 repeats the provisions of the recently enacted Criminal Law (Enforcement of Fines) Act, by providing that a person may work off a fine or other pecuniary sum by performing community service. This may be done if the appropriate court officer is satisfied that payment of a fine or other sum would cause severe hardship. This power may only be exercised where the sum involved does not exceed $2 000.

Clause 58 gives a court the power to remit a fine or other sum where the court is finally satisfied that enforcement is not possible or appropriate. Clause 59 provides that default imprisonment reduces the outstanding amount of the fine by $50 for each day served in prison. The prisoner will be released if the outstanding amount is paid at any time.

Clause 60 makes it clear that 'working off' a compensation order by imprisonment or community service does not diminish the person's civil liability for the injury, loss or damage in question. Clause 61 deals with the enforcement by appropriate officers of sentences of community service, or by the court of other orders that do not involve the payment of money. Imprisonment is the only form of enforcement left. A set scale of one day of imprisonment is provided for each eight hours of community service unperformed. No sentence of imprisonment under this section may exceed six months.

Part X contains miscellaneous provisions. Clause 62 provides that there is no right of appeal against orders of appropriate officers unless there is express provision to the contrary. Clause 63 abolishes the power of a court to order that imprisonment be accompanied by hard labour. This does not affect the power to require prisoners to perform work. Clause 64 is an evidentiary provision relating to proving default in the payment of a pecuniary sum or other court order. Clause 65 is the standard regulation-making power.

The schedule contains a transitional provision that makes it clear that the Bill applies to a person whether found guilty of an offence before or after the commencement of the Act, thus enabling the wide range of sentencing powers provided by this Bill to apply to as many cases as possible. Default imprisonment ordered prior to the new Act coming into operation is unaffected. Clause 2 repeats a transitional provision relating to the fixing of non-parole periods in respect of 'old parole system' prisoners that is currently in the Correctional Services Act.

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

STATUTES AMENDMENT AND REPEAL (SENTENCING) BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Acts Interpretation Act 1915, the Corporal Punishment Abolition Act 1971, the Correctional Services Act 1982, the Criminal

Law Consolidation Act 1935, the Justices Act 1921, and the Local and District Criminal Courts Act 1926 to repeal the Criminal Law (Enforcement of Fines) Act 1987, and the Offenders Probation Act 1913; and for other purposes. Read a first time.

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

This Bill, by and large, seeks to amend and repeal a number of Statutes and provisions in Statutes in consequence of the enactment of the Criminal Law (Sentencing) Bill 1987.

General Amendments: The amendments to the Correctional Services Act are designed to pick up existing machinery provisions in the Offenders Probation Act. Amendments to the Justices Act are largely consequential upon the provisions in the Criminal Law (Sentencing) Bill regarding powers of courts with respect to imprisonment and the enforcement of fines.

The Offenders Probation Act and the Criminal Law (Enforcement of Fines) Act are repealed, their provisions being reproduced in the other Bill. The Criminal Law Consolidation Act is amended largely to repeal provisions dealing, also, with imprisonment and fines; more, the provisions regarding restitution and compensation are struck out as they are reproduced in the other Bill. The Abolition of Corporal Punishment Act is consequentially amended.

Specific Amendments: The amendments to the Acts Interpretation Act are significant. Clause 4 enacts a standard scale of penalties (i.e. for imprisonment and fines) that will in future be utilised in the statute law of this State. Its genesis, or at least a modified form of it, is to be found in the Fourth Report ('The Substantive Criminal Law') of the Mitchell Committee (pp. 387-393). It concluded that:

> ... it does not seem to us to be necessary or efficient for every statutory offence to be the subject of a separately named maximum penalty. We therefore recommend a simplified approach based on penalty divisions. The use of a system of penalty divisions in our view incorporates no disadvantages compared with the traditional approach of naming penalties for each offence, and has the advantage of providing a means of varying monetary penalties to counter effects of inflation. Such a system also provides for ready comparison and adjustment of the maximum penalties attaching to particular offences.

It further observed:

> This penalty structure seems to us to be readily comprehensible to the average person and to provide a means of adjusting the monetary value of fines to take into account the effects of inflation. This would most conveniently be achieved by doubling the maximum fines periodically, and if inflation continues at a rate of approximately 15 per cent per year, the doubling would be necessary every five years. Clearly it would not be convenient to make adjustment annually by increasing maximum fines simply by adding to them the annual inflation rate. In our view, overall adjustment should not be made more frequently than every two or three years so that the public can be given adequate warning of the intended increases.

Quite clearly, life imprisonment will remain in a category of its own and be reserved only for the most serious offences. The Parliamentary Counsel will, in future, make relevant and appropriate amendments to the penalty provisions of each existing Act of Parliament as and when required to prepare any Bill to amend it. The new standard scales will also be incorporated in new legislation as and when it is being prepared.

Sections 77 and 77a of the Criminal Law Consolidation Act are to be repealed. They deal, respectively, with indeterminate sentences for offenders who suffer from venereal disease and offenders who are incapable of controlling sexual instincts. Moreover, the provisions of that Act dealing with habitual criminals are to be repealed. The repeal of such provisions is consistent with the Mitchell Committee's 1973 recommendation (First Report: 'Sentencing and Corrections' pp. 12-13) that, except in the case of life imprisonment, indeterminate sentences should not be used at all. As the Committee observed:

> ... the indeterminate sentence has three serious defects. The first is that if an offender is to be detained until he is believed to have attained some imprecise state of cure from his propensity to criminal behaviour, he is likely to serve a much longer sentence than would otherwise be thought just or reasonable because those charged with his supervision will tend to err on the side of caution. Secondly, a situation in which a person may be detained indefinitely by others has obvious potential for abuse. Thirdly, the effects on prisoners of an indeterminate sentence are known to be deleterious. The absence of any definite date for release induces a hopelessness and resentment which is counterproductive in correctional terms because it diminishes the offender's capacity to become fit for release.

It should be noted that the Child Sexual Abuse Task Force (1986) also recommended the repeal of S. 77a. The habitual criminal provisions of the Local and District Criminal Courts Act are likewise repealed. The Mitchell Committee had also commented specifically on the habitual criminal provisions of the Criminal Law Consolidation Act as follows:

> For all the more serious offences the courts already have wide latitude in the length of sentence imposed on the particular offender. A past record is a fact routinely taken into account in the assessment of sentence at the judicial stage. In our opinion it is unnecessary and may be harmful to make yet further allowance for the persistent recidivist, especially in the present draconic form, at the legislative stage. It may be harmful because its use by the courts is likely to be erratic. The reason for this is that a statute which provides for an increase of sentence on the basis of past record rather than present wrongdoing is a serious infringement of the double jeopardy principle ... and is therefore likely to be viewed with distaste by the judiciary and seldom resorted to. In such a situation the offender who finds himself subjected to an increased, and necessarily long, sentence on this basis may well be resentful and uncooperative.

Finally, an amendment to the Justices Act is designed to ensure that, where a person appeals to the Supreme Court against conviction and a sentence of imprisonment and is allowed out on bail pending the determination of the appeal, time does not continue to run while the person is at large. In this respect the amendment is in terms that will have an identical effect to the provisions of s. 364 (3) of the Criminal Law Consolidation Act, which deal with the situation in so far as it applies in the Supreme Court.

I commend this Bill to Honourable Members. The provisions of the Bill are as follows: Clause 1 is formal. Clause 2 provides for commencement on proclamation. Clause 3 is formal. Clause 4 inserts a new provision in the Acts Interpretation Act setting out a scale of penalties that will apply in the future in new Acts or as old Acts are amended, except where an extraordinary penalty is required for some special reason. The highest division, division 1, is a penalty of 15 years imprisonment and a fine of $60 000. The lowest, division 12, is a fine of $50. The definition does not require that imprisonment of a particular division must necessarily be accompanied by a fine of the same division. For example, a regulatory offence may well require a fine of a high division but imprisonment (if any) of a low division. The amounts are of course maxima, unless a contrary intention is indicated in a special Act.

Clause 5 repeals a section of the Acts Interpretation Act that will be redundant on the abolition of hard labour. Clause 6 is a consequential amendment. Clause 7 amends the Abolition of Corporal Punishment Act by inserting a reference to the use of the pillory, in consequence of the

repeal of section 309 of the Criminal Law Consolidation Act.

The next eight clauses relate to the Correctional Services Act 1982. Clause 8 is formal. Clause 9 provides that the Minister's and the Permanent Head's power to delegate relates to functions performed under other Acts as well as the Correctional Services Act. Both have various functions to perform under the Criminal Law (Sentencing) Act. Clause 10 inserts two new divisions, dealing firstly with the setting up of the community service advisory committee and regional community service committees, and secondly, with the establishment of probation hostels. These provisions are essentially the same as the corresponding provisions in the Offenders Probation Act which is to be repealed.

Clause 11 repeals the section dealing with the commencement of sentences of imprisonment—this now appears in the Sentencing Act. Clauses 12 and 13 are consequential amendments. Clause 14 repeals the provisions dealing with the fixing of non-parole periods—these now appear in the Sentencing Act. Clause 15 inserts an immunity provision currently contained in the Offenders Probation Act.

The next 13 clauses relate to the Criminal Law Consolidation Act. Clause 16 is formal. Clause 17 repeals the sections dealing with indeterminate sentences for convicted defendants with veneral disease or found to be incapable of controlling sexual instincts. Clauses 18 and 19 repeal provisions dealing with restitution of property. Clause 20 repeals a compensation provision that is now covered by the Sentencing Bill. Clause 21 repeals provisions dealing with costs and compensation that are also covered by the Sentencing Bill.

Clauses 22 and 23 repeal provisions dealing with the enforcement of fines and recognizances and other general sentencing powers. These matters are all dealt with in the Sentencing Bill. Clauses 24 and 25 repeal provisions dealing with the police supervision of repeated offenders. These powers are no longer used or required. Clause 26 is a consequential amendment. Clause 27 provides that the Commissioner of Police, as well as an inspector, has the power to issue search warrants for certain premises believed to be housing stolen goods. Clause 28 repeals the provisions dealing with habitual criminals.

The next 28 clauses amend the Justices Act. The majority of these clauses delete provisions dealing with the enforcement of fines and other sentencing powers, all matters now covered by the Sentencing Bill, and for this reason do not require detailed explanation. Clause 54 effects a substantive amendment. It provided that a defendant who is out on bail pending an appeal against conviction or sentence is not to be held to be serving his or her sentence of imprisonment during that period of bail.

Clause 57 repeals the section of the Local and District Criminal Courts Act that deals with habitual criminals. Clause 58 repeals the Criminal Law (Enforcement of Fines) Act 1987. Clause 59 repeals the Offenders Probation Act 1913. Clause 60 provides several necessary transitional provisions. Recognizances entered into under any of the repealed or amended Acts are to be dealt with as if they were bonds entered into under the Criminal Law (Sentencing) Act. The repeal of the provisions that provide for indeterminate sentences will not affect the validity of any such sentence currently being served, or to be served, by a prisoner.

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

FRUSTRATED CONTRACTS BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to reform the law relating to frustrated contracts. Read a first time.

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

This relatively short Bill seeks to implement important law reform measures in relation to contracts that have been frustrated by a supervening event for which none of the parties is legally responsible. The first legislation on this topic was the English Law Reform (Frustrated Contracts) Act 1943 which provided the model for subsequent statutes enacted in Victoria in 1959, New Zealand in 1944 and Canada in 1948. The topic was also the subject of two Reports (the 37th and 71st) of the Law Reform Committee of South Australia.

In other jurisdictions (e.g. British Columbia in 1974 and New South Wales in 1978) there have been new legislative initiatives representing departures from the English model. The law stems from the theory of absolute obligation whereby a person is absolutely bound to perform any obligation which he has undertaken. It was explained by an English court in the leading case of *Paradine v. Jane* (1647) Aleyn 26 at 27:

> When the party by his own contract creates a duty or charge upon himself, he is bound to make it good, if he may, notwithstanding any accident by inevitable necessity because he might have provided against it by his contract. And therefore if the lessee covenant to repair a house, though it be burnt by lightning, or thrown down by enemies, yet he ought to repair it.

This attitude developed from the hesitancy with which the judiciary approached any plea for interference by them in circumstances where parties have committed to writing the obligations and duties each has chosen to undertake. *Taylor v. Caldwell* (1863) 122 E.R. 309 served to mitigate the harshness of the rule as to absolute contracts by launching the doctrine of frustration. It was held that if the contract is brought to a halt by some unavoidable, extraneous cause, for which neither party is responsible, the contract terminates forthwith and the parties are discharged from further performance of their obligations. The court based the doctrine on an implied condition in the contract.

The most renowned instances of the application of this doctrine were contained in the so-called Coronation cases arising out of the illness of King Edward VII (see for example: Krell v. Henry (1903) 2 K.B. 740). However, in *Chandler v. Webster* [1904] 1 K.B. 493 the rule that 'the loss lies where it falls' was established and the apparent injustice of this rule has resulted in the need for legislation defining the rights of the parties. Briefly, the facts were that the defendant agreed to let to the plaintiff a room for £14.15s.0d. for the purpose of viewing the Coronation procession. The plaintiff paid a deposit of £100. Owing to the sudden illness of the King, the procession was cancelled and the plaintiff claimed the return of his deposit from the defendant. The Court of Appeal held that the plaintiff was not entitled to recover this deposit and the defendant was entitled to payment of the balance as his right to the payment had accrued prior to the cancellation of the procession.

In summary, the doctrine of frustration is applicable where a number of requirements are met:

(1) a supervening event, the occurrence of which is not expressly provided for in the contract;

(2) the supervening event must not have been caused by the fault of either party to the contract;
(3) the supervening event must have resulted in a radical alteration in the obligations of the parties; and
(4) there must be more than just hardship, inconvenience, or material loss to the party seeking relief.

In general terms, the consequences resulting from the application are:

- the contract is discharged from the moment the frustrating event occurs;
- the parties are released from performing any obligations that accrued after the time of discharge; but any obligations that accrued prior to the frustrating event remain in force. Therefore the contract is valid and binding for the period before the frustration;
- where money is due under a contract but unpaid at the time of discharge by frustration and there has been a total failure of consideration for that payment, the failure of consideration is a defence to a demand for payment.
- under the principle of unjust enrichment, where a party has paid money to another party for the performance of an obligation under a contract but no part of the performance has taken place and the contract is discharged, the party is entitled to reimbursement of his money as the consideration for his payment has wholly failed.

The common law itself is inadequate to deal with the problems arising because:

- there is no redress or reimbursement where there has been only a partial failure of consideration;
- there is no redress or reimbursement for a party who has incurred costs for the purpose of performing the contract; and
- contractual rights accrued before frustration remain enforceable.

As already mentioned, the result is 'the loss lies where it falls'. The doctrine can produce grave injustice to a party who has either paid money or done work for which he has received no answering benefit or recompense. Such a solution is unthinkable in civil law systems where the doctrine of unjust enrichment ensures a degree of justice is done.

It is, I think, helpful to Honourable Members to give some more examples of frustration. In its 25th Report the New South Wales Law Reform Commission has this to say:

> If the main object of a contract, as distinct from some subsidiary provision, cannot be carried out because it becomes illegal further to perform the contract at all, or to perform some promise essential to the main purpose of the contract, the contract is frustrated. Again, if the main purpose of the contract, as distinct from some subsidiary purpose, is defeated because the subject matter of the contract is destroyed or so seriously damaged as to be fundamentally different, the contract is frustrated. Again, where a contract is a personal contract, such as a contract of service, frustration occurs if the servant dies or becomes permanently incapacitated. Again, where the contract makes a particular method of performance fundamental to its objects, the contract is frustrated if that method becomes impossible. Again, a contract is frustrated where, beyond the control of the parties, an event occurs which would indefinitely delay performance, so that the fulfilment of the contract would involve the parties in something commercially quite different from what the contract contemplated. As Lord Wright put it: 'If there is a reasonable probability from the nature of the interruption that it will be of indefinite duration, they ought to be free to turn their assets, their plant and equipment and their business operations into activities which are open to them, and to be free from commitments which are struck with sterility for an uncertain future period.'

The elements of the scheme which this Bill seeks to effect are, in summary:

(a) provision for repayment of any payment made before frustration;
(b) provision for payment for any benefit which a party has obtained or received from what another party has done under the contract; and
(c) provision for reimbursement of costs which a party has incurred for the purpose of performing the contract.

Clause 7 of the Bill is the hub of the scheme. It provides for a process of 'global' accounting between the parties, in consequence of their contract being frustrated, by which none is to be unfairly advantaged or disadvantaged. The approach of clause 7 (2) is integrated, that is, it produces a return for each party after a single calculation, rather than the many needed in relation to each type of performance or each party. It is in this respect that the Bill departs from the British, British Columbian and New South Wales precedents. The overall effect of the Bill will be to achieve restitution of benefits received before the frustrating event plus an apportionment of new losses suffered. In his commentary on the draft Bill, Mr. Stewart, Lecturer in Contract Law, University of Adelaide observed:

> ... the Bill is to be applauded as a fresh and valuable attempt to deal with an appallingly difficult subject ... the Bill compares very favourably with its U.K., British Columbia and N.S.W. counterparts. The relative failure of those enactments to provide an intelligible, coherent and comprehensive scheme of adjustment fully justifies the adoption of a new approach.

Finally, it should be noted that the effect of clause 4 (1) *(b)* will be to ensure the parties to a contract are free to determine between or among themselves what precisely will be the consequences, for them, of frustration. Moreover, the Act will bind the Crown.

I commend this Bill to Honourable Members. The provisions of the Bill are as follows: Clause 1 is formal. Clause 2 provides the commencement of the measure. Clause 3 sets out the various definitions required for the purposes of this Bill. Significant definitions include 'contractual benefit', 'contractual performance' and 'contractual return'. The Bill also provides for a determination of the value of contractual performance.

Clause 4 provides for the application of the Bill. The Bill will apply to a frustrated contract even if there is, in consequence of the frustration, a total failure of consideration, but will also apply subject to any provision made in the contract itself as to the consequences of frustration. The new Act will not apply to a contract made before the commencement of the Act, or certain contracts that are unsuitable to the application of the rules prescribed by this measure.

Clause 5 provides for the severance of parts of a contract that have been frustrated. Clause 6 provides that the frustration of a contract discharges the parties from all contractual obligations. However, the frustration does not affect an obligation intended to survive frustration of a right of action for damages that arose before frustration.

Clause 7 sets out the rules of adjustment that are to apply on the frustration of a contract. The initial principle is that an adjustment must occur between the parties so that no party is unfairly advantaged or disadvantaged in consequence of the frustration. For the purposes of that adjustment, the value of contractual benefits received by each party must be calculated and aggregated and then the value of contractual performance must be calculated and aggregated. The aggregate of the values of contractual performance must then be deducted from the aggregate of the values of contractual benefit, and the remainder notionally divided equally between the parties.

An adjustment must then be made so that there is an equalisation of contractual return between the parties. In addition, subclause (4) provides that if, in the circumstances of a particular case, the court considers that there is a more

equitable basis for making an adjustment, the court may proceed to make the adjustment on that basis. The court can also make various orders consequential on a determination under this clause.

Clause 8 provides that an action for an adjustment under this Act may be commenced before a court as if it were an action under the contract that arose at the time of the frustration of the contract.

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

SEXUAL REASSIGNMENT BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to allow the reassignment of sexual identity to regulate the performance of reassignment procedures and for other purposes. Read a first time.

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

This Bill provides for the regulation of sexual reassignment procedures and for the legal recognition of the reassignment of sexual identity. The need for legislative reform arises because the present law does not recognise the reassigned sexual identity. The issue of legal recognition of transsexuals was first raised in 1979 at the Standing Committee of Attorney's-General. The Standing Committee spent some time examining the need for reform with regard to post operative transsexuals. However, not all the States and the Commonwealth could agree on what, if anything, should be done.

As a result, the Standing Committee is no longer looking at the matter. However, the State Government has decided to pursue the matter in order to regulate the performance of reassignment procedures and so that the legal status of post operative transsexuals can be recognised in this State. A number of foreign jurisdictions including some American States, Canadian Provinces, Germany, Sweden, and Switzerland have implemented schemes providing for the recognition of a change of sex in certain circumstances.

Reassignment surgery has been carried out for some time in Adelaide. Yet, a transsexual who has undergone the reassignment procedure cannot be recognised under their reassigned sex. Official documents, such as birth certificates, cannot be amended to reflect the reassignment.

The Bill addresses two different aspects of reassignment namely:

(i) infant reassignment—where a child is born with, or develops, ambiguous genitalia and a decision is made to alter the child's physical appearance and to raise the child as a person of the other sex; and

(ii) reassignment of transsexuals, that is, persons suffering from primary gender dysphoria syndrome. In such a case, a person suffers from a condition by virtue of which they believe that notwithstanding having sexual characteristics of one sex, they are of the opposite sex and desire to alter their physical appearance so as to accord with the belief.

The Bill provides a mechanism for approving hospitals and persons involved in carrying out reassignment procedures. It also provides for the legal recognition of the reassigned sex of a person who has undergone infant or transsexual reassignment.

The Bill provides for the establishment of the Sexual Reassignment Board. The Board will be chaired by a lawyer and constituted of representatives of nominated medical specialist groups. The Board is separated into two Divisions and its constitution would differ depending on whether it is dealing with an infant reassignment or a transsexual reassignment.

The functions of the Board include: to grant approvals to legally qualified medical practitioners to carry out procedures under the Act; to maintain a general oversight over reassignment procedures and to issue certificates recognising the reassignment of sex in appropriate cases.

A person who carries out a reassignment procedure must be a legally qualified medical practitioner approved by the Board. The Board can impose conditions on the approval, such as the type of procedure which can be undertaken. A reassignment procedure can only be performed in a hospital approved by the Health Commission. The Commission cannot approve a hospital unless it is a suitable place for carrying out reassignment procedures and it has appropriate staff and facilities to ensure proper patient counselling and care.

At the present time, there is no regulation of reassignment procedures. There is no requirement that proper counselling be provided to the person undergoing the operation. In the case of infants, parents can be faced with the very traumatic decision of consenting to the reassignment of the sex of their infant child with no guarantee of adequate support or counselling. The Bill seeks to build these safeguards into the approval and eligibility provisions.

Clause 14 of the Bill sets out the eligibility criteria for a transsexual wishing to undergo a reassignment procedure. The Bill provides that the person must:

- be suffering from primary gender dysphoria syndrome;
- have attained the age of 23 years;
- be unmarried; and
- have received counselling and lived in accordance with the lifestyle of the reassigned sex for two years before undergoing the procedure.

The person must also consent to the procedure in writing. These criteria are embodied in the legislation to ensure that a person's decision to be reassigned is made after all relevant factors have been considered. The requirement for counselling is crucial to ensure that the full effects of the decision are known. The requirement for the person to have attained the age of 23 years is to ensure that adequate time to make an informed decision and receive counselling is available after the period of adolescence. The reason being that a number of gender disorders are fuelled by problems of adolescence and it can be difficult to make a diagnosis on primary gender dysphoria syndrome until about the age of 21 years.

The two year requirement regarding adopting the lifestyle of the reassigned sex has been included in order that a person, before undergoing procedure, has lived in the changed role for a significant period and has had adequate opportunity to experience any negative aspects of the new sexual identity.

The Bill also provides that a person undergoing a reassignment procedure or applying for a recognition should be unmarried. This will ensure that two persons designated as the same sex are not married.

The Bill provides that, in the case of infant reassignment, the consent of the board is required before a child can undergo a reassignment procedure. This requirement offers protection to the child so that the decision on reassignment is taken objectively after the full consideration of appropriate matters and with the welfare of the child being the paramount consideration. The provision also provides some support to parents who are faced with the difficult decision of whether or not to consent to the sexual reassignment of their child. The Bill provides that where the child is under five years the board should seek to give a decision on consent within thirty days. This is so that the parents and child are not faced with a lengthy period where the sex that the child will be raised as, is unknown.

The Bill also provides for the issue of recognition certificates by the board. The board can issue certificates to infants or transsexuals who have undergone reassignment whether or not the procedure was performed before or after the passage of the legislation. The board can issue certificates where the reassignment procedure was performed in this State or where the birth of the person is registered in this State.

Once a recognition certificate has been obtained it can be lodged with the Registrar of Births, Deaths and Marriages in order that a new birth certificate can be obtained. The revised birth certificate would record the sex of the person as the sex to which he or she had been reassigned.

The recognition certificate would be conclusive evidence for South Australian purposes that the person has undergone the reassignment procedure and is of the sex to which the person has been reassigned. This is a crucial provision as it gives legal recognition to the reassigned sex of the infant or transsexual.

The Bill provides for appeals to the Supreme Court against decisions of the board. It also sets out offences relating to breaches of confidentiality and the provision of false or misleading statements regarding an application to the Board.

The Bill before members is an important step in adopting a more realistic and sensitive approach to persons who undergo sexual reassignment procedures. It will not necessarily solve all the problems faced by transsexuals. For example, the issue of marriage of transsexuals will still be a matter for the Commonwealth to resolve. However, it will give them a legal recognition in this State that to this time has been lacking.

I commend this Bill to Honourable Members. The provisions of the Bill are as follows: Clause 1 is formal. Clause 2 provides for the commencement of the measure. Clause 3 sets out the various definitions required for the purposes of the legislation. A 'reassignment procedure' is a medical or surgical procedure (or a combination of both) to alter the genital and other sexual characteristics of a person to the sex opposite to the sex identified in his or her birth certificate. For the purposes of the Bill, a person is suffering from primary gender dysphoria syndrome if the person believes that his or her sexual characteristics do not accord with his or her true sex and desires to have his or her sexual characteristics altered so as to accord with that belief.

Clause 4 provides that the Act binds the Crown. Clause 5 provides for the establishment of the South Australian Sexual Reassignment Board. The board will be made up of two divisions, one with a special interest in adult reassignment and one with a special interest in child reassignment. Clause 6 sets out the terms of appointment of members of the Board. Clause 7 provides for the payment of fees, allowances and expenses to members of the board. Clause 8 sets out the procedures to be observed at meetings of the board. Clause 9 provides for disclosure of interests in matters before the board.

Clause 10 sets out the functions of the board. These will include functions to maintain a general oversight of reassignment procedures carried out in the State, grant approvals under the Act, issue certificates recognising reassignments of sex and advise the Minister on issues relating to sexual reassignment. Clause 11 relates to staff and facilities of the board.

Clause 12 provides for the preparation of an annual report. Clause 13 regulates the persons who may carry out reassignment procedures. It is proposed that a person must not carry out a reassignment procedure unless the procedure is carried out at a hospital approved by the Health Commission and the person is a legally qualified medical practitioner approved by the board to carry out procedures of that kind. A hospital will be required to provide staff and facilities to assist and provide counselling services to patients undergoing reassignment procedures.

Clause 14 provides that a person, not being a child, must not undergo a reassignment procedure unless the person is suffering from primary gender dysphoria syndrome, has attained the age of 23 years and is not married, has received extensive counselling in relation to the procedures, has adopted the lifestyle and characteristics of his or her opposite sex and has consented in writing to the procedure.

Clause 15 provides that a child is not eligible to undergo a reassignment procedure unless the board has specifically consented to that course of action. The paramount consideration will be the welfare of the child and the board may require the child examined before it gives its consent. The board must attempt to process within 30 days an application for consent that relates to a child of or under the age of five years. Clause 16 will allow the board to issue a recognition certificate in appropriate cases.

Clause 17 provides that a recognition certificate is conclusive evidence of reassignment of sex. An equivalent certificate issued under a corresponding law will have the same effect. Clause 18 provides for the registration of recognition certificates with the Principal Registrar of Births, Deaths and Marriages and the issue of new birth certificates. Clause 19 will allow the Supreme Court to cancel a recognition certificate if it appears that the certificate was obtained by fraud or other improper means.

Clause 20 sets out various rights of appeal to the Supreme Court. Clause 21 protects the confidentiality of information obtained during the administration of the Act. Clause 22 creates an offence in relation to the provision of false or misleading information to the board. Clause 23 relates to the offences under the Act. Clause 24 will assist in determining age when there is no certain evidence establishing age. Clause 25 is a regulation making provision.

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

OPTICIANS ACT AMENDMENT BILL (No. 2)

The Hon. BARBARA WIESE (Minister of Tourism): I move:

That the time for bringing up the report of the select committee be extended to Tuesday 16 February 1988.

Motion carried.

WORKERS REHABILITATION AND COMPENSATION ACT AMENDMENT BILL

Second reading.

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

That this Bill be now read a second time.

This Bill concerns a technical amendment to overcome an anomaly which arose when the Workers Rehabilitation Act was originally drafted. The issue was raised in the Lower House by the member for Flinders (Mr Peter Blacker, M.P.), in a private members Bill. The Government was pleased to support the proposal contained in that Bill as it was in line with an amendment which the Government had already had drafted for inclusion in an omnibus Bill covering other amendments to be made to the Act which the Government intends to introduce in the next session of Parliament.

This Bill seeks to make clear that the exclusion from the coverage of the Act of members of fishing boat crews extends to those crews who either share in the profits or in the gross receipts of working a fishing boat. The Act as it currently stands only excludes fishing crews who are remunerated by a share in the profits. Under the previous Act fishing crews who were remunerated by a share of the gross earnings were also excluded.

In carrying over the old provision to exclude fishing boat crews into the new Act the reference to the exclusion of crews sharing in the gross receipts was omitted. This Bill seeks to restore the previous *status quo* in this matter, to make it clear that members of fishing boat crews are excluded from the coverage of the Act where they are remunerated by either a share in the profits or by a share in the gross receipts of working a fishing boat.

Clause 1 is formal.

Clause 2 provides that the measure will be deemed to have come into operation at 4 p.m. on 30 September 1987.

Clause 3 will amend section 3 (3) of the principal Act so that a member of the crew of a fishing boat who is remunerated from the gross receipts obtained by working the boat is not within the concept of 'worker' under the Act.

The Hon. PETER DUNN secured the adjournment of the debate.

ROAD TRAFFIC ACT AMENDMENT BILL (No. 3)

Adjourned debate on second reading.

(Continued from 12 November. Page 1871.)

The Hon. K.T. GRIFFIN: My colleague, the Hon. Peter Dunn, has already spoken on this Bill. When it was introduced there was thought to be a problem about the scope of the power of inspectors to enter premises and exercise the powers of inspection granted by the principle Act with respect to hire vehicles. The Opposition was concerned that the power given to police and inspectors would have enabled them to enter premises, other than business premises, wherever there was a vehicle which was on hire. Subsequent checking of the principle Act indicates that the powers to inspect a vehicle may be exercised only in those circumstances where the vehicle for hire is on business premises and those premises are open for business. So there is no unlimited power of inspection; it is a matter of limiting that power and, in those circumstances, I am now reasonably satisfied that extending section 160 *(a)* to include vehicles for hire in addition to vehicles for sale will not create any undue hardship in the community.

There was also a concern that by referring to vehicles for hire it would in some way conflict with the provisions of the Metropolitan Taxi Cab Act which deals with hire vehicles, as such. However, I do not think that that is a particularly significant problem, if it is a problem at all. When the provision passes it will deal with the power to inspect not only vehicles for sale but also vehicles for hire (which I presume includes rental vehicles) on business premises during the hours when those premises are open for business. In those circumstances, the reservation that I had when the Bill was first introduced into this place has now largely dissipated. Accordingly, I support the second reading.

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

WORKERS REHABILITATION AND COMPENSATION ACT AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 2375.)

The Hon. PETER DUNN: The Opposition supports this short Bill. As explained in the second reading explanation, the Bill has been introduced to correct an anomaly in the tuna fishing industry where there has been confusion after legal advice was sought about whether fishing crews who share in the profits of the fishing boats were covered by workers compensation. Crews are signed on and share the profits, but they do not share the entire profit. The boat owner is responsible for the normal maintenance of the engine and the boat but the crew shares the running costs of bait, fuel, and general wear and tear that occurs on each trip.

There was confusion about whether those people were covered, whether the captains were covered, and whether the crews themselves had to be covered by the owner of the boat. This Bill retrospectively resolves that problem, and we support it. It is important that this matter be resolved quickly because, after talking to two boat captains two days ago, I was advised that they were ready to start the new tuna season, and so crews and captains will need to be covered. For those reasons we support the Bill.

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

The Hon. R.J. RITSON: Mr Acting President, I draw your attention to the state of the Council.

A quorum having been formed:

PAROLE ORDERS (TRANSFER) ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 24 November. Page 1972.)

The Hon. DIANA LAIDLAW: The Liberal Party supports this very brief piece of legislation. The Bill seeks to simplify and facilitate the transfer of parolees, and that, after all, is the basic thrust of the Act. It will allow parolees to return to the States in which they live, and provide, as I understand it, considerable cost advantages. It is planned that after an offender has served his or her term of imprisonment in another State, if that person is a South Australian, for instance, and wishes to return to South Australia on parole, he or she would be able to do so. In the past there have been some difficulties in obtaining all the documents relating to that parolee. I understand that this leg-

islation is being dealt with Australia wide, and that New South Wales already has passed similar legislation. South Australia is the second State to do so, and the Liberal Party supports the Bill.

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

SHOP TRADING HOURS ACT AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 26 November. Page 2160.)

The Hon. K.T. GRIFFIN: The Opposition is not prepared to support this Bill in the circumstances which I will relate during the course of my second reading speech. The statement by the Leader of the Opposition (John Olsen) made last Monday with respect to this legislation best sums up the Liberal Party's position. He said:

The Liberal Opposition will block the Government's Saturday afternoon shopping Bill. We have taken this decision to protect consumers from higher retail prices and to protect many small businesses from potential bankruptcy. We have been left with no option following proceedings in the Industrial Commission on Friday.

The Shop Assistants union was not willing to proceed with the presentation of its case. And the commission has decided not to make a judgment on the case until Parliament has voted on the legislation. The Liberal Party believes that the labour cost parameters should be known first, before any decision is taken to extend trading hours. We accept that it is the responsibility of the Industrial Commission to settle the wage conditions.

However, we do not accept that it is the responsibility of the Bannon Government to go to the commission giving its full support for the demands of the shop assistants union. For four years, I have led public debate about the desirability of allowing the shops to open on Saturday afternoons provided labour cost issues were fully and fairly addressed. Our stand has taken into account the problems small business will face if extended trading is introduced in a way which forces up their running costs.

But, the Government has turned a blind eye to small business. Its full support for the union demands is unprecedented. These are demands which will mean big wage rises for shop assistants, whether or not they work on Saturday afternoons. They will mean rises in retail prices, whether or not the shops open on Saturday afternoons.

They will put impossible cost pressures on small shops and many will not be able to survive. It's all very well to say pass the Bill and leave the rest to the commission. But this is just the same as playing a game of football in a 10 goal breeze, without a change of ends between quarters. The Government's support for the wage demands gives the union a completely unfair advantage in the case before the commission.

Had the Government stayed out of the case, this legislation would have had a much better chance of being passed. But the Liberal Party is not prepared to endorse a deal between the Government and the unions which has been struck to preserve the Premier's factional power within the Labor Party rather than to pave the way for extended shopping hours.

In proposing a national inquiry into how current shopping hours and costs fail to meet the needs of tourists, the Federal Government has admitted the need to review penalty rates. However, at the very time when the Federal Government is looking to reduce labour costs in retail trading, the Bannon Government is heading in exactly the opposite direction.

It wants to increase labour costs, which can only force up the price of goods on supermarket shelves at a time when more and more families are already finding it more and more difficult to make ends meet. The Liberal Party has no option, in the current circumstances and in the public interest, but to oppose this legislation until there can be a more rational and reasonable approach to the issue of labour costs.

So, that sums up the position of the Liberal Party. We agree to extended shopping hours, but not at any cost. The Government's support of the union's claim to ensure its organisation's factional stability is exceptional. It is biased, and it clearly demonstrates that it is in support of increased costs, regardless of whether or not an employee works on a Saturday. It is interesting to note that the *Hansard* of 2 November 1976 records the present Minister of Labour (Hon. Frank Blevins) as follows:

Clearly there will be an increase in costs, and at this time I do not see how the Government could be party to any action that would result in increased costs.

That was when a Bill for extended shopping hours was before the House of Assembly in 1976. He was, at that stage, an unashamed, uninhibited advocate of the unions' total opposition to extended trading hours. That demonstrates a remarkable about-face now that he has introduced this Bill.

The increases in costs, according to the Acting Commissioner for Prices, will be difficult to estimate. In fact, he did say that it was impossible to estimate with any degree of accuracy the likely increase in selling prices that would result with the advent of Saturday afternoon trading. He was reluctant, therefore, to enter into the political debate about the cost of Saturday afternoon trading, but it is quite clear from information which has been given to us by those who are experienced in the retail sector that, if Government supported union demands are successful, those labour costs will rise by more than 24 per cent in the retail trade in just 12 months. That will mean forcing up the average family's shopping bill by at least $160 a year, more than $3 a week, and that will be the result of those wage claims.

The South Australian Mixed Business Association, in a letter written to the Opposition on this subject, indicates that its best estimate of increased cost to the consumer would be in the range of 3 per cent to 5 per cent because of the quite substantial increases in labour costs which would flow from the application by the union to the State Industrial Commission. Of course, one has to take into account not only the effect on consumers but also the effect on small business itself. One of the clear indications in a time of economic constraint and difficulty, as we are now experiencing, is that any increase in labour costs adding to prices will create even greater pressures for small businesses.

A table of business bankruptcies in 1985-86 indicates 56 retail business bankruptcies out of a total of 163, comprising 34 per cent of the total business bankruptcies in that year. In 1986-87, that figure had increased dramatically from 56 to 114 out of 310, representing 37 per cent of the total business bankruptcies for the year. The increase in 1986-87 over the 1985-86 figure represents more than a 100 per cent in retail bankruptcies.

The added cost pressures which will result from the granting of the union claim with Government support will create an even higher prospect of retail businesses going to the wall and, ultimately, being bankrupted to ensure that the pressure is taken off the small retailer in terms of outstanding liabilities.

The *Advertiser* of 23 November made some very perceptive comments about this legislation. Writing on small business, Malcolm Newell said:

So the ardent Blevinites are determined to come down like a wolf on the (small) retailing fold. We have had occasion before to comment unkindly on the lemming-like propensity of some politicians to get it wrong. Here we are with a sackful of hard facts from a wide range of sources to demonstrate to the Bannon Government the all too-obvious consequences of pursuing extended shopping hours to the death. (Be it the death of a proportion of hardworking small retailers or the Government.)

Yet no one seems to heed any of the warnings. The Government rhetoric at public occasions smooths over the small-business community with slippery words while the Blevins machine steamrollers them into the ground. Why? Try as I may, I can see no justification for extended trading hours other than vague asser-

tions about meeting consumer needs, wishes or freeing up the too-heavily regulated small-business environment.

Yet the counter argument (if the Government is even remotely interested) wields a solid pile of hard statistical information available that clearly demonstrates the unhappy consequence here and elsewhere of extended hours. If Mr Blevins blunders on unblinkered, and the unions—

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: But Mr Newell is talking about—

The Hon. C.J. Sumner: Are you supporting those statements?

The Hon. K.T. GRIFFIN: We support extended shopping hours, but not at any cost, and what he is talking about is the cost.

The Hon. C.J. Sumner: Do you think their view would be any different if there was no cost?

The Hon. K.T. GRIFFIN: Of course it would. The article continues:

If Mr Blevins blunders on unblinkered, and the unions gain a perfectly reasonable adjustment to current wage awards, everyone will be the loser except the big stores. And even they will be hit by higher costs they don't want.

He goes on to report:

South Australian Mixed Business Association Executive Director Terry Sheehan sometimes thinks he is talking to a political brick wall. He predicts Adelaide will lose another 20 per cent of small convenience stores within five years of the introduction of Saturday afternoon trading.

The South Australian Mixed Business Association has suggested that, in its view, there will be no additional income from sales, only a transfer in consumer purchasing patterns.

The Hon. C.J. Sumner: Are you supporting that argument?

The Hon. K.T. GRIFFIN: I think it is important to give a full range of views in the course of the debate.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: I have told you what the Liberal Party supports. I am now reading into *Hansard* the views of a variety of organisations that have made representations to us and, whether or not we agree with them, it is important to have them on the record. If I can continue: the South Australian Mixed Business Association states:

Consumers will only spend to their capacity and budget. It is only commonsense to realise that any extension of shop trading hours will only be an additional cost to the retailer and expense to the consumer. Over and above these labour costs, small retailers in shopping centres will face an additional cost burden because of their tenancy arrangements.

As you are aware at the present time if a shopping centre decides to open, then the small retailer is forced to remain open or lose business. Staying open on Saturday afternoon until 5 p.m. will also increase their share of the outgoings, therefore increasing their costs. Cost estimate for increased outgoings is 9 per cent, and these additional costs will remain even if the retailer trades at a loss.

In respect to shopping centre leases, my colleague in the other place, Mr Stephen Baker (the member for Mitcham), raised the issue of the legal obligations created by existing leases and put forward a proposition for an alternative that would allow optional trading in shopping centres after 1 p.m. on Saturdays.

Discussions with the Business Owners and Managers Association suggest that it sees a difficulty with existing leases requiring a minimum period during which shops in a shopping complex must be open, and it has expressed views on the way in which that matter can be handled. Its view is, largely, that the majority of the shop proprietors in a shopping centre complex, by exercising one vote per lease, ought to be able by majority decision to determine what core hours will be required from each tenant and what optional hours might be permitted.

Of course, there are difficulties where a shopping centre is accessible from outside and not just from an internal shopping mall that might be closed during the hours at which generally the centre is not open. There is also the problem of the sharing of costs and expenses for maintaining at least part of the centre that is open in relation to those shops that are accessible externally.

This is an important issue which must be addressed. I floated it in the debate on the Landlord and Tenant Act Amendment Bill in the past few days; it is an issue that must be addressed in the context of any extension of shopping hours. The Australian Small Business Association, a body under the presidency of Mr Richard Law-Smith, has indicated that it has supported deregulation of trading hours in principle but only on condition that overtime and penalty rates are first removed. The association is concerned about the increase in costs that those overtime and penalty rates will impose if trading hours were extended.

The Motor Trade Association of South Australia has also presented a point of view, as follows:

MTA surveys on trading hours show an overwhelming majority of vehicle dealers oppose any extension to their trading hours and members are quite vocal on this issue. The very small minority who support the extension are as outspoken as the overwhelming majority who give opposing reasons for seeking any extensions.

MTA dealers state that there is very little trading on both Thursday or Friday nights as a result of the extension of late night shopping within the last 10 years. Unlike trade in the retail stores, consumers have not taken up the benefits of late night trading and, in general, Saturday morning trading is not preferred by consumers. In all three cases there is no facility for registering vehicles, checking financial providers, etc., and it does seem that consumers do require those facilities in order that they close a deal.

Dealers generally have extremely low manning levels on these three occasions, and naturally this is even more so in the current state of the motor industry, where the whole viability of some dealers is threatened by factors including devaluation of the dollar and the rapid rise in the price of vehicles, fringe benefits tax, the substantial rise in the price of imported as compared with Australian made vehicles, interest rates and generally the effect on the economy. Not unnaturally all these factors have combined to reduce the market for new and, consequently, used motor vehicles, a product which at any time consumers are reticent about purchasing in view of the substantial outlay that has to be made.

The MTA submits that there would be very few benefits to consumers from extended trading hours as no more vehicles will be sold and consumer purchasing patterns at this time on Saturday morning, Thursday and Friday night, do not display an increasing incidence of vehicle purchases, whereas in the retail stores we assume that consumption patterns generally have shown a shift towards increased purchases in these non normal trading hour periods.

The Employers' Federation has indicated that it is opposed to the award being sought by the shop assistants and is seeking to intervene before the Industrial Commission to put a very strong point of view that the wage claims are totally unjustified. The matter of extended trading hours is a vexed question for the membership of that federation, but it is also concerned that if the award claim does meet with success the conditions successfully obtained by the shop assistants will flow on to other industries and areas where weekend and evening trading has long been the norm.

There is concern about that, just as there is with the Retail Traders Association which has conducted a particularly vigorous campaign against the Government's attitude in supporting the shop assistants in their claim before the Industrial Commission. I know that it, too, is concerned about the cost implications of a successful granting of the award application by shop assistants and also about the flow-on effect and the fact that it is in breach of the Federal wage fixing guidelines.

It is interesting to note that, in Victoria where the legislation passed I think last Thursday, there is quite a substantial claim being made by shop assistants consequent on

the extension of shop trading hours. In consequence of that and the application that has been made here, I understand that Justice Maddern of the Federal commission has convened a meeting of State Presidents of industrial jurisdictions with a view to trying to bring some order into what is presently an area of apparent chaos across Australia and to endeavour to achieve some uniformity. I suspect that that initiative has also been taken in the light of the Federal Government's expressed concern about the shop trading hours in Australia and the costs that are involved at present if longer hours than one would regard as normal are being sought by shop proprietors for tourism purposes.

As I indicated—and I think it is well known—last Friday the Industrial Commission did have before it a union application to adjourn the hearing of the application for improved conditions of employment. That was to have been heard, I think, on 30 November in the Industrial Commission. The parties were ready except the union, and it sought to have the matter deferred until some time in the future. As a result, the matter resumes, if at all, towards the end of February and is to be listed on a number of days during the month of March.

However, it was clear from what was said in the commission that Judge Stanley is not prepared to proceed until he has some indication whether or not the Shop Trading Act Amendment Bill passes the Parliament. That, of course, presents something of a dilemma for the Liberal Opposition because our concern was to postpone the final decision on this legislation until we could be given information more formally as to the likely terms and conditions of employment that would be awarded and which would have relevance to the extension of shopping hours, and also the prospective cost increases in the retailing industry and thus to the consumer as a result of the award of those terms and conditions.

However, that is now not to be the position because it is clear that the Industrial Commission is not prepared to proceed unless it has some clear indication of what the Parliament is likely to do. There was a difference of opinion between those representing the union and those representing the retail traders as to what the position should be if this legislation does not pass. A view was expressed that the question of the award could continue and could be considered. On the other hand, the union presented the view, which was supported by the Government, that the matter would be pre-empted if the legislation was defeated. Looking at the applications that are before the Industrial Commission, I would suggest that that is not so and that the award conditions could have been considered regardless of what happens in the Parliament because there already is in the community an area of shop trading on Saturday afternoons for those who already have exemptions under the Shop Trading Act, and the applications for consideration of award conditions could well have been pursued in respect of those at least.

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: Well, the Grand Prix, too, and for the two Saturday afternoons prior to Christmas. Therefore, there is a basis on which the commission could have proceeded to hear submissions on the terms and conditions of employment in so far as it related to those periods of extended hours and it would have put Parliament in a much better position—certainly a better informed position—before making a decision on this Bill.

In summary, on this occasion regrettably the Opposition will not support the second reading of the Bill. That does not mean that it will not come back at some time in the future. However, we believe that it is important to have before us information about the likely cost impact on consumers, as well as the impact on small business before the proposition in this Bill is able to be fully supported. I therefore indicate opposition to the second reading.

The Hon. L.H. DAVIS: If there is one thing that can be said about the State Labor Governments of Australia it is that they are very good at acting in concert. Not only is the Labor Party good at caucusing within the State but it is also extremely adept at caucusing at an interstate level. We see an example of that ability to caucus on issues particularly of union concern in this matter that is currently before us.

In recent times we have seen the way in which South Australia has copied to a very large extent the WorkCare provisions set down by the Victorian Labor Government and the trouble that that scheme has very speedily run into. On the subject of extended trading hours on Saturday afternoon we see the Bannon Labor Government capitulating to the unions in a typically weak fashion and, in so doing, mirroring the actions of the Cain Labor Government. It is interesting to see in the *Age* of 29 October the editorial that gave vent to that paper's views on the Cain Government's decision to back union claims for overtime payments for Saturday afternoon trading. Like South Australia, Victoria has moved to extend retail trading hours on Saturday afternoons and Mr Cain introduced legislation into Parliament to allow retail stores in the metropolitan area to open until 5 p.m. on Saturdays from December, and shops in country areas are also free to open until 5 p.m. on Saturdays, provided that is acceptable to the local council. The editorial in the *Age* of 29 October says:

> There is no doubt that their [the retailers] campaign for greater choice and greater flexibility of shopping hours had the support of customers. But it was not the customers whose interests came first with the Government. It was the trade unions. They dictated the terms and the Government meekly followed.
>
> However, a deal has now been done with the unions that lets the Government off the hook. The price admittedly was high, including a projected $25 a week pay increase for full-time shop assistants as well as a 3 per cent superannuation payment and time and a half penalties for all Saturday work.

That was a quotation from the *Age* of little more than one month ago and the conditions that were agreed to so meekly by the Cain Labor Government are the identical conditions which have been accepted so meekly by the Bannon Labor Government. Both the daily newspapers of Adelaide—the *Advertiser* and the *News*—quite rightly in their editorials have highlighted the fact that it is one thing to support extended retail trading hours, but it is quite another to do it without caring about the real burden that will be incurred by increased rates of pay for the shop assistants.

The Hon. T. Crothers interjecting:

The Hon. L.H. DAVIS: My friend, the Hon. Trevor Crothers, interjects. He should know that if this legislation becomes law one will even have to pay time and a half for leprechauns.

Premier Bannon has backed the pay rise right from the start, and it is interesting to see the view of Mr Michael McCutcheon, the retail traders chief executive, who in a statement made in the *Advertiser* of 7 November stated, that the Government's decision to intervene in the State Industrial Commission was partisan and set a precedent, as 'no Government of any colour has ever intervened in such a way, not during the Royal Commission into late trading or at any time'. Mr Blevins, the Minister, in another place admitted that the Government's intervention was 'not unusual, but not something we make a habit of'. It is quite clear that the Government's decision to back the extension of retail trading hours was conditioned by a decision to back the union claims without question as to cost and

without question as to whether the retail industry in South Australia had the capacity to meet this increased burden.

Let me spell out what the increased cost will be to retailers and, of course, in due time to the consumer, through increased prices. The claim of the Shop Distributive and Allied Employees Association is identical to the claim of the same union in Victoria, namely, that in return for extended shopping hours on Saturday afternoon the Government will agree to support a claim in the State Industrial Commission for a $25 a week increase, irrespective of whether the employees work on Saturday afternoon; for time and a half for Saturday afternoon work; and also for a 3 per cent superannuation payment. Mr John Boag, the union leader of the Shop Distributive and Allied Employees Association, is obviously backing a winner. The spring racing carnival is over in Melbourne, but you can still back winners in the Adelaide retail stakes because Mr Boag is quoted as saying in the *News* of 16 November that 'he was confident the Government would continue to support its claims for a $25 pay rise, time and a half penalty rates for Saturday work and a 3 per cent superannuation payment'. He knows he is on a winner because a deal has been done with the unions. There is no question about that—a deal has been done.

So, let us have a look at the impact of this decision on the retailer and the customer. First, I want to turn to the assessment of Mr Rod Nettle, a respected senior economist with the Chamber of Commerce, who on 7 November was quoted as saying that 'Friday night shopping in the city could be a casualty of Saturday afternoon shopping'. Certainly, that has been the pattern in New South Wales and the Opposition has no concern with that proposition. We recognise that patterns in retail trading have changed dramatically over the past two decades: there has been a change in lifestyle in many areas of the community during that time. We have seen a shrinking manufacturing sector which has meant that fewer people are working factory hours from 7 a.m. to 3.30 or shift work at night. We have seen a significant growth in service industries including the finance industry, the computer area, technology and tourism. It has meant that more people are working other than what would be regarded as regular hours in the service industry.

With the growth in tourism, there will certainly be increased demand for Saturday and Sunday shopping. It is also true to say that people generally are working fewer hours, hours of leisure have increased and more people are retiring earlier. So, there has been a changing demand for service in the retailing sector, and that is reflected in fairly significant changes to liquor licensing laws. We have seen in this Chamber within the past two years fairly dramatic changes in the conditions applying to opening hours and conditions of trading with respect to hotels and restaurants.

With my colleague, the Hon. Trevor Griffin, I want to put on record the unequivocal support of the Liberal Party Opposition for extended trading hours. The Liberal Party has been consistent in its attitude for many years. In fact, its consistency in this area has been more apparent than that of the Government, and the Leader of the Opposition in another place, the Hon. Mr Olsen, has set down that position publicly more than once.

I accept the fact that the burgeoning tourist industry will drag Australia into the real world of the seven day week—the seven day week that we see in Europe and in North America.

The Hon. C.J. Sumner interjecting:

The Hon. L.H. DAVIS: Yes, we do. We also see the seven day week in South-East Asia. When we talk about the seven day week, I accept that in Europe many shops and cultural attractions may close for one day a week. However, there is an acceptance in most parts of the western world of the needs of the tourist and the local community. Shopping facilities and other tourist attractions are open, generally speaking, on all days of the week—with the exception, as I have instanced, of cultural attractions which may well be closed on one day during the week.

When I talk about the seven day week concept I talk more particularly of the fact that those seven days are given equal weight and that if a person in, say, America chooses to work for five days a week—and those days may include Saturday and Sunday—there will be no payment of penalty rates for working on Saturday and Sunday.

We can instance places such as California which, with a population of 40 million, would be the eighth wealthiest country in the world if it was a nation in its own right. California has a very big tourist flow through its main population centres of Los Angeles and San Francisco, and it has a very large retailing network. Shop assistants in California are paid for a 40-hour week, irrespective of when they work. Overtime is triggered only when a shop assistant works in excess of 40 hours per week, or if he works in excess of eight hours on a particular day.

The Hon. C.J. Sumner interjecting:

The Hon. L.H. DAVIS: The Hon. Mr Sumner says that that is an industrial argument, and it may well be such. It is an obvious point and, of course, that is the nub of the debate on this Bill. Mr John Patten, the Managing Director of Independent Grocers Co-op, which represents half of South Australia's grocery stores, has made the fundamental point that the retail industry can simply not afford any increase at the present time. On 28 October Mr Patten is quoted in the *Advertiser* as saying:

> That claim [of the unions] totally disregards the economic position of this country. Prices would have to go up between 1 per cent and 2 per cent across the board.

I will examine the retailing industry position in South Australia. We have it on record that the Minister of Labour (Hon. Frank Blevins) and the Premier (Hon. J.C. Bannon) support the union's claim before the commission; that has been admitted publicly. I should have thought that, in matters such as this, the Government would act as an umpire, that it would stand back and allow the State Industrial Commission to make a decision. However, on this occasion the Government has acted like an umpire who has picked up a ball for one of the teams and has kicked a goal for it. That is how impartial the Government has been in the matter of extended retail trading hours.

The Liberal Party clearly indicates its support for extended retail trading hours but certainiy not for the partisan approach adopted by the South Australian Government. I will demonstrate how responsible the South Australian Government has been in relation to this matter by referring to Australian Bureau of Statistics figures on the state of the retail industry in South Australia. For the 12 months ended September 1987, there was a 3.9 per cent increase in retail sales in South Australia compared with the corresponding 12 months. That was less than half the national increase for the comparable period. The national increase over that same period was 8.1 per cent. In other words, South Australia's retail sales growth was less than half the national average.

I will take the matter further. For the past 22 months retail sales growth in each of those months in South Australia has been below the national average. If that is not persuasive enough, I point out to the Attorney-General that for each of the past 12 months South Australia's retail sales growth has been the worst of any mainland State and, for almost all those months, the worst of any State in Australia. That is a brief resume of the facts of the retail industry in

South Australia. In fact, it is a debacle. Retailing has never been in a worse position in recent history in South Australia. I went back through the ABS records, and I ran out of time when trying to find a comparable period in retailing where South Australia's position had been weaker compared with all the other States. However, in the face of those statistics, in the face of the reality of plummeting retail sales in South Australia, the Government decides to back the union claims—no question asked. That is abdicating economic responsibility.

If we look at the figures more closely, we can see that, if retail sales are increasing by 3.9 per cent annually and inflation is running at 8 per cent, obviously retailers are bleeding. Many of them are haemorrhaging and, as the Hon. Trevor Griffin said, there has been a dramatic increase in the percentage of business bankruptcies attributable to retailers. When one recognises that many of the State taxes imposed on retailers are increasing in excess of the rate of inflation and that rentals, particularly in large shopping complexes, are tied to the rate of inflation, one does not have to be a genius to realise that the Government's backing of union demands, no question asked, is another millstone around the retailer's neck.

I cannot believe that in such straitened times, as far as retailers are concerned, the Government has jumped into bed with the unions, no question asked. I find it appalling and completely and utterly irresponsible from an economic point of view. The Attorney-General does not have a feather to fly with when we come to the economic argument because, if there is one thing that we have learned from Paul Keating's reflection of Australia heading towards banana republic status, it is that he is not far from the truth.

We must recognise that we have to live within our means; we must compete in the real world; and we must recognise that work practices and industrial policies must alter so that Australia can become competitive again, if we are to be able to offer proper services to tourists. I should have thought that this Bill would give the South Australian Government an opportunity to say, 'We are going to take a stand; we are going to look at this in a responsible light; and we are not necessarily going to follow blindly what has been done in Victoria.'

In fact, the Retail Traders Association's Executive Director, Mike McCutcheon, in a press report of 28 November said:

> We have always said that Victoria should not determine what happens in South Australia.

Hear, hear! I agree. It is high time that South Australia recognised that it should try to recover some of the cost benefits that used to exist in the Playford era, when, it was said, there was a 6 per cent or 7 per cent benefit to establishing manufacturing industry in South Australia. Those benefits have eroded over the years, and all we are left to fly with is quality of life and certain advantages in housing, although in recent years they have been largely eroded.

If one visits America, one sees variations between States in industrial awards. There is no reason why that should be different here. We see the South Australian Government mimicking the Victorian Government's decision to back the shop employees union—no questions asked; no account is taken of the fact that retailing in South Australia is much more depressed than it is in Victoria.

The other great irony is that the Government has gone to the barricades for months on the 4 per cent productivity increase in the public sector, which has had to jump many hurdles; many people had their knees grazed trying to jump the tall hurdles erected by the Government as it tried to fend off the 4 per cent productivity increase.

Of course, that is another question that is yet to be fully answered: how will the Government achieve that trade-off in productivity, given that it has made no allowance in the budget for the increased cost that will flow from the 4 per cent productivity increase for the public sector? Whilst the Government has been fending off the public sector, on the one hand, on the 4 per cent productivity claim and putting up all sorts of obstacles to something that has been accepted at the national level as a claim to be legitimately bargained for—

The Hon. T. Crothers: Within guidelines!

The Hon. L.H. DAVIS: Within guidelines—the Government, with no questions asked, jumps into bed with the shop union and says, 'Yes, we are going to back your case.' The fact is that the Premier and the Minister of Labour are backing what is effectively a 24.2 per cent increase in labour costs in retail trade over the past 12 months.

An honourable member interjecting:

The Hon. L.H. DAVIS: The Attorney interjects that the Minister of Labour is not really backing it, but I do not accept that.

The Hon. C.J. Sumner: That's not what I said: it's not *carte blanche*; I said they are supporting the right for the 4 per cent to be argued within the guidelines in the commission, but they have not indicated support as to quantum.

The Hon. L.H. DAVIS: That is not true. There are several references in the press on this subject. The Hon. Mr Blevins is quoted as follows:

> The Labour Minister, Mr Blevins, confirmed today that the Government believed the trade-off was justified—

That is the $25 a week pay rise, higher penalty rates and improved superannuation. The report continues:

> He revealed it [that is, the Government] would argue strongly in favour of the wage package in the South Australian Industrial Commission.

The Attorney should know because a report in the *News* of 3 November, in this very perceptive article by Craig Bildstien, states:

> Support for the package follows State Cabinet's decision last night to back introduction of all day Saturday trading.

Presumably, the State Cabinet got its fingers in the till in backing the union. The Hon. Mr Sumner was privy to that State Cabinet decision. I am not expecting him to reveal the secrets—

The Hon. C.J. Sumner: Will you answer one question?

The Hon. L.H. DAVIS: It depends what it is.

The Hon. C.J. Sumner: If the Industrial Commission will not consider the question of wage rates until the Bill is passed, how will you ever get extended shopping hours on the basis of what you have said? You will never ever get it.

The Hon. L.H. DAVIS: Our argument is not along those lines: our argument is against the Government for jumping before this legislation had even been considered. We believe that it sets a poor example and shows ignorance of the state of retailing. It shows an absolute lack of reality about the grim retail scene in South Australia. Also, it illustrates that the Government is prepared to put the interests of the union ahead of the economic health of South Australia. That is why the Opposition is opposing this measure. That argument has been consistently put.

The Hon. C.J. Sumner: On the basis of what the President of the Industrial Commission said, on your argument, you'll never get extended shopping hours. He is not prepared to consider it until the legislation is passed. It is as simple as that.

The Hon. L.H. DAVIS: Would it not have been fairer for the Government to take the following position and say, 'We are concerned about the state of retailing in South Australia.' The Government has never admitted that; it has

never admitted how bad the economy is in South Australia; it has never admitted that, in nine of 12 economic indicators, South Australia is last or second last. It has never admitted that in retailing and in so many other indicators we trail the field.

Would it not have been the responsible approach to say, 'We are in favour of extended retail trading hours, but we are concerned about the economic implications and we want to examine these with the union and with retailers together. We want to be an impartial umpire and we are not going to kick a goal for one of the players, namely, the unions; we will act in an even-handed manner.' The Attorney must admit that that was the better option, but the Government kowtowing to the unions, following the precedent of the Victorian Labor Government, chose to opt out and to abdicate its economic responsibility. It chose to ditch the retailers and to increase the costs of the shopping public of South Australia. Madam President, the economic case is conclusive; the logic of the case is conclusive; the Opposition opposes the Bill.

The Hon. I. GILFILLAN: The Democrats oppose the Bill, but for different reasons to a large extent than the argument advanced by the Liberals. I would like to continue quoting the article that the Hon. Trevor Griffin began quoting. The report, by Malcolm Newell, in the *Advertiser* of 23 November—bearing in mind that it is written by a journalist who specialises in getting the pulse beat and the feel of small business—states:

> Were the big stores to discover—

that is after the Saturday afternoon trading, were it to come in—

> that Saturday afternoon (or Sunday, or all-night-seven-days-a-week trading for that matter) didn't pay as anticipated, they could simply opt out and close.
>
> Of course, it will pay in the longer run for the basic reason that a significant proportion of small-business competition will have been wiped out. South Australian Mixed Business Association Executive Director, Terry Sheehan, sometimes thinks he is talking to a political brick wall.
>
> He predicts Adelaide will lose another 20 per cent of small convenience stores within five years of the introduction of Saturday afternoon trading.

I further quote that report:

> Politicians just do not seem to grasp the fury this measure arouses in the small-business community. Those most at risk say they are determined to repay 'this act of treachery' against their livelihoods by people who claim to care about the potential viability and prosperity of the small business sector.
>
> Terry Sheehan reminded the Government recently that the introduction of late-night shopping saw the demise of about 500 independent food stores. The move to trading all day on Saturday will simply prune turnover from the small independents until another batch is doomed. Who gains? Eventually, one way or the other, the big stores take the trade.
>
> And, as an ancillary point, where do the big stores buy the bulk of their stock? Not from South Australian suppliers, be it noted. So, if the retail trading pattern shifts further towards big national retailers, the impact will flow through to local wholesale and manufacturing—even horticultural—businesses. And this decimates again local employment opportunities.

It is significant and sad that the voice of small business is being ignored. It is interesting for the Liberal Party to be selective in the argument that it puts up. I was curious to see how far into that article the Hon. Trevor Griffin would read, because it is a very substantial indictment of the whole basic argument whether or not the shop trading hours should be extended. There is little doubt in my mind at least, and that of the Democrats, that a lot of small operators would not be able to survive an extension of shop trading hours to even 5 p.m. on the Saturday afternoon.

I would like to mention several groups that have made contact with us specifically. Some of these have been mentioned before, but I regard them important to read into my speech. The Motor Trade Association states in its letter:

> MTA surveys on trading hours show an overwhelming majority of vehicle dealers oppose any extension to their trading hours and members are quite vocal on this issue. The very small minority who support the extension are as outspoken as the overwhelming majority who give opposing reasons for seeking any extensions.

I have some acquaintances involved in the motor trade who believe there is no potential for increased sales. The only effect will be to increase their overheads, and make it more and more difficult for them to keep viable businesses. As that flows into the industry, it will eventually increase the cost of the product.

I was contacted by a small self-employed trader in Tea Tree Plaza. He employs his wife and sometimes up to four staff, but if extended hours come in he would be forced to put up his prices to cover the overheads and extra wages. He thinks he would have to let a staff member go and his wife would work longer hours. None of the staff wants to work on Saturdays. He attended a meeting of small traders on 11 November and none wanted extended hours. He has also talked to some of the Myers staff and they do not want it either. He believes that we would certainly be worse off.

The Mitcham Traders Association sent me a copy of a letter they forwarded to Mr Blevins which states, in part:

> The Mitcham Traders Association represents over 50 small retailers all of whom strongly oppose the introduction of Saturday afternoon trading.

The Glenelg Retail and Tourist Association Inc. sent me a letter, which states:

> On behalf of the GRATA Inc. members and committee, I wish to inform you that this association is strongly opposed to the proposed extension of shopping hours.

The Mount Gambier Chamber of Commerce and Industry Incorporated telexed a memo addressed to my colleague (Mike Elliott) amongst others, including the Premier and the Minister. It states:

> The council of the Mount Gambier Chamber of Commerce and Industry wishes to strongly express its opposition to the extension of Shop Trading Hours which we understand, is currently being debated.
>
> Briefly, the reasons for its objections are as follows:
>
> (1) We are unaware of any attempt by Government to ascertain the views of this shopping area.
>
> (2) The speed of presentation of these proposals has left no time for consideration by those affected in rural areas.
>
> (3) An unfair financial and social burden would be placed on small businesses who represent a high percentage of traders in this city. It is considered that there would be little likelihood that these businesses would enjoy any increase in turnover, and, with increased costs incurred in trading over longer hours, substantial loss of profits could result unless these costs were passed on to the consumer.
>
> (4) It is inevitable that service to the consumer will suffer.
>
> (5) An extension of trading hours could undoubtedly result in individuals being deprived of their weekend sporting and social activities. It must be acknowledged that sporting activities in the country area—

I emphasise 'in the country area' because the Government and anyone who is considering extending shop trading hours should be aware that there is a very significant Saturday afternoon social life in small country communities—

> are greatly dependent on the participation of a high proportion of people from the business sector for it to remain competitive and successful.
>
> (6) It is inevitable that the family structure of business people would be gravely affected by any extension of trading hours.

I also have a copy of a letter written back in 1985 from the Amalgamated Shopkeepers of South Australia Inc., representing the interests of 8 000 retailers. Dated 5 November 1985 and addressed to the Hon. Frank Blevins, it states:

> Amalgamated Shopkeepers of South Australia Inc. represents the interests of 8 000 retailers opposed to Saturday afternoon trading.

As well as that letter, I was sent a copy of a letter written to Mr Bannon on 2 December 1985. A couple of paragraphs refer to Mr Blevins' predecessor, Mr Jack Wright. It states:

> We wrote to Mr Frank Blevins on 5 November opposing any extension of shopping hours. We would point out that our members are extremely disappointed at this action, taken without any consultation with this organisation which represents some 8 000 South Australian retailers, ranging from very small to very large employers.

A little further on it states:

> The previous Minister of Labour, Mr Jack Wright, made a special study of the problem, particularly in New South Wales. He was convinced that extended trading hours would have a detrimental effect on small business in this State, particularly as it would not create added revenue for the businesses involved.
>
> Mr Wright was particularly concerned about the impact on small traders of same night trading in city and suburbs. He pointed out to us that our system gave a fair go to traders as well as convenience to the shopping public who could shop in the suburbs on Thursday night or in the city on Friday night.

That letter goes on to make another point which we are not addressing in this debate—the pressure on small shopkeepers in shopping complexes to comply with what are legal shopping hours. The Democrats regard this as a very serious risk. If the hours are extended, unbearable pressure will be put on small shopkeepers in the larger shopping centres with over six shops involved to comply with directions from the proprietors of the centre. If at any stage the shop hours are extended, we will be fighting strenuously to protect small businesses from that sort of pressure, but that is not the issue immediately before us.

The actual issue really seems to have floated in on some whim. It is remarkable how little support there is from any quarter for an extension of shop trading hours. I have made it my business to ask people at meetings, individuals, shop workers and shop owners what they want. Those who are involved in it unanimously say that they do not want an extension of shop trading hours. The general public either has an indifference or a 'take it or leave it' attitude. Some would shop if the shops were open, while others are quite strongly opposed to it on the grounds that it would threaten the family life and social life of people who are entitled to have the weekend off. Those people run into thousands, if not hundreds of thousands, who would be affected in the eventual widespread extension to 5 p.m. on Saturday afternoon. Unfortunately, I suspect that the Government already has a hidden agenda related to the fact that shops which are contravening the shop trading hours are not being prosecuted. There is a failure by the department to provide enough inspectors and to instruct the inspectors to track down these shops which are contravening the current controls.

The Hon. M.J. Elliott interjecting:

The Hon. I. GILFILLAN: I have had several instances brought to my attention of quite large shops flagrantly violating the current shop trading hours. Although once again it does not apply to the Bill before us, it is a very significant indication of the way in which the Government will surreptitiously go around the fact that I believe this Bill will be defeated. I think the numbers in this place will prevent this Bill from being successful at this stage.

As a result of that, the Democrats intend to ask those who are suspicious that the provisions of the Act have been contravened whereby shops that should not be open either on a Saturday afternoon or a Sunday are opening at those times to notify the department, the Minister and the Democrats so that we can ensure that the law is enforced. It is grossly unfair for those who are complying with the law to see their competitors opening and not being prosecuted.

It is interesting to ponder the Liberals' dilemma in this matter. Obviously, we are pleased that they will support the opposition to this Bill, but the grounds upon which they do so leaves serious doubt as to what their eventual position will be. Although I feel concerned that there may be an industrial hearing at the same time as the debate on this Bill in no way do I accept that the Liberal Party can hold that it will not consider or vote on a measure such as this until the Industrial Commission has handed down specific terms for the employment of people in the retail industry. If that was to be extended, it would virtually mean that we would be hamstrung in passing a wide range of legislation on the grounds that we would not know what effect it would eventually have on costs, either through increased labour or increased overheads.

The Hon. Diana Laidlaw: What about increased costs for small business?

The Hon. I. GILFILLAN: Well, the increased costs for small business have very significantly affected the Democrats' attitude to this Bill. The Opposition has made great play of the current application before the Industrial Commission, but the argument goes awry in that, unless there is a change in the current determination, an extension of hours to 5 p.m. would be more expensive under the current award than would be the case under the application from the shop employees union as far as penalty rates go. It has been calculated that, in regard to penalty rates (and I disregard the wage levels), the current situation would impose a higher cost on an employer than would be the case if the union was successful in obtaining amended penalty rates. Therefore, the argument about whether the issue should or should not be affected by what happens in this hearing before the Industrial Commission is ambivalent.

It seems to me that the Liberals are running with the fox and hunting with the hounds in attempting to curry favour with the small business sector. I believe that the ASBA also has seen its flag move in two directions. It is not quite sure who it is representing or how it should best represent those people. I believe it should make a very serious effort to approach those small businesses that currently open during unrestricted hours and find out what impact this measure will have on them. It should also survey many of its members, the slightly larger businesses which could be pressured into an extension of hours, and ascertain from them what effect this measure would have on their economic viability.

To a large extent, the criticism lands very squarely on the Government. The Labor Party exhibits the same indifference to small business of which I have accused the Liberals. It will cheerfully see the corner delis and other small businesses in which families or young people are employed wiped off the map, and I believe that is a very short sighted measure in order to obtain, apparently, some concession for tourism or cater to an obsession by the Minister of Labour, Frank Blevins, for complete deregulation of shop trading hours. The Government has been conned into supporting this legislation. The effect on the workers in South Australia and their social life given the pressure to work on Saturday afternoons and at weekends is enormous, and added to that is the final point, to which I am amazed the Government has been indifferent, and that is the inevitable increase in the cost of living for South Australians.

The Democrats want to make absolutely plain that we oppose without any qualification the extension of shopping hours to 5 p.m. Saturdays. Our opposition has nothing to do with industrial hearings; it is unequivocal opposition to the further extension of what we believe to be adequate and effective shop trading hours that exist at present in South Australia, and we are very disappointed that both the Labor Party and the Liberal Party have been so indifferent to the

hundreds and thousands of people who would be devastated if this Bill was successful. We oppose the second reading.

The Hon. M.J. ELLIOTT: I rise to speak briefly in opposition to this Bill in terms that are similar to those expressed by the Hon. Mr Gilfillan. There is a great danger in that so many people seem to think that change equals progress; as long as things keep changing, we are making progress. The current flavour of change is deregulation of one sort or another. This deregulation flag—

The Hon. Carolyn Pickles: There have been long shopping hours in Europe for many years.

The Hon. M.J. ELLIOTT: So what? I could say that there is child slavery in some countries. That does not make it a good or a bad thing. I think we can argue—

The Hon. Carolyn Pickles interjecting:

The Hon. M.J. ELLIOTT: Here we go! We should argue cases on their own merit. We must balance the pros and cons. We can have a successful debate only if we look at the benefits and the losses of deregulation of shopping hours, at this stage the proposal to extend to 5 o'clock on a Saturday afternoon. It is claimed that, according to the opinion polls, there is strong support for this move, but, as the Hon. Mr Gilfillan said, while a majority of people might say, 'Yes' to extended shopping hours, if we actually talked to those people we would find that Saturday afternoon shopping is not one of the most urgent requirements in their life.

Rather, there is a cold shrug of the shoulder; people say, 'Yes, I wouldn't mind. I might even use it sometimes.' That is the attitude we tend to get from many people: 'Yes, it would be handy if shops were open, but I don't think I would use it because I would prefer to play sport, to take my children to sport, or to work in the garden.' Many people would use it, but many more would not. It does not seem to be an overwhelming priority of many people, except for those who are affected more directly because they either own or work in a business. That is indeed where many of the costs are.

I have not yet heard in this debate what is happening in the work force, in particular regarding the casualisation of the work force. A report was undertaken by the Premier's Department recently which showed that about two-thirds to three-quarters of all the new jobs created under Labor in the past five years were part-time. The majority of those part-time jobs were casual jobs. That has great significance. Those casual jobs offer no hope of promotion, no sick leave, and no long service leave. Certainly, casual jobs suit some people. For instance, they suit university students who now find that the Government is not willing to give them the sort of support it would have given in the past.

As casual jobs are taken up by some people, with their lesser conditions, other people are being thrown out of full-time work and those people most certainly need that full-time work. Casualisation is an inevitable response to extended shopping hours. It is the casuals who pick up most of the work on Thursday and Friday nights—where shops trade on those nights. Obviously, we will see more casuals, in particular more juniors, coming into the work force working for very low wages, if we allow shops to open on Saturday afternoons. That question really must be addressed. Most definitely, there will be impacts on family life of those who will be required to work on a Saturday afternoon.

The Hon. G.L. Bruce: What about the pubs? It didn't worry them when trading hours in the pubs were extended.

The Hon. M.J. ELLIOTT: Mr Bruce, what you have to recognise is that businesses will be open on Saturdays and Sundays and obviously radio and television stations work 24 hours a day. Some jobs demand that people work those hours.

The Hon. T. Crothers: They get the appropriate penalty for it, though.

The Hon. M.J. ELLIOTT: Yes, and I am not opposed to penalty rates, I might add. I believe that the Hon. Mr Gilfillan has said the same thing. We are not taking the line that the Liberal Party has taken; it says that the only reason it is opposed to extended shopping hours is that it does not want to pay people more for working at those times. We are not saying that. I believe that if a person has to work on a Saturday afternoon, on a Sunday or various other uncomfortable shifts, and has to sacrifice family life and other things, then penalty rates are perfectly justified.

The Hon. R.I. Lucas: What about those who don't have to work?

The Hon. M.J. ELLIOTT: What do you mean 'don't have to work'?

The Hon. R.I. Lucas interjecting:

The Hon. M.J. ELLIOTT: I am not looking at the broad spread of the claim. I am saying that I am not opposed to penalty rates in general. Our arguments against Saturday afternoon trading are quite distinctly different from the ones that the Liberals are putting which really concern the self-interest for particular sections of traders. We are not in that game. If a small business is forced to open it will turn out to be a penalty on that small business. That is a good reason why, perhaps, it should not open on a Saturday afternoon. It will be penalised by having to open longer hours. Its lighting and electrical equipment will operate longer hours.

The Hon. T. Crothers interjecting:

The Hon. M.J. ELLIOTT: Right.

Members interjecting:

The Hon. M.J. ELLIOTT: The Hon. Mr Hill is perfectly right, but even without penalty rates the consumer will pay more to shop on Saturday afternoons. If we extend the length of trading hours, we extend the costs of trading. If businesses have to stay open longer, someone still has to supervise at a higher salary, and lights and other things have to operate. Therefore, costs increase but the turnover will not increase—people will sell the same amount of produce over longer hours. The immediate response to longer hours has to be higher costs, regardless of penalty rates. That is inevitable. We cannot go on denying that these sorts of things are occurring.

We have looked at a number of negatives. What are the positives? There is a bit of convenience for Saturday afternoon customers. The Holy Grail of tourism is brought up every time the Government wants to do something, whether it be trading in hotels 24 hours a day for the Grand Prix or whatever. One could justify the work of paedophiles in Hindley Street on the grounds of tourism. On the advice I have been getting recently, I believe that that is becoming a major tourist industry.

The Hon. Carolyn Pickles: That is outrageous!

The Hon. M.J. ELLIOTT: It is not outrageous. That is certainly the advice I am getting at this stage.

Members interjecting:

The Hon. M.J. ELLIOTT: I beg your pardon. Paedophiles, yes. Paedophiles are travelling in from interstate and the advice I am getting from people working in the youth field is that having the Casino and other things in the general locality of Hindley Street—

The Hon. R.I. Lucas interjecting:

The Hon. M.J. ELLIOTT: I said that you can justify anything on the grounds of tourism. That is really the only argument that the Government seems to be bringing up. It is worth noting that the Government says that it cannot

make the shops obey the provisions on hours. It is not a matter of cannot; it is not willing to do it. As a former teacher I know that, if one allows people to break rules, they will consistently do that and lose respect for all rules. I think that the Government stands condemned for not upholding the rules of this State as approved by the Parliament. We oppose the Bill.

The Hon. CAROLYN PICKLES secured the adjournment of the debate.

[Sitting suspended from 5.50 to 7.45 p.m.]

STAMP DUTIES ACT AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 24 November. Page 1971.)

The Hon. K.T. GRIFFIN: In the closing stages of this part of the session we now have to deal with a particularly complex piece of legislation which has been around for only a short time, certainly as far as I am aware, although in the other place the Premier indicated that he and his officers had been considering the matters raised in the Bill for about 12 months. However, that was an internal consideration and certainly has not been aired publicly, except by Mr Terry Groom during the course of the Estimates Committees where, rather obliquely, he referred to the transfer of businesses and the use of the Business Names Act to trace where transfers of business names and business interests had occurred and no stamp duty had subsequently been paid.

Let me say from the outset that the Opposition is not seeking to defeat this Bill. We seek to have the Committee stage deferred until February so that, having heard the various points of view which will be expressed in this Chamber and which have been expressed hurriedly by the Taxation Institute of Australia, South Australian Division in particular, and concurred in by the Law Society, people can consider those points of view so that the Government can prepare amendments to more clearly idenfity the scope of the Bill and also to enable it to continue consultations which have occurred somewhat belatedly with bodies such as the Taxation Institute of Australia, South Australian Division.

I know that other organisations are considering the scope of this Bill. The Joint Legislation Committee of the Institute of Chartered Accountants has received a copy of the Bill from me and, from discussions with the committee in the last day or so, I understand that it is still considering this legislation, as are other groups. The Law Society has indicated by letter that it concurs in the submission made by the Taxation Institute. The difficulty with this legislation is that it is complex and it really is not possible to do it justice in the very short time that we have had to consider it. It is the sort of complex legal legislation that needs careful and considered examination over a reasonable period of time and not in the space of something less than three weeks since the Bill has been available publicly in the House of Assembly and now here.

I believe that if, after we reach the Committee stage, the Government was to agree to a deferral of the Bill until February, there could be a great deal of clarification of what the Bill is intended to do by way of amendments and then professionally I think a larger number of people in the community would be very much happier with this legislation.

The Hon. C.J. Sumner: What happens in the meantime?

The Hon. K.T. GRIFFIN: The alternative is for the Attorney-General to have amendments drafted which seek to clarify the very significant areas of doubt in the Bill as it is at the present time and, if he brings those amendments in tomorrow and gives us a reasonable time to look at them, we will look at them and hopefully, if we can be persuaded that the amendments are fair and reasonable, the Bill can go through tomorrow. But it does need a tremendous amount of clarification before it would get our unqualified support through this Chamber.

It is a matter for the Government to determine the scope of the legislation and in the other place the Premier said, without giving very much information at all in answer to responsible and reasonable questions raised during the Committee stage, 'We are going to deal with that by regulation.' It is not good enough to embark upon taxing citizens by regulation or by adopting the style of a broad ranging piece of legislation which, as I will address later, can be construed as having some consequences akin to, if not identical with, a sales tax or an excise and then limiting it by regulation with the Government saying, 'Well this is what we really meant'. That is not good enough when dealing with taxing legislation. The tradition in relation to taxing legislation has been that it has been precise and clear and has spelled out the ambit of a Government's taxing initiative.

The Hon. C.J. Sumner: The income tax legislation does that.

The Hon. K.T. GRIFFIN: The income tax legislation does specify and it gives discretions.

The Hon. C.J. Sumner: There are reams and reams of the Taxation Commissioner's rulings and guidelines.

The Hon. K.T. GRIFFIN: But they are not necessarily binding; they are guidelines and they indicate how the Commissioner will exercise his discretions, but those discretions are always subject to appeal. What the Government is doing with this Bill is saying, 'We will impose, by legislation, this broad ranging tax, charge, stamp duty or whatever you call it and then we will limit it back by regulation to what we think we really intended to cover'. I say quite categorically that that is not good enough and it is not good enough for any Government.

The Hon. C.M. Hill: It is the role of this Council to straighten up legislation, whether it be taxation legislation or not.

The Hon. K.T. GRIFFIN: I agree, and I would like to see the legislation clarified and to be passed in this Chamber in a form which is clear, which limits the scope of the Government to impose stamp duty, taxes or charges and which then makes it reasonably clear to those in the community who have to deal with it. It is all very well to say that one can appeal this or one can appeal that—and I will address remarks to the appeals procedure during the course of this debate, an appeals procedure which is archaic and needs fairly urgent reform.

Of course, that means more work for lawyers, in particular, and some accountants. Whilst I have a vested interest in ensuring that there is an adequate amount of work around for the legal profession and accountants, the fact is that that is not my duty in this Council. I would want to see, as much as possible, that the legislation is clear and, as far as is possible, to do so, free of the capacity to be misconstrued and thereby lead to appeals. As I was saying, the tradition is that legislation of a taxing nature ought to be precise, that the courts have construed it strictly, that the area of discretions ought to be as limited as possible and that it should be clear and unambiguous.

I concede that with the Federal tax legislation many discretions are vested in the Commissioner. I do not like too many discretions vested in any taxing authority. However, that is the way that the Federal legislation has gone and we can do very little about it. That is one of the reasons why a significant number of rulings are published for the guidance of those who are affected by taxing legislation at the Federal level. Another reason for that is because the drafting of Federal tax legislation is so cumbersome as to be impossible to comprehend even, generally speaking, by the High Court of Australia and those practitioners who deal with litigation relating only to tax.

While I certainly do not criticise the drafting of this Bill—the drafting reflects the instructions given by the Government—there are gross inadequacies in its drafting and in the way that the legislation can be applied. There are a number of problems with the Bill, and they have been pointed up largely by the Taxation Institute, supported by, as I said, the Law Society of South Australia. As I consider the detail of the Bill, I believe that it would be appropriate to relate my observations to the remarks by the Taxation Institute in its submission, because it is a comprehensive submission which picks up a number of areas of doubt.

It should be put on the record at this point that the Taxation Institute is a body of professionals. As I understand it, it is held in very high regard because of its level of professionalism and its attitude towards taxing measures. The institute has endeavoured to provide advice to Governments of all political persuasions and at all levels across Australia on taxing measures which might be introduced into Parliament. The institute has, on a continuing basis, maintained liaison with taxing authorities in the States, at Commonwealth level and in the Territories in such a way as to facilitate the administration of taxing legislation and ensure, as much as that is possible, equity for all those involved. The institute is not, I would suggest, a body comprised of members whose aims are to advise clients and assist them in the avoidance or minimisation of their tax, as the Premier suggested in another place when he handed out a gratuitous insult to the institute.

While individual members of the Taxation Institute have a professional and ethical responsibility to advise their clients as to the way in which tax legislation should be interpreted and administered, and to prosecute on a client's instructions any argument in respect of the application of legislation and appeals, the fact is that they do have professional duties as members of the institute designed to assist in the clear interpretation and drafting of tax legislation. I would be surprised if there could be any criticism of the institute as a body in respect of that sort of involvement in its consultation with Governments and authorities at all levels and of all political persuasions.

The Premier said in another place that there had been discussions in respect of matters in this Bill for the past 12 months. But, as I indicated in my opening remarks, that was only internally—there was certainly no discussion outside Government; and no draft Bill was exposed for comment, even on a confidential basis. So there has not been any professional input outside the Government in the preparation of this legislation. I suppose there may well have been a fear that to expose a draft for comment may have alerted practitioners and others to the Government's intentions with respect to the Stamp Duties Act.

It may have been suspected that some persons would expedite the rearrangement of their affairs to take advantage of the duty free areas presently available in anticipation of the legislation passing through Parliament when ultimately introduced. I suggest that with this Bill there could not be the same level of concern as occurred in, say, 1980 when the then Liberal Government introduced quite wide ranging amendments to the Stamp Duties Act. That legislation took effect from the date of its introduction into Parliament.

I suggest that this Bill seeks to amend certain areas, to close what some may regard as loopholes and to broaden the stamp duty base in other areas. I do not believe that much revenue would have been lost to the State if this Bill had been released for comment even on a confidential basis. When the then Liberal Government introduced its comprehensive Bill to amend the Stamp Duties Act we believed that it was appropriate to engage, on a confidential basis, certain persons who had experience in the stamp duty area of the law to make observations on the Bill.

My recollection is that we actually chose the then Chairman of the Taxation Institute of Australia (South Australian Division) to perform that task, and that he did it without fee or financial reward. That was invaluable, and I think that the stamp duty authorities in this State would acknowledge that that assistance from the other side of the stamp duty fence assisted in putting together an important Bill relating to stamp duties in this State.

Also, if the Government were persuaded that because of the complexities of this Bill it should be postponed at the Committee stage until 9 February, I do not believe that a significant number of transactions would be entered into with a view to avoiding the consequences of this legislation over the Christmas/New Year period. I believe that there would be value in a further period of consultation. I reiterate the point I made earlier that there really has been no reasonable opportunity for professional groups to make observations on the Bill in a form which I think would be helpful, although the Taxation Institute put together, with some haste, this submission which has now had wide circulation.

The Bill was introduced in another place on 11 November; it was debated there on 24 November; it was received in this Chamber on 24 November; and it is now being debated today—2 December. So, within something less than three weeks, the Bill has been through one House and is now receiving consideration in this place.

Before I deal with the detail of the Bill, there is one other observation I should make, that is, that I understand that in the other place the Premier asserted that the Taxation Institute representatives had been having discussions with the Commissioner of Stamp Duties. I understand that that has occurred on at least two occasions. The Premier indicated that the institute had agreed that a lot of its criticism was wrongly based (or words to that effect), but I am informed that that is not so—that it does not acknowledge that its submission contains the sort of mistakes and errors or is wrongly based, as the Premier suggests.

The second reading speech of the Minister in introducing the Bill in this Chamber was brief and, I would suggest also, vague in the sense that it does not deal adequately with the proposed scope of the Bill. It does not also deal, as one would ordinarily expect, with the revenue implications of each of the proposals in the Bill, both those that will have the effect of imposing either a new tax or a tax on documents or transactions not previously liable to stamp duty or in respect of concessions, several of which are referred to in this Bill. I find that rather surprising. It cannot be passed off, as the Premier sought to pass it off in the other place, by saying, 'Well, you know with these sorts of things it is very difficult to assess, and you really cannot tell what will happen until you get in the ballpark.'

I do not accept that that is a responsible response; nor do I accept that it is an accurate response. I believe that some predictions can be made by the Government of the

day as to the revenue that might be raised or forgone in such a measure. Either the Premier has not looked at that, which I do not believe (otherwise I would suggest that the Bill would not be before us) or he does know and for some other reason will not indicate the figure, either because the size of the sum is so large that it would create some embarrassment, or for some other reason. In his reply, I would like the Attorney to indicate specifically what estimates of revenue gain or revenue forgone might be anticipated in a full year from the operation of this Bill in the form in which it was introduced into the Parliament.

I now turn to the detail of the Bill. Clause 3 seeks to amend section 20 of the principal Act, which deals with the penalty for failing to stamp an instrument within a particular period of time. Where it was executed in South Australia, if the instrument is not stamped within two months after its execution, there is a penalty of $50 or an amount equal to 10 per cent of the amount of the unpaid duty for each month for which the instrument has remained unstamped or insufficiently stamped from the day when it was executed until the amount equals the amount of unpaid duty, whichever is the greater amount.

If the instrument was executed outside South Australia, it must be stamped within two months after its receipt in South Australia, or within six months after its execution, whichever period first expires. In that circumstance, the same rate of penalty duty applies. There is power for the Commissioner to remit any penalty or any part of it incurred in respect of the instrument. The amendment seeks to provide that, if an instrument that is chargeable with stamp duty is not produced to the Commissioner for stamping within the periods to which I have just referred, any person who has executed the instrument or on whose behalf it was executed is guilty of an offence.

That makes it a criminal offence, whether it is a 20c duty stamp that has not been placed on it, or whether it is *ad valorem* duty which might amount to a large sum. The basis upon which duty is paid is set out in section 5 (1), which refers to the exemptions in the second schedule. It goes on to provide:

> There shall be charged for the use of the Crown several stamp duties specified in the said schedule and elsewhere in this Act and for the several instruments therein set forth, and also such other duties as are specified in the said schedule or in any other provision of this Act.

Section 5b provides:

> Subject to this Act duty shall be chargeable in respect of an instrument that is outside South Australia where the instrument relates, wheresoever executed, to property situated, or any matter or thing done or to be done, in South Australia.

That is a very broad provision with extra-territorial application. I suppose one could argue the validity of such a section but, supposing that it were completely within the power of the State Parliament, it does have some significant ramifications when taken in conjunction with the proposed subsection (4).

It means that, if there are two parties to an instrument, one being in South Australia, and it is executed in South Australia and is then sent interstate to a party and is executed there, even if that document is maintained outside the State—even though the document did not effectively become the instrument until executed by both parties—an offence will be committed by the party in South Australia because, if the document is not produced to the Commissioner for stamping within the period prescribed under section 20 (1), it is a serious consequence of a document remaining outside South Australia.

I know that there are many documents executed outside South Australia which never come within the boundaries of the State and which therefore, are never stamped in the State. There could be a difficulty in that the party interstate refuses to deliver the executed instrument back to South Australia. What happens in those circumstances? Is the poor South Australian party still liable to be prosecuted for an offence? Then what happens if the document stays interstate and the interstate party, perhaps an individual, comes to South Australia? In those circumstances the mere presence in South Australia of that person is likely to attract the penal provisions of the proposed subsection (4).

I am not saying that no penalty should be imposed on persons who wilfully refuse to stamp or to produce instruments for stamping. I am saying that there are unintended consequences of the proposed subsection (4).

It may also be that a person in South Australia has granted a power of attorney to a person who executes a document without the express authority of the grantor of the power. If the grantor stays in South Australia or perhaps is overseas for six or eight months and the document is not produced for stamping in South Australia, what then? An offence has been committed.

In the other place, the Premier said that the Commissioner has some discretions, but I would suggest that that is a fairly unstable basis upon which to determine whether or not a person is to be prosecuted. It certainly does not clarify with any particularity what sorts of exemptions might be considered appropriate. The other difficulty with that proposed subsection (4) is that the maximum penalty is $10 000. As I indicated a few minutes ago it does not really matter whether it is a 20c duty stamp, a $4 duty stamp or $5 000 stamp duty, the maximum penalty is the same. I would suggest that even though the Premier has said that it is a maximum penalty and the penalty is at the discretion of the court, if a conviction is recorded, the fact is that the maximum penalty is quite disproportionate to the severity of the offence where it is only a small amount of duty.

One of the options which the Government might consider is setting a graduated scale so that if the amount of duty is under $100, maybe the penalty could be $500 maximum or something like that. It could be on a graduated scale so that citizens would not be exposed to the prospect of unduly harsh penalties in circumstances where one might ordinarily regard the offence as being relatively minor. Under proposed subsection (5), the penal provisions do not apply in relation to an instrument that has been duly stamped in some other manner authorised by this Act within the relevant period.

With respect to that matter, the Taxation Institute says that the use of the expression 'duly stamped' has been given a special meaning under the Act, and in this subsection appears to be inappropriate and incorrect. An instrument is not duly stamped unless the Commissioner has expressed his opinion thereon as provided for in section 23 (3) and (4). I think that needs to be addressed to ensure that the terminology does not create any particular confusion. The Taxation Institute further states:

> Where an adhesive stamp is used to stamp an agreement, it is merely denoted as provided for in section 29. A similar expression is used in section 81a. The use of the expression 'duly stamped' in this subsection should therefore be removed and the more general terminology used so that the subsection has the exculpating effect intended.

That needs to be considered and some specific response needs to be given by the Attorney-General. It is a defence that another party has assumed responsibility for stamping the instrument, but that depends on what might be regarded as a custom. I do not know how a custom is established with respect to the assumption of responsibility for stamping an instrument. I can give a number of examples where

there is a transfer of real estate. One would have said that the transfer duly executed by vendor and purchaser should remain in the possession of the vendor or the vendor's agent or solicitor, but that frequently does not happen. It is delivered to the purchaser's agent, broker or solicitor for the purpose of enabling it to be stamped before settlement occurs at the Lands Titles Office.

One might then debate: of those two scenarios, what is the custom? I would suggest that the answer would be different according to the circumstances of each matter. The custom would also vary according to the facts and may be even the practices of different organisations or groups. The practice may well be different between a bank and a credit union or a bank and a cooperative and a bank and a solicitor or a land broker. It seems to me, therefore, that that reference will be difficult to construe and may not effectively provide a defence, thereby exposing a defendant to prosecution in circumstances which might not be reasonable and fair.

The other part of the defence to a charge is that the instrument was delivered into the possession of some other party to the instrument in the reasonable expectation that that other party would have it stamped. Again, I have difficulty in interpreting what that really means, and I hope that the Attorney-General would be able to give some clarification on that defence. There is no point specifying a defence if there is difficulty in interpreting it and applying it. The view of the Taxation Institute is that it should be a defence that another party has assumed the responsibility for stamping. Only if no person has assumed the responsibility should it then become a matter of custom. I tend to agree with that, that the defences ought to be in the alternative rather than collective defences. The Taxation Institute further states:

> It is unusual for instruments liable for duty to be delivered into the possession of some other party to the instrument. It is more likely that the instrument is delivered to the other party's agent or solicitor. In those circumstances, such delivery should clearly come within the ambit of the defence.

Again, I think there is some substance in that.

The Taxation Institute refers to several other matters. While the Commissioner has a discretion under section 20 to remit the penalty, there is no discretion to extend the time within which the instrument may be lodged for stamping without an offence being committed. It is all very well to say that there may be a discretion as to whether or not a prosecution should be lodged, but also there ought to be a more specific provision which enables the Commissioner to grant extensions of time either before the expiration of the appropriate period or after.

A point raised by the Taxation Institute is that in relation to an instrument that is not stamped within the required period, in the light of the fact that the Bill provides a statutory offence, it is arguable that it is then tainted with illegality and is therefore unenforceable. Special provisions in sections 21 and 22 of the Stamp Duties Act deal with the admissibility of unstamped instruments in evidence. I suggest this has the effect of protecting the revenue, because the unstamped instruments cannot be relied on in evidence; they have to be stamped before they can be admitted. Surely that must be the ultimate sanction. I would be very concerned, even if it is only arguable, that because of the creation of a statutory offence of failure to pay stamp duty within a certain period of time that any instrument thereby becomes unenforcable, in terms of the law, not just in terms of the stamp duty provisions.

The other point in relation to the amendment to section 20—and I suspect that this could be applied to the whole of the Bill—is an observation about when the legislation comes into effect. I think it would be wrong if the legislation has retrospective effect. I think it could well be argued that it does have retrospective effect in the sense that there may be unstamped documents out in the community when the time periods applicable have long since expired. Therefore, it would be inappropriate in the context of section 20, and I think in other contexts, too, for the penal provisions of the Bill to apply in those circumstances. So, I would like the Attorney-General to address the whole question of retrospectivity. I know that the Acts Interpretation Act has some application, but I suggest that it may not necessarily cover all the provisions of this Bill in terms of the transactions or instruments which might be affected by it.

The only other matter in relation to clause 3 concerns a point that the Opposition has raised now on three or four occasions, and I refer to the liability of directors of a body corporate. We argued the matter out during the early hours of this morning, and we will probably keep on arguing it. However, I think it is important to say once again that, whilst the Attorney-General argues that this is not a reverse onus provision, I would argue strongly that it is.

There is a difficulty in having such a provision in virtually every piece of legislation where, if the body corporate is guilty of an offence, every member of the governing body is also guilty of an offence and liable to the same penalty, unless it is proved that the person involved could not by the exercise of reasonable diligence have prevented the commission of the offence by the body corporate. That, of course, extends beyond companies; it extends to cooperatives, credit unions, friendly societies, and associations under the Associations Incorporation Act—bodies in which there is not perhaps the same level of expertise as one might expect among the directorship of a company. The scope of this reverse onus provision does have to be seriously considered.

Clause 4 of the Bill deals with objections and appeals. The Taxation Institute says that the amendment is considered desirable. While I do not disagree with that, that does not fully explore the issues that are raised by this amending provision, as follows:

> The Treasurer may, on receipt of a statement of grounds of objection, confirm or modify the Commissioner's assessment and, if the assessment is reduced, any excess duty paid by the objector will be refunded together with interest on the excess, from the date of payment of the duty, at the rate fixed under subsection (10).

Subsection (10) allows the Minister, by notice in the *Gazette*, to fix a rate of interest in respect of refunds of duty and to vary that rate of interest. The second reading explanation states and in the other place the Premier indicated that that rate of interest would be fixed by reference to the rate of interest received by the Government on its own investments. I should say right from the start that I do not find that particularly satisfactory. I think the very fact that there is an amount of interest to be paid to a taxpayer on a refund of duty is an important development, and represents progress, but I think that the rate of interest ought to be, if not identical with the penalties which the Government extracts from taxpayers on overpaid duty, at least something related to that rate of duty, thus putting the Government in the same position in respect of its own revenue as the taxpayer is in respect of its or his or her liability. So, I would like to see some amendment to tidy up the rate of interest which might be paid to a taxpayer on a refund of duty.

Some more significant questions have to be considered in relation to appeals. While it is not a subject of the Government's Bill, this measure nevertheless raises the issue by reference to section 24 of the Act. The mechanism set down in that section allows a person who is dissatisfied

with the assessment of the Commissioner on payment of duty in accordance with the assessment, within 14 days after the date of the Commissioner's assessment, to forward to the Treasurer a statement of the grounds of objection to the assessment, or within 21 days after the date of the Commissioner's assessment appeal to the Supreme Court. If a person forwards to the Treasurer a statement of the grounds of objection to the Commissioner's assessment, the Treasurer, as I have indicated, under proposed new subsection (2), can reduce it or modify it and refund any excess duty. But if upon the confirmation or modification by the Treasurer of the Commissioner's assessment the taxpayer is still dissatisfied, the taxpayer may within 21 days after the Treasurer's decision appeal to the Supreme Court.

A further provision in this section provides that, for the purpose of any appeal to the Supreme Court, the appellant may require the Commissioner to state and sign a case setting forth the question upon which his opinion was required and the assessment made by him. There are two aspects to the provision to which I have referred that I think are a problem. The first concern is the payment of duty. A person who lodges a document for the opinion of Commissioner for Stamp Duties may quite legitimately believe that only minimal duty is payable, only to find that the Commissioner has another point of view and that he assesses, *ad valorem*, duty of a quite substantial amount.

It really does create a considerable hardship for a taxpayer who is, in those circumstances to raise the money, to pay it and then to lodge a notice of appeal. What I would like to see is that rather archaic provision of the Stamp Duties Act amended and that the payment of duty is no longer required as a condition precedent to the filing of a notice of objection and appeal. That is not to say that the duty should not be payable; it should be payable and it should attract the penalties specified in the Act for non-payment of duty, and the Commissioner may take such action as is necessary to obtain payment of that duty.

However, I suggest that it is quite unreasonable in this day and age to require payment of the duty as a precondition to the lodging of a notice of appeal either within 14 days after the date of the assessment of the Commissioner if the appeal goes to the Treasurer, or within 21 days if the appeal goes to the Supreme Court. The Federal tax legislation all provides for a right to object, upon payment of a particular fee, without the requirement to pay in prior to lodging the objection the duty or tax that has been assessed.

My recollection of other State taxing legislation, for example, the Payroll Tax Act, is that the payroll tax in dispute is not required to be paid prior to the filing of a notice of objection or appeal, although there is still a statutory obligation for the taxpayer to pay the outstanding payroll tax. I think that we ought to take this opportunity to upgrade the provisions of section 24 in that respect.

There is one other respect in which I believe that the section needs to be changed. There is a provision that the appellant may require the Commissioner to state and sign a case setting forth the question on which his opinion was required and the assessment made by him. As I understand it, that makes the taxpayer and the appeal very much dependent on the Commissioner. I would like to see that provision upgraded substantially to remove the obligation of the Commissioner in that respect. There have been a number of cases on a similar sort of appeal provision in New South Wales and Victoria where the High Court in particular has referred to that sort of provision as archaic and as a very clumsy procedural provision. It is in that context that I would suggest that we now have an opportunity to address the issue, and it would be a good idea to make the changes while the Bill is before us.

Clause 5 amends section 71 which deals with voluntary dispositions *inter vivos*. The second reading explanation indicates that this amendment is designed to overcome a decision of the Full Supreme Court in South Australia in a case of *Softcorp Holdings Pty Ltd v Commissioner of Stamps*. In that case there was a complicated set of transactions involving a unit trust and the vesting or the creation of shares in a company—a complicated set of procedures which ultimately resulted in a transfer of substantial assets without payment of duty using the vehicle of a unit trust. I suggest that the amendment that is proposed in the Bill really does go much further than ever the *Softcorp Holdings* case decided.

The Taxation Institute suggests that this clause is an overreaction to the Supreme Court decision and that it is unfair. I am not suggesting that the Government should not take steps to close up what might be regarded as a loophole that was identified by the *Softcorp Holdings* case, but I would suggest that the way in which it has been done has unintended consequences. The Taxation Institute, in respect of this, observes:

> A simple example of its unfairness is the example of real estate being acquired by a parent as trustee for a child of, say, eight years of age for a purchase price of, say, $10 000. At this time the transfer would attract $100 duty. Ten years later the parent transfers the property into the name of the child as the beneficial owner. Assuming that the stamp duty rates remain the same but that the property is now worth $50 000, then duty of $1 180 will be payable with a credit for the initial $100. An extra $1 080 will be payable. This does not avoid the double duty that section 71 (5) *(e)* was intended to cover.

The sorts of circumstances to which the Taxation Institute refers are not uncommon. Professionally, I, and many of my colleagues around Adelaide, because there has been a desire to ensure that the law relating to infants contract is complied with, have appointed trustees to hold property for a child in expectation that the property will be transferred to the child when the child reaches his or her majority.

In that circumstance, where there is a fixed trust, it will be caught by this legislation, and I think that that is quite inequitable and wrong. While I do not say that the objective of catching the Softcorp Holdings sorts of case is appropriate, I do say that the sort of fixed trust situation to which the Taxation Institute has referred is quite wrong, because the beneficiary is the child, it has been purchased for the child, yet quite substantial duty is to be paid when the child reaches his or her majority and the property is transferred to that child.

I do not believe that that is reasonable or fair. It is all very well for the Premier to say that we can use a discretionary trust. However, there may be family circumstances that require the fixed trust concept to be preferred. In those circumstances I do not believe that we should be advising parents or others to provide a discretionary trust under which the child for whom a particular property might be intended, when he or she reaches his or her majority, should be subject to the discretion of a trustee who may well change by the time the child reaches his or her majority, maybe because the trustee dies and a new trustee has to be appointed. So, I think there are real problems with the scope of that particular amendment. The Taxation Institute goes on to say:

> There are many other situations where a simple beneficial interest in property arises under an instrument that is duly stamped where hitherto it has been the ordinary and reasonable expectation in the community that there should be no double duty payable.

This should not lightly be disturbed. Any particular avoidance technique that has been adopted to exploit section 75 (5) *(e)* should be specifically legislated against rather than a complete repeal of the exemption.

When we had the legislation before us in 1980 it was of specific concern to ensure that there was not double duty payable in circumstances where a trustee was transferring to a beneficiary. Sure, duty could be payable where there was a transfer of the beneficial interest and duty could be paid at the point where the trustee acquired the property. 41If the trustee held the property in his or her own right and then entered into a declaration of trust, saying that he or she held the property in trust for a beneficiary, then there are two transactions: an acquisition by the trustee in his or her own right and a disposition, in effect, to someone else who would then hold the beneficial interest. But where a trustee purchases or otherwise acquires property in specific trust for a beneficiary and, having paid the duty on the acquisition and there is no change in the stated beneficial interest, in my view duty should not be paid when the property is ultimately transferred to the beneficiary who was the subject of the trust that was entered into by the trustee.

The Taxation Institute also suggests that new subsection (7) does not appear to contemplate the situation where the interest might have arisen under a series of instruments. In that situation is the credit granted for the sum total paid on all instruments or only on the last one. It goes on to say:

The problem is further aggravated if the last instrument in the series is only adjudged duly stamped and has borne no duty or nominal duty.

I see from the Bill and from *Hansard* that this situation, to some extent, has been corrected by dealing with a series of documents over a period of no more than a month, but I suggest that perhaps that one month period is unnecessarily limiting.

The Taxation Institute also raised questions about when the valuation for apportionment purposes is to be made. It raised questions about whether it is at the time of the acquisition or at the time of the further conveyance and I suggest that that has to be considered. It refers particularly to a complicated set of facts which occur quite frequently in real life. It refers to an acquisition of property by a trustee to be held upon trust to pay the income to A during his life, the remainder to B on the death of A; the duty on the transfer to B of a legal estate should have an offset credit for the whole of the duty paid on the acquisition. If it is to be measured at the time of the purchase, B would be liable to pay *ad valorem* duty on the transfer of the property with a credit based on the actuarial value of the interest at the time of acquisition.

The institute then goes on to talk about the life tenant having an overriding power of revocation of trust property in his favour and the fact that that may not in fact constitute a discretionary trust for the purposes of section 71 (3). The Taxation Institute says that new subsection (7) contains no protection for a taxpayer and, whilst the Commissioner may assess *ad valorem* duty under section 15 *(a)* on the value of the property, a minimal credit under the proposed amendment is unlikely to be received. That is a matter which I think needs careful consideration by the Attorney-General.

Clause 6 of the Bill deals with an exemption from duty in respect of a conveyance between husband and wife. I support that proposition in principle and I concede that it is an important development in the stamp duty legislation. An instrument of which the sole effect is to transfer an instrument in the matrimonial home from one spouse to the other is exempt from stamp duty. I think there may well be some difficulty in defining 'matrimonial home' as being limited to residential premises that constitute the principal place of residence but not including premises that form part of industrial or commercial premises.

I raise the following question: what happens to the husband and wife who own a house that has a small shop in the front of it, for example, a delicatessen or a fish shop which is constructed as part of the premises? The bulk of the house may, in fact, be used as a residence, but it does not qualify for the exemption because it does not include premises that form part of industrial or commercial premises. So, the poor, hardworking small business person who happens to live in a house attached to a shop finds himself or herself in a position where the exemption does not apply.

The Hon. I. Gilfillan: And the farmer.

The Hon. K.T. GRIFFIN: And the farmer, too. The farmer's residential premises are attached to farming land or to premises used for commercial purposes. I know there are some problems in that situation, but it may be appropriate to consider apportionment if nothing else. An apportionment is perhaps one way of ensuring that at least some part of the exemption flows to those spouses who sacrifice a lot to make their way in life by running a business which might be conducted in a small shop in the front of their premises.

I suppose the other problem involves somebody who does piece work in, say, the clothing industry. The work is obviously done at home; does that make the property part of industrial or commercial premises? I think that needs to be clarified. A person might have on his land a small shed from which he runs, for instance, a crash repair business or some other small business, yet the whole premises are separate from the matrimonial home but on the same certificate of title. What happens in those circumstances? I think that situation also needs to be clarified.

I turn now to the question of spouses. I think my view on this matter is well known. I do not generally support the inclusion within the description of 'spouse' of a husband or wife living in a *de facto* relationship, but I accept and have accepted that because of the enactment of the Family Relationships Act which sets a precedent. There are now many occasions where one must reluctantly acknowledge that the so-called putative spouse is recognised in law and in some respects in society.

My difficulty with the definition of 'spouse' is that it is inconsistent with the Family Relationships Act and a variety of other legislation where five years is the minimum period of cohabitation where the so-called spouses are *de facto* husband and wife. This issue was raised in the other place, where the Premier said that he was not particularly fussed one way or the other. At that time he preferred to stay with the period of two years but considered that it might receive further attention in this Council. At the very least I would like to see that period for recognition of *de facto* relationships extended to five years instead of the limited period of two years.

I now refer to a letter from the Taxation Institute putting forward matters for consideration by the Government. I understand that a copy of the letter went to the Premier. That letter, which acknowledges that a copy was being made available to me representing the Opposition, states:

I refer to the letter from this institute of the 20th instant in respect of the abovementioned matter—

that is, the Stamp Duties Act Amendment Bill—

Since that submission it has also been drawn to the attention of this institute that companies in the same group transferring various assets between members of the group will be required to lodge a statement [under proposed new section 71e] and pay stamp duty where such a transaction in the past would not have involved a dutiable instrument in the ordinary course. A similar

problem could arise in respect of family businesses where some aspects of the activities are conducted by companies or trusts.

Like problems have arisen in the past primarily in respect of land transactions. In the case of the transfer of other assets there was no dutiable instrument raised. It is acknowledged that if an instrument was raised then duty would be payable.

In the circumstances, to avoid disadvantaging businesses in this State where they engage in a group or family reconstruction of their affairs, it is suggested that there should be an exemption at least from the provisions of the proposed section 71c. It would be preferable if the exemption applied to all assets including land.

There exists adequate precedent for this form of relief. In Queensland examples are to be found in section 49c of the Stamp Act in respect of company reconstructions and section 55b in respect of certain transfers involving a family group. In New South Wales, in the case of amalgamation of clubs, there exists ruling No. 28, and in respect of corporations ruling No. 20 setting out the terms on which relief will be granted from duty in like situations.

In view of the extent of the operation of proposed section 71e, it is now considered appropriate to request the introduction of relief from duty in the case of group and family reconstructions. As previously indicated members of the legislation and technical subcommittee of this institute are prepared to meet with you and/or Treasury representatives to discuss the matters raised in the submissions previously made to you and raised in this letter.

That is an important matter, which is raised, I understand, only because of the proposal for new section 71e.

I turn now to clause 7, which is probably the most significant and controversial part of the Bill. Essentially, it is a very wide and all-embracing provision with wide ranging consequences which, according to the Premier in the other place, will be limited by exemptions promulgated in regulations. I have made the point about the principle of that, which I oppose. I believe that, if there are to be any exemptions or if there is to be any limit on the scope of this provision, it should be specified in the statute itself. I think probably the most appropriate way of dealing with this is to simply read from the Taxation Institute's submission, which sets it out quite clearly. The letter states:

The new section 71e is part of the current trend in stamp duty law whereby duty is levied on transactions rather than instruments. It compels an instrument to be brought into existence in specified circumstances and on that instrument duty is payable. The section is in many respects similar to Division 3A of Part III of the New South Wales Stamp Duties Act 1920. There are a number of material differences in the provisions. There is also very similar legislation in Queensland which has existed in that State since 1968 and has been amended on many occasions.

None of the States of New South Wales, Western Australia and Queensland require a statement to be lodged where the transaction results in a change in the ownership of a legal estate or interest in real property. In the case of Western Australia and New South Wales, a statement is required only when the change relates to a beneficial interest. In the case of Queensland there are very few circumstances where any dealings with real property attracts the operation of its section. Where it does it deems the sale of the real property to be the sale of a business.

In this State it is not possible to effect a transfer or a change of ownership of a legal estate in land without a written instrument by virtue of the provisions of sections 28 and 29 of the Law of Property Act 1936 and section 96 of the Real Property Act 1886, and a number of other provisions of that later Act, or so it has hitherto been thought.

It has of course been possible to effect a change of the beneficial ownership without an instrument. Since the introduction of section 71 (3) *(a)*, duty has been payable on an instrument which acknowledges, evidences, records or effects any such alteration. With the introduction of section 20 (4) the same criminal sanctions will apply to a failure to stamp any such instrument as will apply to a person who fails to lodge a statement in accordance with section 71e. Therefore, the aspect relating to land appears to be unnecessary. It is possible on one construction of 71e (1) to suggest that on the entry into every unconditional contract for the sale of land the section applies which is obviously unintentional.

In South Australia you cannot change the legal estate in land unless you lodge a transfer at the Lands Titles Office and, before the Lands Titles Office will accept the transfer, it must be stamped. If by the very nature of the transaction—for example, a change in trustees—you must lodge it with the Commissioner of Stamp Duties for opinion, it is then adjudged duly stamped and then lodged at the Lands Titles Office.

I think it should also be noted that there are some other significant differences between South Australia and other States, because we have, since the inception of the Stamp Duties Act 1923, dealt with instruments. Basically, it is instruments which have been liable to stamp duty. There is now a quite significant change in the basis for stamping transactions. The Taxation Institute's letter continues:

Whilst there will be many difficulties in determining whether a particular transaction involves a change of ownership in an equitable interest in a business those difficulties are not as significant as many of the other problems in the proposed section.

The section appears to create a sales tax and/or excise. It requires a statement to be lodged on every change in the legal or equitable ownership of a business asset if two other criteria are satisfied. The two criteria are that there is no instrument chargeable with duty otherwise effecting the transaction and if there was an instrument it would have attracted conveyance duty.

I pause there. The significance of the reference to a sales tax and/or excise is this: the duty is assessed on an *ad valorem* basis. When you have duty being assessed in relation to the value of an item, you have, in effect, a sales tax or an excise. There are many High Court cases which deal clearly with State taxes and duties which might be akin to sales taxes or excises and which are therefore unconstitutional.

I would suggest that even though the Premier has indicated that it is the Government's intention to exempt out certain transactions by regulation, particularly those that might have a clearer connotation of sales tax type transactions, that will not affect the question of the constitutional validity of this question. The institute's letter continues:

No definition of a business asset is provided. There appears to be no judicial consideration of that expression. It appears to encompass everything from stock in trade to goodwill and trade marks. The use of the word 'asset' in stamp duty law rather than 'property' is novel. Is it intended to encompass something different?

Under the existing Stamp Duty Act any conveyance of any real or personal property or interest therein would be chargeable with duty as a conveyance, save for a few exceptions. Therefore, there are very few situations where if a transaction was either wholly or in part effected by an instrument it would not be chargeable as a conveyance. Some examples of the operation of the section are:

1. A consumer purchases his weekly groceries from a supermarket—

that is the sexist language of the letter, not mine—

The cost is $80. No instrument effects the transaction. If it were effected by an instrument then *ad valorem* conveyance duty would be payable. The groceries were business assets of the supermarket at the time of sale. General exemption 14 for goods under $40 does not apply. The consumer and the supermarket proprietor must lodge the statements.

There has been some debate in the other place about whether section 31 of the Act provides that this is not a dutiable transaction, but I suggest that section 31 does not alter the general concept of this section and does not invalidate the observations made by the institute. Even if there is argument about it, it suggests to me that it is not clear and that therefore it ought to be addressed more carefully. The letter goes on to state:

2. In a like manner every sale of furniture, a new or second-hand motor vehicle, a radio or television receiver or alcoholic beverage where the total value exceeds $40 will give rise to a transaction requiring lodgment of statements. Of course it must be sold as part of a business. A person who sells his car through the *Advertiser* newspaper may not be caught by the section but a person who sells it as part of a business will be obliged to lodge the statement, as will the person acquiring the asset.

3. A small trader replaces used plant and equipment in his premises and either sells or trades in the used plant and equipment

for $500. General exemption 14 in respect of goods under $40 will not apply. We have a sale of a business asset. It is usually effected without an instrument. It is not in this case effected by an instrument on which *ad valorem* duty is charged. If it had been effected by an instrument the instrument would have been chargeable with duty as a conveyance. A statement must be lodged by each party to the transaction.

4. A farmer selling his livestock will also be caught for similar reasons.

However, one may argue that those examples are construing proposed section 71e too widely or too literally, the fact is that the proposed section is capable of that interpretation, and I would suggest that that in fact has been conceded by the Premier in the other place, when he said, 'Well, look, we are going to grant a lot of exemptions, anyway, under the regulations.' My point, which I made at the beginning of this speech, is that it is not good enough for taxing legislation, and particularly for this Bill, to have such a wide possible impact and then to limit it down by regulation. The Taxation Institute makes this observation:

No other State attempts anything as all encompassing. Further in New South Wales (where the section is not drawn anywhere near as wide)—

as the one in this Bill—

there are a series of exemptions which do not exist in the proposed section 71e.

They list them, as follows:

1. The appointment of a receiver or trustee in bankruptcy;
2. The appointment of a liquidator;
3. The making of a compromise or arrangement under Part VIII of the Companies (New South Wales) Code which has been approved by the court;
4. Surrender of a lease;
5. The transfer or conveyance of any estate or interest in property as security, including the pledging or charging of property. As you will see from this exemption as every bill of sale constitutes an assignment of the property the subject of the bill of sale that transaction will require statements to be lodged;
6. The release or termination of an option for the purchase of property.

The Premier said that we are going to do a lot of that by regulation and a bit more. Let me say that in Victoria where there are transfers of personal property that are business assets, where they are not accompanied by the transfer of real estate, no duty is payable on an instrument which transfers a property in those business assets. The Premier said in the other place, 'We are going to grant an exemption for that.' I say that, if that is the case, it ought to be in the Bill. The Taxation Institute's letter continues:

Every change in the interest of partners in a partnership will require the lodgment of a statement. Every farmer who wishes to admit his son to a partnership owning nothing more than livestock will require the lodgment of statements and the payment of duty, although on what basis is unclear. If there are two stages to the transaction, one involving a change in beneficial ownership followed by a change of legal ownership (by delivery) statements will be required to be lodged on the change in beneficial ownership and further statements on the change of the legal ownership. Is double duty payable? How do you value the change of the beneficial ownership?

They are matters of real concern. They happen every day and, under the Federal Income Act, for example, one can file a section 36 election in respect of one's livestock and plant, and they can be transferred at book value with no tax implications. This section suggests that there will be stamp duty implications, and that they will be much more severe than the tax implications of transferring an interest in livestock and plant within a partnership. Because of that, we need to have clarified exactly what the Government is proposing to cover.

There are other instances where, by virtue of the operation of a statute, a transfer of an interest in property without an instrument may occur. I think of the Consumer Transactions Act which deals with hire purchase agreements and the lease of certain property where, by virtue of entering into such a lease, it becomes immediately a transfer of the title to property with a consequential consumer mortgage back to the person who believed that he or she actually owned the property and was only leasing it or hiring it for a period of time.

Other problems need to be addressed. The Taxation Institute again draws attention to them. It states:

A statement in a form approved by the Commissioner must be lodged within two months of the transaction being entered into. It is unclear from the section whether both parties to the transaction must lodge separate statements in the approved form or whether one statement is to be completed by both parties. If each person is to lodge a statement, will each become liable to an assessment of duty? That is double duty.

A party to the transaction must (if there is to be only one statement lodged, which is not to be completed by all parties) ascertain from the Commissioner whether a statement relating to his transaction has been lodged by the other party or parties or lodge his own statement, otherwise he becomes liable to prosecution.

In Queensland the obligation to lodge the statement is imposed on the purchaser. In New South Wales the obligation is imposed upon the person who is liable to pay the *ad valorem* duty. Only in Western Australia does it impose a duty on all parties to the transaction. In that case the person primarily liable must lodge the statement and each other party to the transaction must notify the Commissioner of the transaction.

The proposed section should be modified so that the person acquiring the assets, who is by ordinary custom the person who pays the duty, is to lodge the form. A notification procedure as adopted in the Western Australian Act could also be adopted. If that course is adopted then separate offences need be provided for in subsection (6).

The subsection does not specify who is liable to pay the duty. The application of sections 5 (2) and 5 (4) is therefore unclear, if they apply at all.

In relation to that part of the letter and its observations on the obligations to lodge a statement, the Bill is confusing. It needs to be clarified and, if it is not clarified, it will encourage a great deal more bureaucracy and paperwork for not only the Commissioner but also for parties to transactions, and it will only add to the costs. I do not believe that it is appropriate to embark upon this sort of process where it is likely to add markedly to the costs of a particular transaction, or where it is likely to expose unwittingly parties to a prosecution or to other penalties. Also, it is likely to involve additional cost because of the need to clarify the obligations with lawyers or accountants. The Taxation Institute continues:

Subsection (5) whilst seeking to avoid double duty creates a series of anomalies. Most of the anomalies arise out of the use of the word 'executed'. In many cases another instrument could be liable for the same duty which need not be executed and which does not effect a change of ownership. Some examples are as follows:

(i) Section 31 (3) renders a receipt liable for duty in certain circumstances. It is unusual to find that a receipt has been executed.

(ii) Section 71 (3) renders liable for duty various instruments which acknowledge, record and evidence a transaction and need not be executed.

(iii) Transfers of the registration of a motor vehicle may not be executed in the context used in this section.

Further difficulties are created by the fact that the other instrument must be subsequently executed. The transfer of the motor vehicle registration may have occurred at the time of the transaction and the duty already paid to the Department of Transport.

It is quite possible that a transaction to which section 66 *(a)* applies may not involve a subsequent execution of a transfer. At the time of the conveyance it may be decided to acquire from the vendor goods, wares and merchandise. The conveyance may be executed but not stamped. That acquisition of the goods, wares and merchandise is disclosed to the Commissioner at the time of stamping but the statement is not lodged. Accordingly the benefit of the credit will not be obtainable and double duty payable.

Section 66 *(a)* requires the consideration paid for goods, wares and merchandise 'which forms substantially one transaction' to be aggregated with the purchase price of the conveyance or transfer of other property. That expression may be different from 'the

same transaction' for there may be two separate transactions forming substantially one transaction but not the same transaction. In those circumstances a credit will not be obtained. A common expression should be adopted.

The subsection does not allow the statement to be adjudged not chargeable if the duty is or has been paid on some other instrument before the duty is paid on the statement where the change of ownership is not effected by the instrument.

Once having lodged a statement if another instrument is brought into existence and inadvertantly stamped there is no relief from paying the further duty imposed on the statement.

The Taxation Institute then deals with certain other matters which are not as significant as those to which I have earlier referred, but for the sake of completeness, it is important to refer to them. It states:

There will of course be a place for subsection (7) if the earlier amendments suggested in respect of one person only lodging the statement is adopted. If not the subsection should be amended to read that a 'person who aids, abets, counsels or procures another person not to lodge a statement is guilty of an offence'.

It makes the point further on that there is no refund provision if the transaction is never completed, and, further, that the section is not limited to property in South Australia as appears to be the case in most other jurisdictions. It states:

It should be limited to assets in South Australia. It should not apply to a dealing by a South Australian in assets outside the State. In the latter case duty may be payable in both jurisdictions otherwise. If there are assets in more than one place there should be an apportionment between the assets of each jurisdiction on the value thereof.

I make the point that that does in fact occur in other places. From memory, I think it occurs in relation to company charges where there is an apportionment of duty according to the property which might be situated in each State.

The Taxation Institute has very comprehensively considered the Bill and certainly my appreciation ought to be recorded for the consideration which it has given. It can be seen quite clearly from the comments made that it is not intent upon protecting those who seek to avoid their responsibilities under legislation, and it is not seeking to oppose at a political level the policy decisions which the Government has made and is entitled to make. We may disagree politically with policy decisions, but the Taxation Institute has not taken that course.

On one other area of the Bill it has not made an observation, and that is in relation to clause 8 which deals with a caveat under the Real Property Act to protect an interest arising under an unregistered mortgage. In practice, some institutions take a mortgage from a client, do not register or stamp it, but protect the unregistered mortgage by a caveat.

I would have thought that an unregistered mortgage ought to be stamped, anyway, but what this clause of the Bill seeks to do is to provide that, where such a caveat is placed on a title, if the mortgage has been stamped the caveat then carries a duty of $4, and, if the mortgage has not been stamped, $4 plus the amount of duty that would have been payable on the mortgage had it been produced for stamping. This has some procedural problems, and I would like the Attorney-General to clarify the matter. I would like him to clarify it in the context that a caveat is a very valuable means by which an unregistered interest in real property is protected. My experience of the lodging of caveats at the Lands Titles Office is that one goes into the front office, produces the caveat details, and then everything flies. It is given priority. The cry goes up 'Caveat!', and the time is noted, and they rush off and get the register book, note it in pencil, with everything moving very quickly, because there is the interest to be protected by the caveat.

What is not clear in this clause is the point at which the caveat must be stamped. Must it be stamped prior to its being produced for registration? If it is to be so produced, is that to be done expeditiously so that the interest sought to be protected is in fact protected? If it is to be stamped prior to production, what problems does the Registrar-General of Deeds foresee in respect of his administration of the Real Property Act, particularly if for some reason a dispute arises as to whether or not a mortgage has been stamped? Some consideration needs to be given to this matter and, accordingly, I ask the Attorney-General to clarify the procedure by which this is to be achieved.

I know that I have taken a quite lengthy time to deal with the issues raised in this Bill. They have very significant ramifications and for that reason it is important to put on record all the concerns raised not only by the Taxation Institute but by those who concur with the comments made by the Taxation Institute, as well as the views of the Law Society of South Australia, and others, to whom I referred the Bill for consideration, although they have not given as detailed consideration to the Bill, because of limited time available, as has the Taxation Institute. I commend the Taxation Institute for its diligence, and I indicate now to the Attorney-General that, as I said at the beginning, I hope that a great deal of clarification of the scope of this legislation will be forthcoming. If that cannot be done tomorrow, then I would endeavour to have the legislation deferred for further consideration in February, and I would give my commitment to endeavour to clarify the issues by way of amendment. I am prepared to give such a commitment as soon as I know what sort of ambit the Government proposes for this legislation, and I refer particularly to proposed new section 71e.

It is in that context that I say that it is in the interests of the Government as much as anyone else to have these matters considered. I indicate that if it is possible to have a wide range of amendments drafted, put on file, and considered by tomorrow afternoon or evening, I am prepared to facilitate consideration of them. However, I indicate that that wd not be easy because this is a particularly complex matter and one that does need very careful consideration. If amendments are put on file by the Government I would like to not only consider them myself but also to have them considered by the Taxation Institute.

If in these circumstances we can deal with the measure tomorrow, I am prepared to do my best and to facilitate that, as I have endeavoured to do with other legislation that we have had to consider over the past two weeks. However, I think it is preferable that the Bill be deferred. There are no politics in it, I might say. It is only a genuine desire to achieve clarity in the tax legislation and to ensure that the scope of it is properly limited. I am prepared to play my part in endeavouring to do that, once I know what the Government really intends in respect of this legislation. I therefore support the second reading, but I hope that some further consideration can be given to the matter prior to consideration of it in Committee.

The Hon. I. GILFILLAN: Mr Acting President, I demand equal time! I am impressed with the general substance of the comments made by the Hon. Trevor Griffin. I have also had the benefit of looking through the written material, to which he referred, from the Taxation Institute. Added to that, I have had some briefings from Mr Bernie Walrut of Thomson Simmons and Co, who have been quite closely involved with this matter. So, I have had what I would describe as something of a crash course in the matter of application of stamp duties intended to apply in South Australia. Most of my concerns have been covered by the Hon. Trevor Griffin's contribution. I will quickly go through

the items that I have listed, in case there is some duplication.

I think that clause 2 should apply only to instruments brought into existence after this Bill is proclaimed. I think that subclause (4), referred to in clause 6, is too restrictive, although it deals with the same matter. In relation to clause 3, I think that the Commissioner should have power or discretion to relieve the two-month restriction provided under section 20 (1) of the principal Act. In relation to proposed new subsection (5) of section 20, the words 'duly stamped' might possibly be inappropriate, as pointed out before. Perhaps those words could be replaced with 'denoted' or perhaps the term 'duly stamped' could be defined in the Bill. In relation to clause 6, the words 'sole effect', referred to in proposed new section 71cb (1), are too restrictive. I imagine that it would certainly affect the farming community. The definition of 'matrimonial home' would exclude farm homes. In relation to the definition of 'spouses', I agree with the Hon. Trevor Griffin that the provision relating to cohabitation for at least two years is inconsistent with other legislation; I oppose that and I would move for the currently accepted five year period.

In relation to clause 7, I think that in proposed new section 71e (1) *(a)* the inclusion of '(i) land' is unnecessary and will increase the paper war as land is caught by proposed section 71e (3) *(a)*, dealing with equitable interest. The phrase 'business asset' referred to in subparagraph (ii) is not defined and, as referred to previously by the Hon. Trevor Griffin, it could refer to supermarket goods. Paragraph *(b)* (ii) allows no exceptions, and is a catch-all provision. There is a liability of double duty, as there may be instruments executed by both parties, as nowhere is it laid down who should be responsible.

Clause 6 provides that each party is guilty of an offence if that is not carried out. Clause 7 prevents a person who is prepared to lodge a statement from dealing with another person who will not lodge a statement. There is a possibility under this clause (not particularly in relation to that subject) of quasi sales tax coming into effect, and from conversations I have had on this issue it seems to be a very real possibility. In relation to the Softcorp matter, I believe that it is better to outlaw the technique used rather than have this clause embrace too wide an ambit. I echo the remarks that the Hon. Trevor Griffin made in relation to that.

This Bill applies to any trade exercised by a South Australian anywhere in the world (and the Hon. Trevor Griffin noted that). It provides no scope for group relief or for inter-family arrangements involving equity (and again the Hon. Trevor Griffin raised this matter, so I will not dwell on it). I believe that section 20 should be restricted to *ad valorem* duty. It seems to me that we are putting substantial and portentous legislation around stamp duties of a nominal 50c or $4 level, particularly with the penalty of $10 000 being applicable for failure to comply.

Someone commented to me—and the Attorney-General might care to reply to this—that discretionary trusts are not touched by this legislation, yet they are regarded by some as being real income scoundrels in relation to avoiding income tax. I do not intend to repeat what the Hon. Trevor Griffin said. However, it is important to make plain to members in this Chamber that I feel distinctly uneasy about passing the Bill in its present form. It has taken me some time to come to my fairly modest understanding of the constructive criticisms that the Taxation Institute put forward.

I anticipate that it will take me at least an equal amount of time to listen to the arguments and discussions of Government advisers to allay my fears. I do not think that that time is available if we are to deal with other matters that are on the Notice Paper. If it is the Government's firm intention to pursue this matter, I, like the Hon. Trevor Griffin, will cooperate to the best of my ability. However, I ask that the Government consider deferring the conclusion of the Bill until the next session. I support the second reading with those qualifications.

The Hon. C.J. SUMNER (Attorney-General): I am not sure whether or not I should thank honourable members for their speeches.

The Hon. R.J. Ritson: It is an important, complex matter.

The Hon. C.J. SUMNER: That is right, but I am still not sure whether I should thank them for all that.

The Hon. R.J. Ritson: Or even speak.

The Hon. C.J. SUMNER: Or even speak. I am sort of numbed into silence permanently, I think.

Honourable members: Hear, hear!

The Hon. C.J. SUMNER: I thought members would be happy about that. Even though I am not sure whether I should, I will thank members for their contribution and indications of their attitude to the Bill.

The Hon. I. Gilfillan interjecting:

The Hon. C.J. SUMNER: You are touched; good. It could be worse. Dr Cornwall or someone like that could be replying.

Members interjecting:

The Hon. C.J. SUMNER: He has gone away to Perth. So, it is all right. Obviously, a number of issues have been raised by members which need consideration by me, the Premier, officers and Parliamentary Counsel. To enable that to occur, I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

LAND AGENTS, BROKERS AND VALUERS ACT AMENDMENT BILL (No. 2)

In Committee.

Clause 1—'Short title.'

The Hon. C.J. SUMNER: Yesterday the Hon. Mr Griffin raised several points about this Bill. I propose to move some amendments that have been placed on file to accommodate his concerns and the concerns raised by the Law Society and industry groups by letters to the Hon. Mr Griffin, which he was kind enough to provide to me and officers of the Department of Public and Consumer Affairs. However, before considering the amendments I wish to address the point raised about progress with other matters that were recommended in the Finance Broking Industry Report. In my second reading speech on this Bill I stated that, because of the serious nature and the number of misappropriations of clients' funds in recent years by land brokers the Government wished to proceed with two legislative recommendations of the working party as a matter of urgency.

This Bill that we are considering tonight is only the initial step in the Government's proposals in this area. It relates to only recommendations 3 and 4 of the working party's report. The Government has endorsed all the recommendations of the working party, but released the report as a white paper for public comment. We have asked for comments to be received by 31 December 1987. I assure the honourable member that we will proceed with those other recommendations, but the precise detail of them requires us to be very sensitive to the needs of the industry we do not wish to proceed with them until we have received

comments from industry and consumer groups and undertaken more consultation.

The honourable member also raised a general question with respect to clause 4—the definition of 'firm'. The question was raised as to what is envisaged by the use of the word 'firm' in clause 4. The word 'firm' in clause 4 *(b) (b)* would be given its normal meaning, that is to say, a partnership or a joint venture of any type. The problems that have been experienced with brokers is that some of the moneys have not passed through trust accounts, but have passed through other accounts of persons or companies with which the agent or broker was associated. It was the aim of the Government in this legislation to try to catch as many of those relationships as possible and, therefore, the use of the word 'firm' has been included to cover types of commercial undertakings, such as partnerships or joint ventures.

On the question of spot audits raised by the honourable member, section 69 (1) of the 1986 amendments to this Act, which have not yet been proclaimed, enables the Commissioner to appoint a person to examine the accounts and records of an agent, including land broker, at any time. It is envisaged that this ability to conduct spot audits will be used by the Commissioner. It should be a most effective way of detecting problems in the operations of agents or brokers' businesses. Spot audits can be done at any time. Changes to computer programs have been prepared by the Department of Public and Consumer Affairs to improve data capture of agents and brokers who do not lodge audit reports. Under section 66 the tribunal on application may make an order appointing a person to administer the agent's trust account. I trust that that deals with the general questions and I will address the other issues when considering the amendments to the clauses.

Clause passed.

Clauses 2 and 3 passed.

Clause 4—'Interpretation.'

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

Page 1—
Lines 19 to 23—Leave out paragraph *(a)* and substitute:
(a) by striking out the definition of 'agent' and substituting the following definitions:
'agent' includes—
(a) a land broker;
(b) a financier that is an associate of an agent or a land broker;
(c) a person who carries on a business of a prescribed class:
'associate'—see subsection (2):.
Line 29—Leave out 'or an associated financier'.
Page 2, after line 14—Insert paragraph as follows:
(ba) they are both trustees or beneficiaries of the same trust, or one is a trustee and the other is a beneficiary of the same trust.

The Hon. Mr Griffin expressed concern about the definition of 'financial business'. He asserted that the definition is broad enough to include in some manner banks or other financial institutions which provide mortgages over land. It is not possible for a bank or financial institution itself to be an agent or associated financier and they are therefore not caught by the Act. Clause 4 *(d)* sets out the classes of persons who can be associated financiers and I do not believe that a bank itself can fall into any of those categories. However, I am proposing amendments to make this even clearer. I am proposing to amend the definition of 'agent' so that only those financiers who are truly associates of an agent will be caught by the Act in its trust account provisions.

A bank itself cannot be a director of a land agent or broker's business because of the licensing criteria set out in the Act and it is most unlikely that an agent would be carrying on a financial business in association with the bank of which he or she is a director. While I am aware that there are arrangements whereby banks and other financial institutions may have interests in land agents' companies, I do not believe they would be caught by the definition. In any event, section 7 of the Act provides for exemptions to be granted if this proves necessary.

Concern was also expressed by the Real Estate Institute that, because of the wide definitions of 'associate' and 'associate financier', it may not be possible in some situations for a finance broker to ensure that such moneys pass through his or her trust account where they relate to the activities of the associate. We are accommodating this concern by proposing amendments which make an associate a principal in his or her own right and they are required to maintain a trust account.

In the amendment to line 29, where I am proposing to leave out 'or an associated financier', this is now included in the definition of 'agent'. The honourable member also raised the question of whether the definition of 'associate' covers businesses carried on by trust. The Government proposes an amendment to ensure that businesses carried on by trusts are so caught by the definitions of 'associate' in the Act. I commend the amendments to the Committee.

The Hon. K.T. GRIFFIN: I appreciate the responses that the Attorney-General has given. With the sort of pressure of the last day, and having seen these amendments this afternoon, it seems to me that they cover the difficulties which I raised, and I am happy to support them. There may be, upon reflection, some unforeseen difficulty, in which event that can be drawn to the attention of the Attorney-General either for consideration before it is finalised in the other place or, perhaps, for some subsequent occasion.

I would imagine that, in the context of the report on finance broking, there may still need to be some amendments next year to the Land Agents, Brokers and Valuers Act. In that context, we can pick up any inadvertent and unintended consequences of these amendments on that occasion without creating hardship within the broking and real estate agents industry.

The Hon. C.J. SUMNER: I appreciate the honourable member's preparedness to facilitate the passage of the Bill. I think that it is important that we get the legislation in place, and I will be happy to examine any unintended consequences—which seems to be a phrase that has now become part of the political vocabulary in these circumstances—should they arise when we are implementing the legislation or subsquently. I appreciate the honourable member's support of the Bill, recognising, as he does, that it is important that we get this into place because of the problems that have been too obvious recently with defaulting land brokers.

Amendments carried; clause as amended passed.

Clause 5—'Certain money to be deposited in trust account.'

The Hon. C.J. SUMNER: I oppose the clause. By deleting clause 5 we would accommodate concerns expressed by the Law Society that the clause would apply to all money payable, whether received by the agent or associate or not, and that this would be too broad. The new definitions of 'agent and 'financial business' should be sufficient to ensure that all moneys received by the agent, broker or associate must be paid into the trust account.

The Hon. K.T. GRIFFIN: I think that will overcome the problem. For the purposes of the record, I should indicate that among the various groups to whom I sent the Bill, even at short notice, the Law Society responded with quite an extensive comment in a way which was indicated not to be necessarily the formal view of the Law Society but the

view of a number of members of the society. I did appreciate receiving that quick response. Even though it may not be a considered view of the Law Society Council, nevertheless, it was helpful.

As the matter is not controversial, I do not think it matters that it is not a formal submission by the Law Society Council itself. The issue which it raised was important, because it appeared that moneys would need to have been placed in trust accounts in circumstances which were really never envisaged, I suggest, particularly in circumstances where a party wished to go along with a cheque in his or her hand, pay it over at settlement and gain the title from an agent. There were some problems, but I think the fact that the Attorney-General is now opposing this clause will solve that.

Clause negatived.

Clause 6—'Audit of trust accounts.'

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

Page 2—

Line 40—Leave out 'Commissioner' and insert 'Registrar'.

Line 42—Leave out 'Commissioner' and insert 'Registrar'.

Page 3—

Lines 8 and 9—Leave out 'on or before the prescribed day or such later day as the Commissioner may allow' and substitute 'within the time allowed by or under the regulations'.

Lines 13 and 14—Leave out 'under this section' and insert 'by or under the regulations'.

The Hon. Mr Griffin also expressed concern about the proposed civil penalty and criminal penalty for non-lodgment of an audit report. Concern had been expressed about the establishment of a procedure whereby a decision to impose a civil penalty, for example, did not prejudice the imposition of a criminal penalty, depending on the circumstances.

The administration of the Act is the responsibility of the Commissioner for Consumer Affairs. The Commissioner has responsibility for the enforcement of the Act, and it will be the responsibility of the Commissioner to decide whether or not to proceed with a criminal prosecution or merely leave the matter as one which will be dealt with by the civil penalty and suspension procedure by the Registrar.

Both the Commercial Registrar and the Commissioner for Consumer Affairs are officers of the Department of Public and Consumer Affairs. It is proposed that with the aid of some amendments to computer programs a list of people who have not lodged audit reports will be produced shortly after the date on which they were due. That list will be given to the Commissioner for him to decide those agents that he wishes to pursue for a criminal penalty. It may also be possible to deal with such a penalty by an expiation procedure.

The amount of the expiation fee would be consistent with other similar expiable offences. Other agents and brokers would then be pursued by the Registrar under the suspension and civil penalty procedure. There are procedures established within the Department of Public and Consumer Affairs for the Registrar and the Commissioner to communicate effectively with one another and coordinate each other's activities. Subsection (8) is inserted to ensure that an agent is not liable for both a civil and criminal penalty in respect of the same default, and the payment of one exonerates him or her from liability for the other.

The Bill as currently drafted requires an agent to lodge a copy of the auditor's report with the Commissioner. The Government proposes to amend that to provide that it must be lodged with the Registrar. In practice, for the convenience of licensees, we will require the lodgement of the audit report and the annual return and payment of annual fees with the Registrar of the Commercial Tribunal. This means that all documents will be lodged in the one place.

The Hon. K.T. GRIFFIN: I am happy to support the amendments; I can see that there is some good value in them. I am delighted to hear that a computer program will be available to quickly identify those who default in filing their audit reports. I presume from the 1986 amendments that in any event the audit reports will be carefully scrutinised by the department so that the whole area of surveillance will be very much tighter than has been the case in the past. With such surveillance, the sort of defaults which have occurred in the past—such as Hodby—could be avoided in the future.

Amendments carried; clause as amended passed.

Remaining clauses (7 and 8) and title passed.

Bill read a third time and passed.

BARLEY MARKETING ACT AMENDMENT BILL

The House of Assembly intimated that it had agreed to the Legislative Council's amendment No. 1, and had disagreed to amendment No. 2.

AGRICULTURAL CHEMICALS ACT AMENDMENT BILL

The House of Assembly intimated that it had agreed to the Legislative Council's amendment No. 1, and had disagreed to amendment No. 2.

APIARIES ACT AMENDMENT BILL

The House of Assembly intimated that it had agreed to the Legislative Council's amendments.

PLANNING ACT AMENDMENT BILL (No. 3)

Returned from the House of Assembly without amendment.

WASTE MANAGEMENT BILL

Returned from the House of Assembly with an amendment.

LAND AGENTS, BROKERS AND VALUERS ACT AMENDMENT BILL

Returned from the House of Assembly without amendment.

CROWN PROCEEDINGS ACT AMENDMENT BILL (No. 2)

Returned from the House of Assembly without amendment.

CITY OF ADELAIDE DEVELOPMENT CONTROL ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 1 December. Page 2300.)

The Hon. L.H. DAVIS: The Opposition supports this Bill. In fact, this matter has been the subject of debate recently in this Chamber and I do not intend to make a lengthy contribution on it, notwithstanding the fact that it is a most important measure. The review of the City of Adelaide Plan is at intervals of not more than five years, and it is certainly a matter of prime importance to the city of Adelaide since the concept of a five yearly plan was first introduced in 1976. So, the 1986-91 City of Adelaide Plan is the third plan; the current review is the second.

This plan provides a framework that will act as a guide to development in the city of Adelaide over the five year period 1986 to 1991. It is useful to reflect on the history of planning in Adelaide. Colonel Light, Adelaide's visionary founder, laid out the streets and squares of Adelaide. He also surveyed the landscape into town acres. He established the parklands, the limit of the Adelaide city boundaries. He also established the River Torrens as a dissecting point for north and south Adelaide, and so the visionary plan of Colonel Light has remained one of Adelaide's greatest assets.

The unique parklands belt ringing the city, the grid system of streets—and wide streets at that—provide Adelaide with features subject to much favourable comment from first-time visitors to the city. Certainly, Light's vision saw much sympathetic nineteenth century architecture, and I refer particularly to the North Terrace precinct and the King William Street and Victoria Square precinct, both of those precincts taking advantage in their buildings of the wide variety of stone available in Adelaide at that time.

Sadly, that cannot be said with so much conviction about some of the additions to the Adelaide skyline over the last 30 years or so. Certainly, I accept that there has been a longstanding battle between planners and architects about planning guidelines set down in the City of Adelaide Planning Act, and that was never more evident than during the review process for the 1986-91 City of Adelaide Plan.

This review created much public debate and controversy: that is healthy and necessary. It provided an opportunity for both professionals and the community to focus on the future direction of Adelaide. It was interesting to see that in the Jubilee Year of 1986 the South Australian Chapter of the Royal Australian Institute of Architects sponsored a national competition to give professionals an opportunity to set down their ideas of the future vision of the City of Adelaide. The competition was free of design and planning constraints. It gave professionals an opportunity to reflect on where they believed planning and development in Adelaide should be going into the twenty-first century.

It was interesting to note that the judges finally listed in order of popularity the propositions that were received. The most popular proposal by far was the idea of reinforcing the two major boulevards—King William Street and Wakefield Street—with avenues of trees, and/or medium to high buildings. That reflects on one of Light's central features in his original plan: that Wakefield Street should be the main boulevard of Adelaide.

It was only a quirk of economics that led to Rundle Street's becoming the main commercial boulevard of Adelaide. Water transported from the Torrens cost so much per hundred gallons up to Rundle Street and from then on it was more expensive. So, instead of going through to Wakefield Street—that gloriously wide street that Light had designed to be the main commercial boulevard of Adelaide—they naturally stopped at Rundle Street and so most of the early commercial development took place there.

Even today, we have the widest of all streets, the main street running through the centre square of Adelaide, Victoria Square, largely untouched as far as buildings of height are concerned and relatively under developed in commercial terms. It is interesting to see that one of the more popular suggestions in this very worthwhile national competition promoted by the South Australian Chapter of the Royal Australian Institute of Architects was to upgrade the King William Street and Grote-Wakefield Street boulevards with avenues of trees and/or medium to high buildings.

It says something about Adelaide that we still have been very slow to capitalise on the softening influence of greenery. Whilst I accept that the fumes from cars make it difficult for trees to grow easily in the city, it is nevertheless pleasing to see that the recently planted trees in Currie Street have taken off and the plane trees in front of Parliament House are flourishing and are already of a sizeable height, notwithstanding the fact that they were planted only a few years ago.

We can look at our Adelaide and reflect on some of the highlights and disappointments in planning in recent years. I suspect that many people would regret, for example, that Morphett Street Bridge was built where it was because it has truncated North Terrace: it has acted as a physical and psychological barrier in North Terrace, cutting off the Fowler Factory and all points west from those points east in North Terrace.

I suspect that if planners were having their time again they would have been more inclined to run a bridge, albeit a more expensive option, through West Terrace across the River Torrens to join with North Adelaide.

We can reflect on the ASER development and the scope and bulk of it. The Opposition accepts that that is a matter of history. It is a matter that has been debated before. In terms of scale, certainly many international visitors, who are conscious of the history of Adelaide, have raised their eyebrows at the bulk and height of that development.

As I have mentioned in a recent debate on this most important matter, we should not kid ourselves about comparing Adelaide with Sydney, Melbourne, Brisbane or Perth because Adelaide was laid out differently. It was planned with its parklands and its grid on a flat area of land. We should recognise that that in itself is a constraining influence to planning. We do not have the rolling hills and harbours of Sydney, but certainly there are some exciting challenges in the immediate future. The opportunity to redevelop the East End market in a sensitive and exciting fashion, to combine shopping, office, accommodation and other forms of attraction for tourists and residents of Adelaide, will be of great interest to watch.

It remains disappointing to me that much of the twentieth century architecture in the central business district of Adelaide is generally forgettable and that reflects on the marginal nature of development in Adelaide; our economy is not so prosperous and it cannot have the amount of money spent on building development here, given that rentals in Adelaide per square metre are the lowest in mainland Australia.

One of the disincentives to sensitive development of existing buildings is the absence of taxation incentives to recognise the importance of heritage buildings. It has been disappointing that the Federal Government for so many years now has talked about taxation incentives for refurbishing heritage buildings, but no tax incentives have yet been forthcoming.

Planning in Adelaide is very much a debate about two key issues: the extent of constraints and controls on development on the one hand and heritage preservation on the other.

The Hon. Carolyn Pickles: Why don't you take a bit longer?

The Hon. L.H. DAVIS: I am sorry—don't you think this is important?

The Hon. Carolyn Pickles: It's very important, but it's not very interesting.

The Hon. L.H. DAVIS: That is not for you to decide, is it? I am sorry if the Government does not think planning in the City of Adelaide is important. This proposal sets in place planning for the City of Adelaide for the next five years, Ms Pickles. I put on the record my amazement that you are condemning me for daring to speak for 10 minutes on this matter.

The Hon. Barbara Wiese interjecting:

The Hon. L.H. DAVIS: Well, do not criticise me for my lengthy contribution.

The Hon. M.J. Elliott: Do you have any amendments with this one?

The Hon. L.H. DAVIS: No. I have told the Attorney I will be 15 minutes, but the Minister is just prolonging it. The City of Adelaide Development Plan has been put in place after a lengthy consultation process. Initially, a draft general principles and design future character statement was released for debate within the community which provided professional architects, planners and other interested parties, together with groups interested in conservation, with an opportunity for comment. The planning system in Adelaide revolves around the City of Adelaide Plan and the City of Adelaide Development Control Act 1976, which gives legislative force to the statutory parts of the plan. The plan consists of objectives and policies. It divides the city into five districts and the principles of development control describe matters of a general nature which should be applied to development through each of these districts.

The plan had several objectives: first, to recognise the important economic base of Adelaide—that it is the capital of South Australia; that it is important to maintain investment and employment within the city; and to ensure the special role of Adelaide as the capital of South Australia and retain the centre of the metropolitan area. It also recognised that the city had an important role in tourism: for leisure, entertainment and recreation. Further, it recognised that the city's population over recent years had dwindled, and it was anxious to ensure that the residential component of the city be increased by identifying areas where medium density housing could take place.

The plan also had as an objective an improvement for Adelaide's residents, workers and visitors by ensuring the proper development and coordination of community services. It also recognised the importance of pedestrians, creating a pedestrian network within the city, integrating public transport and parking facilities. It recognised the importance of public transport for people from the metropolitan area seeking easy access to the city as well as people who drive cars. That also meant, of course, a recognition of the need for both short and long term parking facilities.

Then, most importantly, there was the objective of creating a built environment sympathetic to Colonel Light's vision for Adelaide and, at the same time, providing a proper balance between new buildings and buildings of a heritage nature.

The plan recognises also the importance of particular streetscapes and acknowledges not only buildings with a heritage value but also the rating of streetscapes or precincts for their heritage. It is pleasing to see that this aspect has been given emphasis, namely, to identify, conserve, enhance, and promote heritage items and areas which can contribute significantly to the environmental, social or cultural heritage of the city. Quite predictably, the plan also gives special priority to the parklands and seeks to ensure that the parklands are retained for the purpose for which Colonel Light designated them.

Finally, proper environmental protection relating to the effective waste management measures to control air, liquid, solid, visual and noise pollution is highlighted. All in all, the plan is designed to carry on Light's vision. The plan is accepted by the Opposition as being the result of very intensive consultation between interested parties who often had conflicting views. It recognises that it is not regarded as perfect in all respects by many of those parties, but it is pleasing to see that emphasis is given to the City of Adelaide Plan 1987-91 in the sense that some of the material previously contained within regulations has now been incorporated within the body of the City of Adelaide Plan. That means that people who contemplate development within Adelaide can have ready access to the guidelines for development by referring to the City of Adelaide Plan 1987-91.

It is a user friendly plan which can be a very helpful reference both to professionals and to lay persons. Several other aspects of the City of Adelaide Plan are quite novel, for example, the use of a transferable floor area as a prime source of bonus plot ratio. That is certainly a step that provides some financial incentive for heritage conservation. It is novel and, it is hoped, will be a positive step in providing an opportunity for heritage conservation to be more effectively practised.

The introduction of development controls to protect the character of significant streets is a positive step. Finally, 26 storeys has been retained as the maximum building height in precincts C6 and C7, but the plan recognises the fact that new buildings may be approved in these central business district precincts to a height of 110 metres, provided that the building is designed to be slender in proportion at its highest level, that it meets with aviation requirements and that it conforms with micro climatic effects; in other words, it may be possible to have other buildings as high as the proposed State Bank tower, that is, 110 metres, or 33 or 34 storeys.

All in all, it is a bold plan, and it has much more detail than was the case previously. The plan has been debated at length by the public and in the Adelaide City Council, and the Opposition is pleased to support it. Accordingly, I welcome the Bill.

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

The Hon. L.H. DAVIS: Madam President, I draw your attention to the state of the Council.

A quorum having been formed:

TERTIARY EDUCATION ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 1 December. Page 2301.)

The Hon. R.I. LUCAS: I support the second reading. In doing so, I point out that I believe that this measure is a further example, or a continuation, of the bipartisan approach to multicultural education and language education policies that has been evident in South Australia for the past few years. As I have said on a number of other occasions, I believe that this broad spirit of bipartisan support for the present policies of the State Government is of great advantage for this section of education policy in South Australia, as I believe that it gives those involved in multicultural education and language education policies the opportunity to plan long term and to know that, in so doing, when the change of government comes, radical shifts in relation to

multicultural education and language education policies are unlikely to occur.

The concept of the South Australian Institute of Languages has been around for many years. I am aware of the fact that on both sides of the political fence, dating back I understand to the time when Don Dunstan was the State Labor Premier in the 1970s through key Liberal figures such as David Tonkin and my colleague the Hon. Murray Hill—

The Hon. T. Crothers: The venerable Murray Hill.

The Hon. R.I. LUCAS: I don't know whether he is venerable; he is honourable, anyway. And from a former colleague of mine (and a person for whom I have a great deal of respect) the Hon. Michael Wilson, there has been support for the concept of this institute. So there has been support from significant Liberal figures. Indeed, the Hon. Murray Hill pointed out to me earlier today that the very good community relations policy that he took on behalf of the Party to the last State election included a section which indicated support for the institute. Therefore, support from the Liberal Party for the concept and principle of the South Australian Institute of Languages has been there for many years as, I said, has support from the Labor Party.

The catalyst for the most recent activity in relation to the institute is the report which has become known as the Smolicz report. Printed in June 1984, it is entitled 'Education for a Cultural Democracy: A Summary.' The report of the Task Force to Investigate Multiculturalism and Education at page 32, under the chapter heading 'South Australian College of Advanced Education', contains a key recommendation under the subheading 'Institute of Languages' as follows:

> At the heart of any plan to make education more responsive to the multicultural society is the need to provide broadly based support for language use, learning, teaching, development and research. The college is well placed to play a key role in this aspect. It is proposed that there be an Institute of Languages established at the college.

I acknowledge that the Labor Party, too, in its education policy at the last State election, made a specific commitment for the South Australian Institute of Languages and funding of $165 000 to be spent over a three year period to establish the institute. The institute presently exists as a ministerial committee. It has been established for some two or three months now and the membership of the management committee is: the presiding officer, appointed by the Minister of Employment and Further Education, Mr Romano Rubichi, Chairperson, Tertiary Multicultural Education Committee; one member appointed by the Minister of Employment and Further Education, Ms Eleni Glaros, Teacher, Underdale High School; one member appointed by the Minister of Education, Mr Chris Majewski, Superintendent of Schools (English as a Second Language); and one member appointed by the Minister of Ethnic Affairs, Mr Flavio Verlato, secretary to the Minister of Ethnic Affairs. There is one nominee from each of the key tertiary institutions: from the University of Adelaide, Professor J. Smolicz, Department of Education; from Flinders University, Mr David Askew, Dean, School of Humanities; from Roseworthy Agricultural College, Dr Barry Thistlethwayte, Director of the college; from the South Australian College of Advanced Education, Mr John Chalklen, Dean, Faculty of Business, Communication and Cultural Studies; from the South Australian Institute of Technology, Dr Anne Martin, Head of General Education; and from the Director-General of TAFE, Mr John Wolfensberger, Vice Principal, the Adelaide College of TAFE.

I stated the membership of the committee to indicate that it is broadly based. It is already operating as a management committee and has already met, I am informed, on a couple of occasions. I understand that funding of some $165 000 has already been paid into an account within the South Australian College of Advanced Education by the South Australian Government.

Indeed, the South Australian Institute of Languages advertised as recently as 18 November for a Director and a Director's Assistant; the Director to be a 0.4 time Director and the assistant to be a 0.6 time assistant.

The purposes of the South Australian Institute of Language were summarised by the Minister in his second reading explanation last week to the House of Assembly. In briefly touching upon the purposes of the South Australian Institute of Languages as outlined in that speech, it will become apparent, bearing in mind the original concept of the institute as envisaged by Professor Smolicz in his report of 1984, that there has been an evolution in the thinking, functions and responsibilities of the South Australian institute.

As I quoted earlier from the Smolicz report, the institute was originally intended to be part of the South Australian college. What we are debating, and what the Parties in this Chamber are supporting, is the establishment of an independent institute not attached to any institution but seeking to play a role of coordinating and facilitating language programs in tertiary education and amongst all tertiary institutions in South Australia. The purposes of the committee are as follows:

> *(a)* to facilitate the introduction and maintenance within tertiary institutions of as wide a range as practicable of courses in language; and
>
> *(b)* to coordinate in consultation with tertiary institutions courses in languages offered at those institutions.

Those are very important goals of the new South Australian Institute of Languages. I believe that, if those goals can be achieved by the institute, they will be a great step forward in the development of a comprehensive language program policy in South Australia at the tertiary institution level.

Let us be quite clear, though, that it will be a difficult task for the institute—although an important one—because the information provided to the Liberal Party by the Minister and his advisers is that the institute will not be in a position to direct universities and other institutions in relation to the passage or introduction of programs. So, it will be based on consultation and persuasion, with I guess the role of the institute being a most worthwhile ginger group—

The Hon. C.M. Hill interjecting:

The Hon. R.I. LUCAS: The Hon. Mr Hill says 'example', but it will also be a ginger group to point the directions in which language policy development ought to proceed in tertiary institutions in South Australia. The third purpose is as follows:

> *(c)* to promote cooperation between tertiary institutions in areas such as cross accreditation and recognition of courses in languages.

This is a most important goal or purpose of the Institute of Languages. Most people who have worked in this field will acknowledge that we cannot continue with the number of institutions in South Australia perhaps doubling or tripling on the offering of particular language programs if through persuasion and consultation we can offer a greater variety of programs to be available for those wishing to study at the tertiary level.

If one is undertaking a degree course at university and wishes to undertake a language course that is not being offered at the University of Adelaide, such as a course in the Greek language, for example, at Flinders University, the Institute of Technology or one of the other tertiary institutions, we ought to be thinking seriously about the concept of cross-accreditation so that such a person is able to under-

take that course and still be able to achieve one's qualification, in this case the degree qualification at the University of Adelaide. At a time when we are being told that economic resources are scarce, we cannot afford the wastage of scarce recourses and we need the consultation envisaged in purposes *(a)* and *(b)*. We also need discussion about cross-accreditation and recognition of courses in languages across the spectrum of the institutions that we have in South Australia.

Purpose *(d)* is 'to establish courses for the continuing professional development of language teachers and other professionals in the languages field'. Once again, I believe this to be a most important goal of the Institute of Languages. I am advised that the sorts of courses that we are talking about here for the South Australian Institute of Languages will be in the nature of in-service courses for language teachers and, in particular, courses in teaching methodology.

I am advised that as our teachers come through the South Australian college, when they undertake language courses, they are trained primarily in the acquisition of a particular language and do not spend as much time as perhaps they ought in the teaching methodology of passing on to students in the classrooms their knowledge of that language. In all teaching, but particularly in language teaching, it is not sufficient merely to acquire the knowledge: it is also essential that, having acquired the knowledge, the teacher is able to impart, through good teaching practices and techniques, that knowledge to the students in the classrooms.

I am advised and accept that there is a deficiency in teacher preparation in this area, and I believe that the Institute of Languages can play a very important role in relation to in-service training or professional development training for teachers in South Australia.

Purpose *(e)* is 'to promote access to South Australian courses in languages offered outside of South Australia'. I am advised that what is envisaged under this heading is the offering of courses at, for example, Monash University in Victoria in a particular language which is not already being offered by one of the tertiary institutions in South Australia. I am also advised that the institute may well use its small amount of funding to hire tutors to assist students in South Australia who may well take, through the distance education mode, (by correspondence, for example) a course in a particular language from, say, Monash University.

Again, that broadens the spectrum and range of languages that can be offered to students in South Australia in what I believe is a cost effective way, and all involved in language education in South Australia, I am sure, would support that as a goal of the South Australian Institute of Languages. I do not intend to go over the other goals in any detail, not because I do not believe they are important, but because I do not want to prolong the debate in the Council this evening. Summarised, the other goals for the institute are:

(f) to promote the development and implementation of languages policy in the South Australian community;

(g) to provide clearing house and information services about language learning and language teaching at all levels;

(h) to maximise available human resources to the purposes of the institute;

(i) to conduct available research as required in order to carry out the above purposes; and

(j) to consult with the tertiary institutions and the South Australian and Commonwealth Governments in relation to the purposes of the institute.

As I indicated, if even a good number of these aims can be achieved by the South Australian Institute of Languages there is no doubt that it will be an enormously positive development in language education in South Australia. Since the Bill was introduced last week in another place I have had only a brief time to discuss it with interested parties—and I have spoken with about 15 groups and individuals. I have found, to summarise those discussions, that virtually everyone supports the principle and concept of the establishment of a South Australian Institute of Languages. However, with any new proposal there are always questions about its future operation.

In particular, I place on record some of the questions raised with me by the Ethnic Schools Association in a letter that it forwarded to me in response to my request for comment on the proposition for a South Australian Institute of Languages, and I will read into *Hansard* some of the questions raised by the Ethnic Schools Association. I think it is fair to summarise its view as certainly not opposing the concept of an institute of languages, but nevertheless raising questions about the future operation of the institute—questions which I believe the Minister will address over the coming 12 months. I hope that in the consultation stage, with respect to the regulations that the Minister will bring down early next year, the Minister will consult with the Ethnic Schools Association which, I am sure all members will agree, is a very important association in South Australia. The letter from the Ethnic Schools Association states:

The Executive of the Ethnic Schools Association of South Australia Inc. at its monthly meeting last night considered the copy of the Bill and the explanation that you had enclosed with your letter. In general, our comments are:

- It would appear that the institute is not to be a teaching body. Rather, what it does is to serve as a clearing house on what languages are to be taught in tertiary institutions. Therefore, we perceive its purpose would be to give some order to the teaching of languages in this State.
- However, the question arises—would the institute have any teeth, that is, will it have any powers to enforce its decisions on other institutions?
- Are we creating just another ivory tower? We would like to see value for the educational dollar. Therefore, what benefit will the whole community have from the institute in real terms?
- What functions will the institute be given that cannot be adequately provided for by the current language departments of tertiary institutions?
- If it is simply a question of coordination and promoting cooperation at the tertiary level, is it not possible to set up a languages development/coordinating committee representative of the various tertiary languages departments, and thereby save taxpayers money?
- Do we need an institute to establish courses for the professional development of language teachers when such mechanisms already exist within the tertiary sector and, therefore, do we really need an intermediary agency to promote such courses?
- How will it facilitate and maintain a wide range of courses in tertiary institutions when these are dependant on student enrolments for Commonwealth funding, or will the institute be able to attract additional funding for language courses outside of the quota guidelines?
- How will the institute maximise human resources? Will it have the power to enforce staff transfer of effort across institutions? What about conditions of employment?
- In relation to promoting the development and implementation of languages policy in the South Australian community, what input will there be from community groups and other education bodies to the decision making process of the institute and what effect will it have on the development of ethnic schools?
- Foreshadowing future developments, could the institute become so powerful that it might usurp the academic prerogatives of tertiary institutions and language departments?

We hope the questions raised will be useful and the association was pleased to have been given the opportunity to comment on this matter.

I will certainly not take the time of the Council this evening to discuss point by point the questions raised in that letter. I believe that the letter raises some important questions which should be addressed by the Minister. Many other questions, I think, have already been addressed by the Minister and my colleagues during debate in another place and in the comments that I have made this evening.

I am sure that it will not be in a position, for example, to direct tertiary institutions with regard to the language programs that they develop or wish to offer. Nevertheless, some of the other questions are important and I urge the Minister, in the consultation stage that he indicated he would have in relation to the preparation of regulations, to give the Ethnic Schools Association an opportunity to put forward to him its views on the appropriate framework for the South Australian Institute of Languages.

For the reasons that have been outlined by the Ethnic Schools Association and for a number of other reasons, and in light of questions that have been raised with me by other representatives in the field, I am pleased to see from the debate in another place that the Minister was prepared to accept the amendment moved by my colleague the Hon. Jennifer Cashmore relating to a review in three years of the operations of the South Australian Institute of Languages. The amendment was moved and supported in a spirit of assisting the Institute of Languages to be able to achieve the goals that have been outlined for it with respect to language education and multicultural education in South Australia. After three years, an opportunity will be provided for seeing how the institute has been able to operate and how its functions and operations might be improved with respect to language programs in South Australia.

Whilst indicating my strong support and that of my Party for this Bill and the establishment of the Institute of Languages, I express my concern and that of my Party about one aspect of the legislation that is before the Council; that is, the legislation does not include the powers and functions of the new South Australian Institute of Languages nor does it include, for example, legislative amendment in relation to the membership of the institute. The Bill envisages that the powers, functions and membership will be outlined by regulations sometime in the near future.

In the normal course of events, I would fight that proposition to the very end. As I am sure most members know, it means that the regulations could be introduced next week, when Parliament has risen, and could operate for many months before parliamentary oversight of the regulation-making provision could be enacted in any way. It also means that, even when Parliament resumes in February, it has only two options: either full support for the regulations or complete disallowance of them. That is not a satisfactory option for the Parliament, because it may well be that it is just a particular part of the regulation that is not supported by the Party that happens to be in Opposition at the time, and it might only seek amendment of some part of the regulations.

Members who have been here longer than I have can comment better than I can, but it is unprecedented for a Government to ask the Parliament to support the establishment of a new independent statutory institution such as the Institute of Languages without outlining its powers, functions and membership. I do not accept the argument of the Minister in another place that the committees that can be established under the Office of Tertiary Education are sufficient justification or rationale for the proposition before the Council in this Bill that the powers, functions and membership be outlined by regulation rather than by legislative amendment.

Ms President, having expressed those concerns, I understand that in tertiary education, in what is becoming known as the Dawkins era of tertiary education, the whole face of tertiary education in Australia and South Australia is extraordinarily volatile. I suggest that no-one in education in this State knows where tertiary education will end up over the next 12 months to two years. Recently, we have seen Professor Marjoribanks from Adelaide University suggesting three universitites in South Australia, and that was topped only in the last week by the Vice-Chancellor of Flinders University suggesting that all our tertiary institutions could be telescoped into one single university in this State.

With that range of options and a number of others possibly ahead of us in South Australia, I accept and understand the need for flexibility in relation to a new body such as the Institute of Languages, which after all will try to coordinate and facilitate the offerings of programs in tertiary institutions in this State. I also understand and accept the need to get the Institute of Languages up and going from the early part of 1988 so that the input from the institute can be felt by other tertiary institutions towards the latter part of 1988 as they plan language programs for 1989.

The Hon. T. Crothers interjecting:

The Hon. R.I. LUCAS: You will have to give that to me in written form: I do not know whether I agree or disagree. I accept the need for flexibility and the need to get going. Therefore, I am pleased that the middle ground has been arrived at in discussion between the Government and the Opposition. The Minister in another place has given an undertaking that, if the Bill is to go through Parliament this week, within 12 months the Minister will bring back to Parliament legislative amendments to place in the legislation the powers and functions for the institute, and also place in the legislation the terms of the membership of the Institute of Languages. That is a sensible suggestion. It is a middle ground that has been arrived at through consultation between the Minister, myself and other representatives of my Party. I am pleased that the Minister has given that undertaking as it will give the Parliament the opportunity, within the space of 12 months, to be able to debate those important matters.

Finally, the Government and the Minister should understand that the Opposition Liberal Party's preparedness to be reasonable in relation to this matter should not be taken by the Government and the Minister as a precedent for our approach to future legislation in the further education area, or indeed in any other area. I wholeheartedly support the second reading of this Bill. I congratulate all those people on both sides of Parliament, but more particularly those people who have been actively involved in the instigation and mobilisation of the concept of the South Australian Institute of Languages, for getting the concept up and going and I wish the institute every success for its operations in 1988 and in future years.

The Hon. C.M. HILL: I will be brief. I congratulate the Hon. Mr Lucas on the comprehensive review that he has made of this legislation, and on the manner in which he has just reviewed the Bill. This concept of the Institute of Languages has been a long time in coming. However, at long last it is in some initial concrete form and I am pleased indeed that it has reached this stage.

The institution will be proclaimed if this Bill passes and I support it wholeheartedly. Indeed, support for the Institute of Languages was in the Liberal Party's 1985 community relations policy and was part of the platform I personally supported very strongly. It must be said, as the previous speaker mentioned, that a lot of detail is missing from the legislation, but in view of the nature of the measure I trust that this will all be filled in satisfactorily by regulation. As the Hon. Mr Lucas said, with goodwill on both sides of Parliament, this should be achieved.

The special review written into the Bill in the other place is a provision that I support very strongly. It means simply

that, because we have only got what might be called a skeleton in front of us at the moment, in three years time a full review of the legislation and how it is then working can be carried out and changes and improvements (if improvements are deemed necessary) can be and will be made by Parliament to the betterment of the whole cause of migrant languages. A need exists for much care to be taken as the institution grows, and special care should be taken so that there is no conflict with tertiary academics and others already involved in language education. It is only natural that there will be some discussion between separate parties on this subject, but the thrust should always be to go ahead and achieve the goal of providing this service which has not been within the South Australian community up to this time.

I have great confidence in those who have been agitating for the establishment of the Institute of Languages and I support the educationists who have been working in this area for a long time. Names such as Mr Rubichi and Mr Gardini, come immediately to mind along with Professor Smolicz, who did such a splendid job years ago with his task force in multicultural education and who has been working in this area for many years. He is to be congratulated for his contribution. I take this opportunity to congratulate him upon his recent elevation to his newly acquired professorial status.

In supporting the Bill, I hope that the plans proceed well and to everyone's satisfaction. I hope that the institute will develop and prove to be an extremely worthwhile educational institution in South Australia. I am sure that it will benefit all those who wish to study languages at the tertiary level. I refer to students from migrant communities as well as to those English speaking citizens and their children who are eager to learn a second language.

I have a very strong personal view that it is and will be in the best interests of Australia and the bests interests of individuals within our community if all children in this country ultimately learn a second language. Accordingly, I support the Bill and wish the institute every success.

The Hon. J.C. BURDETT: In speaking to this Bill, despite the late stage in this part of the session, it is disgraceful that we do not have Bills on our desk and we do not have the *Hansard* pulls of the Minister's second reading explanation. I hasten to add that this is not in any way the fault of the staff: it is the fault of the Government. The messengers and *Hansard* have been grossly overworked anyway because of the way in which the Government has mismanaged its legislative program. It can happen towards the end of a session, and it has happened before, but it is a bit difficult to cope with when members also are under pressure towards the end of a session. I had to get a copy of the Bill from the House of Assembly attendants, and I have a copy of the second reading explantion by courtesy of my colleague the Hon. Robert Lucas.

I join with the Hon. Robert Lucas and my colleague the Hon. Murray Hill in supporting strongly the concept of the Institute of Languages. I am sure that it will be of great assistance to the ethnic people and to the community in general. However, I think that the legislation—and this has been touched on by both the Hon. Robert Lucas and the Hon. Murray Hill—is very bad. The Bill provides for an institute whose powers, functions and composition are not contained in the Bill. It is unprecedented, to my recollection while I have been in this place, to introduce a Bill which sets up a body such as this but which does not set out its powers, its functions or its composition.

Recently we have been debating the Reproductive Technology Bill, and the Minister who introduced it said that it was enabling legislation. While that was disputed by members on our side, it did contain in great detail the functions of the Reproductive Technology Council, its powers and its composition. So, to introduce a Bill that does not even do those basic things is, to me, very bad legislation. Parliament really has no say. It is all very well to say that regulations will be introduced to set out these things, but the only say that Parliament has is either to disallow the regulations or not to disallow them. There is no power of amendment at all. As I have said on other occasions, perhaps this is something that we ought to address with regard to subordinate legislation. Perhaps there ought to be a power of Parliament to amend or at least have some say as to the form of regulations, but Parliament has no say at the moment as to whether or not regulations are introduced and, if they are, all it can do is disallow them *in toto* or to take no action.

These three matters—the powers, functions and composition of organisations such as this—very often have been matters on which Parliament has amended Bills. Quite frequently, Bills are introduced which set up statutory organisations of some sort or another and motions are moved (and sometimes carried) as to the powers, functions and, perhaps more particularly, composition. In this case, Parliament really has no say. Everyone in this Chamber who has so far spoken, and everyone who spoke in the other Chamber, supported the concept, as I have, of this Institute of Languages. It will not function unless the powers, functions and composition are set out in legislation of some sort. When the regulations come into Parliament and when we have the option of disallowing them or taking no action because we support the concept (and support it so strongly), the only option we have is not to disallow them. Therefore, Parliament has no say at all.

The second reading explanation sets out the present purposes of the institute. It contains a number of paragraphs, but none of these are set out in the Bill and I think that they should be. The second reading explanation concludes by stating:

> Whilst the purposes of the institute and its membership are presently as I have outlined, some flexibility is required to adjust these as the institute gets under way. For this reason, it is proposed that they be defined by regulations to provide such flexibility while still enabling scrutiny by the Parliament.

That is a nonsense. I suggest the reason why the powers, functions and composition of the institute were not inserted in the Bill was not this reason at all but, rather, that the Government was too slow in preparing its Bill. We have been told that it was necessary to leave these things out in order to introduce and pass the Bill this week, because it is desired that appointments be made, salaries be paid, and so on. That is not the way to go about the legislative process. If that is desired, the Bill must be prepared in time so that it can be spelt out and there can be full consultation. At this stage, I do not believe it is possible to spell these things out in the Bill, because there has been no time for the consultation that would be necessary to include these things in the Bill.

It is a nonsense to say that this method still enables scrutiny by the Parliament: there is no real scrutiny by the Parliament. All Parliament can do is allow or disallow, and in effect it has to allow, because everyone wants this concept to proceed. As the Hon. Robert Lucas mentioned, I support the amendment relating to a review that was inserted by the Opposition in another place so that the matter comes back before Parliament. In their colourful language, the Americans refer to sunset clauses and high noon clauses. In relation to sunset clauses, the sun goes down on the legislation if it is not renewed. This is a high noon clause. There

is no suggestion of the sun going down or the legislation expiring, but there is the requirement that it be brought back to Parliament, and that there be a review: it is subject to the light of high noon.

Particularly because there is no reference in the Bill to the powers, functions and composition of the institute, I think it is very important that there be this review and I am very pleased that that has been inserted. As did the Hon. Robert Lucas and the Hon. Murray Hill, I wish the institute all the best. I trust that it will live up to its expectations, and I believe that it will do so. I hope that it will have the beneficial effect that we all hope it will have on the ethnic communities and on the community at large.

The Hon. L.H. DAVIS: As the shadow Minister of Ethnic Affairs, I indicate my support for the establishment of the South Australian Institute of Languages. I acknowledge that it is necessary for that institute to have a degree of independence, and that necessarily means establishing a separate body, and in this case it is, in fact, a statutory body, although I accept that it may well be situated within one of the tertiary institutions, which will have an interest in that Institute of Languages.

As a member of the Flinders University Council of South Australia, I should indicate that I am aware of the progress that has been made in establishing the Institute of Languages. The Minister of Employment and Further Education, Mr Arnold, in the other place, advised the Flinders University and other tertiary institutions of his intention to establish the Institute of Languages and advised that members representing the two universities, the Roseworthy Agricultural College, the South Australian College of Advanced Education and the Institute of Technology, as well as other interested parties, would serve on a ministerial committee, reporting to the Minister on the development of the Institute of Languages. So, in a sense, the legislative horse is coming after the cart—which has been established.

I must say that I am surprised that the legislation is so thin in terms of details of the purpose and objectives of the Institute of Languages. It would not have been too difficult to have put those down in a form that was acceptable for legislation. Nevertheless, the Opposition accepts that the Institute of Languages should be established. We accept that there is some urgency in passing this legislation and, therefore, the Opposition has agreed to pass the Bill in its present form.

I would like to echo the remarks of my colleagues who have made the point that, by and large, in South Australia there is a bipartisan approach to ethnic affairs. I readily accept that this legislation is put forward in a continuance of that spirit. I recognise also that several bodies with a particular interest in language education are already in place. I refer to the very active and very effective Ethnic Schools Association of South Australia, which is the umbrella body for the burgeoning number of ethnic schools in South Australia. Also, there is the Multicultural Education Coordinating Committee—which is better known by the acronym MECC. Those two organisations have earned rightful acclaim for their very professional and constructive approach to multicultural education and language teaching.

The Institute of Languages will encompass tertiary education of languages, but it will also recognise the importance of cooperation between the tertiary institutions and language teachers. Quite clearly, without a strong base of language teaching in primary and secondary schools, effective language teaching and development at the tertiary level will founder. It is pleasing to note that this establishment of the Institute of Languages seeks to develop the necessary linkages between the tertiary and secondary education sectors.

If ever there was a program designed to build bridges between Australia and the rest of the world it is surely multicultural education and communication. If Australia is to avoid sinking without economic trace, surely we must become more aware of the rapidly shrinking world we live in. We should know that within 20 years the Japanese economy is more likely to be larger than that of the United States, notwithstanding the fact that some 125 million people live in mountainous islands with no natural resources to speak of.

We should recognise that South Korea and Taiwan have already emerged from the economic shadows and that Taiwan has the second largest trading surplus in the world—$US60 billion plus, just a few billion dollars behind Japan. Taiwan is a country of just 19 million people, not much more than the population of Australia. We should recognise that China, with one billion people, is an emerging economic force. Australia lives on the edge of this Pacific rim—the most rapidly growing economic region in the world. We have a choice of either hanging on grimly to that rim or sliding off into oblivion.

We should recognise that the direction of our trade has changed dramatically over recent decades. No longer is the United Kingdom the main importer of our goods and services, nor is it the main source of our migrants. The 1986 census shows that nearly half of our overseas born people living in Australia were from Great Britian or Ireland, 9 per cent were from Italy and 4 per cent were from Greece. However, during 1986, of overseas migrants coming to Australia, only 15 per cent were from Great Britian and Ireland and less than 1 per cent from both Italy and Greece. In fact, in 1986, 38 per cent of our migrants were from South-East, Central and Western Asia and the Middle East; 5 per cent were from Africa; and a growing number were from the Americas, including South America.

This is the Australia of 1986. We had better believe it, and our education system must reflect it. We must not downgrade multiculturalism. We must not downgrade the importance of language policy. We must give practical recognition to the need for a national language policy. I believe that the establishment of the Institute of Languages is a positive step in building up a network to give effective implementation to a national language policy.

Last year I had the benefit of attending (in Adelaide) a conference on national language policy and had the benefit of meeting with key representatives from the Modern Language Teachers Association, FECCA, ALAA and ACTA. The meeting of those bodies in 1986 reaffirmed four guiding principles for the implementation of a national language policy: first, the right of all Australians to achieve competence in English; secondly, the right of Aboriginal, ethnic and deaf groups to maintain and develop their language and cultures; thirdly, the right of non-English speakers to bilingual services and to translating and interpreting services; and, fourthly, the opportunity for all Australians to become competent in more than one language.

In relation to the first principle, I still find it alarming that good English continues to be unfashionable. Is there any other country in the world that so often has commercial television advertisements where the actresses and actors consciously change their natural speaking voices to sound like a real Aussie with a heavy dose of Ocker, and often ungrammatical to boot? The pursuit of excellence in education should start with language. The learning of a language is surely a prerequisite to cultural understanding. The local national illiteracy rate is an alarming 8 per cent to 10 per cent. That is an unacceptably high figure.

The national language policy, which has been so slow in being put into place, will also advance the opportunity for all Australians to become competent in more than one language. One of Australia's most difficult problems is its isolation. This has not helped native-born Australians to acquire skills in languages other than English. Over the past 30 years there has been a period of decline in second language learning. At one time Latin and French dominated in secondary schools; German, Italian, modern Greek, Indonesian, Chinese and Japanese are now taught in a number of schools.

I want to say publicly that the Liberal Party is committed to facilitating language learning. At present about 65 per cent of children have at least one year's language training and our aim is to give every child at least one year of learning a second language. Currently at matriculation level only 12 per cent have a language. Our goal should be to lift that to at least 25 per cent.

I am concerned to find that at least in South Australia there is still apparently a bias in favour of science subjects at matriculation level in the sense that it is easier to score higher marks in science subjects than it is in subjects such as English, French or History. At a time when quotas place great pressures on students seeking entrance to tertiary institutions, it is understandable if they choose science rather than humanities subjects to maximise their matriculation score.

Whilst that may be anecdotal information and may well be construed as the subjective views of several teachers to whom I have spoken, I nevertheless raise it as a matter of concern that students who need to score high marks to achieve entrance into tertiary institutions may often be put off by the perception that they will score higher marks in science subjects rather than in humanities subjects, including languages such as French, Indonesian, Japanese, and so on.

It is often said that Australia has to lift its game in technology. That seems to be reflected in the fact that we rank only 20th out of the 23 OECD in the percentage of exports of technologically related goods and services. We rank behind New Zealand and ahead of Turkey and Iceland. But, it is no less true that an important part of a successful relationship with other countries is an adequate supply of persons skilled in a second language. We increasingly require advisers to Government and business who are bilingual or multilingual. Our diplomatic service is not up to quota in this regard. Overseas tourism, particularly from the Asian regions and Europe, which should be burgeoning as our dollar plunges, requires a pool of interpreters.

I am a staunch advocate of exchange scholarships for both teachers and students. The best language laboratory will surely be the country which actually speaks the language being learnt. Teacher training and retraining is basic to the successful teaching of English as a second language, or languages other than English, whether it be at the primary, secondary or tertiary level or in ethnic schools. Proper teaching aids must be available in training programmes.

There must also be a strong drive to ensure that the community understands that language learning is not impractical, irrelevant or elitist. One of the submissions to the Senate inquiry on national language policy put it quite nicely in noting:

> The language teachers believe that language teaching is all about tolerance and understanding; others believe that it is all about doing grammar exercises.

The implementation of a national language policy must surely be a high priority. Properly implemented, it is about the pursuit of excellence rather than mediocrity. So, I believe that there is an exciting opportunity to make a positive advancement in language teaching by the establishment of the Institute of Languages. We should recognise that South Australia, which celebrated its sesquicentenary last year, was planned by Colonel William Light, himself half Malayan, and within three years of settlement 10 per cent of our colony's population was German.

This all goes to show that, while we have become more conscious of and sensitive to the many cultures in Australia, our multiculturism, we have been very slow in putting into effect a policy which both recognises and respects that fact and which will also build our social and economic relationships with the rest of the world.

The speedy implementation of a national language policy on a bipartisan basis remains a priority of the highest order. The implementation of the Institute of Languages with its objectives as stated is something which I fully endorse. I welcome it, and I am delighted to see that the people who have an interest in this matter are supportive of it. It augurs well for the future of the Institute of Languages. I support the Bill.

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

WASTE MANAGEMENT BILL

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

Clause 9, page 4, line 22—Leave out 'Four' and insert 'Three'.

The Hon. BARBARA WIESE: I move:

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

This amendment arises from one which was passed by the Council relating to the composition of the Waste Management Commission. Members will recall that in the Government's Bill we sought to have a commission comprising seven members. It was the view of Opposition members in the Council that the commission should be reduced to five members, and that amendment was carried by the Council and accepted by the House of Assembly.

After the amendment was carried it came to our attention that the clause which relates to the number of people required for a quorum at commission meetings remained at four. Since the commission comprises five members a quorum of four seems too large a number, and for that reason my colleague the Minister of Transport in another place moved an amendment to reduce the quorum to three. I think that that makes it possible for the business of the commission to be more efficiently expedited. I seek the concurrence of the Committee in relation to this amendment.

The Hon. DIANA LAIDLAW: The Liberal Party is happy to support the amendment, and we concur with the Minister's argument. I suppose, by way of comment, it highlights the value of having two Houses of Parliament and some time to look at issues. The original amendments to change the size of the commission's membership arose from amendments that I moved. I must admit that at the time I did not consider reducing the number of members for a quorum from four to three—but then I suppose neither did other members of this place. I confirm the point that there is value in having time to look at these matters and also the wisdom of having two Chambers to do so. We support the motion.

Motion carried.

CHILDREN'S SERVICES ACT AMENDMENT BILL

In Committee.

(Continued from 26 November. Page 2131.)

Clause 1 passed.

Clause 2—'Commencement.'

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

Page 1, lines 13 and 14—Leave out clause 2 and insert the following clause:

2. This Act will come into operation on a day to be fixed by proclamation.

The amendments that have just been put on file by the Hon. Mike Elliott to clause 3 have one or two new provisions of which I was not aware. At this late hour, I do not want to prolong the proceedings, but I understood that almost substantial agreement had been reached between the Democrats, the Government and the Liberal Party. However, given the revised nature of the amendments, I am afraid that that agreement has now dissipated and there will be some debate in the Committee stage on these amendments. I seek your guidance, Madam Chair, as to whether those amendments can be debated together.

The CHAIRPERSON: The Committee is debating clause 2 for which the amendments on file of the Hon. Mr Lucas and the Hon. Mr Elliott are identical. I gave the Hon. Mr Lucas the call because his was on file first. When the Committee moves to clause 3, where the amendments might be interrelated, they can all be discussed.

The Hon. R.I. LUCAS: Given that the amendments to this clause are identical, I will not prolong the debate on the understanding, as I said, that I have the opportunity to debate both matters together. I had hoped that the Committee could have expedited proceedings, and until some minutes ago, I understood that there was some agreement between the Democrats, the Government and the Liberal Party in relation to the amendments to be moved by the Hon. Mike Elliott and me.

I was relaxed about a procedure or a course that was to be followed. I now see that the amendments to be moved by the Hon. Mr Elliott are different in a substantial way to the amendments that I have previously discussed with him today and, therefore, the Liberal Party will be debating and opposing the amendments of the Hon. Mr Elliott.

The Hon. BARBARA WIESE: The Government agrees to this amendment.

Clause negatived; new clause inserted.

Clause 3—'Registration.'

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

Page 1, lines 15 to 22—Leave out clause 3 and insert the following clause:

3. Section 42 of the principal Act is amended by inserting after subsection (4) the following subsections:

(5) A Children's Services Centre that is incorporated under both Acts may, at any time, terminate its incorporation under the Associations Incorporation Act 1985 by notice in writing to the Corporate Affairs Commission.

(6) Upon termination (pursuant to subsection (5)) of the incorporation of a Children's Services Centre under the Associations Incorporation Act 1985 the property of the centre incorporated under the Associations Incorporation Act 1985 will be vested in the centre incorporated under this Act.

My amendment is moved in an attempt to reach some resolution between the Government, the Democrats and the Liberal Party. I put down the position of the Liberal Party in relation to the intention of the Government Bill to retrospectively terminate the incorporation of about 140 kindergartens that had separate incorporation under the Associations Incorporation Act. I have outlined the reasons for opposing the Bill and I will not go over that again.

In the interests of trying to come to agreement between the major Parties in the Chamber, we have been entering into discussions in the past day or so about possible alternatives to the outright defeat of the legislation, which was the position that I put in the second reading debate. To that end, I have moved this package of amendments now before the Committee. Their import will be that, if a kindergarten that has dual incorporation wants to take advantage of the provisions in this Bill, it can terminate its incorporation under the Associations Incorporation Act at any time by notice in writing to the Corporate Affairs Commission.

During the debate earlier we had a suggestion from the Minister that it would be a cumbersome procedure for the Children's Service Centre that had dual incorporation to wind up incorporation under the Associations Incorporation Act and that it was going to cost them money, etc. It was an argument that the Hon. Trevor Griffin and I did not agree with and we have looked for a middle ground. My amendment allows any of those kindergartens, if they agree with the views put by the Government and by the CSO with respect to the problems of dual incorporation, by notice in writing to the Corporate Affairs Commission to terminate their incorporation under the Associations Incorporation Act. It would then be a fast track or short cut to termination under that Act.

[*Midnight*]

I would envisage, if this amendment is passed, that the CSO and its staff would sit down with the management committees of the affected centres and, in a majority of cases, the management committees would be quite relaxed about putting a notice in writing to the Corporate Affairs Commission and winding up the dual incorporation they have. As I indicated in the second reading debate and in the Committee on another day, the Opposition is not arguing for the retention of dual incorporation of these centres. The Liberal Party has been arguing for the right of management committees to make their individual decision on whether they want to retain dual incorporation or move to a situation of sole incorporation.

We have argued that it ought to be their individual decision, made after they have had proper consultation with the CSO or CSO staff. Under this amendment they would be able to sit down with CSO staff, listen to their arguments and a good number of them would, at a very early stage, put a notice in writing to the Corporate Affairs Commission and wind up their incorporation. However, a number of kindergartens will not agree to the removal of dual incorporation for the reasons I outlined previously. This amendment will allow those kindergartens to retain their dual incorporation.

I would argue that the alternative amendment to be moved by the Hon. Mike Elliott will not allow for the fact that at any time in the future a new management committee for a particular kindergarten in early 1988 may have discussions with CSO staff and say that it wants to retain dual incorporation. It may not write to the Corporate Affairs Commission and a new management committee in 1989 or 1990 may well make a different decision and put a notice in writing to the Corporate Affairs Commission to wind up its separate incorporation under the Associations Incorporations Act. Under the amendment to be moved by the Hon. Mike Elliott, I would accept that it is likely that, because he has a three month cut off provision, in the short term that amendment will pick up more kindergartens.

A number of kindergartens (the Hon. Mr Elliott knows some, I know some, and the CSO know some) will in the three month period not agree to winding up the dual incorporation option that has been provided by the Hon. Michael Elliott. They will seek to retain their dual incorporation under that provision. Because of the three month cut-off provision, if a management committee in 1989 or 1990 was

to take a different view, it would not have the opportunity to avail itself of that option of taking a fast track wind up of a separate incorporation under the Associations Incorporation Act. I would argue that the amendment I am moving will have that significant long term advantage to the goals of the CSO, namely, that it wants to eliminate the number of kindergartens with dual incorporation.

The other aspect of my amendment is the point raised by the Hon. Trevor Griffin in relation to the legal aspects of any termination of a separate incorporation under the Associations Incorporation Act. That part of the amendment will say that, if the legal entity created under the Associations Incorporation Act is wound up or terminated under my amendment or the Hon. Mr Elliott's amendment, any property held by that legal entity under the Associations Incorporation Act will automatically be transferred or vested in the separate legal entity established under the Children's Services Office Act.

The amendments being moved by the Hon. Michael Elliott—based, I concede, on different legal advice from the legal advice that I had—do not take into account those transfer provisions of property. I accept the views that the Hon. Trevor Griffin has put before in this Chamber in relation to this matter and, I guess in the end, if an amendment is carried along the lines suggested by the Hon. Trevor Griffin we will not know until we find ourselves in court in relation to any challenge by a particular kindergarten with respect to the property that they might well argue is held by the legal entity established by this separate incorporation under the Associations Incorporation Act.

Up until that stage of proceedings, they were the amendments that we had discussed and, as I said, I thought there was substantial agreement. I would be moving my amendments and hoping for acceptance but, if not, I thought the fall back position of the Hon. Michael Elliott at least was something on which I would not delay the proceedings of the Committee. There would at least by the opportunity under those parts of the Hon. Michael Elliott's amendments that would allow those kindergartens wanting to retain dual incorporation—if they gave their notice within the three month period—to do so. However, in the last 30 minutes, back into the Hon. Michael Elliott's provisions came an amendment which he earlier had and with which, after discussion with the Hon. Michael Elliott, he informed me he was not proceeding.

It had also been included in my amendments earlier and, after discussions with various people including the Hon. Trevor Griffin, I took the view similar to that of the Hon. Michael Elliott, that this provision had no part in the package of amendments that we should be moving this evening because, quite simply, it negates the whole purpose of the amendment package that I and the Hon. Michael Elliott would be moving. I refer to new subclause 1 *(c)* of the Hon. Michael Elliott's amendments, which provides:

> If this Act and the Associations Incorporations Act 1985 are in conflict in relation to a kindergarten incorporated under both Acts, the provisions of this Act will prevail.

We have had a situation where kindergartens that have established a separate legal entity way before the CSO came into being, and had that constitution lodged with the Corporate Affairs Commission, have jealously protected that constitution because they see in it some measure of independence from the CSO. They see in it at least a measure of a lever that they can retain if there were to be any dispute between the kindergarten and the CSO at any future stage.

In the representations that they have made both to myself and the Hon. Michael Elliott, that has been a key part of their opposition to the Government provisions that we have in the Bill. Yet, in the amendment to this clause that will be moved by the Hon. Michael Elliott, we have a provision that will negate completely the protections which I am moving in my amendments and which the Hon. Michael Elliott was to move previously in his package of amendments. In other words, if there is a difference between those two constitutions under the Associations Incorporation Act and the CSO Act, the Hon. Michael Elliott's amendment provides that the CSO Act incorporation will prevail: that is, that one will be taken heed of, and the separate protection that they had and sought to retain under the Associations Incorporation Act would be thrown right out the window.

That completely negates the protection that we sought to include in the amendment packages about which we spoke in the discussions that we had earlier today and on other occasions in relation to this Bill. The Hon. Michael Elliott has put to me that this conflict provision will apply only if we get into a court proceeding. As the amendment is drafted, that is just not the case. It does not mention court proceedings and, in the interpretation of what will be the amended Act, the Director of the CSO, quite properly if this is to be his legislation, can look at the provisions of the CSO Act, its incorporation and the constitution. Further, he can look at any conflicting provisions in the Associations Incorporation Act. He can operate as the Director of the CSO while completely ignoring the separate provisions of the Associations Incorporation Act and only give heed to the incorporation under the CSO Act, because that is the import of the amendment that will now be moved by the Hon. Michael Elliott.

All these kindergartens that have presented their submissions to me and the Hon. Michael Elliott seeking to retain that small semblance of independence that they see in their incorporation under the Associations Incorporation Act will lose that separateness and that independence if the amendment to be moved by the Hon. Michael Elliott is successful.

I hoped that, if my amendment was not successful, I would be relaxed about the amendment that would be moved by the Hon. Michael Elliott but, because of the changes made by the Australian Democrats at the witching hour of 12 o'clock this evening, I cannot support the amendments to be moved by the Hon. Michael Elliott. Further, under the old arrangement I would have been quite happy to lose my amendment on the voices but, on behalf of the many kindergartens and management committees that have made representations to me, I feel so strongly about this change of heart by the Hon. Michael Elliott and the Australian Democrats that, even at this late hour, and with due apology to members in the Chamber, I will call for a division if my amendment is lost on the voices.

The Hon. M.J. ELLIOTT: I believe that we should put matters into some sort of perspective. When pressed, the kindergartens that felt most strongly about this Bill were left to express their opposition in fairly vague terms. Even the most articulate cannot quite articulate their worries. They are concerned about interference by the CSO, and they hope that their separate incorporation may afford them some form of protection. It is arguable as to how much protection that offers them in law. In fact, every second lawyer whom one asks gives a different opinion, so there is some question as to what sort of legal protection was offered by the separate incorporation under the Associations Incorporation Act.

For some years, in terms of obeying the various requirements of the Associations Incorporation Act, most of the kindergartens that have that separate incorporation have not been active in maintaining it. In fact, after talking to a number of kindergartens, I found that they did not know what the requirements were.

Even the kindergartens that had expressed concern were forced to confess that they had not been obeying the requirements. I think that when one really looks at where the problems could possibly come from, one finds that they appear to relate to section 43 of the principal Act. Under section 43, the Director of the Children's Services Office may, by direction, alter the constitution of a children's services centre. That is a very strong power. It was established in 1985, before I was in this place. However, it seems to me that to some extent that is at the centre of our concern. I have tried to address this matter in my amendment.

I knew that I had no chance of changing the Bill to strike out the Director's power to alter the constitution, but at least, under my amendment, the Director would be required, before making any change to the constitution, to give notice in writing to the kindergartens involved, and even then the action could not take place for another three months, which gives the kindergartens a considerable chance to lobby before any real change occurs. That ability has not existed in the past.

So, by means of this amendment, I believe that kindergartens would be given a chance to lobby the Minister or the department, as well as, of course, the Opposition Parties and, I guess, their own communities if they felt that something unfair was being done. So, if the Minister was to get up to some sort of trick, which people fear might be the case—although they are a little vague about exactly what that trick might be—it is believed that at least those involved would have a real guarantee of consultation, not offered previously under this legislation. So, I believe that I have tried to get at one of the points of contention, from where, I think, the trouble really emanates.

The Children's Services Office has another power over all kindergartens: quite simply it is that it supplies virtually all the money. Certainly, the parents and friends of kindergartens are involved in all sorts of fundraising activities and working bees, which do provide some money, and payment in kind, to kindergartens. But the fact is that the biggest single amount of money provided to kindergartens goes into salaries, and that money comes from the Children's Services Office. If the CSO really wanted to put the screws on any kindergarten, it could do it by way of salaries. The various kindergartens to which I have spoken have conceded that if that happened any pretence of independence would disappear immediately.

It would be a fairly draconian thing for a Minister to do, but some people do have fears that the Minister could do something draconian. If one is willing to believe that the Minister might resort to some sort of horror tactics, one would have to believe that the Minister would be willing to do that sort of thing. There is nothing in the Bill or the amendments that would stop that from occurring. I think it is important that any fears that people have should be put very clearly, but no-one has managed to do that. None of the kindergartens to which I have spoken have managed to do that, and nor has anyone in the Opposition. We have talked about independence, with which I agree, but I believe that that independence is questionable in law, anyway. I believe that at least by pushing for a guarantee of the opportunity to consult over a three month period (as is proposed in my new clause 4) would to some extent mean that kindergartens would get a better deal than they could hope for otherwise.

I am very sensitive to the needs of kindergartens. I have a daughter who first started school only six months ago, and I have a son who, in about two months will start four days a week at kindergarten. So, I am sensitive to the situation and in touch, I believe, with kindergartens. Also, the kindergarten with which my children are associated is one of those with dual incorporations and that kindergarten is one which has had problems because of that.

Even the Hon. Mr Lucas would know something about it because I think his children have attended it as well. It had problems about who should pay for the floor and who owns the building. The J.B. Cleland Kindergarten is one of the kindergartens that has demonstrated the problems of dual incorporation because, the question of who owned it and who was going to pay for putting in a new floor, arose. The CSO could have insisted that the kindergarten find all the money to pay for the floor, and that would have caused all sorts of problems. I am sure that the Hon. Mr Lucas is aware of the problems that are occurring in that kindergarten because of this dual incorporation as his children have been attending it.

As it turned out, I believe that the CSO picked up the tab, although legally it was under no obligation to do so and it could have said, 'Well you have other incorporation; let your association incorporation arm look after it.' That would have been the wrong thing to do. I have tried to be extremely sensitive to the requirements and fears of kindergartens, but I have also tried to put them in perspective. I hope that my amendments do this and set about providing protections as far as is possible.

The Hon. BARBARA WIESE: The Government will oppose the amendments to be moved by the Hon. Mr Lucas and will support the amendments to be moved by the Hon. Mr Elliott. The Government would prefer that the Bill, as drafted, be passed. However, there has been concern expressed by members of both Opposition Parties about the terms of the Bill and if there is to be a compromise in order to see the matter resolved and in order to solve the legal questions that have been debated, we believe that the amendments to be moved by the Hon. Mr Elliott best meet the problems which have been identified and which the Government seeks to address.

The Hon. Mr Lucas's new section 42 subsection (5), under clause 3, is unacceptable to us. It does not achieve what the Government sets out to do. The proposal of the Hon. Mr Elliott in respect to this matter is more acceptable to us. With respect to new section 42 subsection (6), under clause 3, the Government has taken legal advice which indicates that such an inclusion in the Bill is unnecessary. For that reason we can see no point in accepting it. In relation to amendments to be moved by the Hon. Mr Elliott, although we will be supporting them, we do not agree that proposed new clause 4 is necessary. There has never been an occasion in the past where the Director of the Children's Services Office has imposed any amendments to a kindergarten's constitution on a management committee against its will, and there is never likely to be a circumstance when the Director would wish to impose any conditions against a management committee's will. However, if such an amendment will satisfy the concerns that have been expressed by the Hon. Mr Elliott and by some kindergarten management committees, we are prepared to incorporate such sentiments in the Bill in order to satisfy any qualms that people might have about it.

With respect to the remaining parts of the Hon. Mr Elliott's amendment, they take account of the fact that it is desirable that there be certainty with respect to the provisions of incorporation. The amendment will certainly clarify any conflict that might arise should a matter go before the courts in terms of some of the issues that we debated on the last occasion that this matter was before the Council. I refer to such issues as ownership of property, etc., when a

kindergarten is being wound up. Therefore, those amendments are acceptable to the Government, and we will support them.

The Hon. R.I. LUCAS: I am not surprised that the Government is supporting the amendments moved by the Hon. Michael Elliott because, as I said, *de facto* it gives them everything they wanted in the original legislation because of the Hon. Mr Elliott's amendment to clause 5. So, the Government's attitude of the Government does not surprise me one bit given that, albeit through another mechanism, it is achieving exactly what it wanted to do through the auspices of what was meant to have been a helpful amendment for kindergartens being moved by the Australian Democrats.

One aspect of the amendments moved by the Hon. Michael Elliott that I did not address in my last contribution relates to the power of the Director of the CSO—the Director, not the Minister—to give a direction under section 43 to make an amendment to a constitution.

To summarise the amendment, it is really just a piece of intellectual finessing by the Democrats at this late hour to suggest that this gives to kindergartens anything that they do not have already. The power of the Director of the CSO to make an amendment is not affected in any way at all: the chopper is just delayed by three months to enable people to talk with each other.

There is not much reason for lobbying Parliament because it is in the legislation. Under the Act the director quite rightly would have the power to do this if he or she wanted to do it and would be acting within the terms of the CSO legislation. So, to suggest that this in any way meets the criticisms that kindergartens have made of this provision is, as I said, Democrat finessing and does not in any way disguise what, certainly in my view and I am sure that of a number of kindergartens, is a Democrat sell out to the Government on this matter.

I have a question for the Minister, and the Director of the CSO through the Minister, in relation to clause 1 *(c)*, which provides that if this legislation and the Associations Incorporations Act are in conflict in relation to a kindergarten the provisions of this Act will prevail. If that clause is to be part of the legislation, I want to know what the situation will be in relation to those small number of kindergartens and affiliated kindergartens, which, in the debates that we had earlier, we acknowledged had different provisions in relation to the ethos of the education that they provide for their students, and which have specific powers over staff in the curriculum, for example, that all the other kindergartens do not have.

As I understand from representations made to me by those kindergartens, that was protected in their Associations Incorporation Act constitution. I am seeking a view from the Minister, or from the Director through the Minister—as to the intentions of the CSO in relation to those kindergartens because if the Director is of the view—and I am not suggesting that he is—he could in effect reverse all the protections that those kindergartens have in relation to staffing and curriculum. For example, Calvary Kindergarten at Morphett Vale and St Martin's preschool kindergarten at Mount Gambier are just two kindergartens that made representations to me.

I hope that the Director will give a commitment through the Minister that, given that the Democrats will now give the Director and the Government power to have the CSO Act override their separate protections under the Associations Incorporations Act, he will not take up that gun that the Democrats are giving to the Director of the CSO in relation to the protections that those affiliated centres have under their separate incorporations. I acknowledge that it can only be a commitment that the present Director can give. I am sure that, career paths being the way they are, he may not be the Director for ever and a day and that he may go to loftier climes elsewhere, and that a new Director will not be bound by any commitments that the present Director may give. I acknowledge that, but, whilst we have the Director here acting as an adviser, I seek some assurance from the Minister in relation to the affiliated centres that made representations to us.

The Hon. BARBARA WIESE: It is quite likely that the affiliate kindergartens to which the honourable member refers may very well prefer to maintain dual incorporation. Should they wish to do that, their situation would in no way differ from that which they currently enjoy. Their religious beliefs and other matters which might make them different from other kindergartens would be preserved, and it is certainly the intention of the Government and of the Director of the Children's Services Office that their situation would be preserved. Should there be a problem with a conflict between the two constitutions and those affiliate kindergartens want assistance with redrafting constitutions to ensure that there is no conflict, then the Director of the CSO would be willing to assist in that process in order to overcome any potential problem. I can give an assurance on behalf of the Director of the CSO that he has no intention of interfering in any way with the current practices of affiliate kindergartens.

The Hon. M.J. ELLIOTT: I recognise that in the political process it often comes in handy to scare people witless about certain things that will happen, because it works them up into a fervour against the other Party, whichever the other Party may be. However, we still have not heard any real concerns being expressed, despite what I said in an earlier contribution. We now have this vague suggestion that there could be some meddling in the religious independence of some of these affiliated kindergartens. The reality is that any Government in South Australia that did that would be in more trouble than the early settlers, but that really will not happen. Trying that sort of scare tactic on people is really not responsible politics.

The Hon. T. Crothers: It's a disgrace, isn't it?

The Hon. M.J. ELLIOTT: It really is. There are far more important things for us to be worrying about in this place than trying to throw a scare into people about something which a person suggests might happen but which we know in reality will not happen. I have other concerns about kindergartens and I will raise them at a later point, once we have cleared up in which direction we are going in terms of the amendments. There are some other matters which I wish to raise and which I think are of far more importance in relation to kindergartens than some vague worries. I do not believe that the Liberal Party amendments clarify the situation.

Quite clearly, we are in something of a legal wilderness—we are not quite sure of the legal position. There are problems. Some kindergartens have already struck problems as a result of dual incorporation and they do not know where they stand. I think that the position needs to be clarified. I do not want to see kindergartens and their independence meddled with. However, the reality is that because the Government controls the wages and as a result of the director's power under section 43, the Government already has considerable power and to suggest otherwise does not really face up to the truth of the matter.

The Hon. R.I. LUCAS: This is the last contribution that I will make to the amendment, because I do not want to prolong the Committee at this hour. I accept the Minister's

assurance about the present Director in relation to this measure. However, the simple naivety of the Hon. Mr Elliott is revealed in his last comments. In looking at the Hon. Mr Elliott's amendment it is quite clear that, if this legislation and the Associations Incorporations Act are in conflict in relation to a kindergarten, the provisions of the Children's Services Act will prevail. I accept the assurances given by the present Director. I do not in any way wish to impugn his integrity, but a future director or a future Government with a particular persuasion may not be supportive of the particular Christian ethos associated with the affiliated centres that I have mentioned—such as the Calvary kindergarten at Morphett Vale and the St Martins pre-school kindergarten at Mount Gambier.

All members of this Chamber would be aware of members of this Parliament—and not necessarily a majority—who are not supportive of particular schools or kindergartens which have that particular Christian ethos which retain significant degrees of Government funding for doing so. Without naming anyone, we would all know of members who have views along those lines. It would need only a future government, a future Minister or a future director who had that particular view and that vehicle—the trojan horse that the Hon. Mike Elliott proposes to establish in clause 1 *(c)*—could be used to institute a change in direction.

As I said, the finessing indulged in by the Democrats in relation to section 43 in no way would prevent the Director from ordering changes, if he or she wanted to do so. I do not want to prolong the debate but, as I said before, I feel so strongly about the about face by the Democrats on this matter that I indicate once again that, if I lose, I will call for a division.

The Hon. M.J. ELLIOTT: The Hon. Mr Lucas said that he did not want to prolong the debate but, by repeating those outrageous statements, he has done just that. Quite simply, using the example introduced by the Hon. Mr Lucas, the Government could simply withdraw all funding for staff if it wanted to interfere with the religious independence of some of these affiliated kindergartens. The Government has that capacity. The Bill has no effect on religious independence regardless of what amendments go through. The Government has the capacity to interfere at any time by cutting off all salaries—and that would be an incredible interference in itself. However, if the Government tried to interfere with the constitution of a kindergarten to affect its religious independence, major political outrage would be expressed in this State. I do not believe that this State—whether it was governed by Labor, Liberal or the Democrats—would tolerate a government which interfered with the religious independence of its citizens. The Hon. Mr Lucas's statements are really quite outrageous. He is really using scare tactics which should not be used in this place.

The Hon. BARBARA WIESE: I endorse the remarks that have just been made by the Hon. Mr Elliott and say that it is my view that the Hon. Mr Lucas is demonstrating the political naivety of which he has accused the Hon. Mr Elliott. There is absolutely no way that any Government would dare interfere with the kindergartens to which the Hon. Mr Lucas has referred. If any Government did, it would be at great political cost. I can only agree that the Hon. Mr Lucas is attempting to raise fears in the mind of people quite unnecessarily. In conclusion, I thank the Hon. Mr Elliott for his contribution to this debate and for the cooperative way in which he has worked with the Minister of Children's Services in framing the amendments that are before the Committee. I hope that they will be carried quickly.

The CHAIRPERSON: I will put the question that clause 3 stand part of the Bill. If that motion fails, I will put the question that new clause 3 as proposed by the Hon. Mr Lucas be inserted.

The Committee divided on the clause:

Ayes (7)—The Hons G.L. Bruce, T. Crothers, M.J. Elliott, M.S. Feleppa, T.G. Roberts, G. Weatherill, and Barbara Wiese (teller).

Noes (6)—The Hons J.C. Burdett, M.B. Cameron, L.H. Davis, Peter Dunn, Diana Laidlaw, and R.I. Lucas (teller).

Pairs—Ayes—The Hons J.R. Cornwall, I. Gilfillan, Carolyn Pickles, and C.J. Sumner. Noes—The Hons K.T. Griffin, C.M. Hill, J.C. Irwin, and R.J. Ritson.

Majority of 1 for the Ayes.

Clause thus passed.

New clause 4—'Amendment of constitution of registered Children's Services Centres.'

The Hon. M.J. ELLIOTT: I move:

Page 1, after line 22—Insert new clause as follows:

4. Section 43 of the principal Act is amended by inserting after subsection (1) the following subsections:

(1a) The Director must not give a direction under subsection (1) until the expiration of three months after the Director has informed the Children's Services Centre in writing of the amendments that the Director requires.

(1b) Before the direction is given the Children's Services Centre may make representations to the Director in relation to the proposed amendments and the Director must give proper consideration to those representations.

Despite the protestations of the Hon. Mr Lucas that this clause does nothing, while the power of the Director remains the same, his powers are delayed. Action cannot occur until three months after the Director has first notified people of that decision. There have been many times when other politicians and I have successfully lobbied a Government on an administrative decision that did not need the approval of Parliament. Although the amendment does not change the legal power of the Director, it has a political effect in allowing a three month lobbying period during which, if people feel that something has been done with which they disagree, action can be taken. It is a worthwhile addition to the legislation.

The Hon. R.I. LUCAS: My view was that this amendment was intellectual finessing. It is still the same. As to this segment of the amendment moved by the Hon. Mr Elliott, the Opposition is relaxed about it and does not intend to divide.

New clause inserted.

New clause 5—'Amendment of first schedule.'

The Hon. M.J. ELLIOTT: I move:

Page 1, after clause 4—insert new clause as follows:

5. The first schedule to the principal Act is amended by inserting after subclause (1) of clause 1 the following subclauses:

(1a) Section 42 (5) does not apply to a kindergarten incorporated under this Act before the commencement of the Children's Services Act Amendment Act 1987.

(1b) If a kindergarten is incorporated under this Act and the Associations Incorporation Act 1985, its incorporation under the Associations Incorporation Act 1985 will terminate at the expiration of three months after the commencement of the Children's Services Act Amendment Act 1987 unless the kindergarten has, by notice in writing to the Director and Corporate Affairs Commission, elected to retain its incorporation under the Associations Incorporation Act 1985.

(1c) If this Act and the Associations Incorporation Act 1985 are in conflict in relation to a kindergarten incorporated under both Acts, the provisions of this Act will prevail.

We have already debated this amendment. I did say that there were some other matters I wished to raise in Committee and I have a couple of questions to direct to the Minister. They are relevant in that there has been consternation among people in kindergartens about the way the

CSO is generally running kindergartens. It is that consternation that has created some of the doubts that have been further inflamed over recent months. The CSO really does bear the blame for this itself. It promised two years ago that, before any attempt to change incorporation would occur, it would notify kindergartens. That was not done until after the Bill was introduced. The CSO has brought many of the problems that it had and now has on its own head.

As to staffing of kindergartens, a number of kindergartens have contacted me because the number of students has increased, in some cases substantially, yet staffing allocations have dropped. One example is the Jean Horan Kindergarten, which has had its student numbers increased from 53 to 65; 65 is the number it notified to the CSO, but I believe is likely to be starting with 71. It was staffed by three adults to look after 53 children, but it will have two adults to look after 71 children. Clearly, that is an absurd situation and even with its original projected numbers there were two adults looking after 65 children, a ratio of one to 16.25, which is a little away from the Government's stated aim of one as to 10.

The West Lakes kindergarten's number of students is dropping from 81 to 79. It formerly had four staff and will now have 3.5. Thorndon Park kindergarten have 64 and is dropping to 57. It is going from a staff of three to 2.5. In each case the ratio of students to staff is increasing. They are not the only kindergartens. Renmark and a couple of others came to me and said they had similar things happening. I encountered a similar situation at the beginning of this year and made inquiries of the Minister through questions in this place, which took quite some months to answer. The answers to those questions indicated the number of four year olds had increased by 700 while the number of staff had decreased by 11. In real terms that is a cut and the staff of the CSO was 43. That is a signficant cut in the opposite direction of the Government's stated policy.

Kindergartens coming to me now indicate substantial change in ratios in the wrong direction. I am interested to know what is the change in four year olds enrolled next year compared with last year. What will be the change in the number of staff?

The Hon. BARBARA WIESE: It is not possible to be specific about the number of four year olds who would be expected to enrol next year.

The Hon. M.K. Elliott: All kindergartens have to notify, so I would expect the CSO to have sat down and added them up. That would be a normal procedure, I would expect.

The Hon. BARBARA WIESE: I am advised that kindergartens advise actual enrolments rather than predictions for enrolments. It is important that this opportunity be used to outline the procedure adopted by the Children's Services Office in providing staffing and the rationale behind the system used by the CSO in making arrangements for kindergartens each year.

I am advised that in August of every year a Statewide census is conducted and enrolment numbers are ascertained from each kindergarten. Staff for the following year are allocated on the basis of these enrolment figures. The actual staffing allocation is done according to a formula, for example, for enrolments in the range of 56 to 65 children a kindergarten is entitled to a Director and so many teachers and aides according to the formula. In borderline cases an undertaking is given to review the staffing allocation in term one of the following year. The process is known as fine tuning and staff may be either added to or taken away at the end of term one on the basis of this fine tuning which can be undertaken because actual enrolments are then clear. A problem arises when a kindergarten predicts enrolments that are substantially higher than the census figures obtained in August.

Experience has shown that it is unwise to allocate staff on the basis of predictions because invariably the predicted number of children do not show up to be enrolled at the beginning of the following year. If they do show up, the fine tuning exercise will take care of the increase and additional staff will be allocated at the end of term one.

The Hon. R.I. Lucas: You have to wait a whole term—that's the problem.

The Hon. BARBARA WIESE: Yes. The Children's Services Office must make strenuous efforts to ensure that valuable resources are distributed in an equitable fashion to areas of greatest need. We can not afford to staff kindergartens on the basis of estimates or projections. The decisions made for staff really must be based on reality. So, that is the practice that is followed and, as I understand it, it works in a reasonably satisfactory way.

The Hon. M.J. ELLIOTT: I find that very interesting. In the case of at least one of those kindergrtens, it was able to give me the names and addresses of every child who was going to start next year. It was capable of giving me that sort of detail. In fact, in the second term it is expecting its numbers to go up by an even greater amount. It is likely to be significantly understaffed at the beginning of the year, but not get some catch-up until the end of first term, when in fact it will be further behind again because it will have had more enrolments.

From an educational sense, it is fairly disruptive to be shifting staff around part way into a year when programs are set up. To bring a new person into the kindergarten is extremely disruptive. It is the sort of thing that often gets forced on kindergartens, and they start going into all forms of rotations. The Loxton kindergarten, I understand, has all of its students attending three days a week on a rotation basis. One group is doing three mornings, another group is doing three afternoons, and a third group is doing one afternoon and two mornings. That is the only way they can possibly accommodate all the students. That has been going on all of this year.

Many other kindergartens have to delay enrolments or go into other forms of rotation. They do that in response to the fact that they are not adequately staffed and they are told they may get a catch-up at the end of first term. My understanding is that quite often that catch-up does not happen and they are left with either considerably oversized classes or going into all sorts of patchwork rotations to try to give all of the children at least some experience of kindergarten. There have been many cases of students spending much of their time at kindergarten with only two sessions each week, and that is really not good enough.

The Hon. BARBARA WIESE: In the system that I outlined earlier for the allocation of staff, a certain amount of flexibility is available to the Children's Service Office in making decisions about the allocation of teaching staff. In a circumstance like the one outlined by the Hon. Mr Elliott, where a kindergarten is able to provide the names and addresses of children who are expected to enrol the following year, there would be flexibility for the Children's Services Office to give that kindergarten the benefits of the doubt and to make an allocation based on the prediction made by the kindergarten. In some cases, that does occur. Should it occur at the beginning of the year that the enrolments are not as high as had been predicted, then the fine tuning exercise would in fact reduce the number of teaching staff accordingly. So, there is flexibility and it is exercised

by the Children's Services Office where it is considered appropriate to do so.

With respect to the Loxton kindergarten that the honourable member has referred to, as I understand it, the problem there is that the kindergarten itself is just too small physically, which is why there is a rotation of classes etc. Steps are being taken at the moment to extend that kindergarten.

The Committee divided on the new clause:

Ayes (7)—The Hons G.L. Bruce, T. Crothers, M.J. Elliott (teller), M.S. Feleppa, T.G. Roberts, G. Weatherill, and Barbara Wiese.

Noes (6)—The Hons J.C. Burdett, M.B. Cameron, L.H. Davis, Peter Dunn, Diana Laidlaw, and R.I. Lucas (teller).

Pairs—Ayes—The Hons J.R. Cornwall, I. Gilfillan, Carolyn Pickles, and C.J. Sumner. Noes—The Hons K.T. Griffin, C.M. Hill, J.C. Irwin, and R.J. Ritson.

Majority of 1 for the Ayes.

New clause thus inserted.

Title passed.

The Hon. BARBARA WIESE (Minister of Tourism): I move:

That this Bill be now read a third time.

The Hon. R.I. LUCAS: Given the way that the Bill has come out of the Committee stage, the Opposition is steadfastly opposed to it. However, due to the fact that it is 1.5 a.m., we will not call for a division, but I record our opposition to the Bill as it comes out of the Committee stage.

Bill read a third time and passed.

ADJOURNMENT

At 1.5 a.m. the Council adjourned until Thursday 3 December at 2.15 p.m.