LEGISLATIVE COUNCIL

Wednesday 10 February 1988

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

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

PETITION: ADOPTION BILL

A petition signed by 428 residents of South Australia praying that the Council would amend the Adoption Bill to ensure that only suitable couples married for at least five years are eligible to adopt babies in South Australia was presented by the Hon. K.T. Griffin.

Petition received.

QUESTIONS

COUNTRY HOSPITALS

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

Leave granted.

The Hon. M.B. CAMERON: Yesterday, the Minister of Health in this Chamber accused me of stirring up people in the country and telling lies in the country during the past two months. I must say that the Minister credits me with abilities and resources that are way beyond my means, because there is no way that I could have achieved what the CWA has achieved in that time. In fact—and I have direct proof—I spent some of that time catching crayfish in the South-East, which is a much more pleasant occupation. I would like to quote an extract from a 1982 Labor Party policy document on health which shows what the Hon. Dr Cornwall was saying in Opposition and compare that with what he and his Health Commission are now saying to country people. In 1982 the Labor Party was saying:

> The immediate task of a State Labor Government will be to halt further cuts in the State health budget. We will not tolerate further funding cuts . . .

It is history now that that promise has been broken repeatedly in recent years. All country hospitals have had to accept a 1 per cent cut in funds this year, the same cut as they had last year in the 1986-87 budget allocations, and of course there was an even greater cut last year on one section of the budget of 3 to 4 per cent. Now the Minister and the Health Commission have an agenda to make further cuts in rural areas by rationalising some country hospital services. The Minister tried to tell members in this Chamber last December that there would be no changes to country hospitals without clear support from the community, and I quote from *Hansard* of 2 December 1987 as follows:

> I have made it 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 Minister told an *Advertiser* reporter last month that hospitals such as Laura could lose beds as part of this rationalisation of services in country areas but this would allow primary health service visits from physiotherapists, speech pathologists, dentists and podiatrists. I have good news for the Minister; those services are already available at Laura, and in fact also at nearby Gladstone. In fact, the Minister would be interested to know that Gladstone does not have a separate medical officer; the Laura medical officer provides that service—something that a Health Commission officer was not aware of at Cummins last week, which is surprising because I would have thought that the Health Commission was in touch.

Perhaps the Minister should heed the suggestion of the Premier, who, following that disastrous Adelaide by-election last week, said the ALP should stay in touch with the feelings of the electorate. The Premier further said, and I quote from the *News* of 8 February 1988:

> Bannon Government MPs will be ordered 'back on the streets' in the wake of Labor's crushing Adelaide by-election defeat.

The Hon. J.C. Irwin interjecting:

The Hon. M.B. CAMERON: Yes, I would assume so. The article continues:

> Mr Bannon said: 'I give you a pledge that our State MPs will be out on people's doorsteps. There is a big lesson here that we cannot afford to get out of touch. We've got to get out there and find out what's going on and listen to what the people are telling us.'

I gather that the latest options being put to Mid-North hospitals include proposals to retain four general hospital beds at Laura on a 9 a.m. to 5 p.m. basis (that is, only holding beds with no overnight stays) and two or three beds retained at Blyth Hospital under a similar arrangement.

In fact I have been informed—and I have not yet confirmed this—that a Health Commission officer went to Blyth yesterday and said that the hospital there would be closed—except for these beds—within two months. So, in these areas you will have to make sure, in the future, that you time your medical problems for the daylight hours.

The response by country residents, more than 46 000 of whom have already signed petitions opposing hospital closures or changes to their status, has been overwhelming. There has already been a public meeting at Laura where a unanimous motion was passed rejecting the changes proposed by the Health Commission. People are now saying that it is time that the Minister came out of his ivory tower and stopped hiding behind the shirt-tails of the Health Commission. My questions are as follows:

1. Does the Minister stand by his earlier statements that there will be no closure or changes to country hospitals without clear majority support for such initiatives?

2. What criteria will the Minister use to assess support or opposition to planned changes in country hospitals?

3. Will the Minister accept an invitation from me to attend public meetings at Laura, Blyth and Tailem Bend where he can personally assess response to the scenarios offered by the commission and him? In fact, I challenge him to do so at the earliest possible opportunity.

The Hon. J.R. CORNWALL: It has never been my policy to attend barbecues at which I am intended to be the main course. I have no intention of attending simply to aid and abet Mr Cameron in yet another of his political stunts. He is the stuntman of South Australian politics. With regard to halting further cuts, that was a firm commitment given prior to the 1982 election. It was honoured by me as Minister of Health and by the first Bannon Cabinet within four weeks of being returned to office. An extra $4.2 million was injected back into the health budget within four weeks of the Bannon Government being returned to office—something which still rankles Treasury officers of the time (and that was $4.2 million in 1982 money). What may have happened in subsequent budgets, particularly the past two budgets when the conventional wisdom of our time (which I have talked about recently) was that there had to be cuts in public spending, is quite another matter. The Opposition

ought to be, in this matter at least, responsible and truthful. They parrot—

The Hon. Diana Laidlaw interjecting:

The Hon. J.R. CORNWALL: You go and have your little leak on the quiet, Ms Laidlaw. We are not about to take you seriously because your actions and lack of competence put you in a position where no-one can really take you seriously.

Members interjecting:

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: With regard to the clear majority support in any one of these areas, that is perfectly true: we will not proceed with any of these scenarios unless there is clear majority support in any one of the areas. Let me tell the Hon. Mr Cameron that there is very clear majority support for the proposals that we have put forward in Port Pirie and Whyalla. That is where the majority of people live: that is where the majority of people receive their comprehensive health and hospital services. If he has any doubt—

Members interjecting:

The PRESIDENT: Order!

The Hon. M.B. Cameron interjecting:

The PRESIDENT: Order! I have called for order.

The Hon. J.R. CORNWALL: If the Hon. Mr Cameron or any of his colleagues have any doubt about the general support for the scenarios which are being canvassed, then he ought to speak to Mayor Ekblom in Whyalla; he ought to speak to Mayor Bill Jones in Port Pirie; he ought to ask them what they think of the proposals. He ought also to speak to the Mayor and members of the council in Berri and ask them what they think of the proposals. There is clear majority support.

With regard to public meetings, I have already said that I will not be part of a political stunt with the Hon. Mr Cameron. Certainly, I stand by my earlier statements. I have explained how we not only halted further cuts in 1982 but, indeed, injected $4.2 million into the health and hospital system.

GOVERNMENT AGENCY REPORTS

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Attorney-General a question about Government agency annual reports.

Leave granted.

The Hon. L.H. DAVIS: Section 8 of the Government Management and Employment Act, which came into operation in 1986, requires each Government agency to present an annual report to the Minister responsible for the agency on the operations of that agency. Section 8 requires this report to be presented within three months after the end of the financial year, and the Minister is required within 12 sitting days of receiving a report to have it tabled in each House of Parliament. Most Government agencies have a financial year ending 30 June which requires them to report to the Minister within three months, that is, 30 September. The provisions of the Act require that the Minister should have tabled reports no later than Tuesday 10 November 1987; that is, no later than 12 sitting days after the expiry of that three month period.

It is difficult to know exactly which bodies are Government agencies, as defined in section 8. Unfortunately, the last published list of statutory authorities was by the now defunct Public Service Board of South Australia in June 1986—over 19 months ago. However, from an inspection of the list of annual reports tabled in the Parliament after the required date, 10 November 1987, it appears that over 30 Government agencies failed to report within the mandatory period. Indeed, we had some reports tabled only yesterday, three months after the mandatory closing time.

It is also clear that there are still a number of Government agencies yet to report. The Attorney-General would be aware that this lack of accountability and compliance with reporting requirements has been a source of continuing concern, and he would also be well aware that accounts and information of a report rapidly lose their relevance and value if they become public many months—and in some cases more than a year—after the reporting period.

In sharp contrast, the Australian Stock Exchange has strict requirements for listed public companies. Preliminary annual statements are required from all public listed companies within three months of the end of the financial year, and annual reports must be sent to all shareholders within four months of the end of the financial year.

If they do not comply with the four month requirement they receive a warning letter from the Stock Exchange after five days. After 10 days the Stock Exchange issues a press release, naming companies which have not complied with reporting standards, and within 15 days those companies will be suspended from the Stock Exchange. In other words, there is a sharp contrast in the standard of public reporting from Government agencies in South Australia and the standards of the Australian Stock Exchange, which are generally complied with by all public listed companies. My questions to the Attorney-General are:

1. Will the Government examine the possibility of publishing an annual list, perhaps with the Government Management Board annual report, of all Government agencies in South Australia?

2. Will the Government take immediate action to ensure that Government agencies report within the required period?

3. Is the Government concerned that Government agencies are not complying with the mandatory reporting provisions of the Government Management and Employment Act?

The Hon. C.J. SUMNER: I am not sure that the accusations made by the honourable member are correct. Obviously, agencies should report within the statutory time limits that are provided for. I will ascertain whether or not that is the case and provide a reply for the honourable member. There is, of course, a clear distinction between private companies and agencies that are responsible to Parliament, or to Parliament through Government, in that agencies that are established by Parliament are subject to public scrutiny through Parliament, whereas that does not apply to the same extent to companies that are registered under the companies legislation.

The Hon. L.H. Davis: It makes it even more important to ensure that they report.

The Hon. C.J. SUMNER: There is a distinction; that is all I am saying. Obviously, public statutory authorities are accountable through Parliament, which is not the situation in respect of private or public companies that are registered under the companies legislation. But, obviously, one would expect Government agencies or statutory authorities to report within the prescribed time. I have pointed out to the Council previously that on some occasions agencies do have difficulties which may occur as a result of other priorities which it is necessary to attend to in the public interest. However, I repeat: agencies should report within the statutory time limits.

BUSHFIRE CLAIMS

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

Leave granted.

The Hon. K.T. GRIFFIN: Last week the Electricity Trust of South Australia announced that it had reached a settlement with South-East victims of the 1983 Ash Wednesday bushfires. The report of that announcement indicated that about $40 million was to be paid out in compensation to those victims. That report also indicated that ETSA would be paying out 100 per cent of claims although there was some sort of hedge that suggested that the claims still had to be substantiated, so that it was not really all plain sailing for the victims. There was a suggestion that the settlement was immediate, and that was certainly the impression given by newspaper reports.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: Well, there was a suggestion that the settlement was going to be immediate, and that was the impression given by newspaper reports. Reading between the lines, it may still take a long time to establish the amount of the claims before 100 per cent of the amount so established can be paid.

The disappointing aspect of the report was that no reference was made by ETSA to the outstanding claims from the McLaren Vale and Clare fires, where ETSA has been found liable in negligence. In October 1987 in answer to questions in this Council, the Attorney-General said that in respect of the McLaren Vale fire 45 claims out of about 86 had been settled, and in respect of the Clare fire only four out of a possible 42 claims had been settled.

There is no indication that there has been a significantly greater number of claims settled in those two fires than was reported back in October. In respect of both the McLaren Vale and Clare fires, I have received representations on several occasions from claimants who claimed that they had been told by ETSA that they would be required to press their claims in court and that they had been pressured to reduce their claims, in some instances by well over half, in order to have some settlement considered.

It is not clear from the newspaper report of last week relating to the South-East fires whether the same sort of procedures are to be followed or whether equity is to be shown to outstanding McLaren Vale and Clare claimants. My questions are as follows:

1. What are the principles on which the South-East claims are to be assessed? How soon will that occur and the settlement made?

2. Will the principles in relation to the South-East claims apply equally to outstanding claims from the McLaren Vale and Clare fires and, if so, when will those matters be settled?

3. By what time can we now see all outstanding claims against ETSA from the fires five years ago finalised?

The Hon. C.J. SUMNER: I will have to obtain some information to answer those specific questions, suffice to say that ETSA and its insurers have at all times had to take into account the public interest—and by that I mean the broad public interest of South Australians that could be impacted on by payments made by both ETSA and the SGIC—in determining how to deal with these claims. Clearly, those authorities would not wish to act in a way that was to the detriment of the general public in South Australia. I am sure that the Hon. Mr Griffin would agree with that proposition. Clearly, they are constrained to some extent in what they can do by the terms of any back-up insurance that has existed.

First, they have had the general public of South Australia to account to in their conduct of the cases. Presumably their owners—that is, the public of South Australia—would not want the claims settled in such a way as to jeopardise existing insurance arrangements or unnecessarily increase ETSA tariffs.

They are the constraining factors that have existed—namely, that ETSA and its insurers would want to settle the claim in accordance with the law and not in a way that would be to the detriment of its owners, that is, the public of South Australia. I believe that it is a legitimate constraining factor in the conduct of ETSA and its insurers in dealing with these respective claims. I will try to get answers to the specific questions for the shadow Attorney-General.

TRIBUTYL TIN

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister of Health a question about tributyl tin.

Leave granted.

The Hon. M.J. ELLIOTT: Anybody who owns a large boat may know of the existence of tributyl tin, as it is an additive to paint and is an anti-fouling agent. I quote from *Environment*, October 1986, as follows:

> Tributyl tin (TBT) compounds, when considered ecologically, can be described by two superlatives. First, they are probably the most toxic compounds ever deliberately introduced by societies into natural waters. Secondly, they are the most effective anti-fouling agents so far devised for inclusion in paints to protect surfaces of ships and other structures from the growth of marine organisms. In principle their applications can save vessel operators hundreds of millions of dollars annually. But they are also damaging non-target organisms, some of commercial value, in coastal waters.
>
> TBT is incorporated into the paints used on the hulls of ships to inhibit the growth of algae and animals such as barnacles. These organisms adhere to the vessel bottoms, increasing drag and hence decreasing the ship's speed.

Apparently, the French first became aware of the problems associated with TBT in the late 1970s. Their oyster beds (and some of you may be aware that South Australia has an oyster industry which, at this stage, is looking most promising) were suffering rather badly. They had massive mortalities among their oysters, and they also found that about 95 to 100 per cent of their oysters had severely deformed shells, which indicates problems. That has been linked to TBT, and they found that, after the first year that TBT had been effectively banned in France—in 1982—the deformations of the shells dropped to 75 per cent and a further year later to 45 per cent.

They also found that spat fall had improved significantly and therefore the oyster beds started to recover. The oyster industry in France was greatly threatened, but it has improved rapidly. However, TBT was having a significant impact on non-commercial species as well. There is extensive documentation on the effects that TBT has on a large number of other species as well. The British have since followed the example of the French, and have imposed severe limitations on the use of TBT, both in the percentage of TBT in paint and also what boats it can be used on, because they found that the levels of TBT in the water were about 200 times the level that should have been tolerated. The United States has, more recently, followed this example. My questions to the Minister are as follows:

1. When did the Minister and the department become aware of the problems with TBT, if they have become aware?

2. Do they intend to take action to confront the problem?

The Hon. J.R. CORNWALL: Ms President, I am not clear whether the question is directed to me as Minister of Health, to me representing the Minister for Environment and Planning or whether it should be directed to the Minister of Marine and Harbors or the Minister of Fisheries, but I will resolve that problem by referring the question to all the appropriate Ministers and my own Public and Environmental Health Division and bring back a reply or replies as soon as I reasonably can.

WARD BOUNDARIES

The Hon. J.C. IRWIN: I seek leave to make a brief explanation before asking the Minister of Local Government a question relating to ward boundaries.

Leave granted.

The Hon. J.C. IRWIN: The Tatiara council in the South-East, like many other councils, has been through the process of addressing ward boundaries and council representation with the Local Government Advisory Commission. It eventually agreed to six ward councillors for a ward, which is around Bordertown township, and this, together with three wards 12 councillor positions were proclaimed in the *Government Gazette* of 29 October 1987. I now understand that the arrangement as gazetted is contrary to the Local Government Act, and that the department was notified after one alert councillor from that area—he is only a new councillor elected at the last election—pointed out the blunder after having re-read the Local Government Act or after having probably read it for the first time. My questions to the Minister are:

1. Has the department received the legal advice that it was seeking? Has this advice been given to the council, which I believe is waiting to hear it?

2. Did the department advise the council that the Local Government Act might be amended to allow for more than four councillors in a ward, which would be along the lines advocated by the department and the Government of councils having no wards at all?

3. What action has the Minister taken to ensure that this sort of embarrassment does not occur again?

The Hon. BARBARA WIESE: As this matter has not been drawn to my attention, I am not able to provide any clarification on any of those points. I will certainly take it up with my department as a result of this question to see whether the points as outlined are correct and whether or not legal advice has been sought. I am surprised to hear what the honourable member has to say because not only do various proposals for restructuring of ward boundaries and other matters go before officers of my department but they are also considered by members of the Local Government Advisory Commission.

If a decision has been taken contrary to the provisions of the Act, it is surprising, to say the least, in view of the number of people who have been involved in the consultation process on the issue. Certainly, I will take up the matter with officers of my department and bring back a reply as soon as I can.

AIDS MONITORING

The Hon. PETER DUNN: I seek leave to make a brief explanation before asking the Minister of Health a question about AIDS monitoring.

Leave granted.

The Hon. PETER DUNN: Madam President, the other night on the *Four Corners* program some startling facts emerged. The program indicated that one of the methods of monitoring one of the high risk groups involved the issuing of free needles to intravenous drug users and having old needles brought back and exchanged for new needles so that blood samples in the old needles could be monitored for the AIDS virus. Further, two years ago the percentage of AIDS positive people in the group returning needles was two in every 100. On this program they indicated that today the figure is 12 in 100, which is a 600 per cent increase in two years. This has a bearing on the amount of money being spent on advertising and making high risk groups aware of what the problem is.

Four Corners also pointed out that all of the original advertising budget went into the one grim reaper advertisement and that no more or very little money has been put into advertising since then. More importantly, I wish to determine whether South Australia is monitoring the situation in the same way. Are needles being distributed free to intravenous drug users? Are needles being returned and then checked for AIDS? What other AIDS monitoring processes are being used? What is the rate of AIDS positive patients? Is the rate increasing in South Australia?

The Hon. J.R. CORNWALL: May I make clear from the outset that we should be careful about looking at the situation in Sydney and New South Wales and extrapolating it to South Australia. We have always been far better placed with regard to the AIDS pandemic than the Eastern States. The number of sero positives at the last count was something in excess of 200. I am unable to recall the exact figure, but it is still relatively low in South Australia. Contrary to the earlier predictions that it would double every six to nine months, it had increased by only 50 per cent in the preceding 12 months. The rate at which AIDS is spreading in this State is relatively low versus the experiences in other parts of the country and the world. The incidence of infection of sero positives—of individuals returning positive blood tests—is relatively very low compared with the rest of the country and other comparable countries. Let me say a number of other things.

First, it is not possible to predict at what point we are likely to reach a plateau level at which we would be able to say the spread has ceased and we now have a stable percentage of the population infected. Therefore, we have to be cautious in interpreting the results, whether they are due to the conservative behaviour patterns of the at risk groups, the relatively low incidence of multiple partners in homosexual activities, the relatively low to very low incidence of intravenous drug abuse in the city of Adelaide versus the city of Sydney—all these things need to be taken into account. In short, what it means is that we most certainly cannot afford to be complacent. However, for a number of reasons ranging from very good management to chance we have certainly done better than the rest of the country. I repeat: that does not mean that we may not just be in a lag phase, and we must remain ever vigilent.

With regard to the incidence of sero positives in the at risk population who abuse intravenous drugs, that has always been relatively high in South Australia. On the other hand, it must be remembered that that is against a very low base. Whereas *pro rata* one might expect to have about 600 or 700 sero positives in this State, we have only something in excess of 200. Conversely, 18 per cent of those sero positives have been recorded to date in people known to be intravenous drug users. So, the incidence in the intravenous drug using population in this State is relatively high.

As to needle exchange programs, at this stage there is only one needle exchange program available of which I am aware at the AIDS clinic on North Terrace. Demand for

needle exchange has been low indeed. The last time I was briefed there had been (and I am relying on memory and will not be held on this) something less than 200 requests for needle exchange in the 12 months or so that it had been operating.

Against that there is a significant number of community pharmacies—chemists—in Adelaide and in South Australia generally which, upon request, sell small numbers of sterile needles and syringes. It is possible for them to do that within the law in South Australia, and they are available, although not on an exchange basis. They are sold with instructions about the dangers of the intravenous spread of AIDS. Again, in my recollection, those sales run into hundreds rather than thousands. So it is very difficult for us in South Australia to make comparisons with a large and major city like Sydney, where there is a far higher incidence—both absolute and *pro rata*—of intravenous drug abuse.

With regard to advertising, by whatever means, from the outset in this State we have had contact with the high risk groups. AIDS is still overwhelmingly a disease of male homosexuals and intravenous drug users. We have certainly been able to make very constructive contact with the gay community in South Australia, which has been helpful in disseminating information to its members. That has occurred for quite a lengthy period—almost five years. Of course, that is information as distinct from education. I think we must be very careful to make that distinction. You can provide people with information forever but it does not necessarily modify their lifestyles. Education in these areas, on the other hand, should be at a level and in such a form that it has the potential to literally change lifestyles.

Last year virtually every student in year 12 in this State had access—actual or potential—to five hours of education on AIDS, the causes of AIDS, the lifestyles which should be avoided and the way in which AIDS is propagated and transmitted. Although it was not at a level which could be expected to substantially change the mores and lifestyles of students it was, nevertheless, directed to ensuring, to the extent that we were able, that young people in that age group who were sexually active or likely to become sexually active in the near future were at least, at a minimum, given all the facts. So, to that extent they were able to make informed choices as to the risks that they might face or otherwise.

In the medium to long term one would certainly not be attracted to one-off television campaigns. All the evidence is that they are not effective in modifying lifestyles. They may well be effective in generating fear and shock in the community but, whether you are talking about anti-drug education, AIDS education or a whole range of other things in the health education field, you are far better to specifically target, as we are doing, the at risk groups.

The one area that remains of particular concern is the young people who have left the school system before year 12. Very often, for a number of reasons, they are a relatively high risk group. What we have been trying to do through adolescent health programs in places like The Second Story, the Hindley Street project and the street worker project is ensure, to the extent possible, that we are getting substantial information to those groups. We are by no means entirely satisfied with what we have achieved. Nevertheless, I think that by and large we have done relatively well. While I say that there is no room for complacency, the situation in South Australia is certainly better than that in any other State in the country.

EDUCATION DEPARTMENT ASSETS

The Hon. R.I. LUCAS: I seek leave to make a brief explanation before asking the Minister of Tourism, representing the Minister of Education, a question about Education Department assets.

Leave granted.

The Hon. R.I. LUCAS: Over the past two years the Education Department and the Minister of Education have embarked on a large scale sale of schools and other Education Department offices and buildings. In the past two years we have seen earmarked for sale or possible sale the Wattle Park Teachers Centre, the Special Education Resource Unit at Kings Park, the Raywood Inservice Centre, the Grote Street site of the old Language and Multicultural Centre and a number of school sites in the south-western and northern suburbs—in sum total an estimated $10 million worth of Education Department assets and buildings.

At the same time, members would be aware from letters from constituents that the Government and the Minister have continued to cut back in many important programs in schools. We have also seen a number of high priority areas in education remaining underfunded. We need only to list examples in the special education and special needs areas—the question of a curriculum guarantee for those schools with declining student population numbers and the question of maintenance costs for schools in both the city and the country—to know that there are still many high priority areas left in education.

Will the Minister give an unequivocal guarantee that some of the proceeds of the sales of these Education Department assets will not be taken out of education and paid into Government general revenue and that all the proceeds will be used to provide a net increase in funding for the important educational programs that I have listed, and others?

The Hon. BARBARA WIESE: I will be happy to refer the question to my colleague in another place and bring down a reply.

TOBACCO INDUSTRY

The Hon. J.C. BURDETT: I seek leave to make a brief explanation before asking the Minister of Health a question about the tobacco industry.

Leave granted.

The Hon. J.C. BURDETT: Yesterday the Minister indicated that he still hoped that his proposed far reaching Bill restricting tobacco advertising would be introduced this session, despite press reports to the contrary. Against this background it seems to me to be anomalous that the Tobacco Industry Protection Act 1934 is still on the statute book and still part of the law of South Australia. Regulations under the Act are also still in force. The Act is under the administration of the Minister of Agriculture, but I ask the Minister of Health whether he will use his good offices with his colleague the Minister of Agriculture to remedy this anomaly by introducing a Bill to repeal the Tobacco Industry Protection Act. The Act largely protects the position of the people who were growing tobacco in South Australia at that time. However, it is a blot on the escutcheon of the statute book, and I suggest that it should be removed.

The Hon. J.R. CORNWALL: I thank the Hon. Mr Burdett most warmly for drawing that to my attention. I will certainly discuss it with the Minister of Agriculture at the earliest opportunity with a view to canvassing its removal from the statutes of South Australia. I believe that the

honourable member may well be right in describing it as a blot on our escutcheon, and the last thing I would want, personally, is a blotted escutcheon. It was obviously introduced at a time when the dangers of tobacco were not known; when the worst that could be said and was said of tobacco in those days was that it stunted one's growth. I do not intend to comment on that personally.

The Hon. Diana Laidlaw interjecting:

The Hon. J.R. CORNWALL: I gave it up quite some time ago. The other thing which puts us in a favourable position is that tobacco growing has never been a major part of the rural economy in South Australia—for which, again, I think we should be very grateful.

COMMUNITY WELFARE GRANTS

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation before asking the Minister of Community Welfare a question on the subject of community welfare grants.

Leave granted.

The Hon. DIANA LAIDLAW: In response to a question I asked of the Minister on 24 November last year on the subject of the Adelaide Central Mission and the allocation of grants for financial counselling, the Minister replied in part:

> The reality is that the mission quite recently sold radio station 5KA, from memory, for something like $18 million. The mission has a very large income from its assets. It has income-producing assets that are beyond the wildest dreams of virtually every other voluntary organisation in this State . . .
>
> Given the difficult times in which we live we must be very careful, use our discretion, and take advice from organisations such as the Community Welfare Grants Advisory Committee when allocating and reallocating scarce resources. There will be more reallocation in the years to come. That is just a matter of fact.

This reply has quite serious implications for the future eligibility for grants of all non-government welfare organisations which, over the years, have been diligent in building up income-producing assets, and the Adelaide Central Mission is but one of many such organisations in South Australia. I also make the point in respect of the Minister's reply last year that he has power provided under section 23 of the Community Welfare Act, relating to community welfare grants, as follows:

> (5) An application for a grant of moneys under this section shall be made to the Minister in a manner and form determined by the Minister.
>
> (6) A grant of moneys under this section may be made by the Minister subject to such conditions as he thinks fit.

I therefore ask the following series of questions of the Minister in an effort to clarify the guidelines that may well be used for the future distribution of community welfare grants in this State. First, did the Minister's reference to 'our' in his statement 'We must use our discretion in relation to the allocation of grants' refer to the Minister's personal discretion or that of the Community Welfare Grants Committee or even, possibly, that of the Government in allocating and reallocating funds? Secondly, does the Minister intend in future, as is his prerogative under the Act, to determine that applications for funds from non-government welfare organisations would be advantaged or disadvantaged or prejudiced if they have or do not have income producing assets, notwithstanding the merits of the project for which they are seeking those funds?

The Hon. J.R. CORNWALL: If the particular project has merit and the particular agency has money, then it ought to direct it to the project with merit. There are a small but significant number of organisations which have very significant assets, both income producing and otherwise, and one of the pearls of conventional conservative wisdom is that they should 'hold these assets for future generations'. It is my strongly held view that organisations which have assets should certainly be ensuring that they are invested in such a way as to maximise their income while protecting their asset.

They are very advantageously placed with regard to the taxation laws, and they certainly ought to be taking very good advice in these difficult times. I think that it is stating the obvious to say that if an organisation has substantial assets, whether it has come by them because of generous bequests, because of prudent investment over the years, or because of the generosity of the community at large, it is absolutely imperative in this day and age that they are wisely and sensibly invested in such a way that the asset is protected but that the non-taxable return on those assets is maximised.

As to the reference that I made to 'using our discretion', let me first make it clear that I was not using the royal plural; that I was not referring to me personally. 'Our' in that sense was used in the most general way as it might apply to the department, to the Community Welfare Grants Advisory Committee, to the community at large—far more importantly—and to the Government generally.

The Hon. Diana Laidlaw interjecting:

The Hon. J.R. CORNWALL: That is a very silly remark and I will not respond to it. As to any intention that I might have to use those fairly wide powers under the Act to direct the Community Welfare Grants Advisory Committee, that really is nonsense. There is no intention on my part to direct the Community Welfare Grants Advisory Committee. It is normal for the Minister of the day—whoever he or she might be—to meet with that committee on at least one, if not a number of, occasions.

Quite obviously, the committee is sensitive to the needs of the welfare community, and is sensitively in touch with the many agencies that provide such magnificent services, and is aware of the background and the financial position of the scores of agencies that apply. Last year, for example, the overwhelming majority of applications had very substantial merit. There were applications seeking something like 400 per cent more than the Government was able to allocate, so the committee is scrupulously careful in assessing the merits of every single application that comes before it.

The committee, knowing the burgeoning demands which are occurring in the voluntary sector and in the social welfare sector, is increasingly aware of the fact that some of the larger agencies are relatively very well endowed and, if I might say so in direct terms, perhaps able to put their hands in their collective pocket.

The Hon. Diana Laidlaw interjecting:

The Hon. J.R. CORNWALL: No, certainly not. I made that very clear; their investments ought to be made in such a careful way that they protect the asset while maximising the income. That is quite a scurrilous technique to try on me. There is no suggestion, and never has been, that they should in any way diminish their assets. It is just plain commonsense that if you have a battling but very worthy community organisation in Elizabeth, Noarlunga or in the western suburbs where it is very, very difficult to raise significant amounts of money from the local communities, then if they have projects which are of considerable merit, I would have thought that it was commonsense to think that they should rank above an organisation which is substantially well endowed and which attracts very substantial community support.

That should not be used to personalise any one organisation versus another, but as a matter of principle I would have thought that it was commonsense and certainly very much in accord with the principles of social justice, which have been strongly endorsed and supported by this Govt.

ELECTORAL ACT AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 14 October. Page 1140.)

The Hon. I. GILFILLAN: When I was in America some 18 months ago, it was quite clear from talking to many Americans that they really envied the Australian system of compulsory voting.

Members interjecting:

The PRESIDENT: Order! That includes the Hon. Mr Hill. The Hon. Mr Gilfillan has the floor.

The Hon. I. GILFILLAN: Thank you, Ms President. I had a lot of competition for the attention of the Council with some written note on the Attorney's Notice Paper—it does not seem that my remarks rank very highly for the interest of the Council! I continue the point that in America it became very clear to me that many Americans envied Australia its system where a very high proportion of the population contributes to elections. This applies particularly to minority groups in America who feel that there really is very little point; they have a lot of difficulty getting substantial numbers of people to vote at polling booths. The general impression was that we have a far better system.

If one ponders in an objective way about the Australian system, one realises that there are very great advantages involved, and we are largely unconscious of problems because they do not occur. For example, there is no problem here as far as obstructing the population in relation to voting. There is no problem of the sort of *quasi* purchasing of votes, and the ferrying of voters to polling booths—the sort of voting by favour or by intimidation. To a large extent we are protected from whatever forces occur in many places of the world to influence the results of the ballot box, and this applies certainly in relation to State and Federal elections. The risk of such things occurring does not even occur to us.

Also, because we have such a high proportion of voter involvement we do not encounter results based on whim, the sort of *ad hoc* electoral result that can emerge from the frenzy of some sort of fear tactic or some sort of particularly energetically waged single issue campaign just prior to an election. So, in the main, and certainly for major elections—I do not say that the same applies necessarily to a by-election—to elect governments of the day we are protected from single issue emotional voter reaction. It is balanced by the fact that a very high proportion of the electors take part in an election.

I am sure that members of the Council would recall that when we last debated a Bill dealing with the Electoral Act a Democrat amendment was successful, making it legal for an elector to present at a polling booth but that there was no further obligation to in fact vote as such, that is, to fill out numbers on a ballot paper.

The Hon. M.B. Cameron: That has always been the case.

The Hon. I. GILFILLAN: No. There was an interjection inferring that that has always been the case, but it has not been the case. Most people in South Australia have the misguided impression that they have an obligation to fill in the ballot paper. The Democrats' position was a proper compromise of factors that are involved in getting the best and fairest electoral result, and that is to encourage as many people as possible to take part in an election but not to force those electors who have no particular opinion to express at the ballot to fill in the numbers on a ballot paper.

This avoids this sort of ebb and flow and, say, the surge of voters which can be blown in by temporary electoral winds. Also, it means that so many people, particularly those who are at a lower socio-economic level, who might have difficulty in walking to a polling booth, or those people who are older and who might be deterred because of the weather, will be encouraged to take part in electing a Government, as is their right, and the country is thus better for it. This is particularly relevant when one remembers that the decisions made by the elected members affect the lives of all residents in Australia; they do not just affect those people who turn up to vote.

In particular, if we had a voluntary voting system decisions would be made by those people thus elected to cover all members of the State, although the elected members might have been elected by only a small proportion of people in the State. Unfortunately, the amendment successfully moved by the Democrats was amended by the ALP Government: that it could not be promoted, that it could not be encouraged or used widely as an educative process, so that the public, even to this day, largely remains ignorant of it as an option for them in relation to their being obliged to attend a polling booth.

In my concluding remarks I think I ought to identify the reactions of the three major Parties involved in this debate. First, the ALP is frightened that it will lose that which is an automatic, knee-jerk vote by a lot of people, who, by compulsory voting, attend a polling booth and vote, with no particular thought and possibly with some sort of fear of prosecution, in a way that they think advantages them electorally.

The ALP is not prepared to take the risk of having people who are informed and alert to the fact that they do not have to fill in the ballot sheet. On the other hand, the Liberals feel that they will be advantaged by voluntary voting—by those who can swish up to the polling booth in BMWs or Mercedes, regardless of the weather, and those who could perhaps be lured with nice goodies to line up at the polling booth. I am cynical of both ALP and Liberal motives in their approach to this legislation.

I feel that the Democrats' approach offers the best and fairest method to maintain a representative Government and not to insult people by legally demanding that they have to fill in a paper. Indeed, our approach encourages them to fulfil their civil duty to vote in an election. The Democrats oppose the second reading.

The Hon. J.C. IRWIN secured the adjournment of the debate.

WASTE MANAGEMENT REGULATIONS

Order of the Day, Private Business, No. 10: Hon. Diana Laidlaw to move:

That the regulations under the South Australian Waste Management Commission Act 1979, made on 26 February 1987 and laid on the table of this Council on 10 March 1987, be disallowed.

The Hon. DIANA LAIDLAW: I move:

That this Order of the Day be discharged.

Order of the Day discharged.

LOCAL GOVERNMENT ACT AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 9 February. Page 2561.)

The Hon. J.C. IRWIN: After some wait we at last find ourselves addressing this Bill. If I am happy to declare an interest in any legislation, it is this—not a pecuniary interest that I will declare in relation to other legislation, but of affection I have for local government. I have previously said in this Council and will repeat: I have a great affection and admiration for local government as an instrumentality, as a stand-alone third tier of government, and for the councillors and administrators in local government. I am probably one of the few members in this place, although I know of others, who have had direct experience in local government. I feel that I have gained considerably from that experience.

From my learning experience in local government I came somewhat prepared to this form of government and feel that I can speak about the Bill before us. I cannot see why local government has to become a political football and why it should be moulded by those—such as myself—who are outside of it to mirror all that is good and bad in the other forms of government—that is, State and Federal Government.

When I first came to local government in the early 1970s there were few grants from the State or the Federal Government. The great surge of grant money came when the Commonwealth General Purpose Revenue Assistance to Local Government grant was introduced. That was welcomed by local government in 1973, 15 years ago. The Whitlam Government's stated purpose was to promote fiscal equalisation between regions, and the grants were to be additional to and not a substitute for rates.

In 1976 the Fraser Government introduced the Local Government Personal Income Sharing Act which required allocations of financial assistance to be determined subject to a basic set entitlement in a manner consistent with a general fiscal equalisation principle. Although the equalisation principles were the only objectives stated in 1976, as in 1973, other purposes were embraced. First, there was the enhancement of local government's autonomy—and I underline 'autonomy'—to spend grant money how it saw fit. Secondly, there was the abatement of rate increases as part of the fight against inflation, which was very much in evidence in 1976 (and in fact quite a bit throughout the 1970s) as it is still a component of our fiscal thinking in 1988. Even though inflation in Australia has come down to somewhere in excess of 7 per cent, it is still more than double the inflation rates of other countries with which we have to deal.

In 1976 the amount of personal income tax sharing that was coming to local government was 1.75 per cent. In 1979-80 it was 2 per cent. In some cases the money distributed by the Grants Commission amounted to more than a third or better of local government's total income. It was then and has become now a significant amount of money in comparison to rate revenue.

The fight is now on about the 2 per cent of personal income tax going to local government. South Australia did well at the last negotiations and this year will get somewhere near 2 per cent. However, the writing is on the wall that in future these grants are likely to decline. The whole question of local government having an argument to share some of the Federal grants and personal income tax is outside this debate today, and I understand that. However, that has a large bearing on local government finances, and that is the basis of this Bill.

I have always said that if sufficient people in South Australia demand that the State and Federal Governments reduce their tax effort they must expect that the flow on to local government would also have to be reduced. It must also be said that the Federal Government has altered its areas of tax income. For example, personal income tax returns are falling, and there is no doubt that they will fall further because there is the demand. Despite the ruckus that was apparent at the last Federal election about personal income tax levels, there is no doubt that the Federal Treasurer in utterances since then has clearly indicated that personal income tax levels will fall. However, filling this gap we now have, for example, new taxes such as capital gains tax, fringe benefits tax and others, giving a total increase in the revenue to the Federal Government, but that will not necessarily flow on to local government.

I fear for local government as it is locked into needing Federal and State grants to augment its rate income. It will be difficult indeed to come to terms with any fall-off it might have. It is very difficult to plan for the future when you are depending on other levels of government for untied grants and joint venture arrangements.

The magnitude of this problem is illustrated, in a federal sense, by the fact that the Federal Government has a major involvement in the funding of local government—in fact, the Federal Government provides 20 per cent of local government funds, the State Government provides 6 per cent and local government provides 74 per cent and, although they are federal figures I believe they are somewhere close to the mark. Those figures would relate to the State of South Australia. In dollar terms, in 1986-87, the federal grants to local government were $1.31 billion. The States gave $467 million to local government, and local government in Australia raised in excess of $4 billion.

I say with some feeling that councils with decreased funding will become worse off each year. That is obvious. The quarterly payment of general purpose grants also disadvantages councils. Their interest earning has been reduced. This issue has been dealt with before and local government has certainly made a number of written statements and provided statistical evidence to show that it is disadvantaged by quarterly payments. It can no longer get a lump sum payment and put it in the bank and get interest on that investment. It now receives grants on a quarterly basis which are virtually used immediately.

In the area of road funding, under the Australian Land Transport Program, the amounts of excise allocated reduced in the 1987-88 budget to 3.421c per litre of fuel, which is down .752c per litre. Fuel excise is indexed to inflation and the figure is currently 20.8c per litre. The Federal Government raised $4.8 billion in the 1987-88 financial year from this excise. The Federal Government has allocated $764 million of that to the Australian Land Transport Program—$4 billion raised from our fuel tax. Councils have a strong interest in roads, particularly local roads, as well as highways and Federal Government roads that pass through their territory. Of the money raised from fuel tax, $4 billion is not finding its way back to local government—certainly not in road form.

The Australian Bicentennial Road Development Program funding has been maintained at the level of 2c a litre. The return from that is up 9 per cent from last year to $4.8 million. Total road funding under the present government funding has been maintained at a level of $1.25 billion for the fourth year in succession, that is, four years of inflation eroding the value of the grants to local government, and it is still getting the same, in dollar terms, as it did four years ago.

All States, including South Australia, have suffered in real dollar terms in road funding. Total road funding as a percentage of total Government outlays has decreased from 2.12 per cent in 1933 to 1.59 per cent in 1987-88, and road funding this year has fallen in real dollar terms to the equivalent of the amount allocated in 1982, that is, six years ago. In other words, funding has been cut by 35 per cent and, as a result, the States and local government have missed out on over $400 million this year.

We have heard very little recently regarding the State Government's initiative in the area of human services and local government. I refer to what will flow from the report of the Task Force on Human Services and Local Government. We have heard about some initiatives between local government and the Health Commission announced recently by the Minister of Health but, following extensive questioning of the Minister of Local Government after that task force report was released last year, I was assured that there would not be any *ad hoc* action regarding work with local government.

This would be the worst scenario, but I believe that in a small way this is happening. I do not believe that this Council or the Opposition has been made aware of what is flowing from the task force report or the Minister's Cabinet Committee on Human Services. The Minister of Health is looking at me, but he has announced recently initiatives with local government, particularly in rural areas, regarding health, and that seems to be being done separately from what may flow from other human services action which will be taken with local government.

An honourable member interjecting:

The Hon. J.C. IRWIN: I do not see anything sinister in that.

The Hon. J.R. Cornwall: I have reannounced it.

The Hon. J.C. IRWIN: The Minister has reannounced it, has he? The Hon. Mr Cameron has probably not caught up with the reannouncement. I do not see anything sinister in that. This Bill indicates that the Government is not fair dinkum about dealing with local government. However, I ask the Government to try to be fair dinkum in that respect. If the Government is now going to try to move into the horizontal equalisation area and the human services area, and it wants local government to work with it and to use some of its scarce finances, I hope that the Minister will take their advice and work with them solidly all the way through.

I have recently seen lists of those councils receiving less Federal grant money than they received the year before, and I now quickly refer to that list. There were 16 councils with reduced funding in South Australia, eight being rural councils and eight urban. I believe that Lucindale council had the greatest decrease of 6.7 per cent, while other reductions were as low as .3 per cent, although that is without inflation being taken into account. So, 16 councils in South Australia have received decreased funding, and 50 councils had funding maintained at last year's levels or had an increase of less than the inflation rate of 9.3 per cent, which is a funding loss in real terms. Further, 76 per cent, or 38 of those councils are rural councils.

All other councils received funding increases in real terms, that is, more than the inflation rate, and there were 61 of those. They are interesting figures and start to show what I predicted two years ago would happen when the Grants Commission came under the influence and deliberations flowing from the Self committee report. I have no doubt that when the horizontal equalisation factor really gets to work over the next four or five years there will be a substantial fall-off in federal grants as distributed by the State Grants Commission and going to rural councils.

Most councils with high capital values are rural council areas because of their high capital value for rural land, compared to other areas, and that is well borne out by the figures that I have already highlighted for the first year of these allocations flowing from the Self committee report. While it would be convenient for me to say to local government that it is better off in the long term without dependence on other Governments, the argument of autonomy really sticks if they and anyone else are able not to rely on Government funding. Then, it would be denying local government something to which it has become accustomed over the past 15 years.

We hear the argument that, while they have a very narrow rate-raising base, they should be able to rely on and argue for tied and untied grants from Federal and State Governments, which have enormous rate-raising ability, and I will touch on some of that later. Having said that, I want to commend my colleague, the Hon. Diana Laidlaw, for having undertaken the heavy work and responsibility of leading for the Liberal Party on this Bill. In her very detailed response to the Minister's second reading explanation of the Bill she has covered every area of concern to the Liberal Party and the Local Government Association, which represents every council.

I will deliberately not go over all that ground again. Rather, I want to comment on some of the substance of the Minister's second reading explanation. First, I would like to make a general observation. The Hon. Diana Laidlaw alluded to a couple of problems, namely, advice that the Minister receives from her department. I refer to two issues that she mentioned: first, the Thebarton council and, secondly, the Blackwood Hills policy group. I add another today, namely, the Tatiara council.

In my years of hearing about and dealing with the Local Government Department (and some of those years activities were under the stewardship and ministerial responsibility of my colleague the Hon. Mr Hill) I have never observed the department so devoid of people who actually knew something about real local government on the ground. I acknowledge that this area of administration is directly up to the Minister: it is certainly in her court to make what decision she likes in that area. In my humble opinion and that of many people to whom I speak, while I do not intend to criticise the department's staff, the department should have one or two people who have had long and distinguished experience in local government in a council area, be it rural or metropolitan, but preferably both. I sincerely believe that that is the direction in which the Minister should be going. Then, we would not have some of the problems that are being experienced and as evidenced on the discussion on this Bill. I am sure that such a change would bring about a much better understanding of the thinking of local government and help enormously in communicating with it.

Local government is not a battle ground: it does not exist to be in a perpetual state of confrontation. I believe that the Government has done more damage to itself over this Bill than anything I can think of. Following the Adelaide by-election message, it has clearly lost touch with the people. The Minister and the Government should take the Premier's advice and get out and meet the people. For the life of me, I cannot understand why the Minister does not attend local government regional meetings regularly.

The Hon. Barbara Wiese: I do.

The Hon. J.C. IRWIN: I have been to many, and I have never seen the Minister there. I am not saying that she does not do it, but I believe that she should go to a lot more.

An honourable member interjecting:

The Hon. J.C. IRWIN: Yes, one, Wudinna. She should not just send someone else.

Members interjecting:

The Hon. J.C. IRWIN: You come back with the facts and tell me how many you have been to.

Members interjecting:

The Hon. J.C. IRWIN: They can be left alone and the Minister can hear what they are saying. The Minister would gain enormously by mixing more with local government on its home ground. Up until the introduction of this Bill, which is the second of five major rewrites of the Act, the Minister has acted in a proper and helpful manner. I say 'up until the introduction of the Bill'. I have no reason to doubt that, even though the about-face on minimum rates somewhat blemishes that statement. As we have already heard, the Government has had a very long time to get to the stage of introducing this second stage Bill. It was to be introduced in November 1986, which is obviously much more than a year ago now. The draft of the Bill was sent to local government in May—nine months ago. The draft went through the well established consultation process with local government and the 120-odd affiliated councils—every member council of the Local Government Association. The association has a fine and exceptional membership record, as there is no compulsion or arm twisting to join it. However, the advantages are obviously there and everyone can see them, without compulsion.

The Hon. C.M. Hill: The first time they all joined it was under a Liberal Government.

The Hon. J.C. IRWIN: That was a good achievement. A point was reached where the Local Government Association identified about 40 areas of difference with the Minister. In reply to a question I asked late last year, the Minister said, in part:

> ... many councils, as they have now come to understand the range of issues that are dealt with in this Bill and the range of benefits that will accrue to local government, particularly with respect to autonomy over their own financial affairs and management, have realised that the fuss that was made earlier about the issue of the minimum rate pales into insignificance. Many councils are now saying, 'Forget about all that; let's get on with it, because the Act itself is much more important.' I would ask members to bear that in mind when the Bill comes before the Council for debate.

I point out to the Minister that I have borne that in mind as I have addressed the issues in this Bill, and I do so now. I will not forget about the minimum rate—a subject that I will address later. Local government is not impressed by the so-called range of benefits that will accrue through autonomy. A letter from the Minister appeared in South Australian newspapers late last year. I have seen it in only a couple of areas, so I imagine that it went to those newspapers which carried any sort of comment from local government, especially from rural councils. In response to criticism of the Bill, the Minister's letter mentions that the Bill will repeal 58 references to ministerial approval contained in the present Act, compared with 24 areas of ministerial approval in the Bill.

The point made by local government and by the Hon. Ms Laidlaw is that, while the statistical evidence proves that this area has been reduced from 58 to 24, the areas of significance now addressed by those 24 areas of ministerial intervention have increased considerably. In her letter to the newspaper from which I am quoting the Minister went on to say:

> It is entirely appropriate that the more adventurous of the opportunities allowed by the new Bill should need ministerial approval since as Minister I have responsibility to ensure that a balance between greater autonomy for local government and fairness and equity for ratepayers is achieved.

I point out to the Minister that the balance between greater autonomy and fairness in equity to ratepayers is best left to local government in general and to local councils in particular; they will be judged by local ratepayers. They have the very best potential for accountability.

I acknowledge that large amounts of Federal Government grants money go direct to local government through State grants commissions; I have already alluded to that fact. On top of that, large sums of road grant money come from the Federal Government's tax and excise collections through the States. However, I do not see Canberra clamouring for this sort of ministerial and Government accountability on which this State Government is now insisting. I have already alluded to the amounts involved. I think 20 per cent of local government funding comes from the Federal Government, plus grants to roads. However, the Federal Government is not clamouring for this sort of accountability because it knows that is already there, as it is with the State Government, which gives local government about 6 per cent. In fact, it would be fair to ask what sort of accountability applies in relation to the State Government when it hands on to local government road grant money from the Federal Government. That money goes to the State Government, which then hands on some—not all—of that money to local government. Where is the accountability in that transaction, and where is the accountability in relation to the way that that money is spent?

Where is the evidence that State Government money spent on joint efforts involving health inspectors, weed and vermin inspectors, the running of weed and vermin boards and other boards and joint ventures in urban, rural and various other areas is being abused? It is very fair to have accountability, but I think that it is being taken too far. I do not think that there is any evidence that the system is being abused at the moment. I am not aware of any complaints of State funding being abused by local government. The Minister concludes her letter by saying:

> I have always indicated my readiness to negotiate on these issues, as demonstrated by the recent compromise reached on the minimum rate, which was designed to ease the passage of this historic Bill through Parliament.

That is immediately followed by:

> The Opposition Party's attitude and local government's about-face on our agreement has placed this Bill in serious jeopardy.

I do not know what pressure was placed on the local government senior executives (or whatever they were called) to reach a compromise with the Minister on the minimum rate issue, that is, to phase it out over a number of years. However, it was clear to the Opposition in December—and it is even more clear to us now—that the negotiating body was very temporarily out of touch with the councils that it represented. There is no doubt now where the Local Government Association stands, and the Hon. Ms Laidlaw referred to that quite adequately when she spoke yesterday.

I now turn to the Bill before the Council, which was introduced on 5 November, in the dying stages of last year's sittings. When comparing the draft Bill with the Bill now before us, we can see quite easily, after an extensive comparison, very major areas of difference, including the minimum rate and the service charge area. However, some areas were agreed on with the Local Government Association, and I only hope that much of the Bill (and I am sure that this is the case) has been agreed to. Many areas of the Bill now have a quite different complexion compared with those understood by the Local Government Association to be

differences or points of agreement. There is no doubt in my mind that the Bill now before us involves a different ball game than applied in December last year. In fact, we have a different ball game from that obtaining yesterday because we now have on file nine pages of amendments and 29 individual amendments from the Government following the gurgitation period.

There is nothing particularly wrong with there being differences between the Government and the Local Government Association. However, if the Minister wants to continue to follow the proper and helpful path that I mentioned earlier, she should now allow the Bill in its present form, or in an amended form, to go back through the consultation process. The Christmas break is no excuse for not doing that. The Minister and honourable members would know that not many people get down to doing serious work during the latter part of December and the early part of January. If the Bill was sent out for further discussion and then came back to Parliament in a better form (although I do not think that that will happen), it should be in a form that is clearly understood by the Local Government Association, no matter how many areas of agreement or difference there are. At least they could start by saying that they agreed to differ. In her second reading explanation the Minister states:

> In this Bill, judgments as to where the balance lies are based on the following criteria:.

She then listed three, and I refer to the second, as follows:

> Local government taxation should be based on standards of equity, consistency and accountability, comparable—

I ask members to take that word in. This is the State Government telling local government about its standard of accountability—

> with other spheres of government.

Where is the accountability? I have mentioned all areas of Federal and State taxes which are passed on to local government, and I mentioned taxes in relation to roads. I see very little accountability. I refer to one example where accountability is definitely required, that is, the use of land tax. I mention land tax because it is the very same base that local government uses for, as I have already mentioned, 70 per cent of its income.

What is the problem with land tax? The Premier, Mr Bannon, says that if a business cannot afford to pay the tax it should move to another area where the tax is lower. That is a statement demonstrating the Premier's fundamental misunderstanding of the importance of location to the viability of a business. It is very important to local government itself. If people find that they have to move from one local government area to another, or from the inner city to the outer city, at the whim of the Government putting a land tax on them, then the Premier is very seriously misleading himself and the people. All that the Premier is doing is cashing in on increases in property valuation fixed by his valuation department, to the extent that this financial year the increase in land tax revenue is expected to be 30 per cent—almost five times the rate of inflation. That is what is being taken this year in land tax: the very basis of local government's rating.

I will give a couple of simple examples. A hardware business paid $6 702 in land tax in 1986-87: this year its bill is $15 914, a rise of 137 per cent. An investment company paid $47 000 in 1986-87: this year it is being billed $95 000, an increase of 102 per cent. Since Mr Bannon came to office land tax revenue has increased by 142.6 per cent compared to 38 per cent in Victoria. It is Victoria, New South Wales and, if you like, Western Australia this State actually competes with for its industry base. The people in small business who are being hit by these land tax hikes are the very people who offer the greatest potential to create more jobs. Members would probably remember the statement from, I think, the now banished Mr Hurford when he was member for Adelaide and a Minister, who said that if each small business could employ one person there would be no unemployment.

Let us have a quick look at where this competitiveness comes in between the States. We compare land tax in the three cities of Adelaide, Melbourne and Sydney as at December 1987. If your property had a value of $150 000, in Adelaide you paid $697; Melbourne, $734; and Sydney, $600, so Sydney was cheaper. If your valuation was $500 000, the figures were $8 760 for Adelaide; $7 407 for Melbourne; and $7 600 for Sydney. For a valuation of $1 million, in Adelaide you paid $21 000; Melbourne, $21 900; and Sydney, $17 600. Dealing with increases in land tax receipts from 1982-83 to 1987-88, South Australia's increase in receipts from land tax was 142.6; New South Wales, 105.2; and Victoria, 35.

Budgeted changes in land tax receipts from 1986-87 to 1987-88 showed that South Australia had an increase of 30.09 per cent; New South Wales, 10.54 per cent; and Victoria had a decrease of 1.59 per cent. These are the States with which we compete for business, and we are not doing very well in that, but this Government is, of course, doing very well with revenue from land tax, and that is going into its general revenue coffers. Again, where is the accountability for spending that money?

We are asking local government for accountability for the way in which it spends money. I remind members that the Premier correctly says that he does not change the base rate that is being charged; he just relies on the valuation going up. When local government, however, does the same exercise for rate revenue raising, it sets an amount in the dollar, knowing its valuation, to receive in revenue what it requires for servicing that council area—but this Government does not do that.

It just takes the back door method of increased valuations and applies the same rate as last year, which gets it off the hook in one sense and brings in an enormous amount of revenue which disappears into the general revenue fund and no-one can follow it—and it is not accountable. The Small Business Association talks about 60 premises down Unley Road that have gone bankrupt very recently, and land tax is making that even harder to bear. I find it very difficult to understand exactly how valuations for properties can be going up when people are going out backwards. I guess there is a certain amount of delayed effect in the rating for land tax, where the effect of the valuation decrease does not really show up until the next year.

If we have a year next year in which these people leave the industry and valuations are falling because businesses are not selling, and that flows through into the valuation area, then Mr Bannon will either have to move to put up the amount in the dollar to raise that money or just take less—as everyone else has to take less. The Minister in her second reading explanation said that local government taxation should be based on standards of accountability comparable with the other spheres of government. I used land tax as an example, and I hope that the Minister reads this. I do not expect that she will, but if she does I hope she will refer to the accountability that is attached to the State Government with its raising of its funds and, if it cannot show us that, then she cannot expect and the Government cannot expect local government to exactly mirror its response. The Minister goes on to say, and this is the second point of her three:

> Modern financial management in local government requires a greater degree of flexibility in the raising and deployment of funds.

I do not have any great problem with that, but I make the point that, to my way of thinking, local government should not think, 'Aha! We have this marvellous rate raising ability and this great pool of funds, and we will play around with it as though we are a business and start borrowing and overborrowing and—even worse than that—competing with private enterprise which is out there paying rates to local government.' I think that it would be quite wrong if local government took the opportunity of entrepreneurial activity too far and was in unfair direct competition with its local ratepaying force and its business force. That is not the way South Australia or Australia should go, and I would strongly argue that it should not. The Minister goes on to say:

> Communities now expect a great deal more from their local council than the base property related services they have historically provided.

They seemed to go on quite nicely until 1974 with very little help from Federal and State Governments in the areas of big untied grants. The community may be expecting a great deal more, but I think that the Hon. Mr Dunn and the Hon. Mr Cameron (my colleagues from rural areas) would agree with me that the rural councils with which they are in touch have certainly not finished with the prime reason for their existence—that is, paying attention to their road systems and building up their towns and all the facilities associated with the rural area.

Their other aspects of human services and welfare areas are generally, although not totally, looked after by the community itself. Their sporting and recreational facilities are built by the communities mainly without any Government support, and I hope that that self-help and get up and get it done attitude is not urged away from country people, because they certainly have not finished doing the basic property related services they have historically provided. In her second reading explanation the Minister goes on to say:

> As a result of measures introduced in the first revision Bill, its elected members are now more directly accountable to their electors.

The Opposition has no problem relating to that and agreeing with it. I just highlight that because it has been said by the Minister herself, who goes on to say:

> Councils may only exercise the powers, duties and functions which are expressed or implied in the Local Government Act and other statutes.

Some of those they are only able to express if they get ministerial approval. I have already spoken about the area where those ministerial approvals are still fairly strong. There are 24 of them and they cover the very serious matter of local governments' deliberations; they take away the autonomy that this Government says that it is going to give local government.

I refer to the fact that the Minister is patting herself on the back for the way that this Parliament passed legislation, following the first draft of the local government legislation rewrite some years ago, where local government councillors were to have more direct accountability to their electors. I certainly have to agree with that. I do not think that the Minister has to worry about giving ministerial approval for everything that moves and runs—because those people are accountable and will be taken to account by the local people at the polls every two years.

I shall just touch briefly on the minimum rate question, as I think that enough has been said about this. In her second reading explanation, the Minister said:

> First, the increased use of minimum rate to raise greater proportions of total rate revenue is causing serious distortions in the rating system.

I am not quite sure whether that is correct. I would like the Minister to address this point and perhaps give us the statistics on exactly whether the increasing use of the minimum rate is raising a greater proportion of the total amount of rate revenue raised by local government. I would like to see those figures. I am not sure that I have seen them, and therefore I am not sure whether that statement is true.

I guess the Minister understands how the calculation of a minimum rate is done: that is, every property has a capital value, and every council that I know of sets a minimum rate, and the difference between that capital value calculation and the minimum rate set is really the minimum amount that is being asked by the council for the running of those blocks or properties that are in the minimum rate category. So, there is not an awful lot of money involved. Again, I would like to know exactly how much is involved. I do not have the resources to find that out. If one simply takes the minimum rate that applies income-wise to every council in South Australia and adds it all up, that is not the figure that we are talking about—because it is the difference between the capital value by the rate in the dollar and what the council sets as a minimum rate. That must be made very clear. Further, in her second reading explanation the Minister said:

> Thirdly, the increasing application of minimum rating is diverting Commonwealth and State funds from the purposes that were intended by Parliament.

Again, I am not quite sure how that can be justified. Exactly what are those purposes that were intended by Parliament for the use of the minimum rating? We have had a lot of play on this. I was at a meeting in Port Pirie last year when two Ministers told us, at great length, how the minimum rate was illegal. I thought that Ministers would understand more about Acts of Parliament than that, as they had been there a lot longer than I had. The minimum provision is in the Act, so it can hardly be illegal. What they did not point out was the amount of the minimum rate has been challenged. If those provisions are there (and they are at this moment) to put in a minimum rate, then the purpose for which they want to use the minimum rate has got nothing to do with the Parliament. In the end, it really has something to do with the legal system, if anyone wants to challenge that.

As I said last year, if there are councils who are misplacing and misusing the ability to raise the minimum rate, then they should be cleaned up. I suppose it is a little bit like this charging for timed telephone calls, the justification for which we were told was that the telex, fax, and computers are tying up the lines. However, instead of trying to crack that nut by tackling it head on they wanted to completely change the whole system of how telephone calls are charged. I will not get into that argument, but I just use that as an example. There are ways and means of challenging the minimum rate rather than having great alternative ways of doing it in another Act of Parliament. The Minister further stated in her second reading explanation:

> The general tendency towards the use of capital values will be encouraged. Capital valuations taking into account improvement to land are considered to more closely reflect a landowner's capacity to pay than do other methods.

I think that is really coming out into the open and saying that capital valuation is not the exact answer, that capital valuation may not really reflect exactly a person's capital asset and therefore his ability to pay. Although, with respect, it is better than any other method. However, I think that local government's minimum rating is in exactly the same category; it is better than any other method—and I have certainly looked at those methods.

However, in terms of rural production or in terms of small business production in the towns or cities, the high capital value of a ratable property in the city does not

necessarily reflect the ability to pay. As both tiers of government, State and Federal, go on taking more and more in taxes and charges from those businesses struggling to survive, it affects very much the ability of businesses to pay; more so than the fact that they have a property with a high capital value.

The Hon. R.J. Ritson: It could even be a charitable voluntary agency.

The Hon. J.C. IRWIN: Yes. I was going to refer to the Norwood Football Club, which was mentioned this morning, I think. That was in relation to land tax, but we are talking about the same base, where it, in a sense, is a sporting body. Most local government sporting bodies are not taxed or rated at all, but here is this one paying an increase of $7 000 in its land values in land tax—while the club is trying to promote a healthy sport for the young people of this State. The Minister referred to rate instalments, and stated:

> The difficulty created for ratepayers by single annual rate payment is being addressed by providing councils with power to adopt a system of payments by half yearly or quarterly instalments.

The payment of rates in one fell swoop has always been a problem. It can be very difficult to find $1 000 to pay in one hit. I just make the point here that if this system is changed too much rates will inevitably rise because of it. That may or may not be a sinister prediction but they will, in any calculated sense, rise. If councils get a great bulk of rate in at the beginning of the year they can invest it and receive an interest component, which is costed into the whole service requirement for the council, and the rates then with the interest component pay out the service costs for the running of that council for the whole year. If the system provides that ratepayers can pay rates quarterly or monthly, all that will occur is that the borrowing pattern will change. Local government will have to borrow because it will not have enough rate revenue at the beginning of the year to service costs. So, council would have to borrow and pay interest, and thus rates would go up. I just make the point that it is a transfer of borrowing, but the Minister does recognise that because the calculation in the Bill provides that:

> Councils may collect up to two-fifths of that year's revenue in the first instalment and decrease the remaining instalments so as to have a greater sum available earlier in the year and thereby ease the cost of transition.

I agree with that. The Minister refers to differential rating, and mentions that it distorts the *ad valorem* system of rating. I agree with her, it does. It is not perfect. Differential rating is very much like compulsory unionism. If one happens to live in an area that needs a differential rate for a particular service or a road that is not required by the rest of the district, under the Act whether or not one likes it one is required to pay the differential rate. That is no different from compulsory unionism. The Minister and the Government ignore that comparison in saying that they must find another way of doing differential rating that we cannot accept. If a differential rating is being abused by local councils then it can be kicked out and a new council can be elected at the poll every two years.

In relation to hospitals, the Minister said that the range of properties exempt from rating will be clarified by the proclamation of those hospitals and benevolent institutions not required to pay rates. I come from a district council with two towns and two hospitals—one private community and one Health Commission hospital—one of which was rated. The Health Commission hospital had a small rating, and a rate relief that related to the number of pensioners in it, and received a 66 per cent (I think) rebate. I believe that any service with an income raising potential, such as a hospital (and not all hospitals are full of non-paying patients; almost every hospital has some paying patients in it at one time or other) should be charged rates so that the Health Commission knows the costs of running the whole system. One will then not have this myth that millions of dollars in rates are required for prime property in the middle of a town or city.

The Minister refers to borrowing and suggests that there is no control over local government borrowing contained in the Bill. I have not had the time to fully digest the amendment relating to borrowing and take it for granted that it will not change the system. I find it very difficult to accept that there will be no controls over borrowing as some councils are getting themselves into difficulty by overborrowing. Some years ago the department told councils to borrow the maximum amount they were allowed, but the repayment of those loans became an enormous impost on the rate revenue of councils and they used grant money to repay them.

We see that occurring with State and Federal Governments—in fact, in all tiers of government. I again point out that in a person's financial arrangements or in a private company one cannot borrow *ad infinitum* without some accountability. I plead with local government to be very careful about the amount of borrowing it does.

We support the minimum rate provisions as they now stand, but do not support its disappearing from the Act or the phasing out period. We do not support a service charge based on schedule costs. That is not yet covered in the Bill, and we need to know a lot more about it. Last year I talked at length in relation to another Bill about service charges and the work that was done by the South Australian Centre for Economic Studies. At that time I was not convinced that it was an alternate for local government. The Hon. Ms Laidlaw, when speaking, referred in her contribution to information relating to a chart showing what happens by deleting the minimum rate. We support the second reading and, after we have heard the lengthy Committee discussion, we will decide what to do about the rest of the passage of the Bill.

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

ACTS INTERPRETATION ACT AMENDMENT BILL

In Committee.

Clause 1—'Short title.'

The Hon. C.J. SUMNER: I thank members for their support of the second reading. A number of questions were raised by the Hon. Mr Griffin which I will now attempt to answer. The honourable member was opposed to the provision dealing with marginal notes and headings to sections being able to be an aid to the interpretation of Acts. In that respect I would argue that allowing marginal notes, headings to sections and the like to be last resort aids to interpretations, which this Bill provides for, merely does no more than what is now allowed by common law.

I refer the honourable member to Pearce's *Statutory Interpretation, 1974*, at page 43. In the chapter 'Intrinsic and Grammatical Aids', paragraph 63 refers to marginal or side notes, *inter alia*, as follows:

> In that case Lords Reid and Upjohn took the view that a marginal or side note will rarely be of any use in interpreting an Act but that they should not be rejected completely as aids. Lord Reid . . . put this on the basis that it is the whole Act that is the product of the legislature and that therefore the whole Act can be looked at if any doubt should arise as to its meaning.

A contrary view by Viscount Dilhorne is referred to as 'the usually accepted contrary view that side notes cannot be used'. The conclusion of Pearce is as follows:

> The view expressed by Lord Reid and by Street J. seems the better to follow. As is said, a side note is a poor guide to the scope of a section. Nevertheless, a poor guide may be better than no guide and there seems no reason why the court should reject entirely assistance that may, albeit very rarely, be of use to it. But compare the outright rejection of use of a marginal note as an aid to interpretation by Barwick C.J. and Gibbs J. in *Bradley v Commonwealth of Australia* (1973) 1 ALR 256.

The conclusion of Pearce is that it can be a guide, which is what is—

The Hon. R.J. Ritson: That is not very strong.

The Hon. C.J. SUMNER: I am not suggesting it is. All I am attempting to do is clarify the position in accordance with what appears to be the common law. With respect to the issue of punctuation, I refer members to Pearce again, *Statutory Interpretations, 1974*, at page 41. Under the heading of 'Punctuation', the following appears:

> In general, the courts are loathe to pay regard to the punctuation of an Act. In *The President and others of the Shire of Charlton v Ruse* (1912) 14 CLR 220, the High Court considered that no regard should be paid to the punctuation of a section of an Act setting out the powers of local government bodies. Griffith C.J. at 225 said '... stops, which may be due to a printer's or proof-reader's error, ought not to control the sense if the meaning is otherwise tolerably clear'. Isaacs J. at 229 said, 'But though I am not prepared to discard wholly the punctuation of an Act, it would be unsafe to allow it to govern the construction'. Similarly, in *The Mayor, Etc. of Geelong v The Geelong Harbor Trust Commissioners* (1923) VLR 652 Schutt J. at 657 said '... although punctuation is not to be entirely disregarded, it is not to be allowed to control the meaning of the words where such meaning seems otherwise reasonably clear'.

There is another reference and the following note:

> Note, however, that Dixon J. dissenting relied on punctuation to enable him to reach his views.

Therefore, that seems to be the position with respect to punctuation. Again, it can be an aid if the court feels that it is useful. In fact, the first sentence of the paragraph I referred to states:

> Whether the court will have to regard punctuation seems to depend very much upon whether it suits the judge to refer to it as aiding the interpretation that he wishes to adopt or whether it interferes with that interpretation.

It looks as though one can take it or leave it, depending on whether it supports—

The Hon. I. Gilfillan interjecting:

The Hon. C.J. SUMNER: Yes. I have just quoted what the courts have said about it. Pearce's view seems to be that judges make use of it when it suits their own inclination with respect to the interpretation that they wish to give to the section. I am not sure whether judges would necessarily agree with that view, but it is probably a healthy view of their attitude to punctuation. Nevertheless, the summary seems to be, with respect to punctuation, marginal notes or side headings to sections, that they can be used as an aid to interpretation, but nothing more.

The Hon. R.J. Ritson interjecting:

The Hon. C.J. SUMNER: We are merely trying to clarify the position.

The Hon. K.T. Griffin: Are there any occasions where punctuation is amended?

The Hon. C.J. SUMNER: Yes, I am just getting to that. In relation to making alterations to punctuation, I point out that the Parliamentary Counsel does, in preparing a reprint of an Act, have a mandate, although a limited one, to do so, and I refer the Council, for example, to sections 7 (1) *(f)* and 7 (2) of the Acts Republication Act 1967. Section 7 (1) provides:

> (1) In the reprinting of Acts pursuant to this Act, all or any of the following things may be done:

There is a list of things that may be done, and paragraph *(f)* provides:

> Errors of a grammatical or clerical nature in an Act may be corrected.

Section 7 (2) provides:

> Subject to subsection (3) of this section, the Attorney-General may prepare and issue to the Commissioner such directions as he considers desirable for the purpose of—
>
> *(a)* achieving uniformity ...
>
> and
>
> *(b)* generally improving, and bringing into conformity with modern standards of draftsmanship, the form or manner in which the law contained in Acts is expressed.

So, there is a somewhat limited capacity for the Parliamentary Counsel to alter the punctuation. The final issue raised by the honourable member involved clause 5 which deals with retrospectivity. Retrospectivity is considered desirable to protect the validity of things that may previously have been done under other existing Acts and in respect of which clauses 2, 3 and 4 may have been relied upon.

This provision was inserted largely out of an abundance of caution bearing in mind that this Act, being one that may be regarded as largely 'procedural', the common law of statutory interpretation would apply in any event, that is, statutes that are concerned with matters of procedure only can be and are conceded a retrospective operation. But codes of practice are already in operation and these should be covered as much as future ones: the same argument applies to the new section 14c powers and the new section 19 matters. For instance, Parliamentary Counsel has already switched over to the 'heading-to-sections' format, as opposed to marginal notes and such Bills when enacted will need to be covered by the provisions of the Bill before us.

Clause passed.

Progress reported; Committee to sit again.

EVIDENCE ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 3 December. Page 2457.)

The Hon. K.T. GRIFFIN: This Bill is one of three Bills introduced in the Legislative Council before the Christmas recess. The other Bills are the Community Welfare Act Amendment Bill and the Children's Protection and Young Offenders Act Amendment Bill. The three come to the Council under the general heading of Bills dealing with child sexual abuse, although it is important to recognise that this Bill does not only deal with that topic but deals with the capacity of children to give evidence in all cases and not just cases limited to child sexual abuse.

It is also important to recognise that the amendments to the Children's Protection and Young Offenders Act do not deal only with child sexual abuse but deal more generally with the topic of children in need of care as well as transit infringement notices and the transfer of young offenders from South Australia interstate and from interstate to South Australia. As I say, they come to us under the general guise of Bills dealing with child sexual abuse. It is important to recognise that in this session of Parliament we have already dealt with one Bill that addresses one aspect of the whole complex question of child sexual abuse, and that relates to the videotaping of interviews with children alleged to be victims of abuse and the use to which such videotapes may

be put in court proceedings. In introducing the Bills before Christmas the Attorney indicated that he wanted to ensure that the community had adequate time to comment on the proposals and that members of Parliament had adequate opportunity to consider these important amendments.

The Attorney predicted that there would be considerable public debate as a result of the introduction of the Bills and he undertook to consider all submissions before the Bills were debated in Parliament this year. I have received some responses to my requests to members of the community for comment on the Bills, but the difficulty that individuals and organisations have faced, and I suspect that it is a difficulty more generally felt by voluntary groups in particular, is that the Christmas-New Year holiday period intervened and so the effective amount of time when consultations could occur and submissions could be prepared and made has been much more limited than the two months would appear to have given.

The Hon. C.J. Sumner: You do not close down for two months.

The Hon. K.T. GRIFFIN: I am saying that, because of the Christmas-New Year period, voluntary organisations have closed down effectively for two months.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: Your Government is the one that is supporting extended leave packages. I am making the point that, although there has been a period of some two months in which comments and submissions could be made by voluntary groups and other persons in the community, the fact is that it has been a very much less effective time for those persons to make their submissions. I do nothing more than draw attention to the difficulty which ordinary members of the community have experienced in coming to grips with the difficulties in these Bills and in making their submissions. Notwithstanding that, I am certainly prepared to make observations on the Bill.

The whole area of child sexual abuse is difficult. The very fact that there have been two voluminous reports—one by the South Australian Government task force on child sexual abuse and another by Mr Ian Bidmeade on the review of procedures for children in need of care—and that numbers of seminars have been held along with consultations over the past 18 months to two years is an indication of that complexity. The problems that were experienced in the United Kingdom with the Cleveland inquiry, the consultations that occurred in that country with respect to coordination of resources and consultation between different professional groups and law enforcement agencies, publications of white papers and directions and notes for guidance of the community and professionals in that country are again clear indications of the complexity of the area of community concern and the difficulty in reaching satisfactory conclusions about the appropriate course of action to be taken.

During the course of debate on the Children's Protection and Young Offenders Act Amendment Bill I will be making more detailed observations on the matters which I believe should be addressed in this area. In consideration of an earlier Bill I have already made a number of observations on the complexity of the area and of the issues which must be addressed.

This Bill, while it comes in a package of three Bills, essentially deals with the criminal law, although, because of its nature, it also deals with the civil law and in some parts it is not limited only to child sexual abuse cases. It can effectively be considered separately from the Children's Protection and Young Offenders Act Amendment Bill and the Community Welfare Act Amendment Bill which deal with procedures designed to provide for the care and protection of children at risk.

The Evidence Act Amendment Bill in no way impinges on the objective of the other two Bills in protecting children at risk. This Bill seeks to facilitate convictions. It deals essentially with the criminal law, and it seeks to provide a mechanism by which evidence of young children can be more readily brought before a court. It is in that context, therefore, that I think we should consider the Bill before us while recognising that it is not just limited to child abuse or child sexual abuse cases. I suppose to that extent that is the reason why a considerable amount of concern has been expressed in submissions made to me, particularly from members of the legal profession and the Law Society, about the scope of the Bill.

The Evidence Act Amendment Bill seeks to deal with the competency of a child who is under 12 years of age to give evidence. It enacts a new section 12 in place of current sections 12 and 13. It is important to look at present section 12, which provides:

> (1) A child under the age of 10 years shall not be required to submit to the obligation of an oath, but may give evidence in any proceedings without an oath and without formality.
>
> (2) Before the judge receives any such evidence, he must explain or cause to be explained to the child that he is required to be truthful in anything that he may say before the court.

In his second reading explanation, the Attorney-General indicated that a recent decision of the Supreme Court of South Australia concluded that a child under 10 years of age was, by virtue of that section, not able to give evidence on oath. Section 13 (1) of the parent Act provides:

> Such weight and credibility shall be given to unsworn evidence under section 9 or section 12 of this Act as ought to be attached thereto as evidence given without the sanction of an oath.

That really reflects the principle that the evidence must stand on its merits. Certain common law rules have been developed to deal with the weight to be given to such unsworn evidence. Section 13 (2) of the parent Act provides:

> Where the evidence of a child admitted by virtue of section 12 of this Act is given on behalf of the prosecution, and the accused denies the offence on oath, the accused shall not be convicted of the offence unless the evidence of the child is corroborated in some material particular by evidence implicating him.

That is one of the controversial areas—the mandatory requirement for corroboration where unsworn evidence of a child is admitted by virtue of section 12 and the accused denies the offence on oath.

The other area of controversy is the age at which a young child ought to be able and allowed to give evidence. The Bill seeks to provide that, where a child of or under the age of 12 years is to give evidence before a court, that child is not obliged to submit to the obligation of an oath unless the child is of or above the age of seven years and, in addition, that the judge is satisfied that the child understands the obligation of an oath. There really is no difficulty with that. It sets the age at which a child is not obliged to give an oath.

The Bill then goes on to provide that, if a young child who is not obliged to submit to the obligation of an oath is to give evidence before a court, that unsworn evidence can, in certain circumstances, be treated in the same way as evidence given on oath. The circumstances in which that is to occur is when the court appears to the judge to have reached a level of cognitive development that enables the child to understand and respond rationally to questions and to give an intelligible account of his or her experiences, and the child promises to tell the truth and appears to understand the obligations entailed by that promise.

It is important to recognise that that alternative applies in two circumstances: to children under the age of seven

years and to those children who are of or above the age of seven years and of or under the age of 12 years, where the judge is not satisfied that the child understands the obligation of an oath. So, if a child does not understand the obligation of an oath but is between seven and 12 years, and nevertheless the judge believes and is satisfied that the child has reached a level of cognitive development that enables the child to understand and respond rationally to questions and to give an intelligible account of his or her experiences, and the child promises to tell the truth and appears to understand those obligations entailed by that promise, then the evidence so given is to be treated in the same way as evidence given on oath.

There is a difficulty with that, I suggest, and it is one which I think the Attorney-General ought to seriously consider. If a child cannot understand the obligation of an oath, how then can a child fit within those criteria in the new subsection (2) which would enable the unsworn evidence of that child to be treated in the same way as evidence given on oath, remembering, of course, that it is not just in relation to child sexual abuse cases or child abuse cases: it is in all cases where a child is to be a witness, and not necessarily a child who is a witness as the alleged victim of any particular criminal offence charged?

In any other case, the unsworn evidence of a young child, where it is not assimilated under that new subsection (2), must be corroborated in a material particular by other evidence implicating the accused where the accused denies the offence on oath. That, really, to a limited extent, maintains the present law. It is interesting to note that in the final report of the South Australian Government Task Force on Child Sexual Abuse the recommendations included a recommendation that unsworn evidence of children should require corroboration as a matter of law.

What the Government Bill is doing is abolishing the requirement of corroboration in much wider circumstances than envisaged by the task force. It is important, again, at this point to note also that the task force recommended a number of other matters related to the issues which I am addressing, and I read those recommendations as follows:

(a) The age set out in section 12 (1) of the Evidence Act 1929 should be lowered. No consensus was reached on the age to be adopted. The majority of members thought the age of seven years should be adopted, while the minority considered that the age set out in section 12 (1) of the Evidence Act 1929 should be five years.

(b) It should be clear that children under the set age should be able to give sworn evidence where the judge considers them to be competent. The minority view was that children under the set age should not be able to give sworn evidence under any circumstances.

(c) Unsworn evidence of children should require corroboration as a matter of law.

(d) The State Child Protection Council should oversee the development of a cognitive competency test as envisaged in the Australian Law Reform Commission report.

(e) The warning currently given in relation to the uncorroborated evidence of young children who are the alleged victims of a sexual offence should continue to be given.

(f) The oath used to swear in children should be simplified.

It appears that what the Government has done in this Bill is put to one side some of those recommendations. I would like the Attorney-General in his reply to give some clear indication as to why, in the context of this Bill, those recommendations were not followed as precisely as they are set forth in the report.

I should say that I received a copy of the submission of the Law Society to the Attorney-General (and I understand that he was made aware of the fact that that was also coming to me as shadow Attorney-General), in which the Law Society expressed very grave concern about the amendments to the Evidence Act.

Again, it is appropriate for me to read those comments which were received from the Family Law Section of the Law Society and were referred by the President of the Law Society to the Attorney-General and to me on that basis. The Family Law Section is comprised of lawyers who act on both sides in relation to children who may be either in need of care or the alleged victims of some form of abuse. What the Family Law Section says is as follows:

The section is totally opposed to the new section 12. The section severely prejudices the rights of an accused person and does not achieve the stated purpose of balancing the interests of victims and accused persons. The conditions for unsworn evidence of a child to be treated in the same way as evidence given on oath are far too nebulous and, in our submission, will be impossible to administer.

It is difficult enough for a court to determine whether a child understands the obligations of an oath, let alone to determine the conditions set out in section 12 (2). The reasons for the need for corroboration where evidence of children is concerned are well founded, yet the new section makes serious inroads—

The Hon. C.J. Sumner: Do you agree with that?

The Hon. K.T. GRIFFIN: I will talk about it in a minute.

The Family Law Section continued as follows:

—into the same and, thereby, prejudices defendants. The section is also particularly concerned about section 12 (4). In our submission, this subsection will also prove impossible to administer. The support person is to be a person chosen by the child, but how can one expect a young child to make this choice? Further, although it is stated that the support person must not interfere with the proceedings, there will be no way of determining what, if any, interference there has been by this person outside of the hearing.

In our submission, it would also be quite inappropriate for the support person to be the complainant's mother, father or any other person who was a witness in the proceedings. The section is also concerned that section 12 applies to all matters where children give evidence, and not only to matters involving sexual abuse.

The concern which the Law Society Family Law Section expressed has been reiterated to me by a lawyer who has acted on both sides of cases, for both defendants and complainants, and who does, again, express concern about the provisions in clause 12. I would say, though, that there is a good case for lowering the age at which children can give evidence on oath. There is also a good case for simplifying the oath which children who desire to give evidence on oath and are competent to give evidence on oath are required to take, but I do see that there is likely to be some confusion where there are, really, two levels at which evidence can be given and which will be equated with evidence on oath, namely, the evidence which is actually given on oath and the evidence which is given where the child does not understand the significance of the oath but, nevertheless, can be admitted under subsection (2).

I suggest to the Attorney-General that one way of overcoming that is instead to provide for young children to take a simplified oath, so that we do not have a distinction between the two forms of evidence and therefore the rules can apply regardless of the distinction which presently appears in the draft. We can still require, as is presently in the Act and also picked up in subsection (3) of proposed new section 12, that unsworn evidence of a child in certain circumstances must be corroborated. So, there is a better and simpler way of doing it, without the sort of confusion

which this present draft creates and which obviously will be a source of argument within the courts and, undoubtedly, appeals to higher courts.

In respect of the support person, again, I agree with the opportunity for a young person to have a person in the court to give support to that person. The South Australian Government task force on child sexual abuse made the following recommendations:

(a) The alleged victim of child sexual abuse should be entitled to have present in the court in visual contact and in close proximity a support person of his or her choice provided that person does not interfere with the giving of evidence and is in full view of the judge, prosecutor and defence counsel.

(b) The support person should be allowed to remain in the court even when an order for closure of the court is made by the judge.

(c) Some financial assistance, for example, to cover travelling expenses, should be made available to the support person.

The full recommendations of the task force have not been embodied in this legislation. It would seem to me that, in relation to having a support person present in court, it ought to be fairly strictly controlled, and the sorts of guidelines which the task force included in its recommendations should, I believe, be included in the legislation itself rather than being left to the discretion of the trial judge, with possibly avenues of appeal opened up in relation to the circumstances in which that discretion is exercised by the judge or guidelines set by a judge.

It is also important to ensure that the support person is not in fact a witness in the proceedings. To that extent I agree with the Law Society. It would be quite wrong for the support person to be someone who is to be a witness in the proceedings. That person would be enabled to sit through the evidence of the prosecution, whereas the ordinary and traditional approach is that all witnesses in a matter are excluded from the court until they have given their evidence. It would be quite wrong for a support person as a prospective witness to be able to sit in court during the giving of other evidence. Conflicts of interest could well arise and, notwithstanding the need for support for the child involved, it is important that there can be no criticism from either the defendant or the prosecution as to the way in which the support person has behaved in the courtroom.

A suggestion has been made to me that in fact there ought to be a minimum age below which children may not give evidence on oath. However, while one can have some sympathy with that, in the sense that it fixes a clear limit, it may well create some difficulties. I would like to hear the Attorney-General on whether or not he and his advisers are of the view that such minimum age ought to be fixed.

A suggestion has also been made to me, independently of the Law Society's submission, that the criteria which a court must use when evaluating unsworn evidence to be given by a child should be removed from proposed new section 12 and be left to the common law. I would like to hear the Attorney-General on that proposition. I would also like the Attorney to address the very important issue of whether or not this new section 12 ought to apply across the board to evidence given by children or whether it ought to be limited to cases in which the young child may be an alleged victim or, even more strictly, to those cases where there are allegations of child abuse or child sexual abuse.

One other observation on this is that, notwithstanding the provisions of proposed new section 12, there will continue to be a dilemma for prosecutors and for parents, and others close to a child. That dilemma is this: on the one hand psychiatrists have frequently expressed the opinion that it is of extreme importance to convey to young children that they are believed and that the focus ought to be on rehabilitation of the child as soon as there is some detection of evidence of child abuse.

The moment a child is put into the witness box and is subject to cross-examination the child is immediately put under threat, and from cross-examination, which it is the duty of defence counsel to pursue, the child will gain the impression that his or her evidence is not believed. To be put through that traumatic experience may cause more damage to the child than making the decision that the child should not give evidence. Such an experience hurts and it really makes members of the community angry that it should occur. But in the criminal law generally there are always compromises which have to be made. No system is perfect.

A clear decision has to be made as to what is in the best interests of the child. The interests of the child have to be paramount—as is the case with the next Bill we are going to consider—and it may not be in the best interests of a child to be put through the traumatic experience of cross-examination, particularly a very young child, and where the statement of that child is to be severely questioned, giving the clear impression that the credibility of the child is very much under threat and question.

That will be a constant dilemma. Prosecutors have to make that decision and, while there may be more committal proceedings as a result of this Bill and other legislation that has already been passed, it may not necessarily mean that there will be more trials because it may not be appropriate, notwithstanding the pressure of family and others to get convictions, to put the child through that trauma.

I now turn to clause 6, which inserts a new section 34ca. This proposed new section seeks to allow evidence of the nature and contents of a complaint from a witness where the alleged victim of a sexual offence is a young child. That is really the law at present. The complaint made at the first reasonable opportunity is already admissible but not, for example, a later statement made to the police. The common law has taken the view that certain limits should be imposed on the admissibility and use of such evidence. It is not clear from the second reading explanation or from clause 6 whether it is intended merely to reinforce that common law position or to broaden the opportunity to admit statements of complaint made to police officers, medical practitioners and others subsequent to the first complaint.

If it is the latter then a great deal of caution has to be shown because the subsequent complaints may well have been influenced by interviews, family pressure or a whole range of influences that are not present when the first complaint is made. I suggest that it would be highly dangerous for evidence of those subsequent complaints to be admissible as evidence. One could seriously ask, if that is the intention of the Government, what is the reason for not also allowing similar later complaints to be admissible where they are made by adults rather than by children.

I draw attention to one other consequence of proposed new section 34ca by raising the question: 'What use can be made of the evidence of the nature and contents of a complaint?' The proposed new section proposes that the evidence should be admitted if the court is of the opinion that the evidence has sufficient probative value to justify its admission. The question one must ask is: 'Does this mean that it can be used as evidence of the truth of what is stated?' If so, why should this be permitted in the case of children? Those who propose that children should be able to give sworn evidence point out that children have very good memories and are quite reliable in what they say. If this is correct then there is arguably no justification for

admitting in evidence the statement made by a child to the police but not the same type of statement made by an adult.

Then one can ask: 'Is it only to be evidence of the child's state of mind?' If that is intended then the provision should be more specific. It has been proposed to me that the test of admissibility is too vague. Any statement in which a child alleges that the person accused has committed a sexual assault will have probative value and, because it will have probative value, why then should there be the provision in the proposed new section that the court should be of the opinion that the evidence has sufficient probative value to justify its admission. That is a very vague concept, and I would suggest one which needs to be taken further.

Clause 8 deals with section 69 of the principal Act, and this section relates to the persons who may be in court while witnesses are giving evidence and to matters of suppression. The Bill seeks to provide that, where the alleged victim of a sexual offence is a child and that child is to give evidence in proceedings relating to the offence, an order must be made requiring all persons except those whose presence is required for the purposes of the proceedings, and a person who is present at the request or with the consent of the child to provide emotional support for that child, to absent themselves from the place in which the court is being held while the child is giving evidence.

The only point I make in relation to that proposal is that it is absolute. While I cannot think of anyone who should probably be allowed to remain in the court other than those referred to, there may be those occasions that we have not yet considered where the court should be able to allow some other person to be in the court. I suggest that, while setting the standard in this clause, there ought to be some discretion on the part of the judge to admit such other persons as he or she believes have an interest in being present in the courtroom.

I have very considerable sympathy for the view that courtrooms should be made less forbidding, for children in particular, but also for other witnesses; that in the context of children giving evidence there should be an endeavour to have as few so-called intruders or strangers in the courts as possible; and that it is desirable to endeavour to ensure that the child is relaxed and comfortable in the courtroom environment when giving evidence.

A number of ways of achieving this have been explored here and overseas. One, of course, is the video link; another is the two-way mirror; and another is screens. All those methods need to be explored, although they are not addressed in this Bill. There is quite considerable examination of these matters presently in the United Kingdom. However, for the purposes of clause 8 I would suggest to the Attorney-General that there should be some discretion, although the principles should be clearly established.

It is with those concerns in mind that I ask the Attorney-General to give some clear indication of what some of the provisions of the Bill are intended to achieve. While I generally support the principles of the Bill, I do have some reservations about the way in which they are drafted and the way in which they may be administered, such that, while certainly endeavouring to facilitate the admission of material which might be advantageous to the prosecution, it may, nevertheless, be suspect and may not be able to be adequately assessed by the court if the sorts of procedures which are proposed in the Bill are enacted.

We should endeavour to ensure some balance, as much as that is possible, so that young children are able to give evidence of what has happened to them. But, on the other hand we should ensure that, as much as it is possible to do so, a person who is innocent, yet charged, is not prejudiced by the relaxation of the law which will facilitate the giving of evidence on behalf of the prosecution. I support the second reading of this Bill.

The Hon. M.J. ELLIOTT: Mr Acting President, the Democrats support the Bill, as we also support the other two related Bills that are before the Council. These Bills are before the Council predominantly because of concerns that have been raised as a result of child sexual abuse, although not solely because of that, as other matters are also being addressed by them.

There is no doubt that this topic is one of the most difficult topics that this Parliament has had to confront. This Parliament is composed primarily of males, and it appears that, generally speaking, males are ignorant of the extent to which abuse occurs. Certainly, I had no, or very little, awareness until my last couple of teaching years shortly before I entered Parliament. At that time mandatory reporting of possible abuse was introduced, and there was in-servicing of teaching staff; my eyes were thus opened for the first time.

It was only as the issue became increasingly politicised that I had conversations with female acquaintances and really had the truth brought home to me.

Child abuse, particularly sexual abuse, is very difficult for the law to cope with. In the majority of cases there is no witness, the victim is often intimidated, both directly by the perpetrator and indirectly by family circumstances and, even when other family members are aware, for a host of reasons they will not speak up. In some cases they will not even admit it to themselves.

Without any witness except the victim, who may often be a young child, a conviction is extremely difficult to achieve. Without a doubt the majority of child abusers do not even end up in court, and certainly few are ever convicted. Of course at the other end of the scale we have persons who have been convicted protesting their innocence, and even an greater number of families complaining of children being taken from their homes when no charges have been laid, let alone a conviction recorded.

I have been lobbied by people who appeared to believe that most men are paedophiles and, at the other extreme, by others who appeared to claim that whatever—

An honourable member interjecting:

The Hon. M.J. ELLIOTT: I have certainly met people like that. At the other end of the scale, there are people who believe that whatever happens in a family is their own business and that everyone else should keep their noses out. Anybody who claims to have an answer to this problem is most certainly a fool, because I do not think that there is one easy or simple answer.

While I will be supporting this Bill, I must make quite clear that I do not see it as any solution to the overall problem; it is really only tackling peripheral problems, which are nevertheless important in their own right. The philosophy upon which this Bill is claimed to be based is that the child's interests are paramount. It is a philosophy I support, but I am now not really sure that it us upheld. The Attorney-General, when speaking to this Bill, said that he was not providing for a new jurisdiction in the Children's Court for interlocutory protection. He said that he wanted to allow for greater community debate. More likely, he has put it in the too hard basket and that is the last we will see of it. Once these Bills have gone through, the Government can say that it acted on these matters, and we will not see anything in the way of legislation for some time to come.

The Bill does nothing to offer alternatives to the child being removed from its home, a practice viewed by experts

as being quite negative for the child. While the child is being removed for its protection, it is losing all its supports and being plunged into the unknown, which I concede at times might be an absolute relief. However, in many cases it is also a disaster for the child.

There are and will be situations where the evidence of abuse is overwhelming and obvious. While the law does and should demand a trial, why is it that the child is removed? Surely the judge in cases where there was reasonable doubt would refuse to exercise the interlocutory provisions. Then, in such an instance, it may be necessary to withdraw the child. This Bill is suggesting that, when in doubt, the interests of the adult are paramount, so the child is removed.

I would further like to question the situations into which children are placed once they have been removed. Perhaps the Government should admit the difficulty that is being experienced by foster parents. Complaints received by my office indicate that a far from satisfactory situation is in existence in relation to foster homes. That is not meant to cast a slur on all foster homes, but some are quite clearly undesirable. Plainly the Government is attempting to sell something on the cheap: all looks good until one starts asking questions.

I would like to hear from the Government some explanation about why the task force considered interlocutory orders when there was, as the Minister claims, an order that would achieve the same ends. I refer to section 99 of the Justices Act. Doubtless, the truth is that this type of order is difficult to obtain and will not serve to protect children in abusive situations.

While I am looking at alleged offenders and their ongoing contact with victims, perhaps it would give the public some assurances if the Minister were to quote figures on the number of alleged offenders who are permitted to live in close contact with the victim whilst awaiting trial. I am aware of a situation where such a person was remanded in custody until released on psychological grounds. In spite of a confession being made to police, this person is living with his own children of whom abuse has been alleged.

Let me now comment upon the prompt handling of investigations. I have received complaints about long delays from victims between initial contact and when alleged abusers are questioned by police. Again, perhaps the Government could instil some degree of confidence and belief in its determination to achieve better protection for children if it was to provide hard data on the time lags between first reporting and police questioning. Perhaps the fact that there is often a conflict in interest between Department for Community Welfare officers and the police would only add to the fears held by those concerned in the community. It is to be hoped that, by lowering the age for sworn evidence, the conflict between the two departments will be reduced.

Further indication of small minded economy is found when one considers the minimal emphasis placed on staff levels for police involved in child abuse investigation. One does not have to be an expert to understand that positions in the Police Force have not kept pace with the increase in reported cases of abuse.

Let me again comment upon the removal of alleged offenders. On page 5 of the report, some sweeping claims are made. For instance, an order requiring an alleged offender to stay away from the child's home may not be observed. Pray tell, what order can be made which will ensure that the alleged offender stays away from the child? The child may be approached at school or enticed away whilst not under observation of an adult. Where the non-offending parent provides some acceptable assurance that they will protect the child from the alleged offender, then surely that is the preferable course to follow—preferred if one is considering the child's interests to be paramount.

The second argument about the risk of the wrong person being removed is quite flimsy. As I have already noted, the judiciary would not be inclined to make an order unless in possession of hard evidence. The report goes on to discuss the subjects of treatment and diversion. It seems to me that the Minister has shirked his responsibilities by claiming the need for more research. Clearly he is avoiding a difficult but important area, and ultimately it will provide for the safety of children in the future. Once it was claimed by this Government that it was in the forefront of social change in the area of child welfare. The Minister has lost his willingness and incentive, which is obvious by his reaction to the task force recommendations.

The value of seeking change in the abuser is that he or she will provide a different perspective for other children in the family. The children are less likely to perpetuate the abuse during their adult lives. Let me make some comments relating to the experience of child abusers who are placed in gaol. The gaol culture refers to offenders as 'rook spiders'. Treatment of these offenders by other inmates tends to reinforce the whole abuse syndrome. The offenders are abused by other inmates or removed from the normal situation and placed in protection. There are some interesting parallels here when one considers the child's situation. Such treatment does not minimise the likelihood of the offender reabusing children following release from gaol.

The one bright indication of the Government's intention to improve the child's situation is in relation to the possibility of children under 12 years giving evidence on oath. I congratulate the Government on its determination to provide this measure and believe that it will be of benefit for children. The admission of hearsay evidence could have been further enhanced by a suggestion I made last year. That was to do with videotaping of statements and interviews. Selected segments could have been used by both prosecution and defence in the interests of seeing justice done. I must say that I am disappointed that the Government has chosen to follow this course in the face of rational and informed research provided by the Task Force on Child Sexual Abuse. It seems that the Minister has misunderstood both the needs and expectations of the community in this respect.

The final area to which I refer involves new section 12, whereby judges are required to assess the child's level of cognitive development. I would have preferred to find some other mechanism to cope with that, rather than asking the judge to do so. I do not believe that a judge is really the best person to make decisions about cognitive development. We have already seen the problems where judges and juries have had to face expert evidence. We saw such a thing involving Azaria Chamberlain.

The Hon. Diana Laidlaw interjecting:

The Hon. M.J. ELLIOTT: That is what is likely to happen. We are likely to have defence psychologists and prosecution psychologists, and they will argue it out. The judge, who knows little about cognitive development, will make a decision on whether or not a kid believes in Father Christmas or whatever else it is that may make the judge decide one way or the other.

The Hon. Peter Dunn interjecting:

The Hon. M.J. ELLIOTT: I was about to suggest that there is a possible alternative. I cannot see why there cannot be set up an independent panel of child psychologists which

has no interest in the legal aspects, child sexual abuse or anything else, but has the ability to decide whether a child knows reality and understands what is about to happen and its importance. I believe that it would be possible to set up such an independent panel of child psychologists. It was suggested to me in private discussions that that could slow things down, but I suggest that it would certainly save a lot of time in court. I believe that the judgment of a panel of independent experts would be every bit as reliable as, if not more reliable than, a judge who is assaulted by both the prosecution and the defence on matters that he or she really knows very little about.

I ask the Attorney-General to look at what he is requiring of a judge. I know that a judge must make decisions on many things, but I think that there may be a better way of handling it. In conclusion, we support the Bill, but we are a little disappointed that some aspects of the report prepared for the Government have not been taken up. However, we will be encouraging the Government to reconsider at least the interlocutory jurisdiction being taken up by the Children's Court.

The Hon. DIANA LAIDLAW secured the adjournment of the debate.

[Sitting suspended from 5.45 to 7.45 p.m.]

COMMUNITY WELFARE ACT AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 3 December. Page 2457.)

The Hon. DIANA LAIDLAW: This Bill to amend the Community Welfare Act forms part of a package of Bills the Government has introduced to address the issue of child protection. It stems from a report by the Government Task Force on Child Sexual Abuse and also the Bidmeade In Need of Care Review. Both reports contain many important and farsighted recommendations, many of which I believe have great merit. They address the means to enhance our procedures to protect children. For its part, the Liberal Party also has researched at considerable length and over some considerable time the subject of child abuse, and we would also conclude that it is a most complex subject.

In 1986 the Leader of the Liberal Party (John Olsen) released on behalf of the Liberal Party a document entitled 'Child Abuse—Directions for the Future'. It is a paper that I prepared for the Party after extensive consultation in South Australia and interstate, and also having digested research papers and the like overseas. The paper recognised that the nature of child abuse, particularly sexual assault and the silence that has traditionally surrounded the subject of abuse, the problems inherent in our legal system and community responses to the treatment of victims of offenders have resulted over many years in victims not being identified and assisted.

It is clear from research overseas, although little such research exists in this country, that when victims are not identified nor assisted as older children they have been provoked to try to resolve the situation for themselves by running away from home or escaping through the use of drugs while others, quite clearly, suffer and harbour guilt or humiliation and emotional problems throughout their lives. So the problem that we address tonight is an exceedingly important one. The Liberal Party has over some years addressed this subject in that vein.

The position paper that I mentioned earlier contained a range of reforms that we considered necessary to address this subject of child abuse and protection, and they included recommendations to reduce the incidence of abuse, to upgrade the investigation of cases, to improve the present justice system and to increase the services available to a victim, his or her family, and the offender. Since the release of this paper in 1986 I was heartened to see the release the subsequent year of the Government report of the Task Force on Child Sexual Abuse and, later again, the Bidmeade report. They reflected a number of the conclusions that we had included in our paper. Also, I am pleased that subsequently the Government has acted on a number of reforms we proposed at that time.

This fact, however, does not override the grave misgivings that I and my colleagues in the Liberal Party have about the substance of policies and practices that the Government, through the DCW, is pursuing relentlessly under the umbrella of child protection. This evening I do not have time to elaborate on the whole range of my concerns and grievances arising from the DCW's decision in 1985 to deem child abuse to be its number one priority for service provision, nor do I think it is necessarily approporiate to use this occasion to elaborate at length about my concerns about the policies, practices and protocols that the DCW has adopted subsequently in an endeavour to address this issue. Many of these matters I outlined at some length when speaking on this same issue in this place on 25 August. From wide circulation of my speech at that time, I know that the issues that I explored are those which have sound bases of concern within the community. However, I do just briefly wish to highlight a number of general concerns, because they relate to several measures proposed in this Bill.

My first concern is the fact that the department's focus on child abuse, coupled with the interpretation that it so often applies to the child's best interests being paramount, has turned the department from one which was respected for its commitment to support individuals and families in need into one which is obsessed with crisis intervention, control and policing. During this transition (and since it is a transition over a relatively few years the impact of the change is all the greater), the Government and the Department for Community Welfare, in their collective enthusiasm to pursue this issue of child abuse with single minded determination, have lost sight, in my view, of the objectives that they have been entrusted with under the Community Welfare Act. I briefly refer to these. Division II, section 10, notes:

> The objectives of the Minister and the department under this Act are to promote the welfare of the community generally and of individuals, families and groups within the community, and to promote the dignity of the individual and the welfare of the family as the basis of the welfare of the community in the following manner:
>
> *(c)* By providing, assisting in the provision of or promoting services designed to assist individuals or groups to overcome the personal or social problems with which they are confronted; and
>
> *(d)* By providing, assisting in the provision of or promoting services designed to reduce the incidence of disruption of family relationships, to mitigate the adverse effects of such disruption, to support and assist families under stress and to enhance the quality of family life.

It is paragraph *(d)* that I wish to stress. It is my very firm view, having looked at this subject of child abuse over the two years during which I have had this responsibility of shadow Minister of Community Welfare, that the department has increasingly forgotten the very fine and most important objectives which this Parliament has entrusted to both the department and the Minister. It is certainly clear from representations that I have received from time to time and from general discussions that I have had with com-

munity groups on a planned basis that many families in our community know that they are experiencing problems with their children and know, at least to some degree, that they would benefit from guidance, support, counselling, discussion or simply airing these problems, which often stem from parenting difficulties.

However, an increasing number of such families are clearly resisting the idea of approaching the Department for Community Welfare for help, because they fear the development of a situation where they will have their children whipped away from them for an indefinite period of time. This is not fantasy that I am making up for this debate; it is a concern that is expressed quite openly by community workers—senior long-standing community workers within the non-government sector in this State. If Government members are interested, they can instance many examples of the general situation that I have just outlined. To compound what I see as a very sad state of affairs, too often today when children are removed from the custody of their parents, no matter for what length of time they are moved, it is extremely difficult for those parents to get the children back. I incorporated in *Hansard* statistics to this effect last August, and I do not intend to elaborate on them this evening.

I am extremely anxious that child abuse and protection be high on the political agenda in this State. Certainly, my colleagues will attest to the fact that I have worked hard with them to ensure that child abuse was treated as a matter of extreme importance within our own ranks. However, I do fear that, in relation to the manner in which the issue is being handled by the DCW, and particularly the policy makers and senior management at present—aided and abetted by the Minister—we are seeing a process that is gradually undermining the credibility of what I believe must be a very high focus on this vital issue.

Recognising that this field is relatively new and that it requires intrusion into family privacy, it should demand of all involved a recognition of the need for great care and great caution in determining the responses, which will ensure that the children are actually the beneficiaries of our efforts to help them. These responses must involve actions that we are confident are within the psychological capacity of the kids to cope with. One finds today that the removal from home as an option—and what is seen increasingly as an expedient option—is perceived by the workers recommending such action to the courts as being in the best interests of kids, although it is regularly seen later as not being within the psychological capacity of the kids themselves to handle such a situation where, following the notification of abuse, they not only confront all these strangers with all these tests, investigations, and the like, but they also confront a situation of being removed from a family and neighbourhood environment, and regularly a school environment, with which they are familiar.

I believe that this matter of what is in the best interests of the kids should be questioned very strongly by the Government and be reassessed by those who are applying it within the DCW and in the Minister's own office. It is a matter that should be handled with more objectivity perhaps than is the case in relation to the subjective judgments that are made on too many occasions, I believe, in the recommendations from case workers to the Children's Court.

Lawyers will repeatedly tell those who make inquiries of them (and I suppose I could address this point in debate on one of the other Bills, but I will do so here) that if the Children's Court believes that the DCW has a case to present to the court it will place great weight on that and on the recommendations made by the DCW in respect of what should be the outcome for the child concerned. I will explore this issue a little further in debate on subsequent Bills. However, I believe that the matter of acting in terms of the paramount interests of children is not being handled with the diligence with which it should be handled at present.

When from time to time I witness the consequences of over-zealous yet unaccountable action taken by a case worker in the name of a child's best interests, it is hard not to be suspicious at times that child abuse has become something of a fashionable substitute for what a decade ago would have been assessed as a parenting problem. Today the response to such a problem when identified is, as I said before, crisis intervention, with the child removed from a home or the parent removed from a home, notwithstanding that no charge has been laid. Rarely, if ever, is action taken to address the collective problems within the child's home environment that principally gave rise to the instances of abuse in the first place.

It is crucial that in this whole subject of child abuse honourable members appreciate that today few funds are being dedicated for services that would provide individual or group counselling for care givers or counselling for the family unit. In my view, the lack of such services is an absolute disgrace. Without such services—and my following statement will be attested to by senior social workers within the DCW—it is almost impossible, and probably also undesirable, for a child to remain in its remedial network. It is also almost impossible for a child's parent or care giver to provide sufficient grounds in future months and years to convince a child's case worker, the assessment panel or the court itself that the parents or care givers have received sufficient help and counselling, and the like, to address the parenting problems that were grounds for the initial intervention by the DCW to remove the child.

Essentially, in just running through these broad issues, I would argue that in recent years the Government has opened a Pandora's box in respect of child abuse and has then most irresponsibly failed to follow up with the resources necessary to establish the services to handle the situation that it allowed to erupt. It has certainly alerted the community to the problem, and I welcome that fact, but it has failed to cater for the ramifications of its actions. In the meantime, I would also argue that the Government has condoned a situation where the DCW has been allowed to reign almost unchecked—and that is another issue that I shall address in my contribution on the Children's Protection and Young Offenders Act Amendment Bill.

The matter of the Department for Community Welfare's powers in the Community Welfare Act was addressed at length by the Bidmeade review of the need of care provisions in Part III of the Community Welfare Act. Under the heading of 'Roles, advocacy and objectivity' the Bidmeade report focused on this matter. At page 29 of the report Mr Bidmeade made the following observation:

> Many of the submissions and persons to whom I spoke echoed the view that the department has too many roles, that there is a need for other objective perceptions in child protection—and in particular for procedures to be seen as fair and impartial.
>
> Some of these comments arose from the way in which the department had handled particular cases. The Law Society comments were from the perspective of lawyers acting for parents in particular cases and dealing with the department. However, the majority of such comments (many of which came from within the department) simply reflected a concern at the conceptual level for clear delineation of roles and objectivity in decision making. They reflected a perspective that, however meritorious the approach of the department to child protection and its internal procedures may be, the department should not do everything.

I endorse that proposition. This matter is followed up in the Bill with references to the need for advocates and a provision that the Minister should be able to obtain objec-

tive and independent advice on the rights and interests of a child before proceedings are taken under this Act. The Liberal Party supports each of those propositions. However, we strongly believe that the amendment to broaden the range and responsibilities of the Children's Interest Bureau reinforces our contention that it is no longer practical or desirable that the bureau remain the responsibility of the Minister of Community Welfare. It is our strongly held view that, if such advocates are to be appointed and are to be officers of the bureau, it should be transferred to the responsibility of the Attorney-General.

I have had a number of experiences with the Children's Interest Bureau that have confirmed the fact that the bureau and the Department for Community Welfare work closely together, if not hand in hand. In some instances one could say that they were one and the same. This certainly was not the initial aim when the former Minister of Community Welfare (Hon. John Burdett) in 1981 moved to establish the Children's Interest Bureau. We believe it is desirable that if the officers of the bureau are to act as advocates and be seen to be providing independent and objective advice on the rights and interests of a child they should be removed from the responsibility of the Minister of Community Welfare.

We note that in the Bidmeade report the author placed great weight on the fact that a child advocate at the planning conference should be independent of the Department for Community Welfare. We believe that this can be insisted on only if the Children's Interest Bureau is transferred to the authority of the Attorney-General.

The Hon. C.J. Sumner: Cornwall will be happy with that!

The Hon. DIANA LAIDLAW: The Minister of Community Welfare seems to be unhappy on a daily basis, so I am not sure whether this suggestion will make any difference. I can relate a number of instances to the Attorney-General when I have telephoned the bureau for help on matters of grave concern relating to the handling of cases in the Department for Community Welfare. On one occasion I recall that the person in the bureau to whom I wished to speak was not there and it was suggested that the call be transferred. Although I assumed that the call would be transferred within the bureau, I found that it was immediately transferred to a senior officer in the Department for Community Welfare—the very person on whom I was seeking to check in the first place. I suggest that the liaison between the two is particularly close and possibly incestuous. In respect of providing independent advice on the matter envisaged in this amendment, I question whether it is practical for the officers in the bureau to remain the responsibility of the Minister of Community Welfare.

The other important matters addressed in the Bill are amendments to clause 8. Two important changes are proposed to widen the ambit of section 91 of the principal Act. This section addresses the process of notifying or reporting a reasonable suspicion of maltreatment or neglect of a child by any person who has the care, custody, control or charge of a child. Currently the Act provides that it is compulsory for specific classes of persons who have the professional responsibility for children to notify an officer of DCW of any reasonable suspicion of maltreatment or neglect of a child by a care giver as soon as practicable after forming the suspicion.

It also provides voluntary reporting by any person who has reasonable grounds to suspect maltreatment or neglect. Persons reporting suspected maltreatment or neglect in good faith are protected from civil liability. Sanctions for failure to report apply only to those persons subject to the mandatory reporting provisions. Section 252 of the Act provides a fine of up to $500 for failure to report.

The Bill seeks to broaden those provisions by removing the qualification that it is obligatory on certain classes of persons to report the suspicion of maltreatment or neglect only when this form of abuse has been committed by a person who has the care, custody, control or charge of a child. In this matter the Bill embraces a recommendation of the Task Force on Child Sexual Abuse, and I believe that the principle it embodies is correct.

If one accepts that it should be mandatory for certain classes of persons to report suspected abuse, maltreatment or neglect, it is unacceptable to retain the present distinction that it is mandatory to report only when it is suspected that the abuse has been committed by a care giver. The obligation should be extended to children who are suspected of having been abused, regardless of who has committed the abuse. The Bill also seeks to expand the list of persons who have a compulsory duty to report the suspicion of maltreatment or neglect.

The Bill reflects the recommendations of the task force that the list be extended to include probation officers, employees of agencies providing education, child care or residential services for children and voluntary workers of an agency providing the same services and/or health and welfare services.

Currently, the Act requires the following classes of persons to report a suspicion of maltreatment or neglect:

(a) Any legally qualified medical practitioner;
(b) Any registered dentist;
(c) Any registered or enrolled nurse;
(d) Any registered psychologist;
(e) Any pharmaceutical chemist;
(f) Any registered teacher;
(g) Any person employed in a school as a teacher aide;
(h) Any person employed in a kindergarten;
(i) Any member of the Police Force;
(j) Any employee of an agency that provides health or welfare services to children;
(k) Any social worker employed in a hospital, health centre or medical practice; or
(l) Any person of a class declared by regulation to be a class of person to which this section applies.

In South Australia mandatory reporting of suspicion of abuse by certain classes of person has been a longstanding feature of community welfare practices in this State.

In 1981 the classes of persons were increased by the then Minister of Welfare, the Hon. John Burdett, to include psychologists, chemists, kindergarten teachers and social workers in hospitals. Mandatory reporting is also a feature of child welfare law in Tasmania and New South Wales. In neither State, however, are the classes of persons as extensive as is the case in South Australia at present or as is envisaged following the passage of this Bill. I note, for example, that clause 22 of the New South Wales Children (Care and Protection) Act 1987, specifically states that only a person practising as a medical practitioner is required to report any reasonable suspicion that a child under the age of 16 years has been abused, whether or not the abuse consists of sexual assault. The same clause 22 (2), however, provides for other classes of profession, calling or vocation to be prescribed by the regulation, but to date no such regulations have been gazetted to identify other classes of persons, if any, of whom the New South Wales Government deem it will be necessary to require mandatory reporting.

I should highlight that, in relation to mandatory notification of suspected child sexual abuse, clause 22 (3) of the New South Wales Act specifically omits reference to any profession including that of medical practitioners. Therefore, that is quite a marked change to the position that we have in South Australia where all the professions and voca-

tions, such as those I mentioned earlier, are required to report abuse including child—

The Hon. R.J. Ritson: We nearly had the school janitor until they redrafted the Bill.

The Hon. DIANA LAIDLAW: Nothing would surprise me in respect of the over-zealous manner in which the Government is addressing this issue. In Victoria, in the meantime, the Cain Government has resolved to reject mandatory reporting altogether. This decision is in line with the recommendations of the report of the Child Welfare Practice and Legislation Review Committee of 1984, chaired by Dr Carney. Recent Victorian legislation implementing key reforms of the Carney report maintains a system of voluntary reporting by anyone in the community who reasonably suspects abuse or neglect of a child.

At this stage in our endeavours in South Australia to address the vexed issue of child abuse and child sexual assault, I tend to accept that mandatory reporting of suspected abuse of children requires the special role that the law can, and should, play in the protection of children. However, the Carney report, and a number of individuals with whom I have recently spoken about this question of notification, have presented a very strong case rejecting a system of mandatory reporting.

They argue that mandatory reporting on the pain of committing an offence does little to extend protection to children at risk and in many cases may prove to be counterproductive. Essentially, their arguments can be summarised as follows:

1. That mandatory reporting discourages families from seeking help.

2. That it discourages people who know the family and who are concerned about the welfare of the child from encouraging the family to seek help.

3. That by identifying certain classes of persons as having a special obligation to report weakens the capacity of local services to work effectively in preventing child maltreatment and taking constructive action when maltreatment occurs.

4. That mandatory reporting may cause parents to blame the child which, in turn, can lead to further abuse.

5. That it is an unenforceable obligation.

6. That it does not guarantee effective or adequate follow-up.

7. That it takes away the discretion of professionals who know the particular needs of their clients.

8. That confusion over the definition of 'maltreatment' may lead to either failure to report or to over-reporting. In respect of the latter, I would suggest that we are witnessing a spate of that in South Australia at present.

9. That, if adequate support services are not provided, mandatory reporting may do more harm than good.

Increasingly, I am inclined to believe that many of these arguments in favour of a voluntary reporting system are valid. I suspect that my inclination—and it is a change from a position that I held earlier—stems from a frustration that the Government, through the Department for Community Welfare, has failed to follow up its determination to place such a heavy emphasis on child abuse with the resources, systems and services necessary to ensure that the community can cope with the fallout or the ramifications of the department's present focus on child abuse.

Increasingly, I question whether it is a responsible act for the Government to maintain a system of mandatory reporting of suspected abuse of children—let alone to extend the system as proposed within this Bill—while failing to ensure that all the professionals within the classes of persons obliged to report any suspicion of abuse are sufficiently trained to recognise the signs. Without training, without an appreciation of the signs of abuse, a conscientious person within the classes of persons required to report suspicion of abuse can unwittingly unleash great trauma on an alleged child victim and his or her family.

The Hon. R.J. Ritson interjecting:

The Hon. DIANA LAIDLAW: It would be even worse, but that is a matter in which I will not get involved concerning this Bill, but it may be one that the Hon. Dr Ritson wishes to further explore. However, recognition of the signs of child abuse and in particular child sexual abuse is often an extremely difficult and complex task. It is certainly a most sensitive one which at all times should be handled with great care by the person who suspects abuse. It should involve that person's weighing up the gravity of the situation and the consequences of the report in addition to the matters that they see and suspect at the time of observing the child.

All those matters should be weighed up in terms of what are the child's best interests. Therefore, adequate and sensitive training is of the utmost importance. Of necessity, this training involves time and time involves money. I appreciate that efforts are being made by the Government at present to implement training programs, but they are limited in their number and in their capacity to reach the wide range of professional people who may be in a position to encounter children who present with signs of suspected abuse.

In these circumstances there is reason to question the validity of placing a legal obligation on certain classes of professional people to report suspicion of child abuse, let alone extend this obligation to voluntary workers, no matter the hours a voluntary worker may be engaged by an agency providing services for children. Equally, I am concerned that mandatory reporting is a factor turning the focus of DCW on to control, policing and crisis intervention, issues that I alluded to earlier, and away from the time-honoured practices of prevention and rehabilitation.

I am aware of situations, as I indicated earlier, where parents are not presenting to DCW with parenting problems for fear that they will lose their kids and I believe that this fear, combined with this current focus on child abuse, is turning many people away from DCW at a time when they could be helped to prevent the eruption and compounding of problems within their family before they get to a stage that child abuse—physical or otherwise—can be unleashed on that child.

Finally, I would say in respect of this Bill that I appreciate that there is a provision in the present Act for a person of a class declared by regulation to be 'a class of persons to whom this section applies'. However, I wonder whether we should be including this in transferring that provision into this Bill. I have indicated that in South Australia we have a more extensive range of class of person than any other State required to report suspicion of abuse. Indeed, there is a trend in Australia, and I understand elsewhere in the world, to move towards a voluntary system of reporting.

Also, I believe that any person required to breach confidentiality requirements or other ethical standards as would be proposed and inherent in mandatory reporting should be required to do so only by an Act of Parliament and not by regulation. Having covered the two principal issues addressed in the Bill and also a broad number of other concerns that my colleagues and I have about the current focus and the present practices and policies in relation to DCW's focus on child abuse, I indicate that the Liberal Party supports the second reading.

The Hon. K.T. GRIFFIN: I compliment the Hon. Diana Laidlaw on her extensive coverage of the issues covered by this Bill. I add my support to all that she has had to say with regard not only to the Bill but on a variety of principles affecting the reporting of suspicions of abuse and the way in which the department is currently perceived to be handling those matters. As to her last point concerning clause 8 and the amendment to section 91 of the principal Act, not only are the categories of persons required to report expanded but also the nature of the report is broadened from the suspicion of an offence having been committed against the child to a suspicion that a child has been maltreated or neglected. That very much widens the ambit of the mandatory reporting requirements.

In the light of that and given the fact that the categories are broadened quite significantly, I would support the Hon. Diana Laidlaw's call to delete from the amendment reference to a regulation being the basis upon which the classes can be expanded.

With respect to the reporting of suspicions of an offence and with respect to child abuse of all kinds, I refer to a question on notice asked by the Hon. Diana Laidlaw which was replied to on 24 November 1987 and in which the statistics from 1981-82 to 1986-87 were disclosed by the Minister of Community Welfare. It is interesting to note that the numbers of children notified as abused in each year—whether sexually abused or otherwise—in 1981-82 numbered 590 and, of those, 427 (or 72 per cent) were substantiated. So, the majority of those notifications were substantiated. In 1984-85 there were 2 054 notifications and, of those, only 524 (or 20 per cent) were substantiated.

The Hon. R.J. Ritson: The increase has come from overreporting.

The Hon. K.T. GRIFFIN: It is quite likely that the mandatory requirements—and the Hon. Diana Laidlaw has cast some doubt about their desirability—are responsible for that level of overreporting. In 1986-87 there were 5 405 notifications and, of those, only 1 008 (or 18 per cent) were substantiated. So in each of the years since 1981-82 there has been a quite dramatic decline in the number of notifications of abuse—whether sexual abuse or other abuse—and the substantiation rate has dropped dramatically.

In relation to notification of sexual abuse, in 1984-85 there were 355 cases (according to the figures given to the Hon. Diana Laidlaw by the Minister of Community Welfare), of which 153 (or 43 per cent) were substantiated. In 1985-86 there were 770 notifications, with 266 (or 34 per cent) substantiated. In 1986-87 there were 1 378 notifications of which 409 (or 29 per cent) were substantiated. Quite obviously, from those figures, an increasing number of notifications have been substantiated, but there has been a decreasing percentage of substantiated notifications.

That highlights not only increasing concern in the community about abuse and sexual abuse of children, prompting a quite significant increase in notifications, but also that many of those notifications have not been substantiated. I imagine that a great deal of personal hardship may have been experienced as a result of those notifications not being substantiated. Of course, that adds weight to the reservations that have been identified by the Hon. Diana Laidlaw with respect to mandatory reporting requirements.

There is only one other aspect of the Bill on which I will make some observations, although I suppose they could just as easily be made under the Children's Protection and Young Offenders Act Amendment Bill. They relate to the Children's Interest Bureau. The Bidmeade report made observations about the Children's Interest Bureau. The report was really looking for some body that could represent the interests of children and be a more effective advocate for children. A proposal was considered by Mr Bidmeade that the Children's Interest Bureau could become that advocate and represent children in those cases where in need of care applications were made. However, Mr Bidmeade pointed out that there was a need for an independent advocate and that that could occur with the Children's Interest Bureau only if it was revamped and expanded so that it could be seen to be quite separate and distinct from the Department for Community Welfare.

I take the very strong view that it is unwise to have a body such as the Department for Community Welfare as both the care giver and the prosecutor within the legal system. There would be distinct advantages in the department moving away from the prosecutorial role or the representative role (whichever one prefers) and for the Children's Interest Bureau to be seen to be—and in fact be—much more independent than it is at the moment. In that context I think that the department would be doing itself a favour in terms of its public perception if it was seen to be more independent and in its practices more professional; and, in its representation of the interests of children, it should be seen not to have an unholy blend or mix of responsibilities.

The Bidmeade report canvasses the Children's Interest Bureau developing into something akin to a Commissioner for Children with the function of promoting the rights of discriminated groups at a general policy level and taking on specific cases of discrimination. In fact, the Bidmeade report states:

> The notion of a Commissioner for Children providing child advocacy and sharing the load of child protection with the department is very consistent with submissions to this review, and I commend it to the Government.

In his conclusions and recommendations, Mr Bidmeade states:

> As part of the procedures for dealing with in need of care applications and the desirability of a planning conference before an application is made, there should be a child advocate at that conference who is independent of the Department for Community Welfare. There is a considerable demand for some form of child advocacy in addition to that provided by the department. For that advocacy to be effective it must be provided by persons expert in child protection. That role could be played by the Children's Interest Bureau if revamped and given independence from the department.

That is the emphasis which has to be given: if it is revamped and if it is given independence from the department. My colleague's proposal, that there should be a specific provision for the bureau's independence from the Department for Community Welfare and the Minister of Community Welfare and being attached to the Attorney-General, would very much satisfy the objective of the Bidmeade committee and would, in a sense, because it deals with the rights of children, be placed in the same relationship to the Attorney-General, as is the Commissioner for Equal Opportunity, through the Department of Public and Consumer Affairs.

That analogy is appropriate, merits very careful consideration and would go a long way towards removing the present discontent about the way in which in need of care applications are dealt with by the court. I support the second reading of this Bill.

The Hon. R.J. RITSON secured the adjournment of the debate.

CHILDREN'S PROTECTION AND YOUNG OFFENDERS ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 3 December. Page 2460.)

The Hon. K.T. GRIFFIN: This is the third of the package of three Bills dealing with the care and protection of children and is probably the most important of the three in the context of providing care and protection for children. That is, of course, not to detract from the significance of the Community Welfare Act Amendment Bill and the issues which have just been canvassed, or to detract from the Evidence Act Amendment Bill, although one must recognise that that Bill deals principally with the gaining of convictions and has very little, if anything, to do with providing a better mechanism for providing children with care and protection.

This Bill deals with three main areas: applications that children are in need of care; transit infringement notices (and that area bears a curious relationship to the first); and the transfer of young offenders. In dealing with the first major area, it is important for me to outline some of the critical areas which must receive attention in dealing with allegations of child sexual abuse. It is important to provide care and protection for the child in the best possible environment for the child which, in many cases, is not achieved by the removal of the child from the family environment. That, in fact, is recognised by Mr Bidmeade in his recommendations where he specifically recommends that the Children's Protection and Young Offenders Act should make clear that in in need of care proceedings the interests of the child are the paramount consideration and that an aim should be to secure for the child care, guidance and support within a healthy and balanced family environment.

There is a need to provide care for the child. There is a need also to ensure wider powers and responsibility in the courts with flexibility in orders, as opposed to giving to the Director of Community Welfare or to the Minister the sort of exclusive and wide ranging responsibilities presently in the legislation. It is important also to provide for independent representation of children to ensure that that representation is not confused with a prosecutorial role presently exercised by the department.

It is important, in the context of dealing with allegations of child sexual abuse, to minimise the trauma for children in the investigation of allegations. Ideally there should be one interview for both therapeutic and forensic purposes, and video recordings of that interview can be used for the purpose of minimising the number of interviews to which a child is subject. Ideally, too, there ought to be a joint interview by police and a social worker together—and not separately—with those two persons being in consultation before the interview occurs so that proper planning of the interview takes place prior to the event.

There should be proper training of all those who are involved in the area of dealing with allegations of child sexual abuse and, taking it further, as my colleague the Hon. Diana Laidlaw has said in relation to the last Bill, there should also be training for those who are most likely to recognise or be in a position to recognise the symptoms of child abuse. There must be a multidisciplinary approach to training of paediatricians, psychiatrists, police, social workers, lawyers and others who have responsibility at some time during the course of the investigation of allegations, the prosecution of charges, if any, and the care and protection of the child.

Priority ought to be given to the restoration of the child to a stable lifestyle. There ought to be, at each stage of any consideration of a particular child, multidisciplinary case conferences before steps are taken either to make an application to the Children's Court for an in need of care application or to take some other course of action, whether it be counselling or criminal prosecution. The court, as I have indicated already, should in my view exercise more responsibility.

It should be able to give directions in relation to guardianship, access, custody and a whole range of other issues which affect the interest of the child, both in the interim and by way of final order. Matters should be dealt with quickly, both to minimise the trauma for the child and to reduce the delay for the family in dealing with a matter which might end up in court while, of course, ensuring that the rights of any accused person are properly recognised and protected. If proceedings are to be taken then proper notification should be given to members of the family at each stage of those proceedings.

The Hon. R.J. Ritson: All members.

The Hon. K.T. GRIFFIN: All members of the family ought to have notification.

The Hon. R.J. Ritson: That is not so at the moment.

The Hon. K.T. GRIFFIN: No. There is a specific provision in the Bill on this, and I shall deal with that when we get to it. The Bill seeks to extend the grounds for making an application that a child is in need of care, to include maltreatment by a person other than the guardian living in the same household. Mr Bidmeade made that recommendation, and one can appreciate the reason for making it, but it tends to remove the focus from the person who is the guardian and who does have the responsibility for the care and protection of the child. If there is a proper emphasis on the way in which the guardian has exercised that responsibility, then issues such as maltreatment by some other person living in the same household can be taken into consideration in determining whether or not the guardianship has been properly and reasonably exercised.

Of course, there is a problem where it may be that some maltreatment has occurred within a household without the knowledge of a guardian, and it is in those circumstances that one has to determine whether the guardian ought to have known that the maltreatment was occurring and have taken action to stop it or was negligent in not doing so, or in not being aware of it or was totally innocent. If in those circumstances the guardian has exercised proper care and protection of the child but, nevertheless, without the knowledge of the guardian the child has suffered some maltreatment by a third person within the same household, it does seem to be somewhat extraordinary that the guardianship can be the subject of litigation in the Children's Court. But, rather, as I say, there ought to be an emphasis on the quality of the guardianship given and that if the quality is adequate then the issue can be resolved without the 'in need of care' application being made.

The Family Law Section of the Law Society draws attention to this and suggests that a provision in the Act already covers any harm done to a child in the same household as the guardian if it is shown that the guardian has been, is, or is likely to be incapable of protecting a child. The Law Society says:

> If the guardian is not in any way at fault and is not likely to be at fault in the future, then there would seem to be no need for an 'in need of care' order to be made.

The Family Law Section considers it inequitable for a child to be taken from a guardian if that guardian is not at fault. The amendment to section 12 (1) appears to allow for this, though, where another person is involved. So, I draw attention to the difficulty, and I raise the question whether the Bill goes too far and whether in some other way we can focus on the responsibilities of the guardian and make that the focus of any court review.

The Bill also requires the Minister to convene a conference between the appropriate members of the Department for Community Welfare and the Children's Interest Bureau,

except where it is not practicable to do so, to provide advice to the Minister on action to be taken in relation to the child before any application is made to the court. There is concern that the involvement of the Children's Interest Bureau will add only another bureaucratic dimension to applications for an order that a child is 'in need of care' and, of course, it may even add yet another session of questioning and further investigations by some agency other than the department, and in addition to what has already been undertaken.

I think it is important to recognise that certainly the department ought to have some person or body independent of the department involved in that pre-application conference and that that person or body ought to represent the interests of the child. But as the Hon. Diana Laidlaw has said in relation to the previous Bill that we considered, there is not sufficient independence of the Children's Interest Bureau from the Department for Community Welfare at present for that bureau to undertake that responsibility.

The Hon. Diana Laidlaw: At least while it is under the jurisdiction of the Minister of Community Welfare.

The Hon. K.T. GRIFFIN: At least while it is under the jurisdiction of the Minister of Community Welfare and the department. It could well develop into an appropriate advocate and representative of children, as was the original intention, if it were independent of departmental control and influences.

Next, the Bill requires the guardians of the child to be notified in writing of action which is contemplated, unless the Minister is of the opinion that to do so would not be in the best interest of the child. Let us remember that the Minister has control of the whole ball game at that point and the Minister can make the decision whether or not it is in the best interests of the child. I suggest that that is a position of considerable conflict. The principle is excellent, but the way in which it is provided in the Bill is a sop to parents and guardians because it does enable the Minister to conclude that it would not be in the best interests of the child that parents and guardians be notified of action which is contemplated. I believe that it is important that the principle be that in all cases parents and guardians are notified in writing of action being contemplated. If there is going to be some major problem with that, then let the Minister get some independent direction from the Children's Court, but let not the Minister make that decision wearing the hat of both prosecutor and prospective guardian of the child.

The Bill also requires the date of the hearing of any application to be no earlier than five working days from the date on which the application was lodged, unless the court thinks urgent action is required. It is interesting to note that the Bidmeade report recommends three days notice—that is, notice of hearing, not notice of the lodging of the application. I would argue very strongly that the Bill must be amended to provide that unless the court thinks urgent action is required and gives some other directions then notice of the hearing of any application must be given no less than five working days from the day upon which the notice is served.

That would adequately protect the interests of members of the family in particular and give them an adequate opportunity to retain a lawyer, if it is within their financial capacity to do so, or obtain legal aid through the Legal Services Commission, if they qualify, and then give their lawyer an adequate opportunity to take instructions and appear at court.

The next provision is that the court is allowed to make interim orders with respect to the child, including access to a guardian but to no other person where the case is adjourned. With respect to interim orders as well as permanent orders it is my strong view that the court should be in much greater control of the situation than the Bill appears to provide. For example, the court should be able to grant access to persons other than a specified guardian—grandparents, brothers, sisters, uncles or aunts. The court also should be able to attach conditions to any order and give directions to the Minister in respect of guardianship, for example, to allow parents and other guardians to retain custody but subject to conditions.

Although there is some suggestion that the court already has these sorts of powers they certainly are not exercised, and I suggest they need to be more specifically provided in the legislation to encourage the court to take a much more active responsibility in determining what is in the best interests of the child and what sort of orders should constrain the Minister and the Department for Community Welfare.

The Hon. R. J. Ritson interjecting:

The Hon. K.T. GRIFFIN: Of course, the difficulty with what I am proposing is that it means that the court has to be more actively involved in each of the cases that come before it—not be just a spectator but take a more positive role. That was one of the recommendations of the Bidmeade committee, that the court needed to take a much more active role and that its role in this area ought to be exercised in a way different from its criminal jurisdiction. It is important to note part of the preamble in the Bidmeade report, which is as follows:

> I do think that there are some serious conceptual difficulties with the existing system. It seems to me to be a system designed for lawyers and social workers, but not necessarily for children, and it is arguable that child protection in this State may work not because of the legislation and the structures and procedures established by the legislation, but despite them. I would particularly urge the Government to implement changes which will more clearly delineate the roles of the department and the court, and enable the court, through a different composition and powers of inquiry, to play a proper and effective role in child protection. If ever there is a need for a creative and imaginative approach to the way in which decisions in our community are made, then this is it.

Mr Bidmeade, in his recommendations, recommends that the court ought to be able to order that a person appear before it by summons, require the production of documents, inspect books or documents, require persons to answer questions, receive in evidence transcripts of evidence taken elsewhere, adopt findings of other relevant courts, order medical reports on both the child and the parents, and have power to hold conferences before and during proceedings.

This Bill really does not come to grips with that conceptual issue raised in the Bidmeade report. Notwithstanding that, I still think that there is a great need for the Children's Court to have wider powers, accept a broader responsibility and not leave everything to the Minister or the Director. I will be proposing that the powers of the court be widened.

The Bill allows the adjournment of the hearing of any application for a period not exceeding 35 days. That is extended from the current 28 days and prevents an adjournment on more than one occasion except with the approval of the senior judge. That is good. One of the problems we have is that there have been quite extensive delays in some of the in need of care applications that have been made. The Minister of Community Welfare in an answer to a Question on Notice given on 24 November 1987 said that for the year ended 30 June 1985 the shortest time between the application being instituted and the decision being delivered by the Children's Court was four days, the longest time was 8.5 months and the average was 2.28 months; for the year ended 30 June 1986 the shortest period was one day,

the longest period was nine months and the average was 2.7 months; and for the year ended 30 June 1987 the shortest period was one day, the longest was 10.5 months and the average was 3.8 months. This reflects a growing length of time in the Children's Court in the delay between the institution of an application and the decision being delivered, and on the average length of time taken to deliver a decision. That causes some concern.

There is a need for these matters to be resolved with some urgency and I am prepared and pleased to be able to support the proposition that adjournments be given in only very limited circumstances. Presently in the United Kingdom when a social worker applies to court for an order in an emergency situation the child can be subject to an order and removed from the family for only a period of 28 days, and that period cannot be extended. That period is not subject to appeal and during that time the parent retains parental rights. There is a proposition in the United Kingdom for that period to be reduced from 28 days to eight days and for an extension, which can be subject to appeal.

The Bill requires the child who is the subject of an application to be represented by a legal practitioner or, where the court is satisfied that the child has made an informed and independent decision, not to be so represented. I support that. It is consistent with my view that children ought to be adequately represented so that their interests can be presented to the court independently of the department and the Minister.

The Bill also excludes the rights of any other person to a child where the Minister or any other person is appointed guardian under these provisions of the Act. I have some very grave concerns about that. I do not think the Minister should be in a position where every other right, including access, is excluded. I am of the view that the court should have the power and the flexibility to give directions to the Minister which impinge upon the Minister's guardianship and to have a variety of other orders available to it short of the exclusive guardianship of the Minister.

The Bill requires a review at least once each year during the time that the child remains under guardianship and that such review is to be conducted by a panel of persons appointed by the Minister. The Bidmeade report recommends that the court undertake that responsibility. In view of the history of the concern about the applications by the department for in need of care orders, I would be much more comfortable with a review process undertaken either by, or under the supervision of, the court than for it to be undertaken by a panel appointed by the Minister.

There are other matters in respect of in need of care orders applications that I will raise during the Committee stage of the consideration of the Bill. However, the matters to which I have addressed remarks generally are the major issues which should be addressed.

I refer now to the totally unrelated issue of transit infringement notices. The object of this part of the Bill is to enable so-called transit infringement notices to be issued to persons aged 15 years and over. This means that they will be diverted from the court system and that the provisions of the Children's Protection and Young Offenders Act, with respect to screening panels will not apply.

Under the Bill that exclusion will apply to all offences under the State Transport Authority Act. I am most concerned about this. I have held the very strong view that any sort of infringement notice should not be delivered to children, except in special circumstances. I can see that in respect of fare evasion some form of infringement notice may be appropriate, perhaps for a first offence, although not for the second and subsequent offences.

I have some concern that a transit infringement notice might be delivered for acts of vandalism. I think that vandalism, whether it is on State Transport Authority property or out in the wider community, should always be subject to the provisions of the Children's Protection and Young Offenders Act. So, I am proposing that, rather than have the blanket provision in the Bill, there should be a limited recognition of transit infringement notices for persons 15 years and over for a first offence relating to fare evasion, and that no other matter should be subject to an infringement notice.

The Bill also deals with the transfer of young offenders from interstate and to interstate, and I am prepared to support that. I think there is some merit in that matter.

The Act relates to the care, control, correction and guidance of young offenders. The concept of protection is to be added, and I would like the Attorney-General in his reply to amplify what is proposed in the concept of protection. There needs to be some clarification before we give further consideration to that concept. It sounds good, but it needs some work, and I am not yet convinced that the present ambit of in need of care applications is unsatisfactory or that it needs in any way to be amended or extended by the use of a concept of protection. However, I would like to have some further clarification of that.

They are the principal matters to which I wish to address my comments on this Bill. To enable the matters to be further considered, I am prepared to support the second reading of this Bill.

The Hon. PETER DUNN: I rise to make a brief contribution to the debate because of my experience in a case that highlights one of the deficiencies resulting from the present system. I am concerned about section 14 of the Act, which relates to guardianship and children being put in the custody of the Minister and which is amended by clause 9 of the Bill. I have spoken to the Minister about this case, which relates to the Minister's close contact with the Department for Community Welfare and his advisers in regard to a conflict of interest involving the parents of children when the children are taken interstate. Although I tried to be independent in this case, I believe that the advice given to the Minister was either incorrect or not good advice.

Having lived in a close family and had three children of my own, I can understand the feelings of people. Certainly, I understand the problems experienced by the Minister when he must make such decisions. In these circumstances it is important to put the case before a court, which can assist the Minister when the mother, father or guardian believe that they have been unfairly treated by the department.

In the case to which I refer the children were placed with the mother and then put in the custody of the Minister because they had been interfered with by their *de facto* father, who was subsequently gaoled. This left only the mother and the children together. However, early in the year the children were still taken from the mother, which seemed rather unusual, and were sent interstate to their father who had subsequently remarried. The mother was promised that she would have access to the children regularly, and the Council can understand her wanting that. Because the two children were aged 7 and 10 and lived in Queensland, the mother did not have them in one of the school holidays but agreed to have them for a longer period in the Christmas break. She booked plane tickets for the children and advised the department, which said she could not do that. The previous animosity that had built up came out again strongly at that time.

It was at that point that I intervened and tried to get some sense into the matter. I explained to the mother that she did not have that right, yet I can understand her motivation. After a short delay the mother was told that the children would come only in early January, although she had been told previously that they would come at the end of the school year in December. She was upset, and I believe that she had been harshly done by. There seemed to be some sort of punishment for her making an effort to get the children as quickly as possible.

I further ascertained that the children had been taken from Brisbane to Sydney and were out of contact. The department claimed that it could do nothing further. However, it knew where the children were, and I believe that the position it took was harsh. Although I spoke to the Minister about it, he was unable to do any better than follow the advice that he was given. I believe that at this time the mother should have been able to approach an independent authority because her children did not arrive until early in January and had to be back in Brisbane about 12 or 14 days later.

Instead of the mother having access to the children over the Christmas period, she had them for only a short period in January. More importantly, the grandparents who were hoping to help the mother and children had taken time off from their work over Christmas and New Year, but those arrangements were wasted because the children did not arrive. This is just one example of many, but I believe it is important that there be a court or an independent person who can make decisions where appropriate. True, the mother had been difficult in her dealings with the department previously. However, that does not alter the fact that she had been harshly dealt with, and I do not believe that the matter has yet been completed. Under the provision allowing a court to grant access to the Minister, who can then transfer them to the father or some other guardian, an independent person or court should look at such decisions.

When I spoke to him the Minister admitted that these are the hardest cases with which he deals. I understand that, and it may be of assistance to the Minister if he can say, 'Let an independent person decide.' It would be better than relying on his officers who have dealt with the case already. For those reasons I make that contribution.

The Hon. DIANA LAIDLAW: I support the second reading of the Bill, which amends the Children's Protection and Young Offenders Act. The Bill addresses procedures for dealing with children in need of care and the issuance of transit infringement notices to children and the interstate transfer of young offenders. On behalf of the Liberal Party the Hon. Mr Griffin has addressed those issues in great detail, as he is renowned for doing on all matters. Although I do not intend to reinforce each argument, I want to deal with a number of issues relating to the vexed and complex issue of children in need of care.

First, I point out that these amendments are not confined to applications before the Children's Court arising solely from notification of child sexual abuse. The amendments proposed relate to all in need of care applications and must be assessed from a much broader perspective, as has become apparent to me in my consultations. Clearly, because of the public attention given to child sexual abuse and child abuse in general, the people with whom I have spoken believe that these measures are confined to a set of circumstances with which they are familiar. Over time these persons have developed passionate views on the subject of child abuse, and child sexual abuse in particular.

They have transferred that passion into an advocacy for this measure and in many instances would be pressing for much stronger proposals than those that are presented in this Bill. Therefore, I stress, as I have tried to stress in speaking with individuals and groups on a personal basis that one should not have the mistaken belief that this Bill solely addresses the issue of in need of care applications arising from concern about, or allegations of, child sexual abuse. This Bill is also a direct response solely to the child sexual abuse task force.

This Bill arises from the Bidmeade review of part III of the Act which, in turn, was established in response to a submission by the Law Society that procedures for intervention did not provide parents with the right to argue against intervention. Thus, the motivation for this Bill does not lie simply with the interests of a child following allegations of sexual abuse but rather with the powers of DCW *vis-a-vis* those of a child's parents and the court when determining a course of action that is in a child's best interest. The Bidmeade report recommends:

> The Children's Protection and Young Offenders Act should make it clear in INOC proceedings that the interests of the child are the paramount consideration and that the aim should be to secure for the child care, guidance and support within a healthy and balanced family environment.

My personal view is that that recommendation should be amended to add 'a stable family environment' because one of the concerns regularly presented to me—and it was certainly a feature of the case that the Hon. Mr Dunn just alluded to—is that too often following in need of care orders children are moved from family to family according to an *ad hoc* time frame. Children can be with one family, or even with a single parent family, for a matter of weeks or months before being transferred to the care of another family for several weeks—and this can go on and on. In these instances it is important that in need of care orders not only seek to secure for a child an environment of care, guidance and support within a healthy and balanced family but also a stable family environment.

Clause 6 of the Bill accommodates this recommendation. I believe that the motivation underlying the Bidmeade recommendation and the provision in this Bill are correct. The insertion of the principle of a child's best interest being the paramount consideration for a person or panel dealing with a child pursuant to part III of the Act is consistent with provisions in the Community Welfare Act and a provision in the proposed Adoption of Children Act. I believe that this consistency is desirable. Notwithstanding the belief that we should have a consistent standard incorporated in all South Australian legislation dealing with the protection and well-being of children, I do not deny that I have become increasingly concerned over the past two years with the application of this principle of what is in a child's best interest and, more specifically, who deems what is in a child's best interest. Although no-one can quarrel with the principle of a child's best interest, there is grave concern as to who is making these decisions.

The specific problem at the moment is that DCW is all powerful in making these decisions. Very few people who have a much longer association than DCW with a child or children have any chance for representation or to be heard at initial hearings or any later hearing and they are at a severe disadvantage in relation to the presentation of their case to DCW. That is mainly because many parents, for good reasons, reach exasperation point with the process because of their lack of control, lack of influence and lack of input into the decisions being made by others in relation to their children and their whole family lifestyle. The Minister of Community Welfare would be well aware that many parents in such cases are abusive, very uptight and very excitable and, in my view, need help to come to grips with

what has happened to their family situation and the fact that they seem to have no influence and no say.

I continue to be frustrated about this because many DWC case workers fail to see that their actions often cause a parent to become quite exasperated, often to a stage where they are quite unreasonable. Therefore, it is not surprising that DCW case workers, and the like, recommend without reservation in their mind that a particular parent should not have their child returned because that parent is excitable and may be provoked to violence. Certainly, in those circumstances the expressions and behaviour of a parent may be questionable in the eyes of a DCW case worker. However, one rarely finds, following notification of child abuse or physical abuse and all the ensuing proceedings, that that parent has been given any help, guidance or consideration by DCW or any other agency. I think that that is a major area that must be looked at. I believe that we as legislators are unwittingly helping to cause much trauma and stress within many families and I think that more should be expected of us in this area.

I return to the general point of a child's best interest. My concern rests with the fact that at present DCW is all powerful in determining what is in a child's best interest and few other people, particularly parents and others who care and love their children and are concerned about their well-being, have any say in this whole area. The Bidmeade report stressed this in some detail and page 33 states:

The Child Protection Agency has a difficult task—

I do not believe that anyone in this place would quarrel with that—

and its activity will inevitably attract criticism regardless of how conscientious its officers may be. Care must be taken not to act on every criticism.

I have tried to do that in this debate and, in fact, I have never raised in this Council one specific criticism or one specific case in an attempt to highlight it or be dramatic. My comments are based on a wide collection of experiences gathered during my two years as Opposition spokesperson for community welfare.

I did tell my Leader, John Olsen, at one stage that to be shadow Minister of Child Abuse would probably be all that I had time to cope with because of the extent of the problems and range of matters that come to me regularly. I continue with the Bidmeade reference, which reads:

However, it is difficult not to be impressed with arguments, coming from within the department and from without, that the department has far too many roles; that there is a need for other objective perceptions in child protection and, in particular, for all procedures to be seen as fair and impartial. Certainly, I have gained the impression that departmental officers are most concerned and competetent but, overriding that impression is the sense that the department's hand is everywhere. It controls care givers, child protection panels, pre-court conferences and assessment panels, applications to court and review proceedings. Its ethos is likely to prevail in all these proceedings.

I highlight that last point: 'Its ethos is likely to prevail in all these proceedings.' The fact is that, when the department decides what is in the child's best interests, that ethos is likely to prevail in all the proceedings from that time until the child one day may be returned to the family, and so many times—

The Hon. J.R. Cornwall interjecting:

The Hon. DIANA LAIDLAW: I am commenting on the Bidmeade conclusion. I highlighted the conclusion of the Bidmeade report, Minister—that the ethos of the DCW case worker at the beginning is that which will prevail in all those proceedings. It is not my comment. The ethos that the Bidmeade report refers to is the ethos of the DCW from right at the beginning of this whole process, its determination of what it believes is in the child's best interests. That is a most disturbing factor.

I was most interested to note in the Australian Law Journal 61 (4) of April 1987 the case of *J v Lieschke* before the High Court comprising Justices Mason, Wilson, Brennan, Deane and Dawson, and I highlight this case because they were reflecting on a decision in New South Wales based on the Child Welfare Act in that State where the equivalent to our DCW had determined that a parent's point of view would not be heard right at the initial stages, let alone at any future occasion, in any matters relating to that parent's child. The High Court found that the interests of natural justice had to be applied, however grievously the parents or guardians of a child may possibly have failed in their duty, and to allow those persons to be heard concerning proceedings under the Child Welfare Act relating to that child. Otherwise a proper finding could not be made by the courts. It was said that parents who had authority over or access to and a duty to nurture, control and protect their children were entitled to be heard on every issue of fact relevant to a court's decision affecting those interests.

I believe that that judgment will be used increasingly before the courts in South Australia. In the meantime, the Act we are working with at present does not help a child's parents to be heard or challenged or their arguments presented and, that, as I highlighted, the ethos of the department in respect of the best interests of the child prevails in all those proceedings. At this point I seek leave to continue my remarks later.

Leave granted; debate adjourned.

CRIMINAL LAW (SENTENCING) BILL

In Committee.

Clause 1—'Short title.'

The Hon. C.J. SUMNER: The Hon. Mr Griffin has asked for an indication as to the attitude to this legislation of the various bodies which were asked to comment on it. Obviously, I cannot make public what were in effect confidential communications. However, I would indicate to members that there was a general attitude of satisfaction with the philosophy of this legislation as well as the overwhelming majority of its provisions. Obviously, concerns were expressed about various provisions of the Bill, and some differences of opinion would be evident. However, at all times while this measure was being drafted those concerns were considered and attempted to be met by Parliamentary Counsel in consultation with officers of the Attorney-General's Department.

Some of those concerns were substantive and others of a drafting or procedural nature. At all times we have attempted to accommodate those concerns and where clearly, as a matter of law, those concerns appeared not to have merit, they were not acted upon. It is, of course, in preparing legislation such as this, sometimes difficult to attempt to reconcile what are often conflicting views, just as, of course, the sentencing process itself is a difficult task in attempting to reconcile what are often conflicting interests. On that point I can only emphasise that there does seem to be general acceptance of the broad thrust of the Bill.

The Hon. Mr Griffin has raised concerns regarding clause 6. The idea behind not having a sentencing court bound by the strict rules of evidence was in the hope of more successfully expediting sentencing hearings but, obviously, the judiciary, by virtue of their training and by virtue of the rules of natural justice themselves, will simply not give credence to things like hearsay and fifth-hand rumours where

such will not advance the role of the sentencing court in arriving at a determination.

Like any provisions where the rules of evidence are said not to apply—and this has often occurred in the statute law of this State—the courts will not simply abandon all principles and make the matter a free for all. They must continue to act judicially and must continue to apply the rules of natural justice. Rules of admissibility, logic, relevance, weight, credibility, etc., will still apply and need to be respected by counsel for the prosecution and the defence in advancing the matters to the court.

The honourable member inquired regarding the role of prosecutors in seeking to place before the court information regarding victims. He raised the question whether the prosecutors, police and Crown prosecutors, ought to do this rather than parole officers.

The current situation is that there is an administrative direction—part of the 17 principles outlined in the 'Rights of victims of crime'—which provide that information on the effect of the crime on a victim and any loss sustained by the victim should be put to the sentencing court by the prosecutor. That is in place at the moment and is being operated on. There is still some work to be done in ensuring that it is as comprehensive as possible, but the police are doing it, and the Crown prosecutors are certainly doing it in a large number of cases now. It is hoped that in fact their role in that will be expanded.

The real question in this area is whether or not we should, in fact, proceed with the current legislation, that is, the legislation that we passed in early 1986, where the probation officers, the parole officers, prepare as part of a pre-sentence report details of the effects of a crime on a victim. Having parole officers do it has been criticised by advocates of victims on the one hand, although I do not think it is completely inappropriate for parole officers to do it, as I think it can help them in their understanding of the overall issues. Indeed it can help them to bring some balance into their recommendations relating to an offender.

Nevertheless, after further consideration of this issue and in the light of the experience which we have gleaned as a result of the administrative direction and of the prosecutors putting information on victims to the courts, it has now been decided that that ought to be done principally by the prosecutors, either the Crown prosecutors or the police prosecutors. I am having an amendment prepared which will accommodate that. It will not exclude parole officers from doing it, if that is thought to be appropriate in the future. What it will do is assert the requirement that there be a victim impact statement for the sentencing court, and that will be done through the prosecutors. In fact, an extra three people will be employed in the Crown Prosecutors Section of the Crown Solicitor's Office to ensure that the Government's administrative instructions in relation to victims are complied with and that, when this legislation is passed, they have the resources to ensure that proper victim impact statements are placed before the courts.

In relation to clause 7 (4) as it presently stands, the honourable member has asked what is meant by 'a court of a prescribed jurisdiction'. As a result of the amendments that I have foreshadowed, this will become a moot point. The role of clause 8 (2), that the validity of a sentence is not affected by non-compliance with the section—that is, the section dealing with the requirement to give reasons for a sentence—is to ensure, as the honourable member has suspected, that appeals will not be taken where a court fails to give reasons for imposing a sentence or causing an explanation of a sentence to be given. This will ensure not only that appeals will not run on those grounds alone—which I think would be considered to be undesirable—but also that the defence is vigilant as to the obligations of the court and will where necessary remind the court of its obligations under clause 8 (1).

The manner of giving effect to the requirements in clause 8 (1) *(b)*, that is, the giving of an explanation of the legal effect, etc., of a sentence will be, it is envisaged, a matter for discretion of the court. In some cases it may do so itself where in others it may delegate that responsibility, for instance, to the clerk or other officers. The question of whether a language other than English will be used is a matter that I will take into consideration after discussions with the Ethnic Affairs Commission to see that persons who do not command English fluently are not prejudiced by the provision.

Clause 9 does not in any way seek to attach differing weights to the various factors that a court is to take into account in imposing a sentence. The question of weight is in all respects a matter for the court in the individual circumstances of each case. Therefore, clause 9 is not intended to affect the common law as to the weight which is to be given to those factors in any way. Clause 9 does not constitute any sort of hierarchy, and I do not think it would be practicable to do so. In most pronouncements on sentencing, because it is a matter for the discretion of the judge, the weight that is given to any particular factor in determining the sentence is a matter for the judge to consider, taking into account all the circumstances of the case, including, of course, the effect of the crime on the victim.

The Hon. K.T. Griffin: Would it not then be appropriate to ensure that the common law is not overridden by that, because it is if there is no specific reference to common law?

The Hon. C.J. SUMNER: No, the factors that are being taken into account are, I suppose, now spelt out in the Act, but the weight to be given to them—because it does not specify what weight is to be given to them—will still be a matter for the discretion of the judge, which is the present situation. I am happy to consider that point if the honourable member would like to pursue it in Committee. However, I do not think there is anything in clause 9 which would mean that the court's discretion is fettered as to the weight that is to be given to any of the factors that are mentioned there. Obviously, it will depend on the circumstances of each individual case, and the sorts of principles that have operated hitherto will still apply.

The honourable member also raised the question whether injury, loss or damage, etc., extends to other consequences, that is, emotional consequences, pain and suffering. I refer the honourable member to the defence of injury in clause 3 (1) of the Bill, where it is defined to include pregnancy, mental injury, shock, fear, grief, distress or embarrassment resulting from the offence. So, the effect of the crime on the victim is picked up by the fact that the court must take into account whether any injury, loss or damage has been caused as a result of the criminal act. That is a matter to which I will give some further consideration, because I am not sure that that formulation in fact encompasses all the common law principles that applied to the role of the victim, status, or the effect of the crime on the victim in the sentencing process, the principles of which, if the honourable member is interested, are set out in the Sir John Barry memorial lecture that I had the pleasure of giving last year. However, it may be that some amendment is needed to tidy that up. I am presently looking at that matter.

It is not intended that clause 10 will intrude upon the inherent jurisdiction of the court to imprison for contempt. This is made clear by clause 5, which provides that nothing

in the Act affects the powers of the court to punish a person for contempt of court. The principles in clause 10 do not compromise the law in relation to contempt of court.

The honourable member has also raised questions regarding offences of fraud, embezzlement, larceny, burglary, and so on. Where any other sentence would be inappropriate having regard to the gravity or circumstances of the offence, a sentence of imprisonment may still be imposed for such offences. The honourable member, in relation to clause 10 (1) *(d)*, thought that such factors will determine that in appropriate circumstances these offences will be the subject of imprisonment. Imprisonment is not precluded in these cases, but obviously it will depend on the judge's perception of the gravity or the circumstances surrounding the offence. If the judge considers them to be offences of a grave nature or where particular aggravation is surrounding them, obviously a sentence of imprisonment would be appropriate.

The purpose of clause 12 (2), which provides that a court is not obliged to inform itself as to the defendant's means, etc., is to ensure that the onus of bringing material to the court lies on either the prosecution or the defence. The Bill is not intended to establish courts as inquisitorial processes, and it really is consistent with the general proposition that it is the parties that ought to put the information before the court that is picked up by saying that the court is not obliged to inform itself as to the defendant's means.

If parties come armed with sufficient information to satisfy the court that the means of the defendant are not able to satisfy the fine, then that should be the end of the matter. However, simple failure to do so on the court's part—that is, to inquire into the defendant's means—should not leave the matter open to appeal. Clause 13 does not prevent a package approach to sentencing by courts. It is completely silent as to other forms of punishment. It confines itself entirely to compensation orders, fines or other pecuniary sums. In no way—and this is the policy, anyhow—does it prevent a court from tailoring punishment (for example, by way of imprisonment, bond, community service, and so on) to the specific sentencing task before it, whether by using other heads of punishment singularly or in combination. Obviously, one of the reasons for this legislation is to expand as much as possible the options that are available to the courts in sentencing.

In relation to clause 14 (discharge without penalty), I do not believe that this opens a Pandora's box, as the honourable member believes. This is a power to be given to the District Court or the Supreme Court. Those courts, in determining sentence, shall have regard to the antecedents, and so on, of a defendant. 'Antecedents' includes an offender's prior convictions, and therefore a prior record will be taken into account.

Nothing in this Bill alters the present practice regarding an offender's prior record being taken into account. It must always be borne in mind that clauses 14, 15 and 16, etc., can only be invoked once a court has determined a sentence following its consideration pursuant to clause 9, that is, having regard to such of the matters referred to therein as are relevant and known to the court.

Clauses 14 and 16 are able to be invoked by a court notwithstanding a minimum penalty fixed by special Act. However, they cannot be invoked where, by virtue of clause 19 *(b)*, a special Act expressly prohibits the exercise of a power vested in a court by this Bill. In other words, where Parliament has made it clear that a sentence cannot be mitigated or reduced, clearly neither clause 14 nor clause 16 can be invoked. I refer in particular to examples under the drink driving offences of the Road Traffic Act.

The Hon. K.T. Griffin: But that doesn't refer to this Bill.

The Hon. C.J. SUMNER: That may need to be examined. However, where the special Act does not expressly prohibit the use of such powers, the minimum penalty is open to reduction taking into account the various factors in clauses 14 and 16. In effect, clause 16 is a compromise between removing all the minimum penalties that are in various Acts, an exercise that would not be practicable or acceptable to the Parliament, I suspect, because minimum sentences are seen to be desirable in some circumstances. Although I share the honourable member's view in general that minimum sentences are not to be encouraged, clearly in some circumstances the Parliament has deemed it appropriate for minimum sentences to apply.

It applies, in particular, to areas such as drink driving and some road traffic offences where the potential consequences of the criminal action are very serious, even though the more immediate consequence may not seem to be. Of course, drink driving is a classic example of that. I think that the minimum penalty in that case is an expression of the Parliament's view that to drive while under the influence is socially undesirable, even though in any particular case of drink driving there may not be any adverse consequences flowing to any other individual as a result of it.

However, clearly there is the potential for very serious injury or death to be caused by drink driving. It is in those sorts of categories, where we—that is, the Parliament and the community—obviously do not want to have a maximum sentence of 10 years, 15 years or life imprisonment for drink driving but want to express abhorrence at a particular activity that it is appropriate for a minimum sentence to be introduced.

However, I would agree that in general minimum sentences are inappropriate. To revert to what I was saying, clearly we will not remove all minimum penalties from the legislation. So, the effect of the provisions of this Bill is that clause 16 overrides any minimum penalty, except where the special Act that gives rise to minimum penalty excludes it. That seems to me to be a fair compromise and it means that on each occasion a minimum penalty is included in a new Bill, Parliament will need to turn its attention as to whether the special Act should override clause 16 or whether clause 16 should take precedence.

The Hon. K.T. Griffin: I do not disagree with that, but you have all those present minimum penalties which are not covered by the Bill.

The Hon. C.J. SUMNER: That may be right. Then I think that matter needs to be examined further and I am happy to do that, and see what can be done, if anything, in the Committee stage.

In relation to clause 20, the honourable member has raised the question whether there should be a fail safe provision that operates where a court fails to specify a date for imprisonment to commence. That is already the law and I refer the honourable member to section 21 (2) of the Correctional Services Act.

The honourable member has raised the observation that perhaps unrepresented defendants should be specially considered in so far as clause 23 (2) is in question. I am sure that unrepresented defendants, now thankfully a very small minority of the persons appearing before courts, will have special consideration given to them by courts. I believe that the effect of clause 23 (3)—courts are not obliged to inform themselves on such matters—will act as a spur to courts to ensure that unrepresented defendants receive fair and adequate treatment.

The question of bonds for the keeping of peace, etc., under the Justices Act was also sought to be clarified by the

honourable member. Such bonds do not arise under the definition of bonds for the purpose of the sentencing Bill. A bond for this Bill is an agreement entered into in pursuance of the sentence of a court. In turn, 'sentence' means the imposition of a penalty, etc., by the court, or any order or direction affecting the penalty. Orders to keep the peace, etc., are not matters of penalty; they are preventative justice measures and they are not undertaken in consequence of a conviction or determination of sentence by a court. Therefore, such bonds under the Justices Act do not fall within the purview of bonds which are defined for the purpose of the sentencing Bill.

Clause 29 allows a discharge without sentence upon a defendant entering into a bond. Guidelines are given for the exercise of discretion. They are the express factors set out in clause 9. I note the present section 4 (1) of the Offenders Probation Act spells out the factors to which a court is to have regard before determining whether to put a person on a bond. Clause 29 can be activated only after consideration of similar factors that are included in clause 9.

Clause 28 (2) was raised by the honourable member and the suggestion put of partial suspension of sentences of imprisonment. This is an issue of some legitimate dispute and has been suggested from time to time. However, the Government regards this as a considerable overrefinement of the sentencing process which was not recommended by the Mitchell committee and is not looked upon with favour by the Correctional Services Department. It seems to me that a person is either to be imprisoned or not. A person may be released from prison on parole and then there should be satisfactory supervision to ensure that that person is rehabilitated in the community. I do not believe that a bond can serve any better purpose than parole which, if anything, is a more direct way of dealing with the matter. The matter was examined but the Government felt that it did not add a great deal to the sentencing options. Clause 34 (2), allowing the Minister for Correctional Services to discharge a bond, is not, in fact, a new provision and is already contained in section 8 (3) of the Offenders Probation Act.

With regard to the restitution of property, the Government does not want the proceedings to become protracted and undertake the form of a civil hearing. That is the purpose of clause 42 (2) whereby an order for restitution does not prejudice any person's title to the property. It is then up to that person affected to bring before a court of competent jurisdiction any claim that he or she may have in respect of the property in question.

In respect of the role of the Crown Prosecutor in presenting a victim's views, the honourable member's points are noted. They have in fact been raised on previous occasions with me by some prosecutors and I have addressed this principle in a number of speeches that I have given on the question of victims. I do not think there is a major problem. At present lawyers, in representing clients, are often confronted with conflicts of interest that they must resolve. Clearly, a barrister's first duty is to the court and if the interests of the barrister's client conflict with the barrister's duty to the court then it is the duty to the court that must prevail. For instance, a barrister has to advise a court of all authorities he is aware of, even though those authorities may not support his client's case. If he does not do that he would be in breach of his duty to the court and would be behaving unethically. Therefore, in this case the barrister clearly must say that he has a higher duty to the court. There is a duty not to mislead the court. Therefore, there is already a potential conflict for a barrister or solicitor in dealing with a client.

I take the view that the occasions on which there would be a conflict between a prosecutor's duty as prosecutor and the interests of the victim, as the duty to the victim, would be few indeed. In the great majority of cases I believe that the interests of the prosecutor are the same and are certainly not in conflict with the interests of the victim. Where there is a conflict of duty it seems to me the hierarchy is that the barrister has a duty to the court first; a duty to the Crown second; and a duty to the victim, third. My view is that the latter two duties will not, in the great majority of cases, be in conflict.

So, I think that by the exercise of rules with which barristers and solicitors are familiar any problems in that area can be resolved. The problem with giving victims a separate representation is, first, that it will lengthen proceedings considerably; it could have the potential to do that, particularly if victims have the right to appear on issues other than compensation and make statements about the penalty that they believe ought to be imposed. Allowing the victim to be separately represented would be a major interference with the basic adversary nature of our criminal proceedings between the Crown, representing the public interest, and the defendant.

So, there is the conceptual problem, that it would interfere. There is the practical problem that it would lengthen court proceedings at a time when there is a great deal of pressure on resources in courts. Also, I believe the Crown prosecutor doing it ensures that all victims are treated equally and whether the victim is able to appear is not determined by the victim's means as could well occur if the victim was given a separate right of representation. It is appropriate, having considered all the factors, for the prosecutor to put the information, both with respect to compensation and the victim impact to the court.

Some people would argue that the victim has no role at all, that there should not be anything put to the court on victim impact and certainly it should not be put by the prosecutor. If the victim wants to get compensation, the victim should go to the civil courts, but that is something that I reject as being inappropriate today as it downgrades the victim's role in the criminal justice system. The position we have taken is really a middle course between doing nothing for the victim in this respect and allowing the victim full separate representation with a right to question about sentence and argue about a particular sentence or put a case relating to compensation.

It is interesting to note that in the United States in a recent Supreme Court action between Booth and Maryland a written victim impact statement presented the victim's view on the effect of the crime—in this case it was the victim's family in a murder case—contained a very emotional response by the family to the death of the daughter, and the United States Supreme Court struck that down, indicating that that part of the Maryland legislation which provided for victim impact statements in capital cases had the potential to lead to a capricious decision by a jury, as to whether or not to impose the death penalty and therefore was contrary to the cruel, unjust and harsh punishment prohibitions in the US constitution.

Even in the United States where much greater use is made in some States at least of victim impact statements the full constitutional ramifications of victim impact statements have not yet been fully determined by the courts. In this case the courts specifically did not adjudicate upon victim impact statements in non-capital cases. In capital cases, they held that victim impact statements in this par-

ticular form at least provided for by the legislature were unconstitutional.

I give that as an example of a reason why I think the approach we are adopting is a reasonable one for the interests of both the victims and the community at large, because the prosecutor will put the information in an objective, verifiable way before the court such that, because the effect of the crime on the victim is a relevant factor in sentencing, objective information about that effect should be before the court. It is part of the sentencing process to take that into account. As it is part of the sentencing process to take it into account, it is appropriate for the prosecutor to put it before the court. So, that is a matter that has been explored by me on previous occasions. That is the reason for coming down with the decision that the prosecutors, whether police or Crown, can appropriately put the effect of the crime on the victim before the sentencing court.

The honourable member also raised the question of victims being informed of their rights, and he is aware of the administrative instruction issued in 1985 which was referred to in the speeches that I gave in this place in 1985 and 1986 when introducing the package of victims legislation. In addition work is currently being completed on a pamphlet dealing with victims' rights and their role in the criminal justice system to supplement the information which is already available.

Regarding clause 43 (5), I indicate that this is already the law. The question of compulsory third party bodily injury insurance and its interreaction with the criminal law may need to be examined, so I can but note the honourable member's point and repeat that what is contained in this Bill is already in existing law. The honourable member has asked whether the Government has any policy on the question of costs being awarded against the Crown in all cases where a person has been found not guilty of an offence. The short answer to this is that, at present, there is no policy or intention to extend provisions relating to costs beyond those which already exist.

The honourable member raised the point in relation to clause 52, concerning warrants for sale of land and goods, that affected persons should be able to be heard. This is in fact the function of clause 52 (5) which provides that, for the purposes of determining an application under subclause (4), the court may issue a summons requiring the attendance of such persons as the court thinks fit to call before it. In turn, subclause (4) provides in effect that affected or interested persons are not to be neglected in determining whether land or goods that are liable to seizure and sale can in fact proceed to be sold.

The Hon. K.T. Griffin: That is the point. I don't think it gives them that right to appear other than when a summons is issued.

The Hon. C.J. SUMNER: Well, it enables the court to have them appear before it if it feels that the justice of the case requires it. I think that I have answered most of the honourable member's questions. The question relating to clause 6 and the burden of proof will require more attention and I will give my response during the Committee stage. I hope that I have covered most of the issues raised by the honourable member.

Clause passed.

Progress reported; Committee to sit again.

STATUTES AMENDMENT AND REPEAL (SENTENCING) BILL

In Committee.

Clause 1—'Short title.'

The Hon. C.J. SUMNER: The Hon. Mr Griffin raised the question of whether there is a need to substitute a provision for section 297 (5) of the Criminal Law Consolidation Act. I do not believe so, but, if after what I have said the honourable member believes that the point is not covered, I am prepared to consider it further. The relatives of a person killed while endeavouring to apprehend any person may have recourse to compensation under the Criminal Injuries Compensation Act or, alternatively, to the compensation provisions of the Criminal Law (Sentencing) Bill. His or her spouse and children etc. may have a claim pursuant to either piece of legislation. Section 297 (5) was apparently overlooked in the tidying up effected by the Statutes Amendment (Victims of Crime) Act. It would appear that there is adequate coverage, but, if it does not cover what was previously included, that can be explored further in the Committee stage.

The Hon. Mr Gilfillan raised the question of the position of those currently kept in custody at Her Majesty's pleasure under sections 77 and 77 *(a)*. Those sections were also considered by the Hon. Mr Griffin in his contribution. I will not reiterate the arguments on the substance of those sections; that can be done in the Committee stage if need be. The question basically revolves around the desirability or otherwise of indeterminate sentences and, as the honourable member has mentioned, most commentators today would probably say that such sentences are undesirable—certainly that was the view of the Mitchell committee.

To briefly return to the Hon. Mr Gilfillan's point, the provisions of clause 60 of the Bill will ensure that those who are currently in custody must satisfy the requirements of sections 77 and 77 *(a)* in order to be released, as though those provisions were not affected by the Bill.

The Government believes that this sort of transitional provision is much fairer than a simple total cut off of the indeterminate sentence. After all, such offenders were sentenced and had expectations with respect to release as the law then was. It seems only a fair transition to comply with the law as though it were not affected by this Bill. However, on the point of indeterminate sentences it may be that the matter could be addressed by giving the courts power, if the repeal of these sections is agreed to, to reconsider those people who are currently being held at Her Majesty's pleasure with a view to their making a recommendation as to the appropriate action to be taken, that is, release at some time in the future or continuing detention. That is a matter to which I will give further thought before the matter comes back to the Committee.

Clause passed.

Progress reported; Committee to sit again.

BEVERAGE CONTAINER ACT AMENDMENT BILL

Second reading

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

It amends the Beverage Container Act 1975, by changing the definition of a low alcohol wine-based beverage. The Government considers it essential to put an end to the exploitation of the 8 per cent alcohol limit contained in the current definition. Honourable members may recall that

when this Act was in Parliament for amendment in May 1986, a product commonly known as wine-cooler was being heavily marketed in non refillable containers, which posed a serious threat to litter in this State. Those amendments resulted in this product being defined under the Act. However, before allowing this definition it was moved by the member for Coles that an amendment be made adding the wording 'that at 20°C contains less than 8 per cent alcohol/volume'.

What has followed has been that some companies have seen a way around this definition so that products which they market do not fall within the ambit of the Act. This has been achieved by introducing a product on the market of the same composition as the low alcohol wine-based beverage but with an alcohol by volume content slightly in excess of 8 per cent. One manufacturer whose product was marketed prior to the amendment with an alcohol by volume content of 5.8 per cent saw fit to withdraw this product and re-introduce it a short time later with an alcohol/volume content of 8.2 per cent.

I would like to emphasise that this amendment is not designed to add any further imposition on this industry, but to merely put an end to the current exploitation of the limit fixed in the Act. The resultant changes following these amendments will be that a new regulation will need to be made prescribing an alcohol/volume content and regulation 7 will require amendment to remove the words 'low alochol'. I hope the Opposition will support the Bill.

Clause 1 is formal.

Clause 2 replaces the definition of 'low alcohol wine-based beverage' with a definition of 'wine-based beverage'. The new definition is the same as the old except that the alcohol level will be fixed by regulation. The reference to the temperature and the basis of assessing alcohol content is omitted as these are factors on which the regulations prescribing the percentage will be based.

Clause 3 makes a consequential amendment.

The Hon. L. H. DAVIS secured the adjournment of the debate.

ELECTORAL ACT AMENDMENT BILL (No. 2)

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

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

It seeks to effect a number of procedural and administrative improvements and substantive changes to the Electoral Act 1985. The changes flow largely from a consideration of the operation of the Act at the last election, by the State Electoral Commissioner as well as recommendations for changes to the Commonwealth electoral legislation by the Joint Select Committee of the Commonwealth Parliament on Electoral Reform.

Prisoners' Enrolment Entitlements:

Section 29 (4) *(b)* of the Electoral Act 1985 enables a prisoner, who is already enrolled, to change his or her enrolment to another 'outside' address if:

(a) the presently enrolled address is either owned wholly or in part by the prisoner or was the place of residence of a parent, spouse or child at the commencement of his term of imprisonment; and

(b) the prisoner or the parent, spouse or child of the prisoner, acquires during the term of imprisonment some other place of residence and the prisoner intends to subsequently reside at that place.

An opinion of the Crown Solicitor has indicated that the word 'acquires' means ownership or any form of tenancy. In summary, even if a prisoner acquires an interest in a property where he intends to reside after his release, transfer of enrolment to that address can not occur unless he had a pecuniary interest in his currently enrolled address or his parent, spouse or child lived there at the time of his imprisonment.

Even without the benefit of supporting statistical information it is believed that many prisoners would not have been living with their kin or close relatives at the time of their arrest. Furthermore, it is doubtful whether many would have wholly or partly owned such properties. In practical terms very few would therefore be in a position to transfer their electoral enrolment as contemplated by section 29 (4) *(b)*.

It is considered that the concept of ownership of property is too restrictive and that the simple fact of residence (both before and after incarceration) should suffice to enable prisoners to seek re-enrolment.

Residence Requirements for Entitlement to Vote:

Section 69 (3) of the Electoral Act 1985 provides:

> A person is not entitled to vote at an election unless his principal place of residence was, at some time within the period of three months immediately preceding polling day, at the address for which he is enrolled.

The Commonwealth Joint Select Committee's 1986 report recommended the repeal of a virtually identical provision in the Federal Act. It observed:

> It can be seen that the three month rule is therefore in practical terms incapable of across the board enforcement. More seriously, however, its operation is anomalous in that it only works to disenfranchise those electors who have not correctly maintained their enrolments, but are honest enough to admit it. This clearly raises the general question of whether the rule continues to serve any useful purpose.

It was in fact repealed by a 1987 amendment Act. Another argument for repeal advanced by the committee was as follows:

> The three months rule as it stands, however, could give rise to challenges in the court to the correctness of the admission of individual votes which, depending as they would on the question of where a person had resided, would be of very similar nature to a challenge to the roll itself—since in each case the assertion would be that the voter really should not still have been on the roll. On this basis also, it could be argued, the three months rule should be abandoned.

Because of section 107 (3) *(a)*, the Court of Disputed Returns cannot declare an election void because of a defect in a roll of electors unless it is satisfied the result of the election was affected by the defect. The present three month rule does have the potential to erode the effectiveness of the principle of conclusiveness of the rolls.

Amendments of a largely administrative nature:

This Bill also seeks to do the following to the principal Act:

(i) the amendment of section 63, which requires voting tickets to be lodged with the relevant returning officer, to allow such lodgment with either the relevant returning officer or the Electoral Commissioner within 72 hours of the close of nominations;

(ii) the amendment of sections 62 and 63 to allow a candidate, in writing, to delegate to another (for example, the secretary of a political Party) the authority:

(a) to apply to have the registered name of the political Party printed adjacent to his or her name on the ballot paper; and

(b) to lodge with the relevant returning officer or Electoral Commissioner any voting ticket;

(iii) the amendment of section 74 to require that, before 6 p.m. on the Thursday immediately preceding polling day, pre-poll voting officers shall respond by post to all applications for declaration votes received by 5 p.m. that day;

(iv) the amendment of section 82 to enable returning officers to accept declaration votes received by any means within seven days of the close of polling;

(v) the amendment of section 85 to provide that the due dispatch of notices (dealing with failure to vote) is, in the absence of evidence to the contrary, evidence of their receipt by the voter concerned;

(vi) the amendment of section 29 to provide that an elector is entitled to enrolment for a subdivision if he or she has lived at his or her principal place of residence in the subdivision continuously for a period of one month immediately prior to the date of claim for enrolment;

(vii) the amendment of section 29 to restrict the franchise to those prisoners actually imprisoned within this State;

(viii) the amendment of section 30 to enable a claim for enrolment, or the transfer of enrolment, to be made to any (not merely 'the appropriate' as is presently the case) electoral registrar;

(ix) the amendment of section 125, which prohibits canvassing, soliciting, etc., of votes within six metres of a polling booth, to extend its provisions to pre-polling facilities as well (for example declared institutions);

(x) to maximise the opportunities of an elector being enrolled at his or her principal place of residence, the amendment of the Act to enable an electoral registrar to lodge an objection relating to any unnotified change of address of an elector. Section 69 (3) provides:

> A person is not entitled to vote at an election unless his principal place of residence was, at some time within the period of three months immediately preceding polling day, at the address for which he is enrolled.

The Crown Solicitor has advised (17 February 1987) that there is presently no authority in the Electoral Act for an electoral registrar to object to the enrolment of an elector who moves address within a subdivision but does not make a claim for re-enrolment at the new address;

(xi) the amendment of section 66 (1) by amending paragraph *(b)*. That presently provides that posters containing the registered voting tickets for both Houses are to be displayed in polling booths. This really creates more unnecessary work for returning officers and does not provide much information of great value to voters given that paragraph *(a)* already requires how-to-vote cards to be displayed in each voting compartment. The provision is to be limited to the display of Legislative Council voting tickets only. Besides, the display of House of Assembly voting tickets is not consistent with an elector's obligation, under section 76 (2), to place a preference against all candidates.

(xii) the amendment of the Act to provide a penalty for non-compliance with section 79. That section provides for the manner in which a vote is to be made (that is, the voter is to retire alone to a compartment, deposit the ballot paper in the ballot box and leave the booth). The Electoral Act 1929 (section 154) had provided a penalty of six months imprisonment for persons who fraudulently took a ballot paper out of a polling booth. The intent of this amendment is to ensure:

(a) a person places the ballot paper in the box; and

(b) leaves the booth.

(xiii) the amendment of the Act to provide for sanctions against any officer who neglects his or her official duties under the Act. The repealed 1929 Act had provided for this (sections 144 and 145) but such provision was not made in the 1985 Act.

Miscellaneous Amendments:

Finally, it should be noted the Bill seeks to amend the principal Act so that:

(i) the word 'member' in the context of a political Party seeking registration on the basis of 150 members is defined for the purposes of Part VI as an elector;

(ii) the Act gives an entitlement to a pre-poll declaration vote to an elector who will be engaged on polling day in his or her employment or occupation and whose absence to vote may cause serious inconvenience in respect of that employment or occupation;

(iii) the Act provides that an elector whose religious beliefs prevent him or her from voting on the day appointed for polling is entitled to register as a registered declaration voter;

(iv) in respect of mobile polling the relevant returning officer should have the authority for reasonable cause, to vary the polling schedules before the visit;

(v) the Act provides for a fresh scrutiny to be conducted by each district returning officer of all House of Assembly ballot papers included in the count before any candidate is declared elected.

In conjunction with the present Bill, three other Bills are also to be introduced into this Parliament—one to amend the Constitution Act 1934, another to amend the Acts Interpretation Act 1915 and a third to amend the Justices Act 1921. Those amendments are almost wholly consequential upon those that are embodied in this Bill.

Clause 1 is formal.

Clause 2 provides for the commencement of the measure.

Clause 3 amends section 20 of the principal Act to provide that the address of the place of residence of an elector noted on the roll is the address of the principal place of residence.

Clause 4 amends section 29 of the principal Act. A person will be required to have lived at his or her principal place of residence in a particular subdivision for a continuous period of one month before he or she is entitled to be enrolled on the roll for that subdivision. Subsection (4) is to be amended to restrict its operation to persons imprisoned within the State. Furthermore, it is considered that subparagraph (i) of paragraph *(b)* of that subsection is too restrictive in that it limits the operation of paragraph *(b)* to situations where the place of residence of the prisoner before his or her imprisonment was owned by the prisoner, or was

the place of residence of a parent, spouse or child of the prisoner. Many prisoners do not own places of residence and many do not live with their next-of-kin. It is therefore intended to remove the requirements of this subparagraph from paragraph *(b)* of subsection (4).

Clause 5 will amend section 30 of the principal Act so as to allow a claim for enrolment or the transfer of enrolment to be made to any electoral registrar (and not just the 'appropriate' electoral registrar, as the provision presently stands).

Clause 6 amends section 32 of the principal Act so as to allow applications for transfers of enrolment to be made to any electoral registrar.

Clause 7 makes related amendments to section 33 of the principal Act so as to allow an objection to the enrolment of a person on the roll of a subdivision in respect of a particular address.

Clause 8 amends section 35 of the principal Act so that on an objection the electoral registrar may, if appropriate, change the address in respect of which a person is enrolled.

Clause 9 amends the definition of 'eligible political Party' in section 36 of the principal Act so that it relates to a political Party of at least 150 electors, and not simply 150 members.

Clause 10 amends section 62 of the principal Act so as to allow an application under the section to be made on behalf of a candidate by the registered officer of a registered political Party of which the candidate is a member, or on behalf of all of the members of a group of candidates.

Clause 11 revamps various subsections of section 63 of the principal Act so as to allow voting tickets to be lodged by a candidate or candidates to whom the tickets relate, or by a person duly authorised to act on behalf of the candidate or candidates. An authorisation will be able to be given to a registered officer of a registered political Party of which the candidate or candidates are members or, in the case of a group, to a member of the group.

Clause 12 amends section 66 of the principal Act so as only to require the display in polling booths of how-to-vote cards, and voting tickets for a Legislative Council election. It is considered unnecessary to require the display of voting tickets for a House of Assembly election.

Clause 13 strikes out subsection (3) of section 69 of the principal Act. This subsection provides that a person is not entitled to vote at an election unless his or her principal place of residence was, at some time within the period of three months before polling day, at the address for which the person is enrolled. It has been argued that this provision only disenfranchises someone who is honest enough to admit that he or she has not correctly maintained his or her enrolment. Its repeal was recommended by the Commonwealth Joint Select Committee's 1986 report and the corresponding provision in the Federal Electoral Act has been repealed.

Clause 14 amends section 71 of the principal Act so as to allow a person to make a declaration vote if the person will be working on polling day and cannot reasonably be expected to have to vote at a polling booth.

Clause 15 provides for the amendment of section 74 of the principal Act. It is intended to require that officers must respond to applications for the issue of declaration voting papers by 6 p.m. on the Thursday last preceding polling day. The applications will be required to be received by an officer before 5 p.m. on that day if they are to be effective. The register of declaration voters is to be made available to persons who are likely to be precluded from attending a polling booth because of membership of a religious order or religious beliefs.

Clause 16 amends section 77 of the principal Act. In particular, it will be possible to alter the times or places for polling at a mobile polling booth. If possible, the Electoral Commissioner will be required to give at least one day's notice of the alteration, but if that is not possible then the presiding officer will be required to take such steps as are reasonably practicable to notify electors of the alterations. Reasonable steps will be taken to inform candidates of the alterations.

Clause 17 makes a technical amendment to section 82 of the principal Act so as to allow declaration votes to be delivered, as well as posted, to a returning officer so as to be received within the prescribed period of seven days.

Clause 18 amends section 85 of the principal Act so as to allow a prosecution for failing to vote at an election or failing to return a notice to the Electoral Commissioner to be commenced at any time within the period of 12 months of polling day. New subsection (10) revises the evidentiary provisions that may apply in relation to proceedings against section 85.

Clause 19 relates to section 91 of the Act, which provides for the scrutiny of declaration votes. It will be necessary for the relevant officer to ensure that the address in respect of which the voter claims to be entitled to vote corresponds to the address in respect of which the voter is enrolled.

Clause 20 amends section 97 of the principal Act so as to require a district returning officer to conduct a re-count of ballot papers in a House of Assembly election before the result of the election is declared.

Clause 21 will oblige an officer to carry out his or her official duties in relation to the conduct of an election.

Clause 22 will make it an offence for a person to whom a ballot paper is issued to remove the ballot paper from the polling booth.

Clause 23 will allow a presiding officer, in appropriate cases, to reduce the six metre rule prescribed by section 125. The operation of section 125 is to extend to declared institutions at which votes are being taken by an electoral visitor and any other place where voting papers are issued.

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

JUSTICES ACT AMENDMENT BILL (No. 2)

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

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

This simple amendment to the Justices Act 1921 is proposed in conjunction with the Electoral Act Amendment Bill 1987. It seeks to amend S. 27a of the principal Act to enable the services of summonses by post—for summary offences under the Electoral Act 1985—within 6 months (instead of the usual 4 month period) after polling day.

The volume of such summonses means that the Electoral Department is, unless this amendment is effected, hard pressed to serve them by post. If the 4 month period expires, service of summonses can then only proceed personally, a process which would be both unnecessarily time-consuming and expensive.

Clause 1 is formal.

Clause 2 provides for the commencement of the measure.

Clause 3 provides for the amendment of section 27a of the Principal Act (relating to the service of summonses by post) so as to allow subsection (3) to operate in relation to alleged offences against the Electoral Act if the time of posting is within six months after the day on which the offence is alleged to have been committed.

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

CONSTITUTION ACT AMENDMENT BILL (No.3)

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

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

This Bill is wholly consequential upon the Electoral Act Amendment Bill 1987. The Constitution Act is amended to bring its relevant provisions into line with the enrolment and entitlement-to-vote provisions of the Electoral Act 1985. This is done by:

(i) the repeal of section 12 because of its duplication of the requirements of section 52 of the Electoral Act 1985 (dealing with the criteria for candidature for the Legislative Council) and thereby also abolishing the requirement for three years residency in this State for such candidates;

(ii) the repeal of section 29 dealing with the qualifications of candidates of the House of Assembly which is also now dealt with by section 52 of the Electoral Act 1985; and

(iii) the repeal of sections 20 and 33 which deal, respectively, with the qualifications for electors of the Legislative Council and the House of Assembly—again matters now dealt with in the electoral Act 1985.

Clause 1 is formal.

Clause 2 provides for the commencement of the measure.

Clause 3 will repeal section 12 of the principal Act. This section sets out the criteria for candidature for the Legislative Council, being that a person must be entitled to vote at a Legislative Council election and must have resided in the State for at least three years. However, section 52 of the Electoral Act also deals with the qualifications of candidates, providing in relation to Legislative Council elections that a person must be an elector.

Clause 4 will repeal section 20 of the principal Act. This section provides that a person who is entitled to vote at a House of Assembly roll also qualifies to be enrolled for the Legislative Council. However, this is also the effect of the Electoral Act and so section 20 is no longer required.

Clause 5 will repeal section 29 of the principal Act, relating to candidature for the House of Assembly. This is covered by section 52 of the Electoral Act.

Clause 6 will repeal section 33 of the principal Act, relating to qualifications for enrolment as a voter in a House of Assembly election. This issue is now dealt with by section 29 of the Electoral Act.

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

ACTS INTERPRETATION ACT AMENDMENT BILL (No. 2)

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

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

This Bill is partly consequential upon the Electoral Act Amendment Bill 1987 and partly upon relevant Commonwealth legislation. In 1984 the Commonwealth Parliament enacted the Australian Citizenship Amendment Act (No. 129 of 1984). It has the effect, *inter alia*, of repealing the provisions of the principal Act dealing with British subjects. As a concept, that has been abolished altogether.

Section 29 of the Electoral Act 1985 provides that a person is entitled to enrolment as a voter if he or she is (*inter alia*):

(a) an Australian citizen; or

(b) a British subject who was, between 26 October 1983 and 26 January 1984, enrolled as an elector under the State or Commonwealth Law.

The concept of 'British subject' is defined by section 33c of the Acts Interpretation Act 1915, by express reference to the Commonwealth Australian Citizenship Act 1948. However, as indicated above, the latter Act no longer refers to British subjects. The law of this State need no longer refer to them either. In any event, their franchise is protected by proposed section 29 (1).

Clauses 1 and 2 are formal.

Clause 3 provides for the repeal of sections 33b and 33c of the principal Act. This provision is consequential on the enactment of the Australian Citizenship Amendment Act 1984 of the Commonwealth, an Act repealing the provisions of the principal Act of the Commonwealth dealing with British subjects.

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

REPRODUCTIVE TECHNOLOGY BILL

Returned from the House of Assembly with amendments.

ADJOURNMENT

At 10.34 p.m. the Council adjourned until Thursday 11 February at 2.15 p.m.