LEGISLATIVE COUNCIL

Wednesday 23 March 1988

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

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

PETITION: CAE PARKING

A petition signed by 618 residents of South Australia concerning parking at Colleges of Advanced Education, and praying that the Council oppose by-laws made under the South Australian College of Advanced Education Act designed to levy fees and fines for staff and students parking on site was presented by the Hon. I. Gilfillan.

Petition received.

AUDITOR-GENERAL'S REPORT

The PRESIDENT laid on the table the supplementary report with respect to the financial year 1986-87.

QUESTIONS

UNLEY PROPERTY

The Hon. R.I. LUCAS: My question to the Attorney-General, as Leader of the Government in this Chamber, is on the subject of the Minister of Agriculture and the New Age Spiritualist Mission in Unley. Will the Attorney-General confirm that when Cabinet resolved to make a proclamation under section 50 of the Planning Act in relation to the New Age Spiritualist Mission in Unley, he was not aware that Mr Mayes had been a bidder at the auction for the property?

The Hon. C.J. SUMNER: As the honourable member would know, Cabinet discussions under the Westminster system are confidential and I have no intention of revealing to the honourable member or to the Council the nature of those discussions.

Members interjecting:

The Hon. C.J. SUMNER: Well, it is all very well for the Premier who is the head of the Government in South Australia to indicate certain things, as I understand he has done. I certainly do not intend to reveal Cabinet discussions about the matter.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: That is all right. The question is that Cabinet discussions are not revealed to the Council. The honourable member knows that; the honourable Mr Hill knows that; the honourable Mr Griffin knows that.

The Hon. M.B. Cameron interjecting:

The Hon. C.J. SUMNER: I left here at midnight after a busy legislative program yesterday, went home and had a comfortable sleep. I was at my desk again at 8.30 this morning dealing with matters of Government business. I repeat that it is well known to members that Cabinet discussions are confidential. I do not intend to indicate what discussions occurred in Cabinet on this matter. Suffice to say that the Cabinet decision speaks for itself. You can draw your own conclusions from that decision. Furthermore, it is now clear that section 50 is not open to the Government, and we have decided to withdraw the proclamation.

The Hon. R.I. LUCAS: I have a supplementary question. In light of that answer, will the Attorney confirm that at 3.30 p.m. yesterday in this Chamber he told me that at the time of the Cabinet discussing this matter he was not aware of the fact that Mr Mayes had been a bidder for the property at the auction?

The Hon. C.J. SUMNER: Yes, I gave that information to the honourable member.

The Hon. K.T. GRIFFIN: My question is directed to the Attorney-General and concerns the New Age Spiritualist Mission at Unley. When the Government resolved to make the proclamation under section 50 of the Planning Act in relation to the property of the New Age Spiritualist Mission at Unley, what legal advice did it have before it and what was that advice? When the Government resolved to revoke that proclamation what legal advice did it have before it and what was that advice?

The Hon. C.J. SUMNER: I do not intend to reveal whether the Government had legal advice and, if so, what that advice was. That again, as the honourable member would know, is a matter of confidentiality between the Government and its legal advisers. Suffice to say again that it is now clear that section 50 was not open to the Government and we had decided to withdraw the proclamation.

The Hon. M.B. CAMERON: My question is addressed to the Attorney-General and again concerns the same subject as the previous ones. Is it not a fact that the Government revoked the proclamation under section 50 of the Planning Act made in relation to the Unley property of the New Age Spiritualist Mission a few short weeks previously because it received legal advice that the use of section 50 in relation to this property was a gross abuse of power by the Government and because it became aware of Mr Mayes' involvement in the auction and the subsequent improper use of his ministerial position to achieve the original proclamation?

The Hon. C.J. SUMNER: That is not correct in all its aspects. Once again, I do not intend to reveal what legal advice was given to the Government on the matter or, indeed, whether legal advice initially was given to the Government on the matter. Suffice to say that after consideration of the matter by me and my advice to the Government it has been decided to withdraw the proclamation.

The Hon. L.H. DAVIS: My question is also directed to the Attorney-General as Leader of the Government in this place and concerns Mr Mayes and the Unley property. If, at the time the Government made a proclamation under section 50 of the Planning Act, the Attorney-General was not aware of the involvement of Mr Mayes in the auction of the Unley property—and that seems to have been indicated by the Attorney's answer to the Hon. Mr Lucas—

The Hon. C.J. Sumner: Please repeat that question.

The Hon. L.H. DAVIS: If, at the time the Government made a proclamation under section 50 of the Planning Act, the Attorney-General was not aware of the involvement of Mr Mayes in the auction of the Unley property, which was ultimately purchased by the New Age Spiritualist Mission, and if he had known what he now knows, would the Attorney-General have supported the making of the proclamation as he then did?

The Hon. C.J. SUMNER: I am not going to answer that hypothetical question. The reality is—

The Hon. K.T. Griffin: It is hardly hypothetical.

The Hon. C.J. SUMNER: It is quite hypothetical. The reality is that the honourable member, the Hon. Mr Griffin and the Hon. Mr Hill, would know that Cabinet discussions occur. Indeed, Cabinets are not unanimous on every decision taken by them. In other words—

The Hon. L.H. Davis interjecting:

The Hon. C.J. SUMNER: I am not giving any indication one way or the other of my view. It would be improper for me to do that having regard to Cabinet confidentiality about discussions. I merely say, as you would know, that Cabinets discuss issues and come to conclusions about them. It does not mean, just as in your shadow Cabinet, that if you make a decision everyone agrees with it: there are different views. It is a matter well known in Government, and obviously any other course of action would not make the Westminster system of government sustainable. If one does not agree with the Cabinet decision and cannot proceed with it or cannot live with it, one does not have any alternative but to leave the Government. If one does accept the collegiate decision-making process you accept that in some cases you are in the majority in decision making and in other cases in the minority.

Having said that, it is not my intention to indicate my personal view of the matter. I have indicated what the Cabinet decision was, and that must speak for itself: you can draw whatever implications you like from it. I repeat: the situation is that, following discussions and consideration of the initial Cabinet decision, it is now clear that it is not open to the Government to proceed with the section 50 procedure, and we have decided to withdraw the proclamation.

The Hon. L.H. DAVIS: I desire to ask a supplementary question. Will the Attorney indicate whether he would support Cabinet's making a proclamation under section 50 of the Planning Act, if it had been aware that Mr Mayes had been involved in the auction of the Unley property?

The PRESIDENT: Order! I point out that under Standing Orders hypothetical cases are not permitted in questions.

IMVS

The Hon. CAROLYN PICKLES: I seek leave to make a brief explanation before asking the Minister of Health a question about AIDS and cancer research.

Leave granted.

The Hon. CAROLYN PICKLES: I notice that in the *News* of 14 March 1988 the Opposition spokesperson on technology, the member for Mitcham (Mr Baker), called for the establishment of a biotechnology centre in South Australia to research diseases such as AIDS and cancer. I understand that the Institute of Medical and Veterinary Science has already carried out research in these matters and is continuing to do so. Can the Minister provide information on the role of the IMVS in relation to these two diseases?

The Hon. J.R. CORNWALL: Yes, I would be very happy to do so. I was just a little concerned that the member for Mitcham, as the Opposition spokesperson on technology, did not do some research before expressing criticism. Less than a month ago I was able to announce that the Australian biotechnology company, Australian Medical Research and Development Corporation (AMRAD), had signed a $300 000 agreement to support breakthrough cancer research at our Institute of Medical and Veterinary Science (IMVS) in South Australia. The research, which is being carried out under the direction of Professor Matthew Vadas, Director of Human Immunology at IMVS, is of international significance and could well lead to Australia's becoming the first country in the world to purify and clone the DNA binding proteins which are the 'on/off' switches of the growth factors in cancer.

In October last year—only a few short months ago—I announced a grant of $300 000 to the joint Haematology Unit of the RAH and IMVS from the multinational medical product company, Travenol. The grant will be used to refine an improved technique which the unit has developed for transplanting blood stem cells in the treatment of leukaemia. The technique, referred to as 'peripheral blood stem cell autografting', is easy to carry out as it has been developed; is believed to be safer than other methods; involves a shorter period of hospitalisation and, because it does not require a donor, will be available to significantly more leukaemia patients. The grants will allow the RAH and IMVS to coordinate a three year national trial of the autografting procedure.

The IMVS also plays a major national, and to some extent international, role in AIDS research. It is a significant component of the national network of AIDS reference laboratories involved in the ongoing evaluation of new commercial assays for human immunodeficiency virus antibody and antigen. The laboratory has also developed and introduced successful new tests, not yet commercially available, which distinguish false positive from true positive reactions for AIDS patients.

The IMVS monitors the extent of HIV infection in South Australia and, since April 1985, has performed about 45 000 tests. The IMVS Division of Medical Virology is also involved in various projects associated with the culture of human immunodeficiency virus and virus culture assays. The IMVS has an enviable record in biotechnological research and, I am happy to say, it is in the forefront of research in areas such as cancer and AIDS on the national and international scene.

UNLEY PROPERTY

The Hon. M.J. ELLIOTT: Can the Attorney-General say, first, whether it is obligatory under our Westminster system for a Minister to divulge any personal interest in a matter before Cabinet and, secondly, does living in the same street as, and bidding for, a property at auction comprise a personal vested interest?

The Hon. C.J. SUMNER: It is usual practice to declare a direct interest, just as it is in Parliament when debating a particular matter. As I understand this particular case, and from what the Minister has now indicated, he did not have a direct interest in the property, financial or otherwise. His only interest was that, at some stage, he had put in a bid for the property. It was known that he lived in the street, in any event, so whether that needed specific disclosure in this case is somewhat beside the point. Certainly, with respect to any direct or indirect interest, that clearly ceased when the Minister finished bidding for the property, as he apparently did.

I understand that following the bidding the property was sold, so Mr Mayes could have no further interest in the matter when it was discussed in Cabinet. Obviously, Mr Mayes had an interest—and that may be the matter to which the honourable member is directing his question—on behalf of his constituents to express their concerns.

The Hon. M.J. Elliott: No personal interest?

The Hon. C.J. SUMNER: I am not sure. The honourable member may be able to indicate to me how the Minister had a personal interest in these circumstances, but I would have thought that he did not have a personal interest; he was taking action on the basis of complaints that he had received from his constituents, which of course—

Members interjecting:

The Hon. C.J. SUMNER: He was not disinterested in the sense that he was interested as a local member. From

what we know of the matter at this stage, it would not be correct to say that he had an interest beyond that. He had apparently bid for the property, but once that occurred that was the end of the matter. I do not see how beyond that he had any direct interest in the property, which had been sold, apparently at a price that he was unable to meet. So, once the property had been sold, it seems to me that the notion of his having any direct interest in the property had passed. He obviously had an interest in the sense that his constituents were concerned about this development on this site, but I suppose that is a matter of—

The Hon. I. Gilfillan: He might have wanted to sell it again.

The Hon. C.J. SUMNER: I do not think that is right. There is no evidence to suggest that that was the case. As I understand, he was acting at the instigation of his constituents who were concerned about—

The Hon. I. Gilfillan: He himself inititiated the first letter.

The Hon. C.J. SUMNER: Just a minute. The honourable member knows more than I do, and that is something on which he can comment at the appropriate time if he wishes. I know that the Minister indicated yesterday that he had bid for the property. Prior to that I was not aware that he had bid for the property, which is what I told the Council previously. But, once he bid unsuccessfully for the property it was sold. It seems to me then that his interest in the matter was no more, except an interest on behalf of his electors. If the honourable member has evidence to suggest that there was something more sinister than that, I suppose he has the right to say it inside or outside the Council. However, as I understand the position from my knowledge of it—and my awareness of his bidding for the property only came about yesterday—and with that information in hand, once that bidding had finished he had no further interest in the property. There is no suggestion that he had any further interest in the property from a personal point of view.

The Hon. I. Gilfillan: He lives next door to it.

The Hon. C.J. SUMNER: I do not think that he lives next door to it; the honourable member had better check that. I knew that he lived in the street or in the vicinity, as did a number of other people. A large number of people made submissions for this development to be stopped, but I do not think that Mr Mayes would have treated the matter in terms of his own personal interest in the property. Once the bidding had finished he treated the matter on the basis that there was considerable concern—and I think that is demonstrated by the petitions that he collected in relation to the matter—about the development in what is, on the face of it, a residential area and reflected his electors' concerns about the development.

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation prior to addressing a question to the Minister of Local Government on the subject of the New Age Spiritualist Mission.

Leave granted.

The Hon. DIANA LAIDLAW: In the House of Assembly yesterday, the Minister of Agriculture made certain statements in relation to the Unley council's handling of an application by the New Age Spiritualist Mission to build a church in the street in which he resides. He alleged that the whole issue had highlighted some of the inadequacies in the local government system. Further, he said planning officers failed to notify local residents of this particular plan. The Minister made those criticisms despite the fact that the proposal was a 'permitted use' under the existing zoning regulations and the council was not required to notify residents. My questions are as follow:

1. Will the Minister, in the interests of local government generally, dissociate herself from the statements made by her Cabinet colleague in view of the fact that local government would be exposed to a massive increase in administrative costs if it was required to notify residents in the case of each successful application for a 'permitted use' development?

2. Will she endorse the Unley council's handling of this particular matter?

3. Will she ask the Minister of Agriculture to apologise to the council for his allegations that the council had been insensitive in its handling of this matter?

The Hon. BARBARA WIESE: This is not a matter that has been brought to my attention as Minister of Local Government with respect to the council's handling of an issue, one way or the other. Therefore I am not informed about the nature of the issue that the council was dealing with. Certainly, no complaints have been made to me as Minister of Local Government as to whether or not the council has behaved in accordance with the Local Government Act. It would only be in the circumstances that I have received such a complaint that I would make it my business to make inquiries of the council about such an issue.

However, the issue at stake is a planning one. If there is any suggestion that the matter has not been handled appropriately it would be as it applies to the provisions of the Planning Act. Perhaps if there is a problem with that it is a matter for the Minister for Environment and Planning to investigate. But, as I understand it, there is some argument whether or not the matter involved a 'permitted use'. Whether that is the case, I cannot make any judgment. I am not the Minister for Environment and Planning, and it is not a matter that I have looked into. However, should a complaint about any council be raised with me, I would take whatever action I deemed was appropriate at the time, either in this case or in any other case when a complaint is put to me about the behaviour of a particular council.

WATER FILTRATION

The Hon. T. CROTHERS: I seek leave to make a brief explanation before asking the Minister of Health, representing the Minister of Water Resources a question about water filtration.

Leave granted.

The Hon. T. CROTHERS: A public announcement was made recently concerning the filtration plant that will service the southern areas of Adelaide in respect of the quality of the domestic water supply in those areas. Despite the economic constraints that the present Government has had to work under, and given that I consider that the Government has moved very quickly to implement its total program in respect of water filtration—

The Hon. M.J. Elliott: That's an opinion.

The Hon. T. CROTHERS: Don't you have opinions in the Democrats? Can the Minister tell me the time schedule for completion of the Government's water filtration program?

The Hon. J.R. CORNWALL: Let me say how impressed I am in how quickly we are getting through the questions today. We are only 25 minutes into actual Question Time and already there have been eight questions, only two of which have been asked by Government members. This is a matter which is not within my direct portfolio area, of course. I shall be very pleased to refer it to my colleague in another place and bring back detailed and accurate replies. However, allegations have recently been made by a small

but vocal number of people in the southern suburbs concerning the possible health hazards of the water supply.

As Health Minister, I want to assure this Council that although the water certainly is aesthetically and physically far from ideal (to put it mildly), it constitutes no significant health hazard at all. It is also important that we remember—

The Hon. K.T. Griffin interjecting:

The Hon. J.R. CORNWALL: Allegations have been made but they are quite unfounded. As I said, the water aesthetically and physically leaves a good deal to be desired, but there is no proven hazard whatsoever to human health, if you leave aside the fact that there is always a possibility of *naegleria fowleri* being in our reticulated water supplies in South Australia.

The Hon. R.J. Ritson interjecting:

The Hon. J.R. CORNWALL: Of course. It is heavily chlorinated. It was chloraminated. It smells from time to time. It has a lot of residue. The wags have been known to suggest that there is a meal in every glass. I could go on and on, but I will not. I am anxious that we get on with Question Time. The simple fact is that we have a city here in Adelaide of one million people in the driest State in the most arid continent on Earth. It has an extremely limited water catchment area, unlike almost any other city of comparable size in the world. In the circumstances, I think the E&WS does a quite outstanding job. Nevertheless, from the point of view of aesthetics and for many other reasons, it is highly desirable that our water is filtered.

For that reason, the Government has taken a quite specific decision to bring forward the completion of the Happy Valley filtration plant. Incidentally, the Happy Valley supply serves 40 per cent of the entire metropolitan area. It is my recollection that, because of the actions that we have taken, that filtration plant will be completed by the end of 1989 or early in 1990. As to Myponga, that of course is under consideration. I cannot give any specific details on that except to say it is a priority with the Government. However, as I said at the outset, I do not want to take up the time of the Council because these matters belong quite properly with the Minister for Water Resources in another place. I shall refer the questions that require specific and detailed answers to him and bring back a reply expeditiously.

MINISTER OF CONSUMER AFFAIRS

The Hon. I. GILFILLAN: I seek leave to make a brief explanation before asking the Attorney-General a question on the subject of his assessment as B in the Consumer Association's magazine, *Choice.*

Leave granted.

The Hon. I. GILFILLAN: It is unfortunate, and I commiserate with the Attorney-General, that he managed to get only a B in the rating, falling behind his colleagues in Victoria and New South Wales who both got resounding As. The good news is that he is definitely ahead of the Minister in the Northern Territory, who scored a D, and he is reasonably well ahead of the Minister in Queensland, who scored a C, so it is not all bad news. In its assessment of him, the association stated:

> South Australia used to lead the way but now tends to follow. However, Chris [referring to the Attorney-General] supports uniform legislation.
>
> His first priority for 1988 is to credit overcommitment. He has a working party on the issue looking for quick, practical solutions and is hoping that SCOCAM reaches a speedy decision for future credit legislation. South Australia has a code for retirement villages and has targeted 'get-rich-quick schemes' for supervision. Initiatives include target education programs and a review of the rights of boarders and caravan dwellers.
>
> Although there is not a Small Claims Tribunal, magistrates hear consumer affairs matters a couple of mornings each week. Consideration will now be given to the need for a tribunal following the introduction last year of the Fair Trading Act. The $1 000 compensation ceiling is also due for reassessment.

I am sure that the Attorney is determined to raise his rating from B to A. As he has put 'credit overcommitment' as his first priority for 1988, I would like to ask him some questions related to that. Is the Minister's first priority for 1988, as reported, to be directed to credit overcommitment? Reference is made to a working party that he has set up. What progress has it made? Who is on the working party; are there any community financial counselling movement or consumer movement representatives on it? If not, why not? What arrangements to obtain non-governmental input have been made? Finally, when will the debt repayment package passed by this Parliament in 1978 be proclaimed or replaced?

The Hon. C.J. SUMNER: Whether or not I am happy with a B rating, or whether I think it is fair, depends on whether I agree with the assessment procedures that were used. Nevertheless, as far as assessing the examiners' performance in this matter, I would have to give them a Z for accuracy. First, they say there is no small claims tribunal, apparently being unaware that the Commercial Tribunal is in place in South Australia and deals with consumer small claims. Furthermore, they say there is something attached to the local court. What they apparently fail to realise is that there is a small claims jurisdiction in the local court with specific small claims procedures. They also do not seem to be aware that we have passed in this Parliament a Bill to increase the jurisdiction of the small claims jurisdiction of the local court to $2 000. That will shortly be proclaimed.

As to the question whether South Australia follows or leads, the reality is that South Australia had done a considerable amount of work in the consumer area, as we know, during the 1970s. Obviously in the 1980s less had to be done compared with those States such as Victoria, where the Labor Government was only elected in 1982. I make absolutely no apology for attempting to get uniformity in this area, because one of the great disasters or, indeed, scandals, if you like, in Australia is the different regulations State by State that our business community and our consumers have to put up with. Frankly, I am not into States' rights egotism whereby I rush out to the press every time with some bright idea and say, 'South Australia is first.' The reality, and the position I have adopted, is one of careful reform, attempting to get agreement with as many States as possible, so we do not have this mad run around Australia with everyone beating their breasts and exposing their egos so that they can claim to be first in something. I prefer to see something which puts Australia first, and puts the regulation of business and consumer laws in this country on a uniform basis. That is something that I have worked very well towards achieving, and with some success.

Following the election of the Federal Labor Government in 1983, I was the Minister on behalf of South Australia who pressed for the establishment at the first SCOCAM meeting of a working party to consider uniformity of consumer laws. The result of that has been uniform provisions for the Trade Practices Act covering corporations (that is, the Federal legislation) and substantially uniform provisions in each of the other States—not all States but the four Labor States, Victoria, New South Wales, Western Australia and South Australia; and that has substantially occurred. Of course, while that working party was proceeding my good friend and colleague from Victoria decided that he had to make a name for himself so he announced that he

was going to have some fair trading laws introduced. That is fair enough; I do not mind. He gets an A and I get a B—but it is of no consequence. I am sure that I do not feel as though I am a failed student.

I am very proud of the record I have in this area. I have emphasised uniformity—I make no apology for that—and I will continue to do it. If that means that South Australia does not necessarily rush in first to do something, well that does not bother me either, as long as we get there and get there through sensible discussion and, hopefully, we get there in a way which means that there is some uniformity and consistency throughout this country in the area of business and consumer legislation.

As to the credit working party, that is proceeding. I can obtain an up-to-date report for the honourable member. It includes representatives from the private sector and from the credit industry. I think that Mr Forte is a representative of the finance industry at the Australian Finance Conference. On the other side, my recollection is that the Legal Services Commission and the Adelaide Central Mission have an involvement in it. If the honourable member wants—

The Hon. Diana Laidlaw interjecting:

The Hon. C.J. SUMNER: The Hon. Miss Laidlaw says that it is in *Hansard*. There are private sector people on it. A combination of Government and private sector representatives will look at all these issues. What happens with respect to the debts repayment legislation is a matter that will have to be considered in the future. That was a very expensive solution to a problem, and this working party will presumably make some comment on the future of that legislation.

UNLEY PROPERTY

The Hon. J.C. IRWIN: My question is directed to the Attorney-General as Leader of the Government in this Council and concerns the New Age Spiritualist Mission. Does the Attorney-General regard the placing of a small portable toilet on otherwise vacant land purchased by the New Age Spiritualist Mission as vacant land at Unley to be 'substantial development' sufficient to cause the Government to take the extraordinary step of revoking the proclamation under section 50 of the Planning Act?

The Hon. C.J. SUMNER: The Minister for Environment and Planning considers the factual issues relating to the Planning Act. Whether that factual situation as outlined by the honourable member is all there is to the matter obviously I am not prepared to say.

The Hon. L.H. Davis interjecting:

The Hon. C.J. SUMNER: That is right. The reality is, as I said before, that it is now clear, for whatever reason, that section 50 is inappropriate, and the Government has withdrawn it.

TELEVISION ADVERTISING

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Minister of Health a question about television advertising.

Leave granted.

The Hon. T.G. ROBERTS: A contribution was made yesterday in the Council on the Bill before us and there is an article in the *News* today which explains some of the anomalies that may be occurring with the advent of Skychannel television and some of the technologies that are involved in beaming national programs into State hotels. Are these anomalies correct? Can anything be done to correct the situation in relation to tobacco advertising in this State?

An honourable member: It is a Bill before the House.

The Hon. T.G. ROBERTS: It is a Bill before the House: I understand that. However, there is also a question inherent on the front page of today's *News* and I think that this can perhaps be answered. It concerns some of the problems that have been raised by the Opposition spokesman for health.

The Hon. M.B. CAMERON: I rise on a point of order. I am not absolutely certain that this question is in order. When the Bill is before the Council the Hon. Mr Roberts will have the opportunity both at the second reading and Committee stages of raising all these matters. It seems to me that it is inappropriate at this stage.

The Hon. J.R. CORNWALL: May I make a submission on this? The question concerned an article in today's *News*.

The PRESIDENT: Order! Standing Order 107 states that members may not ask questions relating to any Bill, motion, or other public matter. I refer to a reference from the House of Commons that questions should not seek to promote discussion on an Order of the Day or other matter on the Notice Paper, and particularly on a matter that has to be decided without debate. Of course, this does not prevent a question dealing with something that is in the newspaper, but it would have to be a question and answer that did not discuss an Order of the Day. Neither the question nor the answer can refer, in Question Time, to an Order of the Day on the Notice Paper.

The Hon. I. GILFILLAN: I rise on a point of order. Will you, Ms President, answer why Standing Order 107, to which you first referred, does not rule the question out of order?

The PRESIDENT: Order! Standing Order 107 provides that questions may be put to a Minister of the Crown relating to public affairs but then continues in relation to questions to non-ministers. Therefore, the rest is not relevant to the question that has just been asked because it was a question to a Minister. It certainly is a public affair, but there is a House of Commons ruling which this Council has always adopted. I apologise for the time it took to find the reference, because I thought that it was in the Standing Orders book, but it is not, and it provides that no question can promote discussion of an Order of the Day or other matter on the Notice Paper.

The Hon. M.B. CAMERON: The Hon. Mr Roberts, in asking his question, referred to an order of the day and to my second reading speech, and I ask you, Madam President, to rule the question out of order on that basis.

The PRESIDENT: As phrased in that way, it would be out of order.

The Hon. Carolyn Pickles: The question was clearly about television advertising.

The Hon. L.H. Davis: We talked about that in the second reading debate.

The PRESIDENT: Obviously, a question can be asked about television advertising: I am not in any way suggesting that it cannot. The fact that someone may have discussed television advertising in a second reading speech does not mean that it is a discussion on an order of the day. There is no order of the day dealing with television advertising, but it depends very much on the form of the question and the way it is asked as to whether it comes within the House of Commons ruling.

The Hon. J.R. CORNWALL: Madam President, the question basically is about television and Skychannel.

The PRESIDENT: If the question is taken as being a question about—

The Hon. M.B. Cameron: That's your decision.

The Hon. M.J. Elliott: He said 'loopholes in the Bill'!

The PRESIDENT: The 'loopholes in the Bill' part is clearly out of order.

Members interjecting:

The PRESIDENT: Order! But a question on television and Skychannel is not out of order, beause that is not a question about an order of the day on the Notice Paper. Any comment relating to a Bill before Parliament which is an order of the day is out of order, but a question on Skychannel and television advertising is not out of order. It comes completely within the guidelines of Question Time.

The Hon. M.J. ELLIOTT: Does that mean that half of the *Hansard* report of the question is to be ruled out to make it in order? He asked the question as a whole, as I saw it, and I cannot see how you can strike some of it out.

The PRESIDENT: How *Hansard* deals with matters that are out of order is for *Hansard* to determine.

Members interjecting:

The PRESIDENT: Order! If members use unparliamentary language which they are later requested to and do withdraw, it does not mean that the unparliamentary language does not appear in *Hansard* together with the withdrawal. In this case I would presume that the whole question would appear in *Hansard* but, as I have ruled part of the question out of order, the Minister cannot reply to that question.

Members interjecting:

The PRESIDENT: Order! That part of the question is out of order, and the reply cannot be to that part of the question that is out of order, but obviously the Minister can reply to a question on television advertising and Skychannel.

The Hon. T.G. ROBERTS: I would like to ask a question of the Minister of Health about Skychannel and television advertising.

Members interjecting:

The PRESIDENT: The Hon. Mr Roberts has asked a question to which no reply has yet been given. There has been much discussion as to the form of the question—

Members interjecting:

The PRESIDENT: Order! Following the ruling I have made, I suggest it will clarify the air considerably if we go back to square one and have a question that is in order.

The Hon. T.G. ROBERTS: I seek leave to ask a question of the Minister of Health.

The PRESIDENT: You do not need to seek leave to ask a question: you only need leave to make an explanation.

The Hon. T.G. ROBERTS: Does the technology associated with Skychannel present any difficulties to the States in promoting healthy lifestyles when national advertising standards compromise State programs for promoting healthy lifestyles?

The Hon. M. B. CAMERON: On a point of order, Ms President. I do not have the Tobacco Products Bill in front of me, but section 14 *(d)* (1) clearly refers to the promotion of healthy lifestyles. Therefore, I ask you to rule that question out of order because it is clearly relating to a matter that is in the Bill.

The PRESIDENT: I will not rule that question out of order. The matter on the Notice Paper that I am trying to find—

The Hon. M.B. CAMERON: On a point of order—

The PRESIDENT: No, I am giving my ruling on the point of order you have just raised: you can listen to it before you raise another one. The 'Tobacco Products Control Act Amendment Bill' is the title on the Notice Paper. The question did not in any way relate to the Tobacco Products Control Act, to tobacco, to control of tobacco or the matters which are contained in the item on the Notice Paper. To me, they refer clearly to an article that appeared in the press that had discussed Skychannel. The honourable Minister of Health.

The Hon. J.R. CORNWALL: Thank you, Ms President. There is not much time left after all that time wasting that the Opposition has involved itself in. Opposition members obviously want to deny the democratic right to ask as many questions as possible within that 60 minutes. Be that on their own heads. I am reminded of the thing that happened to me a few years ago. I brought back a length of cloth from Hong Kong, and the Hindley Street tailor to whom I took it said, 'There is just enough there to make you a two-piece suit.' I was not satisfied and so I took the cloth to Canberra because I happened to be going over on ministerial business. The tailor in Canberra said—

The Hon. R.I. Lucas: What has that got to do with it?

The Hon. J.R. CORNWALL: The parable will become clear to you in a minute, son. He said, 'We can make you a three-piece suit with an extra pair of trousers.'

Members interjecting:

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: I asked, 'How can you do that when the Adelaide tailor told me he could make a two-piece suit with the same length of cloth?' He said, 'In Adelaide you are a much bigger man than you are in Canberra!' Clearly, we have no discretion over broadcasting and television, because that is controlled nationally under the Federal Broadcasting and Television Act as is Skychannel. Any suggestion that the State can, should, or would be involved in trying to control what may be televised or otherwise, whether it is through a commercial channel on *Wide World of Sports* on channel 9 on Saturday afternoon, or on Skychannel in your local pub or at the racecourse, is quite ludicrous.

It is a silly beat-up, and it seems to me a great pity that before this article was run the journalist did not take the trouble to at least acquaint himself with the fact that we as a State have not control whatsoever, nor do we aspire to have any control whatsoever, over television. He has been conned by Martin Cameron's silly beat-up, which was perpetrated on this Council yesterday.

UNLEY PROPERTY

The Hon. K.T. GRIFFIN: In the light of the Attorney-General's statement that he did not know of Mr Mayes' participation in the auction for the property purchased by the New Age Spiritual Mission, how does he explain the assertion by Mr Mayes last night on the ABC *7.30 Report* that the Attorney did know of Mr Mayes' participation in that auction?

The Hon. C.J. SUMNER: I have not seen the *7.30 Report*, and I am not aware—

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: I will have the transcript, and I will have a word to you a bit later. Please feel free to give me the transcript, because I have not yet studied it. I am not aware that that is what Mr Mayes said on the *7.30 Report*, and I can only repeat that I was unaware until yesterday that Mr Mayes had bid for the property.

EQUAL OPPORTUNITY ACT AMENDMENT BILL

The Hon. DIANA LAIDLAW obtained leave and introduced a Bill for an Act to amend the Equal Opportunity Act 1984. Read a first time.

The Hon. DIANA LAIDLAW: I move:

That this Bill be now read a second time.

Equal opportunity legislation in this country was pioneered in South Australia in 1974 when Liberal backbencher, David Tonkin, introduced a Bill to render unlawful certain acts and behaviour deemed to constitute discrimination on the grounds of sex or marital status. Subsequently, the Racial Discrimination Act was passed in 1976 and the Handicapped Persons Equal Opportunity Act in 1981. In 1984 these Acts were amalgamated, and the operation of the legislation was expanded into new areas where discrimination was seen to be occurring in the community.

The Equal Opportunity Act 1984 provides that it is unlawful to discriminate against another person on the basis of sex, marital status, pregnancy, sexuality, physical impairment, or race. Remedies are provided for persons who claim they have suffered discrimination on any of these grounds. The Act also addresses the issues of sexual harassment and discrimination by clubs offering membership and services to both men and women on a different basis.

The Bill I introduce today seeks to extend the ambit of the Equal Opportunity Act to incorporate the ground of chronological age. It is the first Bill of its kind in this country, which is appropriate considering our proud history of equal opportunity initiatives, by Governments of all persuasions over the past 14 years. I should acknowledge, however, that the Wran Government in New South Wales in 1976 sought to incorporate in its anti-discrimination legislation the ground of age. The move was defeated largely because of intense opposition to the use of regulations to specify the circumstances in which age discrimination would be unlawful. The preference was for enabling legislation containing details of how the principle would be implemented. Incidentally, in South Australia to date no regulations have been proclaimed under the Equal Opportunity Act, and the Bill I move is compatible with this practice—it is enabling legislation.

Legislation to render unlawful discrimination on the basis of age may be novel in Australia, but it certainly is not overseas. In the United States, for instance, the Age Discrimination in Employment Act was passed by Congress in 1967—some 21 years ago. This Act makes it unlawful for an employer to discriminate against any worker aged 40 years and over with regard to the terms of employment. This prohibition applies also to employee benefits, such as retirement incentives. Similar legislation has operated in Canada for some years. Eleven years ago the US Congress also passed the Equal Credit Opportunity Act which prohibits any creditor from discriminating against older people who apply for credit cards, mortgages or loans. The United Nations has recommended that all member countries consider the introduction of age discrimination legislation.

Even more recently, in June 1987, the annual conference of the International Labour Organisation, comprising Government, employers, and employees from each member nation, including Australia, recommended that a ban on age discrimination be included in provisions banning discrimination based on sex, race, religion or national origin. This recommendation is to be presented to the ILO's annual meeting this year and, if adopted, it will be the first time an ILO convention has specifically prohibited age discrimination.

These advances at the international level are being reinforced in Australia by organisations representing the interests of the ageing. For instance, in August last year the New South Wales Council on the Ageing released a position paper on age discrimination which in part recommended that age be included as a ground for redress within the provisions of the New South Wales Anti-Discrimination Act 1977. It also recommended that, as a matter of priority, the Australian Council on the Ageing should press for similar initiatives by other States. I understand that this objective has been endorsed by ACOTA.

In South Australia, I am well aware that organisations representing the interests of the ageing are keen to see our Equal Opportunity Act amended to incorporate the ground of age. In October last year I sought the considered opinion of all such organisations to a proposition that I, on behalf of the Liberal Party, introduce legislation to address this vexed issue. Over the ensuing months I have received strong support and encouragement to pursue such a course, from DOME (Don't Overlook Mature Expertise); the Aged and Invalid Pensioners Association of South Australia Inc.; VOTE (Voice of the Elderly); Over 60s Radio Association Inc.; the Older Women's Advisory Committee; Women's Information Switchboard; the Retired Union Members Association of South Australia Inc.; and the Salisbury Task Force for the Ageing.

In addition, I and many of my colleagues have received scores of letters and telephone calls from persons disadvantaged by varying degrees in various fields of activity, all urging that legislative action be taken to protect the rights of older people. All these representations have been a most humbling experience to note, and they have confirmed my resolve to proceed with legislative reform in this area.

Honourable members will be aware that the Commissioner for Equal Opportunity, Ms Tiddy, in successive annual reports to this Parliament has noted a high level of complaints related to ageism. Indeed, in her last report for the year 1986-87, the Commissioner forecast an increase in complaints in this category due to anticipated changes in work ethics. Currently, however, the Commissioner is powerless to investigate and act on these complaints.

A perusal of annual reports by the Commissioner for the Ageing, Dr Graycar, also reveals that his office receives complaints from elderly people regarding instances of age discrimination. The Commissioner's statutory responsibilities, however, are confined to advice and advocacy. Like the Commissioner for Equal Opportunity, he does not have the authority to act to redress such complaints.

I am aware that concern within the ranks of the Government to the incidence of age discrimination in our community prompted the then Minister of Employment and Further Education (Hon. Lynn Arnold) in April last year to establish a three member task force to investigate evidence of age discrimination. The task force is chaired by the Commissioner for the Ageing and includes the Commissioner for Equal Opportunity and a representative of the Department of Employment. I understand that, following completion of its report, the Government proposes to determine whether age discrimination legislation is warranted.

The task force was given a timetable of 12 months in which to report. This period has nearly expired, yet I am informed that the task force has a long way to go before its report will be finalised. In the meantime, it appears the task force's findings have been pre-empted by the release last October of the Government's ageing strategy. The strategy proposes that the office of the Commissioner for the Ageing merely monitor claims of discrimination and identify practices which disadvantage older people. This offers little more than is the situation at present. No constructive, meaningful action is envisaged.

Not surprisingly, this limp response to a very real problem has been greeted as shallow tokenism by victims of discriminatory practices and by organisations representing the interests of our ageing population. They want action—not simply more rhetoric on this subject—to redress stereotypes, to counter assumptions that link age with negative characteristics and to overcome structural features in programs which discriminate against the aged. It seems to me that their cause is a just one, for the use of age alone as a measure of a person's capacity is an arbitrary, rather crude and certainly a prejudicial response.

In time, education to change community attitudes will help to overcome some of the disadvantages encountered by individuals today due to ageisms, whether it be in the area of health, housing, employment, finance, goods and services or entertainment and leisure. In the shorter term, however, I believe there is a need to complement such an initiative with legislation to reaffirm the rights of people to be judged on their merits, no matter their age, and not on the basis of a conception of an age group.

Legislation has an important role to play in setting standards, and there is no doubt that the lesson in equal opportunity over the past decade is that public opinion can be shifted for the better by the setting of legislative standards.

My goal in moving this Bill today to amend the Equal Opportunity Act is simply an attempt to put an end to stereotypes based on age and to ensure that people are judged on their merits and enjoy increased opportunities in the years ahead. These principles are the same as those which govern current equal opportunity legislation in this State. Indeed, the Bill is structured to reflect the provisions in the principal Act in relation to discrimination on the grounds of sex, race and physical impairment. Thus, the criteria for establishing discrimination on the ground of age—as provided for in clause 4, new section 85 *(a)*—is the same as that which applies to discrimination on the grounds of sex (section 29 (1) and (2) of the principal Act); discrimination on the ground of race (section 51 of the principal Act); and discrimination on the ground of physical impairment (section 66 of the principal Act).

Likewise, the references in the Bill to discrimination against applicants and employees, discrimination against agents and discrimination against contract workers, are essentially the same. In regard to discrimination within partnerships—clause 4 new section 85 *(e)*—the provisions are the same as those in the principal Act in respect of race and physical impairment.

The Bill, like the principal Act, also addresses discrimination in the provision of goods and services and in relation to accommodation. In all these areas, instances of both direct and indirect discrimination are experienced by older people in particular. For the sake of brevity, I will highlight only two examples of such practices in the area of financial credit. Each case has been brought to my attention in recent weeks. I refer, first, to the case of a gentleman aged 71 years who gained approval for a loan he had requested. The approval, however, was limited to three months only because of his age. I refer, secondly, to the case of a widow whose charge accounts were cancelled because they had been in her husband's name but who was refused permission to open new accounts because she did not have a credit history.

As an aside, there is no doubt that older women are particularly vulnerable to credit denial because of limited credit history, yet our aged population is predominantly female. Others, who have been stalwart credit customers all their lives, find that upon retirement they are denied credit because the system is weighted to income not assets. The fact they may have ample assets seems to account for nothing in terms of the provision of credit and, as I indicated earlier, older women are particularly vulnerable in this regard.

The main focus of the Bill, however, is employment, because employment usually determines a person's position in relation to the poverty line and their access to employment and other services, including credit. In recent years Governments and the community at large have placed heavy emphasis on initiatives to counter youth unemployment. This focus is important, and the Bill will not preclude such initiatives in the future. However, in the process the growing number of chronically unemployed adults has been overlooked, as has the fact that the mature aged unemployed face entirely different problems.

In Australia today we have a staggering 870 000 people who have retired from the workforce before the age of 45 years. This represents a big under-utilised resource which generally comprises disaffected individuals. These individuals tend to have been brought up with the traditional work ethic and to believe that, when they started work, they would pursue whatever they chose to do until they retired—at the standard retirement age, not 10 or 15 years earlier.

Emotionally and financially, few are equipped to cope with this form of early retirement, which essentially is disguised redundancy. Their problems, however, are compounded by the fact that today it is virtually impossible for people in the pre-age pension decade to find alternative employment. One has only to visit DOME to witness the problems of age discrimination in employment and to appreciate the frustrations and heart-break that usually grip a mature age unemployed person and his or her family as a consequence.

At this stage I want to quote from a number of interviews that I had with a range of men and women when I visited DOME in early February this year. First, I refer to the case of Chris, aged 52 years, who is a qualified chef. He usually applies for hotel/motel management, bar work and catering jobs. He said to me, 'Many times I have been told by an employer that I have been too old for the job. On two occasions the CES told me that there was no use my applying for jobs because I was too old'.

In the case of Irene, aged 42 years, a word processor, typist and clerk, I was advised that on two occasions she had been told on the telephone by employers that she was too old for particular jobs. Heather, aged 42, a hospital kitchen hand, was advised by the CES that they wished her the best of luck but did not hold out too much hope for finding work in this field because she was too old.

Peter, aged 53 years, is an industrial chemist. He told me that he had a relatively young voice over the telephone and consequently when he applied for jobs he was able to get quite a number of interviews. However, when he walked into a prospective employer's office he said that he could see by the looks on their faces that they expected someone much younger. He also told me that he was informed that they were looking for younger and fitter persons. The positions for which he applied were for technical officers and laboratory assistants. Peter, and others at DOME, question whether fitness and youth have any relevance to these jobs.

Colin, aged 58, has had a distinguished career in this State and overseas in public service type duties. He told me that the CES had informed him, 'Your age is a restriction. We do not say that you are too old, we say that age is a restriction.' When Colin in turn said, 'But that is the same thing,' it was pointed out to him that he was being argumentative. In turn, they say that most of their schemes like CYSS are oriented towards the young. He also informed me that he had been told that there were not any employers

looking for ex-public servants because there was nowhere that they could be employed.

Margaret, age 45 years, a receptionist and clerk, has been told on the telephone by employers that 'We are looking for someone in the lower age group.' Another employer with whom she had a job for two weeks sacked her because he wanted someone younger. Bill, aged 60, is an engineer, industrial chemist and technical manager. After eight months of being employed he was put off because the employer wanted someone younger.

Pat, aged 46 years, is a clerk. She had been told by her employer that she was too old. Marilyn, aged 47, is a clerk. She had been doing a NOW course with TAFE and had to find a week's work experience. She rang the *Advertiser* and was told that they were 'not geared to cope with mature aged people'.

George, aged 40 years, is a motor mechanic and service manager. When he inquired of the CES about the Public Service Board test for grade 1 clerical officers he mentioned his age and, as a result, was informed, 'Well, you can sit for it but, even if you get good marks, the preference would be for younger kids.' George felt that he was simply wasting his time.

Brian is a teacher. When he was applying for a job which was still on the CES board he was told that he was wasting his time because he was too old. He is 40. Gordon, aged 41, has been told over the telephone that at over 40 he is too old. Robert, aged 44 years, is a labourer. The CES has told him on many occasions that he will find it very hard to obtain work because of his age.

That is a selection of people with whom I have spoken at DOME and who were prepared to relate to me some of the very sad stories of their recent experience with employment.

That visit to DOME prompted me to scan the employment sections of the *Advertiser* on two consecutive Saturdays in February. On each ocasion, nearly a quarter of the advertisements contained a specific age requirement. In all instances the requirement excluded older workers, with three-quarters excluding people over 40 years.

In effect, these advertisements preclude mature age people from even applying for many jobs for which they may well be qualified—let alone offer a mature age person the hope, or the opportunity, of reaching an interview stage so that they may be judged on their merits. Their only alternative—if their spouse is not in the workforce—is to resort to a life on unemployment benefit.

The Bill, with very few exceptions, will render such advertisements unlawful. It will reinforce the merit principle as the basis for offering employment—a principle that is always insisted upon, and rightly so—whenever equal opportunity or affirmative action programs for women are canvassed. Incidentally, the companies which have embraced such programs for women have done so because they recognise that it is sound management practice to ensure that their personnel practices do not arbitrarily exclude applications for employment or promotion. They recognise that it is in the overall best interests of their enterprise to ensure that they employ the best person for a specific job.

Ms President, the Bill incorporates a range of exemptions. Section 85*l* allows for the operation of any law or Act to give effect to such a law that provides for or authorises discrimination on the ground of age. As in the principal Act, section 85f provides exemptions in relation to, first, employment within a private household; secondly, employment for which there is a genuine occupational requirement that a person be of a certain age or age group; and, thirdly, employment of a person if the person is not, or would not be, able to perform adequately and without endangering himself or herself or other persons, to work genuinely and reasonably required for the employment or position in question; or to respond adequately to situations of emergency that should reasonably be anticipated in connection with the employment or position in question.

Also in respect to employment, section 85f (4) provides that it will not be unlawful to:

1. set discriminatory rates of remuneration according to age;

2. impose a standard retirement age in respect of employment of a particular kind; and

3. pursue genuine schemes to promote the employment of persons of any particular age group that have been disadvantaged in that area or disadvantaged because of lack of experience in a particular field of employment.

In relation to the first two of this package of three exemptions, I admit that for some time I was sorely tempted to provide that both exemptions would cease to apply on the fifth anniversary of the commencement of this Bill. I have resisted this temptation. However, I remain of the view that discriminatory rates of remuneration payable according to age cannot be justified if we as a State and nation are ever to counter unemployment and its associated social ills, revitalise our economy and ensure our industries are equipped to compete internationally.

Success in each of these areas is vital, but ultimately such success will depend on our ability to break down labour market rigidities and build up our skilled work force. The key to whether or not we realise these objectives is the availability of training and retraining programs to all persons, no matter their age. The payment of remuneration on the basis of age is incompatible with these long term objectives. Indeed, I do bemoan the passing of the time when the wage system in this country endorsed relativities for one's level of skill. Surely, no matter a person's age, if they are undertaking training and retraining, their remuneration should reflect this fact, and when they have completed their training their remuneration should reflect their enhanced skills—their enhanced ability to do a job. Neither proposition has a great deal to do with a person's specific age. This concept is no different from our long-standing acceptance that capital value added by the way of the processing of raw materials—whether it be wool, wheat or iron ore—is reflected in the higher price we pay for the end product.

The general perception, however, is that due to a factor solely of age, mature age, and in particular older people, lack the skills, dynamism and judgment to make a worthwhile contribution in the workforce and elsewhere. Often younger people also are handicapped by a conception of their age group as irresponsible, lax, with little inclination to apply themselves to any task at hand. Both perceptions are false. Like so many stereotypes that abound in our society, they are founded on myth rather than reality—but in the meantime, many individuals suffer discrimination based on a negative conception of an age group. The Bill will seek to redress this negative practice.

For some time, however, these myths, combined with the intricacies of the Social Security Act and the provisions of workers compensation legislation and regulations, have encouraged the imposition of standard retiring ages. As I indicated earlier, the Bill does not render unlawful the imposition of a standard retiring age in respect to employment of a particular kind. This, however, is the second of the two areas in which I had been tempted to incorporate a provision that the exemption would cease to apply on the fifth anniversary of the commencement of the Act.

Again I have resisted the temptation, although I remain of the view that the practice of forcing people out of participation in the workforce solely on the basis of their chronological age—for instance, forcing women out at 60 or 63 years and men out at 63 or 65 years—is an odious practice. I share the view of the Commissioner for the Ageing, Dr Graycar, that not to provide people with a choice in this matter represents 'a dereliction of duty on the part of our society'.

I am not advocating that people continue in the workforce until 80 or 90 years of age, or that employers be compelled to keep workers on the payroll until this age, but rather that 60, 63 or 65—or even earlier in the case of most mature age unemployed—is an artificial arbitrary age for enforced retirement. Many people who are forced to retire against their wishes, and irrespective of their skills and capacity, justifiably resent the impression that we as a society have condoned for so long, that they are being exiled to the scrap heap; that nobody wants to know them or to believe they have anything more to contribute to society.

For some years our mortality rates at every age have been dropping. People retiring today at age 50 to 60 years can expect to live another 25 to 30 years. Women retiring at 65 on average can expect to live another 18 to 19 years, and men retiring at the same age can expect to live another 12 to 13 years. The realities of the ageing of our population pose a number of most important questions for the future. Recently the realities prompted the Federal Departments of Finance and Social Security to prepare an options paper which in part canvassed an overhaul of retirement and pension age limits to allow people to stay at work until they were 70 years of age. Such a move, if implemented, would radically reduce Australia's current outlays on age pensions. By the end of this financial year, the outlay is anticipated to amount to $7 billion or 31 per cent of the Department of Social Security budget—and to climb sharply in the near future as the post war baby boom reaches the current standard retirement age.

The ageing of our population also will lead to a smaller proportion of younger people entering the work force in the years ahead. Therefore, a lesser number of younger people will be paying taxes and doing the jobs so vital if we are to have a robust economy. Unless we embark as a nation on a massive immigration program or our birthrate rises dramatically, the realities of our ageing population will determine that there is a need to retain more older and experienced workers in the workforce in the years ahead, compared to the practice at present.

Certainly this is the considered view of the Commissioner for the Future, Ms Rhonda Galbally. In an address on 5 February this year to the Victorian Older Person's Action Centre, as reported in the *Advertiser* on 6 February, she stated:

> Retirement at 65 for men and 60 for women was leading to an under use of Australia's productive capacity. That is unsustainable in the long term.
>
> She said Australia could not afford to ignore the talents and expertise of older people when those aged 60 or over could make up around 20 per cent of Australia's population by the year 2021. Australia's future prosperity depends on our ability to develop more knowledge-based industries to reduce our dependence on the export prices of raw materials. This transformation of Australia's economy will be retarded without the contribution of older people. She said the current trend for more people to retire early needed to be reversed. Ms Galbally said the past 20 years had seen a dramatic drop in workforce participation of people aged 55 and over. In 1984, 23.7 per cent of men aged 65 and over were working. In 1987 the percentage was 8.8. A similar decline had occurred for women.
>
> This is a waste of skills and expertise that is related to myths about the ability of the aged to continue to work productively. Older people are seen as unsuitable for work because of physical debilitation but it is mental capacity and experience that really will count in the knowledge based economy of the future.

I concur wholeheartedly with Ms Galbally's statements, for in South Australia not only do we have a sluggish economy we also have the distinction of a notably higher proportion of older people than every other State, in every age cohort and on every projection series through to the year 2021.

I have been forewarned that this Bill will attract a hostile response from employers. My own inquiries lead me to believe that where such a response may arise it will be limited in its extent and can be tempered when the motivation for and the substance of the Bill is appreciated.

To date, I have not undertaken detailed consultations with organisations representing the interests of employers and employees, but my confidence in the ultimate acceptability of this measure arises in part from a detailed survey undertaken by the New South Wales Anti-Discrimination Board in 1979 with the manager or personnel manager of 100 companies in the Sydney metropolitan area, Newcastle, Wollongong/Port Kembla, and in some country towns. Employers were selected from each of the major ABS industry classifications in approximately the same proportion as these industries were represented in the New South Wales work force. All were medium to large employers. Employers with less than six employees were excluded from the sample because such employers are not covered by any of the provisions of the New South Wales Anti-Discrimination Act.

One question employers were asked was, 'What problems they saw, if any, if the Anti-Discrimination Act was extended to make discrimination on the ground of age unlawful?' I seek leave to incorporate in *Hansard* a table summarising these responses.

Leave granted.

Age as a Ground of Unlawful Discrimination

Response	One answer (86 companies)	More than one answer (14 companies)	Total no. of times mentioned
No problems	46	2*(a)*	48
Problems arising because of factors which are closely related to age:			
physical and/or mental capacity	9	8	17
training and experience	6	6	12
age composition of co. workforce and clients	2	4	6
promotion	3	1	4
superannuation	1	—	1
employment of people over 60 or 65	2	1	3
other factors	2	6	8
Other problems	12	10	22
Don't know, can't answer	3	—	3

(a) These respondents saw no problems for their company but suggested problems which might arise for others.

The Hon. DIANA LAIDLAW: When members peruse the table they will note that nearly half of the respondents—46 of the 100—said that they could see no problems for their company if age discrimination was made unlawful, and many said that this was probably the case for employers generally. Most did not qualify their answers. A few supported the move because they thought the calibre of the work force would be improved if it included more older workers or because they thought it was wrong to regard older workers as being on the 'scrap heap'. Nine respondents mentioned physical and/or mental capacity as the only problem they envisaged and another eight saw it as one of a number of problems which might arise if age discrimination was made unlawful.

In respect of the Bill I point out that its provisions are restricted to chronological age. Accordingly, no matter their age, if a person cannot do a job for which they are employed because of limited physical or mental capacity, the Bill does

not require an employer to keep that person on the payroll. Physical and mental qualities should not be confused with the factor of age. Likewise, there is nothing in this Bill which prevents an employer applying for or promoting a person on the basis of experience and maturity. Again, such qualities are not specifically a factor of age.

The last point I wish to make is that, unlike the principal Act, it is expressed in gender neutral terms. In introducing and speaking to this Bill today it is not my intention to press for further contributions to the debate in this session. Rather I wish to follow the lead of the Government and in particular the Attorney-General who, in recent times in relation to Bills seeking to implement social reforms and to foster attitudinal change (for example the package of child protection measures), has adopted the practice of introducing the Bills prior to circulating them widely in an endeavour to seek feedback.

Therefore, I introduce the Bill today with the intention of circulating it widely, including to organisations representing the interests of employers, employees, the unemployed and the ageing. I intend also to seek appointments with as many of these orgainsations as is possible for I am keen to receive their considered comments. In the budget session, I propose that the Bill will be reintroduced.

In the meantime, I firmly believe that in this State, we must seek to affirm in legislation the principle that people have the right to be judged on their merits, no matter their age. I commend the Bill to members. I seek leave to have the explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 provides for the commencement of the Act.

Clause 3 provides for the ground of age to be incorporated into the long title of the principal Act.

Clause 4 inserts a new Part VA to provide for the prohibition of discrimination on the ground of age, the provisions are as follows:

Section 85a sets out the criteria for establishing discrimination on the basis of age.

Section 85b makes it unlawful for an employer to discriminate against applicants and employees on the basis of age.

Section 85c is a similar provision dealing with the situation in which work is done by commission agents.

Section 85d is a similar provision dealing with the case where work is done for a person under an arrangement between that person and an employment agency which employs the worker.

Section 85e prohibits discrimination by a firm against existing or prospective members of the firm.

Section 85f provides that provisions 85b to 85e do not apply in the case of employment in a private household; to employment for which there was a genuine occupational qualification that the employee be of a certain age, or age group; or to employment where a person would not be able to perform the work without endangering himself/herself or to respond adequately to situations of emergency.

Subsection (4) provides that Division II relating to discrimination in employment does not render unlawful discriminatory rates of remuneration payable according to age; the imposition of a standard retiring age; an act done for the purpose of carrying out a genuine scheme to promote the employment of persons of any particular age group disadvantaged in that area; or any other prescribed scheme.

Sections 85g and 85h comprise a Division dealing with discrimination in relation to the provision of services and accommodation.

Sections 85i to 85l comprise a Division dealing with exemptions from this Part.

Section 85i exempts charitable trusts from the operation of the foregoing provisions.

Section 85j permits acts done for the purpose of carrying out a scheme for the benefit of persons of a particular age group.

Section 85k permits discrimination in the terms of annuities, life insurance and other forms of insurance; in the terms of membership of a superannuation scheme or provident fund; and in the manner in which such schemes or funds are administered.

Section 85l allows for the operation of any other law or act to give effect to such a law, that provides for or authorises discrimination on the basis of age.

Clause 5 provides for the ground of age in procedings under the Industrial Conciliation and Arbitration Act.

The Hon. I. GILFILLAN secured the adjournment of the debate.

CRIMINAL LAW CONSOLIDATION ACT AMENDMENT BILL (No. 5)

Adjourned debate on second reading.

(Continued from 2 March. Page 3226.)

The Hon. C.M. HILL: I support the second reading and commend the Hon. Dr Ritson for introducing the measure and for his arguments and submissions during his moderate second reading explanation. I commend the other speakers who have contributed to this debate so far. The previous speakers have explained the details of the Bill, and I do not intend to repeat that information. However for some years now I have felt that the South Australian law on abortion needed attention by the Legislature. The present legislation was passed in 1969 and was introduced by the then Attorney-General, the Hon. Robin Millhouse. I supported the Bill then, and am the only remaining former ministerial colleague of its author in this Parliament.

A few years ago I recall reading some comments of Justice Millhouse (as he now is) expressing misgivings that the surprisingly high abortion figures were not foreseen when the Bill was introduced. The figures since 1969 have increased to a far greater degree than I expected when the Bill was passed. I seek leave to incorporate in *Hansard* a table of a statistical nature which states the number of terminations made on an annual basis from 1970 to 1986 which is taken from the seventeenth annual report of the committee appointed to examine and report on abortions notified in South Australia for the year 1986.

Leave granted.

TABLE 14

Annual Number of Terminations (Corrected Data):

Year	No.
1970	1 440
1971	2 409
1972	2 692
1973	2 847
1974	2 867
1975	3 000
1976	3 289
1977	3 494

1978	3 895
1979	3 880
1980	4 081
1981	4 096
1982	4 061
1983	4 036
1984	4 091
1985	4 079
1986	4 323

The Hon. C.M. HILL: These figures indicate that the number of terminations have increased from 1 440 in 1970 to 4 323 in 1986. I understand that that 1986 figure is the most recent official figure that can be obtained. In my view the 4 323 terminations in 1986 is too high. Indeed, we have reached a stage in South Australia where the principles of the present law are not being carried out and where we have *de facto* abortion on demand.

This Bill endeavours to ensure that the original principles are put into effect, as well as accepting modern medical knowledge and experience in reducing the period from 28 weeks to 24 weeks in which abortions can be carried out. Apart from my own view on this matter, I believe that there is a strong public feeling that the abortion law should be changed to prevent the situation in which, over the past 18 years, there has been a gradual drift not only towards but now into an abortion on demand society.

This public feeling is not limited to those with strong anti-abortion beliefs based on religious grounds, but is spread right across the community. I thank all those people who have written to me on this subject, and I have given full consideration to those representations. Indeed, there have been many letters. I have been particularly grateful for submissions from the Family Planning Association of South Australia and from the Adelaide Women's Community Health Centre.

I hold both those institutions in high regard, but I believe that their fears that the Bill if passed would lead to an increasing number of unsafe and often self-induced abortions are not well founded. The issue of overcoming back-yard abortions was a dominant factor in my decision to support the 1969 Bill, but I cannot really see that that aspect is an issue on this occasion. The measures the Bill addresses are not enough to satisfy the wide unrest to which I have referred.

Authorities need more resources to step up educational and support services and counselling generally, especially prior to a proposed termination of pregnancy. However, the Bill is one step forward, in my view—

The Hon. C.J. Sumner interjecting:

The Hon. C.M. HILL: To whom is that interjection directed?

The Hon. C.J. Sumner: It was not an interjection but a private conversation.

The Hon. C.M. HILL: —to satisfy the public feeling that the present law needs tightening up and, therefore, I support the second reading of the Bill.

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

CREMATION ACT AMENDMENT BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Cremation Act 1981. Read a first time.

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

That this Bill be now read a second time.

The amendment was prepared because in February 1987 a new crematorium was established at Mount Gambier. Before a cremation can take place, a permit must be obtained. The District-Registrar of Births, Deaths, and Marriages at Mount Gambier is able to issue cremation permits for deaths that occur in his distict. However, if a death occurs outside his district then, under the Cremation Act, a permit must be obtained from the Principal Registrar in Adelaide. This is a lengthy process and has discouraged Victorian funeral directors and next-of-kin from using the Mount Gambier facility.

The amendment will enable the District-Registrar at Mount Gambier to issue cremation permits for deaths that occur outside his district, and there will be no need then to obtain a permit from the Principal Registrar in Adelaide.

A select committee of the Legislative Council prepared a report on the disposal of human remains in South Australia. One of the recommendations of the committee was the repeal of the Cremation Act. A Bill is presently being drafted, and the schedule states that the Cremation Act is to be repealed. Therefore, this amendment will have only a temporary effect—until the disposal of human remains legislation is enacted.

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

Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 repeals section 1 of the Act, and substitutes two sections: one provides the short title of the Act, and the other deals with the interpretation of certain words used within the Act. In particular, the definition of 'registar' is amended to include a district registrar of births, deaths, and marriages as a person who may issue a cremation permit.

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

EVIDENCE ACT AMENDMENT BILL (No. 2) (1988)

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Evidence Act 1929, and to exclude the operation of certain Acts of the Imperial Parliament. Read a first time.

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

That this Bill be now read a second time.

Part VIB of the Evidence Act 1929 was enacted in 1974. The legislation was part of a uniform scheme which was designed primarily to provide for the taking of evidence by South Australian courts for use in courts in other Australian States and for courts in other States to take evidence for use in South Australian courts. The uniform scheme never got under way because of the failure of the other States either to enact legislation or, if enacted, to proclaim it.

Following the enactment of the Commonwealth Evidence Act Amendment Act 1985 and the recognition of the desirability of Australia ratifying the Convention on the Taking of Evidence Abroad in Civil and Commercial Matters, the Standing Committee of Attorneys-General agreed to design a uniform scheme to provide for the taking of evidence by Australian courts for use in proceedings both interstate and overseas and for evidence to be taken interstate and overseas for use in Australian courts. These amendments to Part VIB, while not following the drafting of the uniform draft Bill approved by the Standing Committee of Attorneys-

General, have the same effect as the provisions of the uniform scheme.

The amendments depart in two aspects from the existing scheme in Part VIB. The existing scheme provides for an authorised South Australian court to request a 'corresponding court' to take evidence on its behalf. A 'corresponding court' is a court declared by instrument in writing under the hand of the Attorney-General, and published in the *Gazette*, to be a court in a prescribed country or State that corresponds to the authorised South Australian court.

The amendments do away with the concept of 'corresponding court'. While it is easy to identify and declare 'corresponding courts' within Australia, this is not so as far as overseas courts are concerned, and is not necessary, anyway. The amendments are flexible and provide that a court can obtain evidence outside the State either by sitting outside the State, issuing a commission to an appropriate person to take the evidence, or request a foreign court to take the evidence.

Provision is made for the taking of evidence outside the State in both civil and criminal proceedings. It is becoming increasingly common for criminal activity to have an international connection, and the successful prosecution of such crime can require evidence relating to foreign bank accounts, and such like. Evidence obtained outside the State will not be automatically accepted in the proceedings in the State. New section 59e (2) *(a)* gives the court a discretion as to whether or not the evidence may be put in. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 repeals the heading to Part VIB of the principal Act and substitutes a new heading. Clause 3 repeals section 59d of the principal Act and substitutes a new section. This is an interpretation provision for Part VIB of the Act. The amendment removes the requirement for the Attorney-General to declare a country or State to be a prescribed country or State, or to declare a court to be a corresponding court. The new section omits the old subsection (3) which provided that a deposition or document obtained outside this State could not be tendered in a jury trial unless all parties agreed.

Clause 4 repeals section 59e of the principal Act and substitutes a new provision. Subsection (1) enables a South Australian court to obtain evidence outside the State in three different ways. First, it can sit outside the State to take evidence. Secondly, it may commision an officer of the court or other person to take the evidence. Thirdly, it can request a foreign court to take the evidence. Subsection (2) provides for evidence so obtained to be admitted in the proceedings before the South Australian court as if it had been taken within the State. Subsection (3) is an evidentiary aid.

Clause 5 makes a consequential amendment to section 59f of the principal Act in accordance with the change of terminology in the new interpretation provision. Clause 6 makes similar consequential amendments to section 59h. Clause 7 excludes the operation of certain statutes of the Imperial Parliament.

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

SUMMARY OFFENCES ACT AMENDMENT BILL (1988)

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Summary Offences Act 1953. Read a first time.

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

That this Bill be now read a second time.

The Road Traffic Act 1961 contains a number of offences dealing with maximum masses of vehicles. Section 64 of the Summary Offences Act 1953 already allows for expiation of prescribed offences under the Road Traffic Act 1961 by virtue of the Traffic Infringement Notice Scheme. Currently, vehicle overload offences are not prescribed.

The provisions of the Road Traffic Act are enforceable not only by a member of the Police Force but also by an inspector appointed under the Road Traffic Act 1961. However section 64 of the Summary Offences Act 1953 is only administered by members of the Police Force. Therefore, to widen the scope of its administration, inspectors are to be included by way of amendment. Consequential amendments are also to be made, for example, whereby the Commissioner of Highways, as well as the Commissioner of Police, may exercise various functions under the Act in respect of expiation of relevant offences. Once this Bill is passed, the regulations under the Summary Offences Act 1953 will need to be amended to pick up the offences under section 147 of the Road Traffic Act 1961. As well, the expiation notice will need to be amended to reflect the new arrangements.

In the 1986-87 financial year 2 622 vehicle overload cases were prosecuted before the courts. The average fine levied on successful prosecutions was about $320. It is proposed that only overloads up to 2 tonnes will be expiable. In 1986-87 the number of prosecutions for this category of offences was 1 200 (that is, nearly 50 per cent of all overload prosecutions). For overloads in excess of 2 tonnes, prosecutions will continue to be the proper course of action, as is the present situation.

The most direct cost savings of this measure (for the Highways Department) will flow from the following areas:

- issue and service of summons;
- court fees and costs;
- cost of time, involvement and travel of departmental officers in investigating offences and getting matters up for the purposes of court hearings.

I commend this Bill to honourable members. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 provides for the commencement of the measure. Clause 3 amends section 64 of the principal Act. New definitions of 'appropriate authority' and 'inspector' are to be inserted. New subsections (2) and (4a) will allow a traffic infringement notice to be issued by an inspector under the Road Traffic Act 1961 where the alleged offence is a prescribed offence against that Act. A traffic infringement notice will be able to be withdrawn by the Commissioner of Police where a member of the Police Force issued the notice and by the Commissioner of Highways when an inspector issued the notice.

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

OPTICIANS ACT AMENDMENT BILL

(Second reading debate adjourned on 22 March. Page 3329.)

Bill read a second time.

TOBACCO PRODUCTS CONTROL ACT AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 22 March. Page 3331.)

The Hon. PETER DUNN: The Opposition does not support this Bill, because it believes that it is hypocritical and stupid and mocks this Parliament as it just will not work. It is a hoary old annual which pops up with monotonous regularity and gets chucked out because it contains some basic flaws. It will not work because only a very small part of the industry can be controlled. The Premier admitted that on the front page of today's *News*. He said that advertising cannot be banned in hotels where Skychannel is used or at race meetings. For those reasons the Bill will not work.

Let us look at the Bill carefully. I do not have an interest in it because I do not smoke. I do not want others to smoke, but the fact is that people will smoke. I have children of my own and I have encouraged them not to smoke, but that has not always worked. That is part of the psychology of the problem. The only way it will be stopped is to ban the whole of the product. If Parliament was to ban the product, like the prohibition days of the 1930s it would go underground and would not be stopped. I think that is the only way that what the Minister said in his second reading speech can be done. He said that 60 000 of today's young people will die prematurely of a preventable disease. I notice the President looking at me sideways; I hope that she does not consider that she is included in these comments. I do not know from where the Minister got those figures, but I guess that they are correct. That is a very sad indictment if it is so.

I do not believe that stopping advertising will make one iota of difference to those 60 000 people who will be affected by smoking cigarettes. The Minister went on to say that children of 15 and younger are using cigarettes. He says that the industry, by advertising, is recruiting Australian schoolchildren to smoke cigarettes. I do not believe that that has anything to do with it. I do not believe that advertising will necessarily introduce children to smoking, it is purely peer group pressure. They see their friends smoking, they notice the nice smoke aroma, and those who are smoking appear to be very mature and grown up, and suddenly we have the younger ones saying, 'I would like to be like that; I would like to be grown up; I would like to experience that new feeling'.

Let me say that from my own early days when I started to smoke I coughed and spluttered and spat with the first few cigarettes, and that is how my father discovered that I had been smoking in the back shed. He discovered that I had been spitting on the floor. He said, 'Son, have you been smoking?' and I had to admit that I was. Children will smoke because they see others doing it. Having become smokers, it is an addictive habit and they find it hard to give it up.

Much of the problem relates to insecurity. If you have watched young people smoking at a hotel, in public, or at a sporting event, you will notice that they have a problem with their hands. They are insecure and do not know where to put their hands or whether to put them in their pockets. The easiest thing is to get out a pack of cigarettes to fully occupy the hands. From personal experience I can say that that is true. The President could not put her hands in her handbag without looking silly, so she pulls out a cigarette and furthermore probably enjoys it; I do not deny that. That is the addictive habit of cigarette smoking.

I notice Dr Ritson leaving the Chamber, probably to have a cigarette. I go back to the point that it is a problem to do with the hands, I can recall distinctly when I used to sit in the open when tractors where not so sophisticated, and one had to sit on the tractor for many hours in the cold, that there was nothing better than to light up a cigarette to take your mind off the cold, the dust, or whatever was happening around you. I must admit that smoking did that for me, but that was one of the things that made me give it up. It was all right when we had tobacco because the packets were soft in your pocket, but when hard packets that prevented cigarettes from being squashed were introduced they dug into your pockets.

I gave cigarettes away because I could not be bothered with having squashed cigarettes the whole time. Furthermore, there was a danger living in a rural community of setting alight to the fields around me. I did not want on my conscience, having set alight to my own property, of setting alight to my neighbour's property in an endeavour to put the fire out. So, I gave smoking away for those reasons. I believe that young people start to smoke not because of advertising but because of the other factors, such as peer pressure, to which I referred.

I do not believe that the evidence suggests that advertising will increase the amount of smoking. I have with me some research done by Lester Johnson of the Macquarie University in New South Wales on advertising of cigarettes. He says:

> At present there is virtually no empirical evidence on the effect of total advertising expenditure on the aggregate demand for cigarettes in Australia. Neverthless, advertising has been banned on television and radio since 1976 and there is some suggestion of a total ban in the future. In this paper we present results of estimation of a demand model for cigarettes in Australia using annual data from 1961-62 to 1982-83. We found no statistical evidence that aggregate advertising has any effect on aggregate cigarette demand, a result which is consistent with the view that advertising in the cigarette industry is used as a brand switching device.

I suggest that that remark is very close to the point and fairly accurate, that advertising has the effect of making people smoke one brand or another. I guess that cigarette smokers are a lot like beer drinkers: they get on to one brand and stick with it, and when having to change to another brand they complain about it. That is what advertising is about, to try to encourage those people to change from one brand to another. In his second reading explanation the Minister said:

> In brief, the Bill will:
> - prohibit tobacco advertising, including cinema advertising, billboards and other external signs (with provision for phasing-in and exclusion of the print media);
> - prohibit tobacco sponsorship of sporting and cultural events where there is public promotion of tobacco products or brand names (with provision for phasing-in and exemption of the Grand Prix and other national or international events);
> - establish an independent South Australian Sport Promotion, Cultural and Health Advancement Trust to provide replacement funding for sports and cultural groups and to promote good health;
> - increase the tobacco licence fee from 25 per cent to 28 per cent to create a fund to be administered by the trust.

That is where I have a geat deal of opposition to the Minister's Bill. The Hon. Mr Cameron in his second reading reply yesterday pointed out the stupidity of this line, in that one can have a test cricket match on the Adelaide Oval with tobacco advertising around the perimeter, but the next

day if it is the end of the cricket season and there is to be a football match, all that advertising has to come down. Then if there is a bicentennial cricket match on the following day the advertising can be replaced. Mr Cameron mentioned all those things yesterday.

He also mentioned the Grand Prix. How absolutely ridiculous! Everything this Government has done is to focus our attention on the Grand Prix, but it would not run without tobacco sponsorship. Have a look at the number of cars in the Grand Prix that are sponsored by cigarette companies: take those out and we would not have the leading companies or a Grand Prix as such. We have banned television advertising, but the figures indicate that there has been very little drop in cigarette smoking.

I have here some figures which indicate that there has not been a drop since television advertising was phased in. However, there has been a drop in later years, and I think that that is a result of other educational processes. I hope that the Government will spend more time and money on educational processes. These figures come from a Morgan Research Centre public opinion survey. Therefore, I suppose that some elasticity is applicable to them. Even so, they must be relatively accurate. It must be remembered that the banning of television advertising was phased in from 1973 to 1976. If we look at the consumption per adult population, that is, 18 years and over, we see that in 1973-74 the average consumption per adult per week per packet of 25 cigarettes—and remember this is per week—was 2.56. If we go back to, say, 1968, we see that it was 2.41. So, there was a gradual rise from 2.41 in 1968 to 2.56 in 1973.

In 1976 television advertising was totally banned. By that time the figure had risen to 2.64. There was a slight change—and I guess that that will always happen—as it dropped to 2.51. However, the following year, 1978, it was back up to 2.58 packets per week. The figure then fell away a little. By 1980-81 it was 2.55 packets per week. There has not been any change in the advertising from 1985 until now, but in 1987 the figure had dropped down to 2.2 packets a week, despite the fact that there had been no change in advertising.

Therefore, we see that there has been a change towards less consumption of cigarettes. However, that has been despite the fact that there has been no change in television advertising. So, all that I can conclude from that is that if you ban television advertising the consumption increases. But, if you have an education process—and I have no doubt that quite a lot of education has been going on, either in the public media, by health authorities or by doctors in general—people will become more aware of the dangers of smoking. As a result, there has been a gradual drop in cigarette smoking.

However, with this Bill we are saying that we will ban some of the advertising but we will let the rest go. To use an analogy, it is a bit like having a grasshopper plague. You have the grasshoppers heading for you, and in this State they generally come in from the north; you know some days in advance that they are coming, so you go out and spray your paddock. You might even spray your farm but, if you do not spray the areas around you or the farms to the north of you, the grasshoppers will simply come in and clean you out, anyway.

That is a lot like this Bill. It is saying that in South Australia those things cannot be advertised but that that advertising can come in from interstate, whether it be by Skychannel or in magazines such as the *Women's Weekly, Penthouse* or any other magazine that contains a lot of tobacco advertising. However, the Bill does not even attack that. It still lets that go on in the normal papers. The excuse used by the Minister is that it will be disruptive to the industry. Well, good heavens above, it will be disruptive to the billboard industry, too; it will really knock them about.

Perhaps that puts my point of view as to why I do not think this Bill will be successful and why I do not think that it will have the desired effect, despite what the Minister said in his second reading speech. If it does not have that effect, what in the world is it doing in this Parliament?

It is ridiculous to introduce legislation that becomes the derision of the general public, and I guess that that is what will happen to this Bill—it will become the derision. This Bill has the effect of adding another 5c to a packet of cigarettes, and will raise that $5.2 million that will be distributed through the trust. However, because it has cut down on the advertising and raised that extra money, the tobacco industry will concentrate its efforts in some other field, and, believe you me, it will not lose out on this. It is my candid opinion that it will—

The Hon. C.J. Sumner: There will be $3 million—

The Hon. PETER DUNN: According to this Bill, it is $5.2 million.

The Hon. C.J. Sumner: There will be money available for better health advertising.

The Hon. PETER DUNN: That's fine. I agree totally with that.

The Hon. C.J. Sumner interjecting:

The Hon. PETER DUNN: But the Government is taking some $41 million out now. Why can't some of that be put into health advertising? You cannot get out of it by saying that you will raise a bit extra to put into it. If that is the case, the $5.2 million that we are told is going into sports promotion, etc, appears not to be going into sports promotion.

The Hon. C.J. Sumner interjecting:

The Hon. PETER DUNN: Well, if the Minister can prove to me later that the money raised with the 5c per packet will be used for better advertising to promote better health by stopping people smoking, whether they be young, old or middle aged (and the figures definitely indicate that as people get older, they do stop smoking), that is fine. However, he should not stand up in this Chamber and say that $5.2 million will be spent on promoting sport and putting back into the industry what you are taking away from it.

The Hon. C.J. Sumner: That is what will happen.

The Hon. PETER DUNN: On the one hand you are saying that, and on the other you are saying that it will—

The Hon. C.J. Sumner interjecting:

The Hon. PETER DUNN: In my opinion, that is just pork barrelling. We can go into that a little later. The Hon. Mr Cameron pointed out yesterday that the trust will be set up. Administration costs will be involved. The Minister of the day has the direct responsibility for where that goes, because he has to authorise the expenditure of that money, and he will very quickly determine that the money will go into electorates which are held by a slight margin and which the Government could lose at the next election. I assure members that the Minister is human and that he will do just that. It will probably happen, no matter what Party is in power at the time. However, it need not happen if this money is not administered by the Minister or by the trust that he sets up.

The industry works very well. It puts great sums of money into sport and, as one who lives in the country, even though we do not see this money being directly spent on country promotions or country sport, I can say that indirectly a lot of it filters back to the bush. Immediately that money is cut out, they will be the first people to suffer. They will be the first to have their money cut back, and the football and cricket clubs will not go to the country and promote sport

and foster carnivals, etc. They will be the ones to suffer. Goodness knows, at the moment we have a lot of problems in the country just keeping sporting clubs and their members going. There are still people in the country who have very strong feelings for promoting sport because it is an important part of the country lifestyle.

From a health point of view, it is good to play sport, and I applaud that all the way. In fact, this weekend I will be going to a beautiful club at a placed called Buckleboo. I guess very few members have heard of it, but there is there a lovely sports club that has been built totally with their own money; not one cent of Government money has been used, and, apart from a sign, I do not think any tobacco money has gone into it, either. The club cost about $250 000 to build, and that money was raised through their own efforts in cropping, barbeques, fund raising activities, carting stumps etc—lots of hard work. But they did it, and surely those people ought to be entitled to some of the tobacco money that will be raised this way.

I suggest that not one person from outside the metropolitan area will be on that trust, so there will be very little input in relation to those people receiving any of these funds. Some rather large country carnivals are held throughout the State—at Port Lincoln, Broken Hill, Port Augusta and Whyalla—and I suggest that they will receive very little of this money. In his second reading explanation, the Minister said that that does not stop the tobacoo industry fostering sport and promoting sporting competitions, whether they be here or wherever. In the same breath, he said that they would not be allowed to advertise or promote their product. Does the Minister really think that the tobacco companies will say, 'Here you are, Whyalla; here is $100 000 to put on a football carnival, but you will not be able to mention our name or say anything.'? That is just ridiculous. I do not think that it was very clever for the Minister to mention it in his second reading explanation.

I have said before that the setting up of this trust will lead to what I believe will be improper pressures on the Government. People will be wanting this money, and the Government will be under constant pressure to deliver. How the Government will decide where it will spend its money will be a very vexed question. The money that will be saved in the health industry, if it were to be effective, will not be seen. It will not be able to be measured. In fact, the Bill will not work, either, in any circumstances. It is ridiculous that we can have advertising in broadsheet but not on television or on a billboard. Also, it cannot be promoted at other than sporting events that have been prescribed by the select few of the Government. I believe that the Bill will be counterproductive and that the industry itself may find ways and means of spending the money that it will not spend on that sort of advertising, in a way that will be far more effective than is the case today. For those reasons, I object to the Bill.

The Hon. J.C. BURDETT: I do not support this Bill. It is an incredibly hypocritical Bill, as has been pointed out by the Hon. Martin Cameron and the Hon. Peter Dunn. The exemption of an advertisement authorised by the Australian Formula Grand Prix Board as part of the conduct of a motor racing event within the meaning of the Australian Formula Grand Prix Act under proposed new section 11a (3) *(e)*, and the proposed exemption under new section 14a (1) of an ever-increasing number of other major sporting events renders the Bill farcical and discriminatory. It discriminates in favour of just some large and major sporting events, and discriminates against the small, fun sorts of sporting events which are the very ones that ought to be promoted. Apparently it is all right to promote tobacco products if there is enough money in it, but not otherwise. Then there is the provision in proposed section 11a (3) *(a)* exempting an advertisement in a newspaper or magazine. Why discriminate between different forms of advertising?

Advertisements in newspapers are probably likely to have more effect than many other forms of advertising. Could the Government be trying to protect its friends? The set up of the proposed trust is ridiculous. It has a big potential for corruption and pork-barrelling, as previous speakers have pointed out, and it will require a quite unnecessary amount of administrative expense. But, that rarely seems to concern this Government, particularly if it can suck the necessary money out of the public by way of even more additional taxation. The Skychannel loophole referred to on page 1 of today's *News*—and I am allowed to refer to this matter under Standing Orders, even if other people were not—

The Hon. J.R. Cornwall interjecting:

The ACTING PRESIDENT (Hon. C.M. Hill): Order!

The Hon. J.C. BURDETT: There is nothing wrong with it and nothing wrong what what I am saying. The Skychannel provision is a loophole because it can be used, and that has been admitted by the Premier.

The Hon. J.R. Cornwall: It hasn't.

The Hon. J.C. BURDETT: It has been admitted by the Premier.

The Hon. J.R. Cornwall: We are not the National Government.

The Hon. J.C. BURDETT: You just read the *News* again and see whether—

The Hon. J.R. Cornwall: You are more honest than that.

The Hon. J.C. BURDETT: I am quite honest about it. I know you—

The Hon. J.R. Cornwall interjecting:

The Hon. J.C. BURDETT: I am aware that the State Government has no control over it, but it is still a loophole. It still makes a nonsense of the whole thing. It means that some advertising can be attacked and that some cannot. Sporting bodies are united in that the issue of smoking and cigarette advertising—

The Hon. J.R. Cornwall interjecting:

The ACTING PRESIDENT: Order! I ask the honourable Minister to refrain.

The Hon. J.C. BURDETT: Sporting bodies are united in that the issue of smoking and cigarette advertising as such is not for them, but they are adamant that they must be free to accept sponsorship from any lawful source as they see fit. In today's *News* at page 58 reference is made to the formation of an SA Sports Council to fight the Bill.

The Government and the Democrats, who have pledged support for the Bill, must recognise that opposition to it and protest about the proposed objectionable system of funding sporting and cultural groups will not go away. As the Democrats have pledged support, the Bill will pass, but that will not be the end of the protest. The protest will haunt the Government and the Democrats for many a long day.

Members interjecting:

The ACTING PRESIDENT: Order!

The Hon. J.C. BURDETT: I admire the sincerity of people who are genuinely concerned about smoking and its proven massive adverse effect on individual health and the public health system. I would support genuine moves to lessen smoking without unduly impinging on human rights. I am concerned about young people smoking.

The Hon. J.R. Cornwall: You're not concerned enough to stop them taking up smoking.

The Hon. J.C. BURDETT: This Bill does not stop them from smoking, and I very much doubt whether advertising has any effect on them because that is not the evidence of overseas experience.

The Hon. M.B. Cameron: If the Government believed that, the Grand Prix wouldn't be exempt. You are just a fraud.

The Hon. J.C. BURDETT: Exactly. Overseas experience—

The Hon. J.R. CORNWALL: I rise on a point of order. Mr Cameron called me a fraud. I demand that he withdraw and apologise. If you, Mr Acting President, had been doing your job you would have done it for me.

The ACTING PRESIDENT: Order! I did not hear the interjection.

The Hon. J.R. Cornwall: It was very loud and it is in *Hansard*, now.

The Hon. M.B. CAMERON: I can only operate on what you, Mr Acting President, ask me to do.

The ACTING PRESIDENT: If the Hon. Mr Cameron called the Minister a fraud it should be withdrawn.

The Hon. M.B. CAMERON: I will withdraw it. He acts like a fraud.

The Hon. C.J. Sumner: You know that that is no good.

The ACTING PRESIDENT: I ask the honourable member to withdraw it.

The Hon. M.B. CAMERON: I withdraw it, for the time being.

The Hon. J.C. BURDETT: Overseas experience has shown that the incidence of cigarette smoking does not decrease through banning advertising. So what is it all about? What are we trying to do? Surely the Bill only has merit if it reduces the incidence of cigarette smoking. If it does not do that the Bill is very intrusive, very discriminatory and strikes all over the place. Why have it at all if it will not do what we are trying to do and want to happen, namely, reduce the incidence of cigarette smoking? There is no evidence that it will do that.

All members of Parliament have had contacts about this matter from the Anti-Cancer Foundation, the medical profession, sporting bodies, and tobacco companies. In view of the importance of this subject it has seemed to me that there have not been many contacts supporting the Bill. There have been some, but in view of the number of medical practitioners in the State there have not been many from them. In relation to the contacts I have had, when I have explained the attitude I have to the Bill (which I have just explained to the Council), in the majority of cases they have been satisfied with the explanation that I have given them. I would support proper measures to reduce the incidence of smoking.

The Hon. M.B. Cameron: Sincere measures.

The Hon. J.C. BURDETT: Yes. However, some people seem to be prepared to support any Bill that even appears to be against smoking—even a bad Bill like this one. I do not support it.

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

SUPPLY BILL (No. 1) (1988)

Adjourned debate on second reading.
(Continued from 1 March. Page 3159.)

The Hon. M.B. CAMERON (Leader of the Opposition): This is the usual Supply Bill that goes through the Council at this time and debate is necessarily restricted to matters that are contained in Government expenditure. I will say a few words about some examples in the health system where I believe that a serious problem is arising—a crisis in the Health Commission. They are not my words; they are the words of people who work in the system—members of the RANF, the Miscellaneous Workers Union, and the AGWU. It is interesting to now see them taking up the cause because there is nothing like people at the work face to be aware of what is happening.

I was somewhat surprised—and I have been surprised for some time—to see the Minister of Health attempting to defend what is happening and trying to hide from some problems that are occurring. I sincerely hope that in the coming reshuffle the rumours are not true that the Minister of Health is to be taken from that portfolio, because there is no doubt that he has been of tremendous help to us at this stage of coming up to the next election, and we really would not want to lose him. I appeal to the Premier to leave him there.

One of the problems for this State Government and Labor Governments throughout Australia is that they do not understand the effect of their governing on the people, and within the health system that is particularly true. These problems are clearly demonstrated by the fact that there are at least 130 intellectually disabled people in this State who are urgently waiting for immediate accommodation. Sixty-seven of those are very urgent cases. Despite all the hoo-ha about moving people out of Ru Rua, only four of the 91 residents have so far been moved out of what can only be described as atrocious, antiquated conditions into a community house at Brighton.

Three more homes which could accommodate another 12 children lie empty because of the failure of the Government to support the devolution of Ru Rua in an appropriate way. There is failure to provide the funds to staff these houses which, in fact, are in danger of being vandalised because they are empty, even though one parent was told that his daughter was to be moved out by December. He has now been told that it may be 1989 before his daughter is placed into one of those homes.

The Government's record in the area of the intellectually disabled in the past 12 months is abysmal and appalling. That is shown by the many phone calls coming into our office. An enormous number of people are really desperate for assistance. Staff of the Intellectually Disabled Services Council still have bans in place over staff shortages which the Health Commission refuses to fill. That is in the northern suburbs. In itself, that causes enormous difficulties. One cannot really blame the staff. Certainly, I do not approve of these measures being taken, but one cannot blame staff because they are being asked to carry out their duties with totally inappropriate staffing levels, and positions that should be filled are not being filled. Positions are being left empty and so the pressure on staff is simply tremendous. The Steer Report, which I provided to the press, highlights the major problem in the area of the intellectually disabled.

Besides highlighting serious overcrowding in Ru Rua and conditions which staff have described as outdated and hopeless, the report also draws attention to serious overcrowding at Strathmont and recommends that the Government adopts new roles for that institution and Minda. The Minister has conceded that there is a formidable task in helping the intellectually disabled, but the problem is that he has allowed services to run down to such a level that it is extremely difficult to get them back to a reasonable level. As I have said, almost daily my office is contacted by parents of the

intellectually disabled who are frustrated, worried and tired of being ignored when they try to explain their problems.

For example, there was the recent case of a parent who had to abandon her 29 year old daughter in the office of ADSC because of the crisis situation at home. The sheer lack of accommodation for that daughter through no respite care being available was the problem. Only then, after taking such traumatic action, was a bed found.

Another parent has been trying for years to obtain accommodation for her intellectually disabled son. Another parent has a 2½ month marriage severely under strain because of her 7½ year old son still being denied accommodation. This lad has had several near misses with trains and vehicular traffic. The family has had to contend with his smearing faeces over interior walls of the house, and they have to be vigilant virtually 24 hours of the day in anticipating his next move. This parent says that now she will be moving to Queensland shortly where facilities for the intellectually disabled are said to be markedly superior. Clearly, that indicates the failure of the Government in this matter.

Let me say a few words about the problem of Kalyra. As members know, Kalyra has been raised in this Council on a number of occasions—That is a magnificent institution providing hospice and rehabilitation care. The hospice provides care for people and their relatives who are in a very difficult stage of their life and it is probably the most important element in the health system, yet what has occurred? This Minister and the Health Commission have set about, so it seems to me, in a vindictive way to shut down Kalyra. They have been absolutely determined to terminate its contract with the people of this State, yet the institution has existed since 1896—a long time indeed. It has been supported by a charitable trust set up by Jessie Brown way back in 1896, yet the Minister says, 'It is finished.' He has been very determined in that.

The saving to the State in this closure is $1 million a year. The most annoying fact is that shortly after this magnificent saving was announced the Minister was prepared to provide to St John paid staff $500 000 for no change in the ambulance service whatever. All that occurred was that volunteers, decent people who were prepared to provide a service to the community, were replaced by paid staff. That makes up $500 000 out of the $1 million to close the hospice care facilities.

That was one of the worst moves that I have seen by a Health Minister in this State. As I have indicated before, when we get into Government at the next election, that facility will be reconstituted, provided the Minister has not taken enough steps to absolutely ruin it as an institution. There was almost a total lack of consultation in the process, a total lack of knowledge of what was being done. The commission was going to shift the hospice care patients down to Windana, but then it found that that was totally unsuitable—but only after it was announced. The commission then had to spend much money at Daw House at the Repatriation Hospital, and that is not yet properly ready for the people who have to go to it. I must say that the *ad hoc* decision making in this matter is a sad indictment on this Government and on the people of this State.

Let me now say a few words about country hospitals, an area about which there is obviously a great deal of concern. Again, the annoying thing is the lies being told about country hospitals. The Minister has said that no country hospital will be closed. That was repeated by the Minister of Transport in another place: no country hospital will be closed. What has been the offer to these institutions that are not to be closed? I undersand that Laura has been told (although the Health Commission officer keeps coming and going) that it will have some acute beds left. After all the shenanigans it will have some acute beds left. The only problem is that the beds will be open only between 9 a.m. and 5 p.m. each day. What do patients do each day after 5 o'clock when they are in an acute bed in hospital? Will they pick up their plaster cast for the evening and come back in the morning?

It is ridiculous for the Minister or anyone else to say that the institution is not closed. It will be just an ambulance station; it will not be a hospital any more. The same thing has happened at Blyth, although there has been an attempt to bribe the GPs there by providing cars, wages and all sorts of things to try to keep them in the area. I understand that Tailem Bend has been told that its hospital will not be closed. It has been told that it will become part of the Murray Bridge hospital and be the old folks home or the primary health care centre, but that hospital will no longer operate in the sense of an acute care hospital: there will be no beds there.

The whole matter of country hospitals has involved a pack of lies. I take exception to the way that people within the Health Commission have gone around promoting these stories that have been untrue. I attended a meeting on Eyre Peninsula at a small town and indicated that I believed that country people had been treated badly because country hospitals had a 1 per cent cut in real terms, yet metropolitan institutions were faced with only a .75 per cent cut. A Health Commission officer got up and said that I had misled the people at that meeting because, in fact, a larger sum had been taken out of metropolitan health institutions. However, what he failed to tell them (and this is what really got on my goat) was that only four or five major institutions had a greater amount taken out.

All the smaller institutions in the metropolitan area of comparable size to those in country areas had a .75 per cent cut, and the Minister knew that; while all country hospitals of the same size had a 1 per cent cut. The Minister misled the people of this area. I think it is time that we looked closely at the way in which some of these people are presenting this case to country people. I do not accept that they should go around the State presenting a point of view which I believe tends to be politically biased.

Country hospitals are a vital part of each country region and every country town. People who live in the country and people who are in touch with country people know that if a country town loses its hospital it loses its doctor and its chemist, and eventually it is no longer a suitable place in which people can live. If the Minister and his Government continue down this track, they will face political defeat of a sort never before contemplated within this State, because a large number of country people have very close contact with people in the metropolitan area.

The next thing in relation to hospitals is the question of the 4 per cent wage case. The Government and, I gather, the Minister have proceeded to grant all staff the 4 per cent increase without proper discussion with the managers of these institutions (and that information came from a very reliable source). No indication was given to the people who have to find the offsets that the 4 per cent would be granted; there was no previous consultation. They read in the newspapers that this was going to happen, and they then received an instruction that they were to pay it: they were to find it out of their budgets or find offsets. Committees were set up, as the Minister said. However, the committees cannot find the offsets; in fact, it is impossible to find them in a hospital. I do not know where one would find them.

So the institutions are now finding it almost impossible to pay the money involved, and it will have a serious effect

indeed on their budgets. In fact, it will mean that their budgets will be cut by a further 2.5 per cent in real terms. Coupled with what they are already facing, in a country hospital it will mean a 3.5 per cent cut in real terms in one year unless the funds are replaced. However, I gather that the Minister has made it quite clear that that will not happen.

One area where this is already having a fairly dramatic effect is Whyalla, where already the administrator has proposed that 31 beds be closed by 31 July. That is just an indication of what is occurring all around the State. While I was in that area I visited the Port Augusta Hospital. Although I did not go inside (I remained out the front), I was told that the top floor was closed—that 15 beds were closed. I think that $5 million was supposed to have been spent on that hospital at one stage; I think that is what the Minister promised. I noticed out the front of the hospital that two rather extraordinary temporary buildings had been erected, and I rather wondered what they were. If they are part of the rebuilding program, I suggest that there is a bit of a problem. I am told that they house the administration staff. In fact, the local council, it appears, is very upset because its permission was not sought before the buildings were erected. No doubt the council has taken up that matter with the Health Commission.

The Government seems totally oblivious of the desires of country people. All this talk about not making any changes without the support of the community is just absolute nonsense, and that was clearly obvious when the Minister said, 'In the northern region, in the area of Laura, Blyth, etc., the people of Port Pirie will have a say.' The Minister asked me whether I asked Bill Jones or Eileen Ekblom what they thought about these changes. I point out that I did ask them, but they did not seem to know much about them. It seems that there was no major discussion with them. In fact, I think they were simply notified, and that was it. They certainly had not indicated support for the destruction of the hospitals within their immediate region; in fact, they were quite surprised by it. However, I will not go into that matter in any depth. I took the trouble to make some inquiries as a result of the Minister's statement.

I refer to one small example of the sort of problems that are arising with the hospital system and the failure of the health system under this Minister to provide a service for the people of this State. It is a simple example involving a man who is impotent (and most people would understand what that word means). He has already waited 18 months to obtain treatment for his problem at one of our major public hospitals. The treatment initially involved the use of a special instrument which the hospital did not have and was reluctant to purchase. Only after lobbying the Health Commission was the man able to change the hospital's attitude, and the instrument, which cost $40, was purchased. When the treatment did not work, the man had to wait a further six months to be put on a course of injections which again were unsuccessful in treating his ailment. He has now been told that surgery is the only way to solve his problem. However, that will take two years because of the length of the hospital's elective surgery waiting list. He has been told that his surgery, which will take only 30 minutes, is cosmetic. This is a man who is impotent.

I rather wonder whether that is what the Health Commission was referring to when it talked about too much cosmetic surgery being done in our public hospitals. If that is the case, clearly there are not many people in the Health Commission who are impotent and know the problems that it can create within a marriage relationship. This man is married with a family and is outraged at his problem being categorised as cosmetic. He has been told by both doctors and the Ombudsman who looked into the matter that the alternative to waiting two years is to pay $3 500 and have the operation done privately, in which case the surgery could be done virtually straight away. I can understand this man becoming a little cross to find that this marvellous system that has been built up cannot cope with him as a public patient.

I have no doubt that over the next two years we will hear many more examples such as that as the ordinary citizens find it more and more difficult to gain access to the health system. People who live out in the Elizabeth area and similar areas who cannot afford health insurance given the way that the Government has structured our health system, and who cannot afford to cover themselves, will be forced to join the waiting lists at our public hospitals.

It is no wonder to me, knowing the health system now as I do—and it has taken some time to get to know it as much as I have, and there is still a lot to learn—that there have been major changes in the political outlook across Australia. There is no doubt that Australians are now seeing that underneath it all this Government and other Governments of a similar persuasion across Australia really do not care about them, really do not understand their problems, are completely out of touch with them and have not returned to the grass roots, as the Premier said following the Adelaide by-election. I do not think that that will ever be the case because I do not think that Labor Governments have the necessary rapport with, or understanding of, the people. So it is no surprise to me to find that my Party is starting to win elections. I support the Bill.

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

STATE LOTTERIES ACT AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 1 March. Page 3190.)

The Hon. L.H. DAVIS: This is a small amendment to the State Lotteries Act which anticipates a problem that has occurred in New South Wales, namely, that in the X Lotto games, which are by far the most popular form of game or lottery offered by the Lotteries Commission, commercial syndicates have sought to profit either by requiring a fee or taking a percentage of the winnings from participants in schemes which the operators claim will improve their winning chances.

The Lotteries Commission in South Australia in the 20 years since its inception has been of benefit to the community in the sense that nearly $250 million has been raised for hospital, recreation and sporting funds. In that 20 year period there has been a dramatic shift in the nature of revenue raising by the Lotteries Commission of South Australia. That is underlined by an examination of the 20 year summary of the Lotteries Commission's activities contained in the 1986-87 annual report. Whereas State lotteries, which were run on a weekly or monthly basis and drawn as the lottery filled, accounted for 100 per cent of revenue in the first five years of the commission's existence, today they account for less than 1 per cent of all revenue raised. The demise of the traditional lottery has occurred because people want to know exactly when the winners of the game of chance will be known. In the 1986-87 annual report it is stated that on 26 May 1986 a $10 lottery was opened with a first prize of $500 000. One would have thought that was

a fairly attractive lottery, but it took nine months to sell the 100 000 tickets. So, public support for the traditional lottery has diminished dramatically in recent years because, as the report says:

> The public prefer to know when a lottery is to be drawn. However, all tickets must be sold before a lottery of this type may be drawn. Therefore no undertaking can be given to its eventual draw date.

In recent years there has been an explosion in X Lotto sales. Instant money games have also been popular; indeed, in 1979 they accounted for 45 per cent of revenue. That figure has now fallen to 27 per cent of the Lotteries Commission's revenue. The dramatic growth has been in Saturday and mid-week X Lotto sales. Indeed, Saturday X Lotto sales in the 1986-87 financial year accounted for nearly $58 million or 45 per cent of total Lotteries Commission income, and mid-week X Lotto sales, that is, the Wednesday draw, accounted for $29.4 million, nearly 23 per cent of the Lotteries Commission's sales. The fact that X Lotto is televised and drawn twice-weekly has obviously been a magnet and a great attraction to the public.

I have not been in a X Lotto game, but I am told that there are many and various ways in which one can participate. It is possible to pick the six numbers required for the X Lotto or to have an easy pick where the numbers are picked at random for the participant by a computer. It is possible to have any one of a number of systems: systems 5, 7, 8 and 9 to 15. In system 12, which I am told is very expensive, one can have 12 numbers. System 7 gives one an opportunity to pick seven numbers, thus improving one's chances of winning; one game costing $1.95. Of course, some of the prizes in X Lotto are absolutely huge. The Hon. Terry Roberts is licking his lips in anticipation no doubt of the draw tonight.

The Hon. T.G. Roberts: I don't have a ticket, I couldn't afford one.

The Hon. L.H. DAVIS: He does not have a ticket on this occasion—yet another underpaid politician. This amendment seeks to focus attention on a problem which has emerged in New South Wales, that is, that commercial syndicates have sought to entice people to use their systems allegedly to improve their chances of winning large amounts of money. In return for providing a system the syndicate will collect a fee, which might be a percentage of the amount invested initially in the X Lotto game and which will include a percentage of the winnings of any ticket that is successful in the draw.

I understand that lottery managers from each State met last year and agreed that they should act against this practice. Accordingly, this amendment to the State Lotteries Act has been introduced. Although there is no evidence yet of this practice occurring in South Australia, the Opposition accepts that sometimes it is necessary to legislate in anticipation. I believe that on this occasion the arguments advanced by the Government merit support. I think that it is fair to distinguish games of pure chance, such as X Lotto, from, say, racing which is perhaps, for many, a game of absolute chance with so many factors working which will influence the final result. Certainly there are some people who establish a record in tipping, and I accept that there are people who make a living by selling tips, either by phone or by offering a tipping service. I do not know whether the Hon. Terry Roberts is a tipster or a recipient of these tips.

The Hon. T.G. Roberts: I receive a lot of bad ones.

The Hon. L.H. DAVIS: The Hon. Terry Roberts tells me that he receives bad ones. Well, as long as he does not pay for them he has nothing to worry about. However, we are talking about a situation that I believe is a little bit different from that which I set out—horse tipping—where people can sometimes make money by selling tips, either by phone immediately before a race or through a stop press service, a telegram or whatever, giving advice that people are prepared to pay for.

Of course, the ultimate success of the tipsters will stand or fall on the accuracy of the tipping. I have no doubt that con men operate in this field and make their mark and some money, as well. However, in games of absolute chance, such as X Lotto, I think there is a good argument that people should not be allowed to benefit from trying to sell a system to a person, or a group of persons, in the belief that the system will improve their chance of winning a lotto game.That is not to say that a syndicate of many people cannot be formed to enter into lotto games; indeed, that happens quite often. In fact there was a front page story in the *News* not very long ago where a syndicate from one of Adelaide's more prominent commercial legal firms won millions of dollars in a lotto game.

The Opposition therefore supports this amendment which will overcome the temptation for unscrupulous people to move into South Australia to induce people to hand over money by way of a percentage of winnings, or as an initial fee, in the mistaken belief that the advice that they have received will advantage them and assist them in winning a lotto game. Accordingly, the Opposition supports this amendment to the State Lotteries Act.

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

ROYAL COMMISSIONS ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 22 March. Page 3334.)

The Hon. C.J. SUMNER (Attorney-General): The Hon. Mr Griffin raised some questions on this Bill that I will attempt to answer. The request that additional commissioners be appointed to act as separate fact finding royal commissions was initiated by Commissioner Muirhead. My understanding is that Commissioner Muirhead never envisaged that there would be more than one commission sitting in any one State at any one time. That is, the additional commissioners, if appointed, would sit concurrently in different States. Commissioner Muirhead will obviously be well aware of the problems in this area and would be expected to design his sittings accordingly.

I am aware that the Aboriginal Legal Rights Movement is only interested in the South Australian hearings. As far as I can ascertain there is only one national organisation attending the hearings, that is, NAILS (the National Aboriginal and Islanders Legal Service), which is a federally funded body. It may well be that it will need to brief counsel in this State if there are two commissions sitting at the same time. All the other parties attending the South Australian hearings have been represented by South Australian counsel. If it wished to attend all hearings, obviously it will incur additional expenses at this time. Apart from that, it does not appear that there would be a massive increase in costs because this would speed up the process and, therefore, in one sense, reduce the costs that would be expended.

On the question of costs, I point out that when South Australia agreed to the concept of additional commissioners being appointed to act as separate commissions, it did so on the understanding that the Commonwealth would meet any additional costs involved with the appointment of further commissioners. The State supported the proposal because the South Australian Government believed that it

was important for the royal commission to complete its task as soon as possible.

Following a Cabinet decision of 30 November 1987, the Premier wrote to the Prime Minister on 3 December agreeing to meet costs relating to the royal commission on the following basis:

(a) The State will fund the appointment of a small team comprising a law officer, a research officer and secretarial assistance to assist the commission in its inquiries in South Australia. Accommodation for these staff and administrative expenses will be provided. The costs of travel by the staff will not be funded by the State and should be met from Secretariat allocations from the Commonwealth.

(b) The State will provide court facilities for hearings of the commission in this State.

(c) The Crown Solicitor's Office will appear at hearings on behalf of the State and has been granted leave to appear representing State departments by the royal commission.

(d) The State will meet the costs of legal representation of individual State officers who have been granted leave to be represented before the commission.

An amount of $227 000 has been set aside to meet estimated costs for 1987-88 as follows: staff, $50 000; court attendant, $4 000; legal representation for individual officials, $20 000-$100 000 (maximum level senior junior); accommodation, furniture and phones (six months), $40 000; administrative expenses (including phone charges, photocopier), $23 000; and Crown Solicitor's Office direct expenses (travel etc.), $10 000. That makes a total of $227 000. To date costs have been approximately $29 000.

A Cabinet submission is currently being prepared concerning the funding of legal representation for State Government employees. On present indications regarding the number of hearings and the length of those hearings, the cost of this representation will be met within the budget. However, it is not always easy to accurately budget for royal commissions, nor to contain costs within budget because, like court proceedings, the Government does not have direct control over what is likely to happen. I am sure that the Hon. Mr Griffin, having been through one royal commission (which looked at prisons in South Australia), would be aware that costs cannot always be accurately predicted. Nevertheless, that is the position that the Government has taken to the present time.

In relation to future costs, the Premier advised the Prime Minister on 25 February that South Australia agreed to the appointment of additional commissioners subject to the Commonwealth meeting any additional costs involved. However, the royal commission is likely to request an additional clerical officer for the South Australian office. No decision has been made on whether to agree to this. However, it would not involve any significant additional expenditure.

In relation to the general logistical problems raised by the Hon. Mr Griffin, I point out that the Commonwealth is providing funds for legal representation for the Police Federation of Australia to represent police officers in all States. This is on a similar basis to funds provided for other organisations representing Aboriginal families. I trust that I have answered the questions raised by the honourable member.

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

EVIDENCE ACT AMENDMENT BILL

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

The Hon. K.T. GRIFFIN: Will the Attorney indicate the date by which the Bill, if passed, will come into effect, and what preliminary work needs to be done to ensure that the community, particularly professionals, are alert to the implications of the legislation?

The Hon. C.J. SUMNER: It will be proclaimed as soon as it possibly can be, and the normal procedures will be used to notify people.

The Hon. K.T. Griffin: What are they?

The Hon. C.J. SUMNER: Send copies to judges. I assume that lawyers keep track of legislation passed in Parliament.

Clause passed.

Clauses 3 and 4 passed.

Clause 5—'Evidence of young children.'

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

Page 2, lines 5 to 27—Leave out subsections (2) and (3) and insert new subsections as follows:

(2) The form of an oath to be given to a young child must (if necessary) be adapted so as to make it comprehensible to the child.

(3) If a young child is to give evidence before a court without an oath—

(a) the judge must explain or cause to be explained to the child that the child must tell the truth in everything that he or she may say before the court;

(b) the evidence has such weight and credibility as ought to be given to evidence given without the sanction of an oath;

and

(c) a person who has been accused of an offence and has denied the offence on oath cannot be convicted of the offence on the basis of the child's evidence unless it is corroborated in a material particular by other evidence implicating the accused.

What this clause of the Bill seeks to do is to repeal sections 12 and 13 of the principal Act and to insert a new section 12 which is designed to deal with the evidence of children of or under the age of 12 years. The scheme, as I outlined in my second reading presentation, was to provide for the evidence of a young child which may be given on oath or, if a young child who is not obliged to submit to the obligation of an oath is to give evidence, then a different test will be used to determine whether or not the child's unsworn evidence should be treated in the same way as evidence given on oath, and then unsworn evidence, which of course requires corroboration where the accused denies the offence on oath, and in those circumstances the evidence is to be evaluated in the light of the child's level of cognitive development.

That is a difficult gradation, and there would be more value in providing for just two situations: one where the evidence is evidence on oath, and the other where the evidence is unsworn. Where the evidence is to be taken on oath, the form of the oath to be given to a young child may be adapted so as to make it comprehensible to the child. That overcomes all of the criticisms which have been made on the Bill as drafted as to the tests which the judge is to apply in determining whether or not the child has reached a level of cognitive development that enables the child to understand and respond rationally to questions and give an intelligible account of his or her experiences, and the child promises to tell the truth and then to equate that unsworn evidence in the same way as evidence given on oath.

There ought to be only two situations: it is either evidence given on oath or it is unsworn evidence. If it is evidence given on oath the normal rules will apply. If it is unsworn evidence then again the normal rules will apply, and there is no intermediate position which might be subject to controversy or to debate and a high level of uncertainty within the justice administration system as to the status of that evidence, and even giving rise to appeals to question or

determine the status of the evidence given before the court where it is not given on oath.

There is a lot of advantage in that alternative I propose. It simplifies the procedure. It does not up-end the established rules, yet it makes it much easier for a young child to give evidence on oath if the oath is adapted to make it comprehensible to the child. I move the amendment on the basis that it is a distinct improvement on what appears in the Bill already, and will give rise to less confusion, less prospects of appeal and yet ensure that in appropriate cases the evidence of young children is given to the court.

The Hon. C.J. SUMNER: The Government opposes this amendment. The amendment will result in the age of giving sworn evidence being lowered from 10 to seven, and, combined with that, the use of a simplified oath. The test for competency, however, where a child is given an oath would continue to be based on an understanding of the obligation of an oath—that is, a moral and religious test of competency. The task force recommended that a cognitive test be used and for the introduction of a simplified oath or affirmation. The Bill provides for a cognitive test of competency and a form of affirmation.

The Hon. K.T. Griffin: It doesn't provide for a form of affirmation.

The Hon. C.J. SUMNER: Well, a form of affirming that they will promise to tell the truth.

The Hon. K.T. Griffin: That is different.

The Hon. C.J. SUMNER: Why?

The Hon. K.T. Griffin: It is not in the same category when you take it in the context of an oath or an affirmation.

The Hon. C.J. SUMNER: Well, it is, under our Bill. If the court is of the view that the child's cognitive development is such that the child can understand the difference between truth and falsehood and can promise to tell the truth, that is adequate to establish the capacity to give evidence which does not require corroboration. What the honourable member's amendment does is import back into the requirement to give an oath a moral or religious test of competency. What we are trying to do is simplify that for the benefit of child witnesses.

The amendment proposed by the Hon. Mr Griffin would also introduce a minimum age below which a child may not give sworn evidence or its equivalent, and the Government's Bill does not have that restriction.

The Hon. K.T. Griffin: It says nothing about a minimum age.

The Hon. C.J. SUMNER: You have the minimum age of seven. So you have agreed to the age of seven (which is in the Government's Bill); then you are saying that below the age of seven a child cannot take the oath and therefore a child's evidence, no matter what the level of cognitive development, will have to require corroboration for a conviction. That is as I understand the honourable member's amendment. If he has some explanation which indicates that it is different from what he intended, no doubt we can listen to it. That is our understanding of it at the present time.

The introduction of a minimum age sets up an arbitrary limit which may act against the interests of some children. I consider that if a child is of a level of development to fit within the test in the Government's Bill his or her evidence should not be treated differently. The amendment also modifies proposed subsection (3). A child's unsworn evidence would be given such weight and credibility as ought to be given without the sanction of an oath. The Government prefers the approach contained in our Bill whereby the child's evidence is evaluated in the light of the individual child's level of development.

The Hon. M.J. ELLIOTT: My reading of the amendment is such that the age limit is seven years, below which the child would not be in a position to give evidence as originally intended under the Bill. I see that as a major deficiency. In fact, that has been a major complaint, particularly in relation to child sexual abuse—that the child has been unable to give uncorroborated evidence which, I believe, this clause is attempting to rectify. The amendment negates that very purpose, and that worries me particularly. Otherwise, I understand what the Hon. Mr Griffin is attempting to achieve. However, I am not sure whether it has helped the situation.

The Hon. DIANA LAIDLAW: I support the amendment for a variety of reasons. I was interested to see the rather shallow arguments used by the Attorney to oppose the amendment and maintain support for the provisions in the Bill. First, he resorted to referring to the task force report but, as the Attorney-General himself would know, the Government has been most selective in preparing this Bill in relation to which recommendations it adopted. What is in this Bill is another instance of that. The Government has certainly not followed what the task force recommended. Therefore, to have a go at the Hon. Trevor Griffin on that count seemed to me to be rather superficial.

While I do not recall the words used by the Attorney, I was concerned about his references to the age of a child and to the matter of corroboration. If he had the task force report in front of him he would recongise that the majority of members of the task force strongly favoured a position that unsworn evidence of children should require corroboration as a matter of law; and it went on in dealing with that subject on the basis of natural justice and international legal covenance.

As I understood it, his argument—and I do not wish to suggest that the Attorney-General is not credible in the matter of law—did not seem to stand up in the light of what was argued in the task force report. I believe that the amendment moved by the Hon. Trevor Griffin is particularly sensitive to the issue of child abuse, and one has to be sensitive in looking at this very vexed issue. I know from many years of dealing with this matter that one of the biggest problems is uncertainty—how many times a child is brought before the courts, how many times the case is adjourned, and the nature of the evidence and cross-examination. The more certainty we can bring into this system the greater the benefit to the child and the child's care givers.

The propositions put forward in this Bill give rise to a great deal of legal uncertainty and, as the Hon. Trevor Griffin outlined extremely well, controversy, debate and possible appeal. I strongly recommend that the Committee look positively at the amendment because I believe it could well be argued that it is in the child's best interests because it removes uncertainties, maintains the principle that one is innocent until proved guilty and reflects the recommendations of the task force report.

The Hon. K.T. GRIFFIN: If one looks at the Bill, one sees that new section 12 (1) provides:

> A young child who is to give evidence before a court is not obliged to submit to the obligation of an oath unless—
>
> *(a)* the child is of or above the age of seven years; and
>
> *(b)* the judge is satisfied that the child understands the obligation of an oath.

What that really means is that the Attorney has already provided an age limit in the Bill.

The Hon. C.J. Sumner: I know. I am not denying that. We say that below the age of seven a child can still give evidence that does not need corroboration.

The Hon. K.T. GRIFFIN: Under my proposition a child who is under the age of seven years can still give evidence which, on a modified oath, would not require corroboration. I do not understand what the Attorney is driving at when he says that I have limited the evidence to that of a child of or above the age of seven years. I am merely trying to overcome the undoubted confusion and the undoubted greater prospects of appeals where you have, in effect, three levels at which a child can give evidence. Under the Attorney's Bill, it can be evidence on oath; it can be unsworn evidence where certain criteria are specified by which that unsworn evidence is adjudged and, in those circumstances, it will be treated in the same way as evidence given on oath; and it can be unsworn evidence.

I am seeking to cut out the second level and combine it with the first level by modifying the oath. With all due respect to the Attorney, I just do not see that there is any substance in the argument that, if you modify the oath, you still have a difficulty with young children who will not understand what the significance of the simplified oath is. After all, the oath is 'to tell the whole truth and nothing but the truth, so help me God', or one can have an affirmation which under the Oaths Act is equated with an oath. So, I do not see what the Attorney is driving at. I suggest that he has misunderstood the significance of my amendments and the objective that I am trying to achieve, because one will not need to have corroboration where there is in effect, in my new provision, a combination of his suggested subsections (1) and (2) which would allow an adaptation of the oath to make it comprehensible to the child. The governing words are 'so as to make it comprehensible to the child'.

It is only in circumstances where the evidence is in the category of unsworn evidence that you still in certain circumstances require corroboration. That is what the Attorney has in his Bill, anyway. I want to avoid the confusion—the prospects of appeals and injustice—and nevertheless, to ensure that the ability for a young child, whether over or under the age of seven years, to give evidence, is still available. I cannot see that the arguments which the Attorney uses really address that issue.

The Hon. M.J. ELLIOTT: With the utmost respect to the Hon. Mr Griffin, I have re-read the amended form that this clause would take and, although I do not have legal training, I find that it reads the same way. I am not questioning the honourable member's intention. New section 12 (1) provides that a young child will be giving an oath, and new section 12 (2) refers to the oath that is mentioned in subsection (1); it seems to me to be the same oath. Under the Attorney's structure, we have something which is not called an oath and which clearly reads to be a different thing. If we read new section 12 (2) as if it refers to the oath mentioned in new section 12 (1), the interpretation would be that it applies only to children over seven years. That may not have been the honourable member's intention but, as I read the amendment, it comes across in the same way. I therefore believe that it is worth exploring that to start with, although I am not questioning what the Hon. Mr Griffin is trying to do. However, I do not think he is doing it.

The Hon. K.T. GRIFFIN: There is nothing in the Attorney's Bill which says that one cannot administer an oath to a young child under seven years of age. New section 12 (1) merely says that a young child who is to give evidence before a court is not obliged to submit to the obligation of an oath unless the child is of or over the age of seven years and the judge is satisfied that the child understands the obligation of an oath. There is nothing there that says that, if the child is under seven, he or she is not permitted to take an oath. It just means that one is not obliged to take an oath.

If it is appropriate for a young child under seven to take an oath, the option is still there. My amendment does not alter what is new section 12 (1); nor does it compromise the opportunity for a young child to give evidence on oath if that young child is sufficiently developed to comprehend even a modified oath. The Committee should remember that I am proposing that the oath should be adapted so as to make it comprehensible to the child.

If the young child is of or above the age of seven years, under the Attorney's Bill the child is obliged to take an oath unless the judge is not satisfied that the child understands the obligation of the oath. There is nothing there, even in new section 12 (1), which says that a young child under seven years cannot take an oath. That is the position as I see it. It seems to be quite clear. If a child is of or above the age of seven, the child is obliged to take an oath if the judge is satisfied that the child understands the obligation of the oath. If the child is under seven years, the child can still take an oath but is not obliged to do so. My amendment merely seeks to provide a modified oath. That is one option that has been explored in a variety of committees as a way in which the evidence of a young child can be given the sort of weight that is expected of it without the need for corroboration. With respect, I do not see any difficulty with the drafting.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: A young child under the definition is a child of or under the age of 12 years, and my amendment says that the form of an oath to be given to a young child of or under the age of 12 years must, if necessary, be adapted so as to make it comprehensible to the child. That is a sensible way to go and it does not create the problems that the Attorney at first suggested it did.

The Hon. C.J. SUMNER: I can understand what he is trying to do, but I do not think he has done it. If he is trying to say that you can have a young child under the age of 12 being able to give evidence on a modified oath at whatever age, I do not think he has achieved that objective.

The Hon. K.T. Griffin: I believe I have. You tell me how I haven't?

The Hon. C.J. SUMNER: Because the first subsection refers to children above the age of seven years.

The Hon. K.T. Griffin: But it just says 'is not obliged to submit'.

The Hon. C.J. SUMNER: I think the honourable member should refer to Attorney-General's reference No. 2 of 1987, which was a case which was stated to the Court of Criminal Appeal and which dealt with the question of whether a child under 10 years was permitted to give evidence on oath or affirmation. In other words, the court dealt with the effect of the existing section 12 and found that a witness who understood the obligation of the oath must give evidence on oath or affirmation. The Chief Justice said:

> It seems to me that the consequence of the view of the section contended for by the Solicitor-General would be so strange, even bizarre, as to render it highly unlikely that Parliament could have intended it. On that view the decision as to whether a child under 10 who understood the obligation of an oath, took the oath or affirmation or gave unsworn evidence would be entirely for the child to make. He could give sworn or unsworn evidence according to his mere whim. This would be a startling and unwarranted departure from the inveterate rule that a witness who understands the obligation of the oath must give evidence on oath or affirmation.

Our concern is that the proposed new section 12 (1) is expressed in similar although slightly different terms from the existing section 12, which provides:

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.

The words are similar: 'a child under the age of 10 years shall not be required to submit to the obligation of an oath'. Our redrafted section provides:

A young child who is to give evidence before a court is not obliged to submit to the obligation of an oath.

So, the words are similar: 'shall not be required to' is used in one and 'not obliged to' is used in another. The court interpreted that as meaning that under the old section if a child was able to give evidence on oath he had to do that and could not elect to either do it or not. That is why section 12 (1) is expressed in this way. In other words, if the court is satisfied that the child understands the obligation of an oath then he must give evidence on oath. The child cannot then opt for the second string. In our proposed section, if the child does not satisfy the first criterion, that is, that the court is not satisfied that the child understands the obligation of an oath, in respect to its moral or religious test, then one can resort to our proposed new subsection (2), which provides that, in those circumstances, a child who is not obliged to submit to the oath (that is, a young child who does not understand the obligation to give an oath) can give evidence which is to be treated as the same evidence on oath if the child appears to have reached a level of cognitive development and can give an intelligible account of his experiences, promises to tell the truth and appears to undertake the obligations entailed by that promise.

If a child understands the obligation of the oath in the sense that that is considered by the law, namely, whether he or she has some notion or concept of the religious or moral basis for an oath, he or she must give evidence under clause 12 (1). If he or she cannot understand that, under our drafting there is an option for a child under seven—or, for that matter, a child of any age—to give evidence which has the same effect as evidence on oath in that it does not require corroboration. Further, if the child is in the third category, he or she can still give evidence, but that is in circumstances where the evidence is not sworn in any sense of the word. That child can give evidence and the court will take into account and evaluate that evidence in the light of the child's level of cognitive development. However, in those circumstances corroboration is required. So, we have a three stage option.

The Hon. K.T. Griffin: You have three tiers.

The Hon. C.J. SUMNER: Yes. The problem with the honourable member's amendment, as I see it at least, is two-fold: first, a child can give evidence on oath with its religious or moral connotations. If the child is over seven and can give evidence on oath he must do so. If the child is under seven then he or she can give evidence under the honourable member's second tier, which requires corroboration.

The Hon. K.T. Griffin: No, that is not right.

The Hon. C.J. SUMNER: That may not be what the honourable member intended, but if one resorts to the way in which the court has interpreted the existing section 12, it will be seen why we have expressed it in this way and provided for a three-tier approach. I am not sure whether that convinces anyone, but I have done my best.

The Hon. M.J. ELLIOTT: One other problem that I see with the Hon. Trevor Griffin's amendments, if I have read them correctly, is that, while under section 12 (1) the judge needs to satisfy himself that the child understands the obligations of an oath, the varied form of oath places no obligation on the judge to—

The Hon. K.T. Griffin: No, it must be comprehensible to the child.

The Hon. M.J. ELLIOTT: It must be comprehensible to the child.

The Hon. K.T. Griffin: So it is implicit in that that the judge has to be satisfied that it is comprehensible to the child.

The Hon. M.J. ELLIOTT: In that case, I think the whole question of oaths should be looked at in a wider context. At this stage I want to raise another matter. I am not convinced that the amendments that the Hon. Mr Griffin proposes will work. I also have some concern about what will happen under new section 12 (2) where the judge is required to make a decision about the level of cognitive development.

During the second reading stage I raised my concerns. It is to be expected, (and I suppose it is only right) that, if the judge has some doubt as to whether or not the child has reached a level of cognitive development to understand, such an oath will not be able to occur and corroboration will be necessary. I said before, and I say again, that I do not really believe that a judge in the normal courtroom context has the ability to make decisions on cognitive development. What is likely to happen is a fight about who has the best psychologist to prove or not prove that the child does or does not understand the obligations of an oath.

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: Yes I appreciate that that is what the honourable member is trying to do, but, as I said, I do not think that he has done that at all. I think that decisions in relation to cognitive development would have been better made outside the court. We do not have problems in the court asking for coroner's evidence and the like, and I cannot see why we cannot have such a facility available for—

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: A coroner can give certain evidence to a court; why can we not have a psychiatrist?

The Hon. K.T. Griffin: A coroner cannot give evidence to the court.

The Hon. M.J. ELLIOTT: I defer to the honourable member. Nevertheless, I would still like to see somebody outside the court giving disinterested evidence as to cognitive development. As the section is structured at present, that will not occur. I think that that will make it very difficult to proceed with many cases.

The Hon. K.T. GRIFFIN: That is the very reason why I am trying to find some alternative to what the Government is proposing. There is no way of determining the level of cognitive development under proposed subsection (2) unless evidence is given to a court and a judge makes the decision—

The Hon. M.J. Elliott: After the evidence.

The Hon. K.T. GRIFFIN Yes, after the evidence. It is a bit like the *voir dire* examination of a statement given to a police officer: it can be a trial within a trial. One of my concerns is that a whole range of new areas for debate within a trial and the prospects for appeal are opened up when a judge makes a decision either way, in effect, about whether or not a child understands the obligation of an oath, or whether or not the child has reached a level of cognitive development that enables the child to understand and respond rationally to questions and give an intelligible account of his or her experiences after the child promises to tell the truth and appears to understand that obligation. In the circumstances envisaged in proposed subsection (2)

the evidence will be treated in the same way as evidence given on oath.

I have been endeavouring to wrap that up into one concept which has a long history in the courts, that is, the taking of the oath. It must be remembered that the oath is not just a religious oath because, under the Oaths Act, it can be an affirmation. It seems to me that with an affirmation you are really asking the child to appreciate the significance of telling the truth. Of course, with an oath you are importing a religious overlay to the evidence and the quality of the evidence given by the witness. Therefore, I still feel very strongly that my proposed amendments go a long way towards removing some of the difficulties which I have expressed in relation to the Bill and will not, in fact, create the difficulties envisaged by the Attorney-General. But if—

The Hon. C.J. Sumner: They will if they follow the decision on section 12.

The Hon. K.T. GRIFFIN: If the Attorney is so worried about that, and this is finally carried, we can put in a provision which makes it clear that there is an option in relation to the oath, because that is clearly the way the Bill is drafted. Proposed section 12 (1) provides:

A young child who is to give evidence before a court is not obliged to submit to the obligation of an oath unless—

The Hon. C.J. Sumner: It is not an option: if you are over seven and you understand an oath, you must give the oath.

The Hon. K.T. GRIFFIN: What is the difficulty with that? Under your proposition, if you are over seven you are obliged—

The Hon. C.J. Sumner: Only if you understand the obligation of an oath.

The Hon. K.T. GRIFFIN: Yes, that is right.

The Hon. C.J. Sumner: Well, that is an oath in the sense of the moral or religious test. That is the problem. Proposed subsection (2) enables the non-religious or moral test to be brought in for those children who do not understand the obligation to give the oath in a moral or religious sense.

The Hon. K.T. GRIFFIN: I do not see that a form of oath which is comprehensible to the child creates that sort of problem. The whole object of my amendment is to ensure that the oath is comprehensible to the child and that the child understands what is required in relation to the oath. In fact, my amendment provides:

The form of an oath to be given to a young child must (if necessary) be adapted so as to make it comprehensible to the child.

If the oath is not comprehensible to the child, I suggest that the child will not be able to satisfy the requirements of proposed subsection (2), anyway. So I suggest that my amendment still overcomes some of the problems which I foresee with the Bill and, in particular, it overcomes the concern that evidence given under proposed subsection (2) will in fact be unsworn evidence and will no longer require corroboration—

The Hon. Diana Laidlaw: And yet be treated in the same way.

The Hon. K.T. GRIFFIN: Yes, and yet be treated in the same way as evidence on oath. Notwithstanding what the Attorney-General has said, there is considerable advantage in going in the direction that I have proposed.

The Hon. M.J. ELLIOTT: I still have reservations about the form of the Hon. Mr Griffin's proposed amendment. During my second reading speech I expressed grave reservations about how proposed section 12 (2) would function so, for that reason, I will support the amendment at this time. After the Bill is considered in the other place it may be returned to us to consider further alteration to the Hon. Mr Griffin's amendment such that it will work satisfactorily, if there are the problems that the Attorney-General first envisaged.

The Hon. C.J. SUMNER: Well, it seems that the Hon. Mr Elliott now has adopted the proposition that a child under the age of seven cannot give evidence on oath, and he is adopting the proposition—

The Hon. M.J. Elliott: No.

The Hon. C.J. SUMNER: Well, you are, I am sorry. I have just explained the antecedents to the section, and that is the way that it will be interpreted if the courts follow the case that I have just referred you to. So, I make it clear that he is apparently saying—

The Hon. M.J. Elliott: No.

The Hon. C.J. SUMNER: So, no one is saying that. Well, it seems to me that you have not achieved your objectives.

The Hon. M.J. Elliott: The original clause in the Bill does not achieve what I would have hoped.

The Hon. C.J. SUMNER: Why?

The Hon. M.J. Elliott: I expressed my reservations about proposed section 12 (2).

The Hon. C.J. SUMNER: It does not matter what system you have. At some point in time the judge has to decide whether a child is capable of giving evidence. That happens in some cases under the general law. For instance, section 9 of the Evidence Act provides:

Where in any proceedings (including proceedings in the nature of a preliminary examination) it appears to a judge that a person does not understand the obligation of an oath, he may permit that person to give evidence without an oath and without formality.

That has been part of our law for a long time, and it requires a judge to make an assessment as to whether a person understands the obligation of an oath. In a sense, it seems that the Hon. Mr Elliott is cutting off his nose to spite his face. Apparently he wants children under seven to be able to give evidence and have it accepted without corroboration, yet he will remove from the Bill the very provision that enables that to be done.

If the Hon. Mr Elliott supports the Hon. Mr Griffin's amendment, he will end up with a situation where, if a child does not understand the oath (with its moral or religious connotations) and is not of or above the age of seven years, any evidence that does not come into that category will require corroboration. As I said, that just defeats what I understood the Hon. Mr Elliott to have been on about from the first moment that he spoke on the Bill. His concern is about deciding whether a child has reached a level of cognitive development but, whether or not he accepts the Hon. Mr Griffin's amendment, that will have to be considered, anyway. The Hon. Mr Elliott proposes to exclude a class of children from having the capacity to give evidence and have it accepted without corroboration.

The Hon. M.J. Elliott: Isn't that what you are doing in proposed section 12 (2)?

The Hon. C.J. SUMNER: No. If the child comes within proposed section 12 (2), corroboration is not required but if the child comes within proposed section 12 (3), corroboration is required. Even if you do not accept the Hon. Mr Griffin's argument about the age of seven and just accept the argument about the oath, you are excluding that category of child who does not understand the oath, whether they are four or five. That means the oath—

The Hon. K.T. Griffin: In a comprehensible form.

The Hon. C.J. SUMNER: Yes. Even though it is in a comprehensible form, it is an oath which has religious or moral connotations. That is clear. He is not changing that. That is what we were attempting to change with proposed subsection (2). The Hon. Mr Griffin's amendment still

requires an understanding of an oath (even in a comprehensible form), meaning its moral or religious connotations, and the affirmation is related to the religious or moral connotations of an oath. So, let us forget the point about age for a minute. If the Hon. Mr Griffin did not mean to do what he did, that can be argued.

The Hon. K.T. Griffin: Whether I did what you said I did.

The Hon. C.J. SUMNER: The Chief Justice and the Full Court would say you did, if you would like to consider the case that I have just referred to, which has really picked up the wording of existing section 12. Leaving aside the question of age, I point out that by supporting the Hon. Mr Griffin's amendment the Hon. Mr Elliott is excluding those children, of whatever age, who do not understand the obligation of an oath with its religious and moral connotations. In proposed subsection (2) we are attempting to set that aside and say, 'They are the strict moral or religious connotations of an oath. Let us look at the child and see whether he can respond to questions rationally; whether he can give an intelligible account of his experiences, and whether he has reached such a stage of cognitive development to do that; and whether he promises to tell the truth and understands that promise.' That does not have any strict religious or moral test. It has a test—

The Hon. K.T. Griffin: Whether it is right or wrong, surely.

The Hon. C.J. SUMNER: Okay, moral, but not in the religious sense.

The Hon. K.T. Griffin: It doesn't have to be religious.

The Hon. C.J. SUMNER: You may be a better expert on what is an oath.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: In order to give an affirmation you must understand the obligations of an oath. That is the point we are trying to make. Sure, but in making an affirmation you are doing it in place of an oath on the understanding that you—

The Hon. K.T. Griffin: Tell the truth.

The Hon. C.J. SUMNER: Yes, and that you understand the obligations of the oath. If you want to get into an argument we can get the cases I suppose. As I understand the position there is that aspect to the oath which children may not understand, and yet they may be perfectly credible witnesses. It seems to me the Hon. Mr Elliott has cut off his nose to spite his face. He seems to have wanted to do something, but then because he does not like the method by which we are doing it he is voting against it and excluding from the capacity to give evidence, in my view, all children who are under seven, but certainly all children who cannot understand the obligation of the oath with the connotations that it traditionally has had.

The Hon. DIANA LAIDLAW: I would like to get this back in perspective. Certainly we are talking about the ability of a child to comprehend a matter or the development of a child to give evidence, but I would like to remind members that we are also dealing with a case where there are two parties where someone has been accused of a criminal offence, and I think it is a very important onus on all of us that we try to clear up these matters so that we have a situation in which we are providing circumstances for children to tell their side of the story in a matter in which they seem to be telling the truth, and that it is within their capacity to give evidence in the knowledge that what they are saying may have extraordinary ramifications for the person who is the alleged offender. Justice is what we are after in this case. I remind members that there is, in my view, probably no more damning accusation upon anybody than to be accused of child abuse, particularly child sexual abuse.

I found the Attorney's last remarks quite difficult to follow. First, I make the point that to talk about, as in the Hon. Mr Griffin's amendment, what is comprehensible to a child seems to me quite a different matter from what the Attorney has in the Bill which provides for a judge to try to determine the cognitive development of that child in terms of a child being able to understand and respond to questions and to give an intelligible account of his or her experiences, etc. The Attorney suggested in his latest contribution that the Hon. Mr Elliott in supporting the Hon. Mr Griffin's amendment was in fact leaving out a group of people. I would challenge that. Moreover, if the judge decides that the child has not reached this level of cognitive development the child will not be accommodated, as I read this Bill, by all the options which the Attorney is seeking to provide, and which he is accusing us of trying to curtail. So perhaps the Attorney could say what is the difference between the cases that I have raised?

The Hon. M.J. ELLIOTT: I have already expressed reservations about both the clause as originally drafted and the amendment. I thought I said when I spoke last time that the reason I was supporting the amendment in the first instance was to keep the debate on the clause alive. If I supported the clause as now in the Bill then I would not have had another opportunity to review it. It was for that reason that I was intending to support the amendment. I do not think I am disagreeing with the Attorney or with the Hon. Mr Griffin in perhaps what we are trying to achieve at the end. It is a question of how it is achieved, and I am not sure that either have quite achieved what we set out to.

The Hon. K.T. GRIFFIN: To accommodate the point of view that the Attorney-General is putting in relation to those under seven, I intend to put that beyond doubt. I do not see it as an area of concern, but if the Attorney-General believes that it is, and he is quoting the Chief Justice as support for his position, then I am prepared to put that beyond doubt by providing a form of words which will ensure that new subsection (1) does not preclude a child under the age of seven years from giving evidence on oath. That will overcome the problem.

The Hon. C.J. Sumner: No, it won't.

The Hon. K.T. GRIFFIN: It will overcome the problem on which the Attorney-General is focusing, remembering that the form of the oath may be adapted if necessary to make it comprehensible to the child. I do not see there is any problem with that at all. It is really a question of my additional clarification depending on how this vote goes, and, if the Attorney-General is happy to proceed we can then perhaps recommit it with a view to adding that extra provision to clarify it when the drafting is available.

The Hon. C.J. SUMNER: I do not think it will be satisfactory to the Government because the honourable member is still excluding that group of children that cannot understand the oath with all its connotations. *C'est la vie.* The object of the exercise was to try to expand the capacity of children who were genuinely able to give evidence without the necessity for corroboration. What the honourable member is doing, I think, is restricting that. The Hon. Mr Elliott has spoken. We may as well let it through and sort it out in the conference.

The Hon. K.T. GRIFFIN: We can still recommit this clause in due course.

Amendment carried.

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

Page 2, after line 31—Insert new subsection as follows:

(5) A witness or prospective witness in the proceedings cannot be chosen under subsection (4) to provide emotional support for a young child.

One of the concerns I expressed during the second reading was the prospect of a witness or prospective witness also providing emotional support for a young child. I have no difficulty with the concept of a person providing emotional support to the young child provided, of course, that that person does not interfere in the proceedings. There is a difficulty if the support person is also a witness because that person will need to be in court throughout the time that the young child is giving evidence and thereafter, whether or not the support person as a witness has also given evidence at that time. It is correct, as the Attorney-General said in his reply, that the court can so structure its proceedings as to ensure that the evidence of the support person is given first to overcome the traditional exclusion of all witnesses from the court until they have themselves given evidence.

But I see a difficulty since the support person would be present in court, be familiar with the progress of the case and, having given evidence, would then be in court as a support person to the young child who is a witness and perhaps be emotionally upset or involved to the extent where that may be prejudicial to the evidence of the young child because, of course, the support person is to be present in court and within reasonable proximity to the young child.

I suggest that although there is the prohibition against interference by that person in the proceedings it will not be possible in every respect to ensure that that position prevails and, with the witness very much involved in the proceedings, I would see that the tension, the emotional involvement and the nature of the case might more readily involve the witness and prejudice that emotional support than if the person were not such a witness. My amendment seeks to provide that a person who is a witness or a prospective witness in those proceedings is not competent to be chosen to provide the emotional support in the context envisaged by new section 12 (4).

The Hon. C.J. SUMNER: The task force dealt with the issue of the support person and recommended that the support person should be a person of the child's choice. It considered that the child's interests in having a support person of his or her choice should be paramount. However, I have had further discussions about the matter, including discussions with the Crown Prosecutor. It may be in some cases that it would be inappropriate for a person directly involved in proceedings to be the support person. According to the Crown Prosecutor, the presence of such a support person may reflect on the prosecution case and actually prejudice a child's evidence. In the circumstances I can see some merit in the proposal put by the Hon. Mr Griffin.

However, I think that there ought to be a let out such that there should be a discretion resting with the court where the most appropriate, or indeed the only, support person available is a witness or prospective witness. My slight modification to the honourable member's amendment is to insert before 'A witness' the words 'Unless the court otherwise allows'. That would provide that the normal situation would be that a witness or a prospective witness cannot be the support person but may be in circumstances where the court considers it appropriate. I move to amend the Hon. Mr Griffin's amendment as follows:

Before 'A witness' insert 'Unless the court otherwise allows'.

The Hon. M.J. ELLIOTT: The proposed amendment to the Hon. Mr Griffin's amendment resolves one of the problems that I saw. A child may have very few people who can provide true emotional support of the sort that I would have envisaged. There may be circumstances where the court may want and need to waive the proposal that a witness or a prospective witness is not chosen. A very young child may only have the mother and one or two close relatives, and they are the most likely people to be witnesses in some of these cases. There may be a need at times for the court to waive the proposal that the Hon. Mr Griffin has put forward.

The Hon. K.T. GRIFFIN: I am happy with what the Attorney-General is proposing. The amendment would then read:

(5) Unless the court otherwise allows a witness or prospective witness in the proceedings cannot be chosen under subsection (4) to provide emotional support for a young child.

The Hon. Mr Griffin's amendment carried.

The Hon. Mr Sumner's amendment carried.

Clause as amended passed.

Clause 6—'Statement of victim of sexual offence who is a young child.'

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

Page 2, line 37—Leave out 'to whom the alleged victim complained of the offence' and insert:

(a) to whom the alleged victim complained of the offence; and

(b) who was the first person to whom the alleged victim complained of the offence,.

The concern I have in relation to this clause is that it appears to go wider than the law provides at present. The court may now admit evidence of the nature and contents of the complaint when first made, because that is evidence, but when complaints are repeated to other persons or subsequently to the same person those complaints are not admissible for the obvious reason that it is quite possible to modify one's complaint or have it influenced by other persons so that it no longer reflects the facts surrounding the matter contained in the first complaint. When I raised this matter during the second reading stage the Attorney-General subsequently responded as follows:

The new provision is intended to have wider operation than the common law exception to the hearsay rule. The aim of the provision is to broaden the opportunity to admit the child's statement to the court. Such an exception is already used in some States of America. The provision can be used as an additional means of presenting the child's statement to the court. It would offer some assistance where a child is troubled by the courtroom environment and finds it difficult to present evidence on his or her own behalf. However, the provision expressly provides that the child must be available as a witness. This would allow for the evidence to be tested through the normal process. Further, the court retains its discretion to exclude the evidence if it is unduly prejudicial compared to its probative value.

I might say, 'whatever that means'. That is my addition to what the Attorney said on that occasion. The difficulty is that, even if the child is available as a witness, remembering that these matters go before juries, the damage is done when the child makes the statement to another person (it may be a police officer, a welfare worker or some other person) during the course of questioning to obtain information about the allegations. It does not really matter that the child is subsequently available for cross-examination, if the hearsay evidence is admitted, the damage is done.

In the consideration of this whole issue of child abuse, allegations have been made of children changing their story, and we particularly hear this in the Family Court, where one person alleges that the other parent has got at the child and has turned the child against him or her. So, you have this situation of conflict and real tension, where the child is in the middle, and the child may well be influenced by the person with whom that child spends most time, who is less disciplinarian or who has other features which, in the eyes of that young child, may be most commendable.

I have heard in my discussions with a variety of people on this subject that, in the course of eliciting information

from a child, it is possible that a child's statement is coloured by the leading questions of the person asking the questions—the medical practitioner, the police officer or the welfare worker. So, I have very grave concern about the admission of hearsay evidence which really is going far beyond what the present exception to the hearsay rule will allow, remembering again that what we want to achieve in this is justice both for the child who is alleged to be the victim and for the person who is alleged to be the offender.

Many of the difficulties can be overcome by police, social workers and medical practitioners being properly trained to assess allegations, to conduct examinations and to take statements in relation to the child's allegations. So much of the problem so far has occurred because too many people are examining, re-examining, questioning and requestioning the alleged child victim.

Much of this could be overcome if there was a coordinated approach by police, medical practitioners and social workers to the young child to minimise the number of occasions when the young child is questioned and examined, and also in the form in which the questions are asked of that young child. There is a highly developed system in the United Kingdom for the investigation of allegations of child abuse and child sexual abuse, and there is a comprehensive training program for paediatricians and other medical practitioners, social workers, lawyers and police, all of which is directed towards ensuring that the accurate information is elicited from the child in a form that has no suggestion that the child has been prompted or encouraged to give what might be evidence or information which is, in effect, very much influenced by what other people have said to that child.

In addition, there is an established procedure for dealing with allegations of child abuse or the sexual abuse of children by investigators. Police and social worker together interview the child but, before doing so, they have a conference to discuss what they know of the case, or what is known of the case, the information that is available to them and the way in which they will deal with questioning the child. Also, there is a provision for videotaping the interview without the videotaping being intrusive.

So, there are highly developed procedures for getting to the truth to ensure that the child is not unduly threatened by the investigators and that real evidence is obtained upon which the proper assessment can then be made whether or not there is to be a prosecution.

Many of the problems that are experienced in South Australia could be overcome by that sort of approach. To suggest that this clause, as the Attorney has suggested, is a way by which all sorts of other information which might under the long established rules of evidence or even under the exceptions to the hearsay rule be got in without necessarily ensuring that justice is done, is in my view a serious departure from established principles.

Before we go down this path we ought to be looking at developing the appropriate package for investigations, for training and for assessment of information and evidence. So far, we have not got that in South Australia, and I do not think that we ought to be moving down this very radical path which the Attorney is proposing in clause 6.

The Hon. C.J. Sumner: It's hardly that.

The Hon. K.T. GRIFFIN: It is a radical approach to introduce quite obviously hearsay information. On the Attorney's own admission, it broadens the opportunities to admit the child's statement to the court. That could be two or three months down the track after investigations have commenced. It could be statements to the medical practitioner, the police officer, the social worker or a whole range of other people. We have already, in amendments made last year, accommodated the presentation to the committal proceedings of a statement by a young child.

We have already made some significant change in that area, and I would suggest, before we take this very radical approach to admitting quite extensive hearsay evidence, we ought to be developing training and proper investigative and assessment procedures. Then, if we need to review the law relating to hearsay, we should do it then. We should not do it now and put the whole system of justice in jeopardy.

The Hon. C.J. SUMNER: That was a somewhat dramatic speech containing a little hyperbole. An exception of this kind has been introduced in a number of common law jurisdictions around the world, particularly in the United States. It was a recommendation of the task force. The amendment moved by the honourable member is opposed. It seeks to limit the operation of the new section so that it applies only to the first person to whom the alleged victim complained of the offence. Such an amendment would severely restrict the operation of the section.

The first person to whom the alleged victim complained may not have received detailed information from the alleged victim about the offence. For instance, under the honourable member's amendment, the person to whom the victim first complained might be the twin sister. She might say that so-and-so did something to her. Three seconds after that, the child victim might pour out her problems to her mother. Under the Hon. Mr Griffin's amendment, the statement to the mother would not be admissible because she was not the first person.

The Hon. K.T. Griffin: It is not at present. What I am proposing is the present position.

The Hon. C.J. SUMNER: I think that there has to be some proximity; it cannot be the first person to whom the victim made the complaint six or eight months later. That is my recollection of the law: it has to be a recent complaint. It is an exception to the hearsay rule.

The Hon. K.T. Griffin: It is the first complaint; it does not matter whether it is eight months later.

The Hon. C.J. SUMNER: That is what you are saying.

The Hon. K.T. Griffin: Yes.

The Hon. C.J. SUMNER: You said that you were reinstating the existing law.

The Hon. K.T. Griffin: That is right.

The Hon. C.J. SUMNER: My recollection is that the existing laws talks about recent complaints to create the exception to the hearsay rule. The honourable member is therefore going beyond the existing rule to some extent. It is true to say that the Government's proposal goes beyond the existing rule. I am trying to make the point that in any event the honourable member's amendment is too restrictive, apart from the question of whether or not it was a recent complaint. I have just given the example of a child victim whose first complaint is to her sister of the same or similar age; and it is a very brief complaint. Three seconds or five minutes later the mother walks in and the complaint is then made to the mother in much more expanded form. Under what the Hon. Mr Griffin is proposing, if I read it correctly, that later conversation with the mother by way of complaint would not be admissible. He can tell me if that is not right.

The Hon. K.T. Griffin: It is not admissible at the moment, is it?

The Hon. C.J. SUMNER: It is admissible as a recent complaint, as evidence of consistency of statement—not evidence of the actual offence having been committed. Mr

Burdett is an old Rumpole of the Bailey, and he would probably confirm that.

The Hon. J.C. Burdett: You cannot smooth him over like that.

The Hon. C.J. SUMNER: There is nothing wrong with Rumpole. He would no doubt say that a statement of a recent complaint can be admitted as evidence of consistency of the complaint, not as evidence of proof of what is alleged to have occurred. The Hon. Mr Griffin's amendment restricts that to some extent, but he would confine any complaint to the first person to whom the complaint was made. Under the existing law the complaint can be made to more than one person and be admissible as to the consistency of the statement. Admittedly, this is a much broader concept.

The Hon. K.T. Griffin: It can be 12 months later.

The Hon. C.J. SUMNER: That is right, we are creating an exception to the rule, and we are not limiting it to a recent statement. But, we are saying that it can go beyond the first person to whom the complaint is made.

I have just given an example of where the Hon. Mr Griffin's amendment would lead us. It would lead us to a complaint to a victim's sister being admissible, even if it was just a couple of words, whereas a full and expansive complaint to the mother 30 seconds after that, would not be admissible under this exception to the hearsay rule that we are attempting to create. The amendment restricts the operation of the section. The first person to whom the alleged victim complained may not have received detailed information from the alleged victim about the offence. The admission of the evidence is in the discretion of the court (that is quite clear in the section) and subject to the court considering the nature of the complaint, the circumstances in which it was made and other relevant factors. Given this, the court has the ability to test the reliability of the complaint before allowing the evidence of the person to be admitted. This should provide an adequate safeguard where the person is not the first person to whom the alleged victim complained of the offence.

The Hon. M.J. ELLIOTT: I also see problems with the proposed amendment because quite often the first complaint will not hold very much. There may have been an almost off the cuff remark to a teacher, who will then realise that something needs to be looked at further. Quite often that first complaint would have very little in it, and it is perhaps the second complaint, where the person has been with somebody from DCW or the police, which might really go into some detail; yet that would be totally precluded, as I see it. It also seems to me that, if the Hon. Mr Griffin was worried that a child might be coached in some way, the evolution of the complaint could be used in two ways. If it is obvious that the child has been coached, the person to whom he complained first, second or third might say that he did not tell that story to him—that it was quite different. So, it could work in the other direction as well.

Having said that, I do not find the amendment acceptable. I believe that one point made by the Hon. Mr Griffin is very true, and that is that the administration of child abuse cases, in particular, is absolutely appalling. I know that this clause does not talk about administration in the first instance, but it certainly relates to administration. If there is bad administration of child abuse cases, some of the problems that the honourable member talked about may occur under the Government's proposal. I make a plea to him to get the Minister for Community Welfare to do something about the way in which the department is handling cases. I am not saying that community welfare officers are acting wrongly by way of intent or present established practice. I am merely saying that established practice is woeful and that something needs to be done about it. I make the plea at this point to the Attorney-General to prevail upon the Minister for Community Welfare to do something about his department and the way it functions. That is a legitimate point, although it will not alter the way in which I vote in relation to this amendment, which I will not accept.

The Hon. C.J. SUMNER: Following the task force report a lot of attention is being given by the department to upgrade the training of the people who deal with child abuse cases. Furthermore, the position is being examined to try to get matters dealt with by police and welfare workers simultaneously so as to reduce trauma to children. As far as the Crown is concerned, the Crown prosecutors last week had a two day seminar on how to treat child victims in the court procedure. I was able to attend—

The Hon. M.J. Elliott: Two days is not a lot.

The Hon. C.J. SUMNER: Well, it is not bad. If you are a prosecutor at that end of the scale, a lot can come out in two days just talking about prosecutors and their role. They see it at the end of the procedure. I was able to be at the first part of that seminar, because it seemed that it would be useful. I do not think that there is much doubt that legal advice should be obtained as early as possible—and we will have to develop procedures to do this—so that a child is not put through a committal before it is found that the case would not stand up in court and cannot be presented—

The Hon. K.T. Griffin: That is the point I made.

The Hon. C.J. SUMNER: Well, that is all right. So what?

The Hon. K.T. Griffin: Good, I am pleased to see that you are supporting it.

The Hon. C.J. SUMNER: There is no problem with that. No-one is upset about it. It is nice to know that you made the point. You probably read the task force report and had an idea. That is all right, members opposite are entitled to have ideas, and I am quite happy for them to come forward with their propositions. All I am saying is that attention is being given to this problem by the Department for Community Welfare and the Police Department.

Last week Crown prosecutors and some police prosecutors held a seminar dealing with child witnesses. As far as I could see, during the couple of hours that I was able to be there, it came up with some useful suggestions. I believe that we should try to do more to get legal advice on decisions about these cases at an earlier stage and by 'legal advice', I mean advice of the Crown Prosecutor's Office. By doing that we will no longer have children put through excessive questioning. At the moment, if there is a committal—although the child may not, of course, appear at that hearing—there is a delay before it may be decided that there is insufficient evidence, for one reason or another, to prosecute. Of course, this often becomes apparent only when a prosecutor conducts an interview and finds that the child is likely to stand up as a witness in court. Therefore, I think that attention needs to be given to those issues. I am pleased to see that the Opposition agrees. Steps are being taken to upgrade the procedures for dealing with children.

The Hon. K.T. GRIFFIN: I am disappointed that the Hon. Mr Elliott is not supporting my amendment, if only to keep this issue alive. What I had envisaged in my amendment was to reflect the present position with the law. However, I see that there are very grave dangers in this clause. I suggest that it will allow the admission of hearsay evidence, which might occur over a long period and may be influenced by those most closely associated with the young child. My concern about that issue is on the record. However, in the light of the Hon. Mr Elliott's indication of his opposition to the amendment, I indicate that, if I am not successful on the voices, I will not call for a division.

Amendment negatived; clause passed.

Clause 7 passed.

Clause 8—'Order for clearing the court.'

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

Page 3—

Line 23—Leave out 'and'.

After line 27—Insert new word and paragraph as follows:

and

(c) any other person who, in the opinion of the court, should be allowed to be present,.

This clause seeks to provide for an order for clearing the court. It provides that, where the alleged victim of a sexual offence is a child who is to give evidence, the court must make an order requiring all persons to absent themselves from the place in which the court is being held while the child is giving evidence, except those whose presence is required for the purposes of the proceedings, and the person who is present at the request or with the consent of the child to provide emotional support for the child. I expressed concern during the second reading debate that there ought to be some provision which would allow the court to make an exception—similar, I guess, to the approach which the Attorney-General had to my amendment to add a new subsection (5) to proposed section 12—so that there is an option for the court in appropriate circumstances.

It may be that there is some other person whose presence is not necessarily required for the purposes of the proceedings but who might appropriately be present. It may be a social worker not involved in the case who is accompanying the social worker directly involved. In fact, it could be a variety of people. I think the court ought to have the option and some discretion, provided the principle is established that in ordinary circumstances the court should be cleared with the exception of the persons referred to in paragraphs *(a)* and *(b)*.

The other aspect is that one would hope that there can be some developmental work in respect of the courtroom environment. I know there have been some experiments overseas, particularly in the United Kingdom, with one-way mirrors, with courtrooms being made less overpowering, with video evidence by closed circuit television, and a whole variety of other experiments. I hope that those experiments and pilot programs can be monitored and that there can be some developmental work done here to ensure that as little pressure as possible is placed upon the child witness whilst giving evidence in so far as the surrounding environment is concerned. Therefore, I believe that my amendment is appropriate to give some discretion to the court.

The Hon. C.J. SUMNER: The Government does not object to this amendment. Work is already being done on the question of courtroom environment. I have asked the Court Services Department to examine that issue. The Crown prosecutors, at their recent seminar, gave some attention to this and I hope that, at some point in the not too distant future, propositions will be put before the Government. Of course, any proposition will need to be discussed with the courts to see whether, say, closed circuit television, a screening system or something else can be introduced. There is a suggestion that not having the child directly confronting the accused may diminish the impact of the child's evidence on a jury. That has been suggested in some quarters and it is not beyond the bounds of possibility. If the jury cannot actually see the child and has to rely on a video, that may have some impact. It is a bid hard to predict. Nevertheless, that is a view that has been put and it would have to be given some consideration at least.

The question of courtroom environment is certainly being considered by the Government at the moment. However, that matter will have to be dealt with in conjunction with the courts, because obviously the courts will decide, in the absence of any legislation obliging them to do it, that a particular courtroom environment was appropriate.

Amendment carried; clause as amended passed.

Clause 9 passed.

Title passed.

Bill recommitted.

CHILDREN'S PROTECTION AND YOUNG OFFENDERS ACT AMENDMENT BILL

In Committee.

Clauses 1 to 3 passed.

Clause 4—'Factors to be considered in dealing with a child.'

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

Page 1, line 27—Leave out 'and'.

After line 30, insert the word and paragraph as follows:

and

(c) by inserting after its present contents, as amended (now to be designated subsection (1)) the following subsection:

(2) Where the proceedings are under Part III, the court, panel or other body or person must, in complying with the requirements of subsection (1), regard the interests of the child as the paramount consideration.

I am seeking to bring the principle referred to in clause 6 back to a more appropriate place in the Bill. Clause 6 provides for a new section 11a which provides that a person, court or panel in dealing with a child pursuant to this part—that is Part III—or in making any recommendation or determination in relation to a child who is or is alleged to be in need of care or protection must regard the interests of the child as the paramount consideration. The concern I have is that that may be construed as being separate or independent from the principles set out in section 7 of the Act. The principles in section 7 are:

That in any proceedings in relation to the child the court, panel or other body shall seek to secure for the child such care, correction, control or guidance as will best lead to the proper development of his [or her] personality and to his development into a responsible and useful member of the community and in so doing shall consider the following factors:

(a) the need to preserve and strengthen the relationship between the child and his parents and other members of his family, and that obviously will be his or her in both cases;

(b) the desirability of leaving the child within his own home;

(c) the desirability of allowing the education or employment of the child to continue without interruption;

(d) where appropriate the need to ensure that the child is aware that he must bear responsibility for any action of his against the law;

(e) where appropriate, the need to protect the community or any person from the violent or other wrongful acts of the child.

Because the proposal in clause 6 was for a new section in a different part of the Act, I believe that it could be argued that in regarding the interests of the child as the paramount consideration it would not necessarily be in the context of maintaining, as far as possible, the relationship between the child and his or her parents and other members of his or her family, and the other principles which are set out in section 7.

I want to bring that provision back to section 7 to maintain the principle that the interests of the child are to be the paramount consideration, but that that paramount consideration is in the context of the principles referred to in section 7. That then more appropriately accords with the recommendations of the Bidmeade report, and puts beyond question the fact that those factors in the present section 7

are to be regarded as important considerations in dealing with a child under Part III.

The Hon. C.J. SUMNER: This amendment is not opposed. We do not think it is necessary, but the amendment restates the principle of paramountcy of the interests of the child and makes clear that the factors set out in section 7 must also continue to be taken into account by the court. That is what the Government had intended in any event.

Amendment carried.

The Hon. DIANA LAIDLAW: It first came to my attention when looking at the adoption legislation last year that the Aboriginal Child Care Agency and Aboriginal Legal Aid both called on that occasion and subsequently for Aboriginal placement principles to be inserted in all legislation that looks at this question of children's protection. I understand that such a submission was made to the Government on this matter, and I was wondering in that case why the placement principles were not accepted and instead the child's sense of cultural identity has been incorporated and I am led to believe it is not satisfactory to the Aboriginal Child Care Agency and Aboriginal Legal Aid.

The Hon. C.J. SUMNER: I do not understand the honourable member's point.

The Hon. DIANA LAIDLAW: Aboriginal placement principles are recognised not only in the Aboriginal community but more broadly in policy of departments where it comes to the protection of children. Therefore, the Aboriginal Child Care Agency and Aboriginal Legal Aid, not only in respect of this Bill but as I indicated earlier in respect to the adoption legislation, sought the inclusion of Aboriginal placement principles within this legislation. As I am aware the Government had those submissions for some time. I am asking why it did not seek to include Aboriginal placement principles—a commonly accepted practice—and chose instead to make reference to a child's sense of cultural identity which I understand also is not satisfactory to those bodies to which I referred.

The Hon. C.J. SUMNER: The officers advising me do not have any recollection of a formal submission to this effect. They say that the matter was the subject of discussion at the stage of drafting the Bill. Frankly, I do not understand what the honourable member is on about. There does not seem to me to be any doubt about the clause that the Government seeks to put in. What we are talking about in section 7 are the factors that have to be considered when a court deals with a child, and that is in the broadest possible sense. One of the factors now will be the child's ethnic or racial background and the need to guard against damage to the child's sense of cultural identity. I would have thought that, given that what we are talking about are broad principles, that is sufficient to encompass the questions that the honourable member has raised.

Clause as amended passed.

Clause 5 passed.

Clause 6—'Interests of child are paramount.'

The Hon. K.T. GRIFFIN: I oppose this clause. That is consequential on the amendment to clause 4 that the Committee has supported.

Clause negatived.

Clause 7—'Application for declaration that child is in need of care.'

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

Page 2, line 23—Leave out 'should' and insert 'must'.

This clause seeks to amend section 12, and in particular seeks to insert a provision that before the Minister makes an application that a child is in need of care the Minister should, except in cases where urgent action is required, arrange for a conference between appropriate employees of the department and the Children's Interest Bureau to provide advice assisting the Minister to decide on the action that should be taken in relation to the child. That ought to be a mandatory requirement; I think that 'should' is discretionary. If there is to be a requirement for a conference to provide advice to the Minister then, except in urgent cases, it ought to be mandatory.

There is a lot of value in a conference relating to whether or not the Minister should apply an order that a child is in need of care, and if the departmental officers involved and the Children's Interest Bureau (which is to be the advocate for children) consider it with their different perspectives (or the different perspectives that they ought to have) and the different responsibilities that they should exercise, then that is in the interests of the child and may well ensure that no precipitate steps are taken which subsequently might be regretted but out of which the Minister is not able to escape because of the prospect of losing face.

The Hon. C.J. SUMNER: This amendment is opposed. The inclusion of the word 'must' means that a conference would be a precondition of an application. Therefore, the point could be taken by those disputing the application that, if no conference had been called, it was not a validly made application. That seems to me to be unnecessarily technical. The Bill provides that the Minister 'should' arrange a conference between the department and the Children's Interest Bureau to provide advice, but it ought not to be an absolute precondition to the taking of the proceedings because that would leave the capacity for people who disputed the proceedings to contest them on that technical ground and the proceedings could be thrown out if a conference of this kind was not held.

If the point was taken, evidence would have to be produced in the proceedings that a conference was held. Again, that seems to be an unnecessary technical imposition when the Government's amendment clearly provides that there ought to be these conferences, and it would obviously be the Minister's intention to carry them out. To make it an absolute precondition—which is what the Hon. Mr Griffin is doing—to an application being taken seems to me to provide the capacity to open up technical arguments about the proceedings which would not be in the best interests of the child.

The Hon. M.J. ELLIOTT: I do not support the amendment.

The Hon. DIANA LAIDLAW: In relation to the word 'should', I have reservations about how the Minister proposes that new subsection (1a) *(a)* will operate. Will he be in almost all instances arranging such a conference, will that be only when it comes to his attention that there may be something wrong, or when there are perhaps protests and lobbies from members of Parliament? I was not sure how this was to be arranged and which cases before the Minister were going to have the advantage of having access to this independent advice (which I saw as an important initiative) from the Children's Interest Bureau. It remains a fact that without that advice we do not overcome the current major problem in the handling of these cases which is that DCW plays every role from carer, to counsellor, to prosecutor, and ultimately to providing and recommending remedies and looking after the long-term care of the child.

The Liberal Party supports the system of independent advocates from the Children's Interest Bureau but we would like to see the cases that are before the Minister having the benefit of that process. Otherwise we are not getting away—

The Hon. C.J. Sumner: They will be.

The Hon. DIANA LAIDLAW: But 'should' leaves the whole thing so vague.

The Hon. C.J. Sumner: No.

The Hon. DIANA LAIDLAW: In my view it certainly left it vague, and it was on that basis, notwithstanding, I admit, some reservations about the amendment (because of resource considerations, and so on), that I thought that the matter was so important that 'must' was a more desirable addition to this provision.

The Hon. C.J. SUMNER: The word 'should' is stronger than 'may'. There is an exhortation in the legislation for the Minister to carry out this procedure, and the Minister will, wherever possible, do that. There may be problems with resources, as the Hon. Miss Laidlaw mentioned. There may be simple cases where there is no point in having a conference and, if you make it obligatory to have the conference, you may slow down the process. That is one thing.

If for some reason you do not have the conference, the technical point can be taken. The conference may be absolutely unnecessary in some cases but, if it is not held, the technical point will be taken and one can end up having a fight in court about whether one has followed the correct procedures. This is quite appropriate. It is not an absolute, fundamental precondition to proceedings but, in the majority of cases, because there is that exhortation in the Bill, I expect that the Minister would arrange such a conference. The Minister does want the independent advice of the Children's Interest Bureau. It has been a good point of the argument about these Bills to get the bureau more actively and statutorily involved in the procedure. That is what this does. But, it is not a big argument. If we say 'must', we are creating a capacity for lawyers to argue whether all the preconditions of an application had been met. I do not think that is necessary.

The Hon. K.T. GRIFFIN: In the light of the indication from the Hon. Mr Elliott, if I do not succeed on the voices, I do not intend to divide.

Amendment negatived.

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

Page 2, lines 30 and 31—Leave out ', unless of the opinion that to do so would not be in the best interests of the child,'.

I feel strongly about this amendment, which still relates to new subsection (1a). It deals with paragraph *(b)*, which provides:

The Minister should, unless of the opinion that to do so would not be in the best interests of the child, have the guardians of the child notified in writing of the action that is being contemplated, the possible consequences of an application under this section, and of the availability of legal advice and any other relevant assistance.

I want to delete the discretion given to the Minister to determine whether or not it is in the best interests of the child to give the guardians of the child notice of the action that is being contemplated. It seems to me that one of the major areas of controversy at present is that parents or other guardians are not kept informed of action that is being taken.

Regardless of the merits of any complaints by guardians about the actions of the Minister, the fact is that in many of those complaints the parents or other guardians perceive that they have lost their parental rights, that they have not been consulted, that action has been taken precipitately and that therefore they are in the category of being second class citizens. It is important for the sake of the children and their future relationships with parents or other guardians, and I think it is also important for the department in the many difficult cases which arise that there is as little as possible done to create animosity between parents or other guardians and the department.

It ought to be a priority that parents or other guardians are notified in writing of the action that is being contemplated. The Attorney will note that I am not changing 'should' to 'must', and that there is still an element of discretion in it. But, notwithstanding that, I think it ought to be done as a matter of course. Because of that, I have moved my amendment.

I should also say that while paragraph *(b)* is a good initiative, it is only a sop to parents and other guardians if there is that wide discretion on the part of the Minister to reach some opinion that it would not be in the best interests of the child to notify the parents or other guardians of what action is contemplated or what are the possible consequences of an application and of the availability of legal advice.

The Hon. C.J. SUMNER: The Government opposes this amendment, which would mean that notification to parents should be given in all cases. The Government and the department accept that, as a general rule, the guardian should be advised of an investigation and possible outcomes of it. However, the Bill introduced by the Government provides for such notice not to be given where it would not be in the best interests of the child to make such information available. There may be circumstances where to give notification may act against the interests of the child, and the department has indicated such possible examples as absconding with the child when that notification is given.

That is a possibility and, I am advised, it does happen. If the parent feels that the child has notified someone of the abuse or complained about the abuse there may be the capacity for more abuse in particular circumstances. Further, the police may be engaged in an investigation of a criminal offence, and one may well notify the guardians and interfere with that investigation.

The Hon. K.T. Griffin: What do you do? Do you just whip the child away?

The Hon. C.J. SUMNER: No. That does not happen in the normal case. We are suggesting that in the normal case (and this is the policy of the department as I understand it) the parents or guardians should be notified. There are some circumstances where that creates problems in terms of the interest of the child. As I have said, one problem is absconding. Another is further abuse, and yet another is that it may cut across some investigation that is being conducted by the police. The department and the Minister want to retain that discretion as to whether to give notification that action is being contemplated.

The Hon. M.J. ELLIOTT: I agree with the Attorney. I believe that, by the very nature of the cases that may be involved, the clause as worded should remain. The amendment is not acceptable.

The Hon. K.T. GRIFFIN: It is important that the guardians of the child be notified in writing of action that is being contemplated. That can be achieved by giving them notification in writing at the same time as or immediately before action is taken to apply for an order. But, in the light of what the Hon. Mr Elliott has indicated, if I lose the amendment on the voices I will not divide.

Amendment negatived.

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

Page 2, after line 36—Insert new paragraph as follows:

(f) by striking out subsection (2) and substituting the following subsection:

(2) The following persons are parties to an application under this section:

(a) the Minister;

(b) the child the subject of the application;

(c) each guardian of the child;

and

(d) where a ground of the application is that a person residing with the child has maltreated or neglected the child—that person.

This amendment provides that the parties to an application include a person residing with a child where a ground of the application is that the person has maltreated or neglected the child. The reason for including this provision is because of a proposed amendment to section 14 which would allow the Children's Court to make an order affecting that person. Therefore, the person should be in a position to appear before the court as a party to the proceedings.

The Hon. K.T. GRIFFIN: I support the amendment. I think it is important to have the matter clarified, and the amendment meets the difficulty that would have occurred if the Attorney-General had not sought to expand the description of those persons who were to be regarded as parties to any application.

Amendment carried; clause as amended passed.

Clause 8—'Service of application.'

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

Page 2, line 37—After 'is amended' insert the following:

(a) by striking out subsections (1) and (2) and substituting the following subsections:

(1) The Minister must cause a copy of an application under section 12 to be served—

(a) on the child the subject of the application, if the child is of or above the age of 10 years;

and

(b) on each other party to the application.

(2) The application must be served personally, but—

(a) if it is not practicable to serve the application personally on a party (not being the child);

or

(b) if the whereabouts of such a party has not, after reasonable inquiries, been ascertained,

the application may be served on that person by post addressed to the person at his or her last known place of residence or employment.;

and

(b).

This amendment provides for the service of an application on a person residing with the child where a ground of the application is that the person has maltreated or neglected the child. The provision restates the provision dealing with service by post and extends it to cover service on a person residing with the child who is a party to the application.

The Hon. K.T. GRIFFIN: Again, I think the amendment is appropriate, except that I have some difficulties with the service of these sorts of applications by post. Obviously, if after reasonable inquiries the whereabouts of such a party has not been ascertained, there is no point in sending the application by post. The person will not get it, yet that will be regarded as adequate service. As I say, I have some difficulty with proposed subsection (2). I have no difficulty at all with subsection (1). Will the Attorney-General indicate how he proposes to overcome the problem if the whereabouts of a party cannot be ascertained after reasonable inquiries and the application is served by post? In those circumstances the application would be deemed to have been served, even if it is not going to be served by post.

The Hon. C.J. SUMNER: This is the existing law, and the department says that it has operated satisfactorily. It provides that the application shall be served personally but can be served by post where it is not practicable to serve the application personally or the whereabouts of the person has not been ascertained.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: They send it to the last known address. The only other alternative is to have some form of substituted service which would involve yet another court proceeding before the action could be commenced.

The Hon. K.T. GRIFFIN: There is no provision for giving the person who has not been served an opportunity to come back and have the matter reviewed.

The Hon. C.J. SUMNER: If you have not been served and you find out about the proceedings, then you front down to the court and say, 'I did not get served.'

The Hon. K.T. GRIFFIN: Do you not have procedures for that in the Justices Act? If you look at the Justices Act you will see a procedure for dealing with applications which are sent by post but not in fact served.

The Hon. C.J. SUMNER: That may be. All I know is that this provision has been in the Act since 1979 and the department tells me that there has not been a problem with it. Presumably, if someone finds out that there is an application of this kind of which they did not receive notice, they will appear in court and, if he felt that there was an injustice, the judge or magistrate would restart the hearing or vary the orders, as I assume could be done under the existing legislation. It seems to me that we should not be seeking out problems if they do not exist, and so far no problems have arisen with this clause, which has been part of the Act since 1979.

Amendment carried.

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

Page 2, lines 39 to 41—Leave out subsection (4) and insert subsection as follows:

(4) The Court must not, unless it thinks urgent action is required, proceed to hear an application under this section if any party served with the application has not had at least five days' notice of the hearing.

The Bill provides that the date for the hearing of the application must not, unless the court thinks urgent action is required, be earlier than five working days from the date on which the application was lodged. That means that the defendants to the application need not get any particular period of notice of the hearing; in fact, they may get notice the day before. The Bidmeade report suggests a minimum of three days notice from the date of service, unless the court thinks that urgent action is required.

I prefer merely to turn the Government's own amendment around and to provide that, the court must not, unless it thinks that urgent action is required, proceed to hear an application under this section if any party served with the application has not had at least five days notice of the hearing. I think five days is reasonable, particularly if it is served on a Thursday or a Friday and there is an intervening weekend before the date of hearing. I think this removes the prospect of a great deal of criticism which I have heard of inadequate notice being given to the defendants of an application and an inadequate opportunity to get legal advice and, if necessary, legal representation in order to adequately deal with the matter when it first comes before the court.

Of course, it must be remembered that when defendants are served with an application they are usually taken by surprise. Many of them are nonplussed by it all and, because it involves their family, they are very emotionally upset by what is occurring. In those circumstances I think that, unless it is urgent and the court believes it to be urgent, it is in the interests of everyone and it is important, that there be a minimum period of five days notice of the hearing.

The Hon. C.J. SUMNER: The Government can understand what the honourable member is putting. Unfortunately, the Government believes that there are problems with it. If the honourable member's amendment is carried, it may produce a situation where there are lengthy delays

in dealing with matters when there should not be because of the difficulty in serving notice of the application. The Government feels that the wording of its amendment is better. Of course, it depends on the court whether or not a case is listed. If the court is not happy about the service of an application, it can decline to proceed with the case. The section that the Government is introducing is designed to provide at least some period of time before the matter proceeds, that is, at least five working days. The Opposition's proposed—

The Hon. K.T. Griffin: It is five days, not five working days.

The Hon. C.J. SUMNER: Our amendment is five working days. The Opposition's proposed wording may require extra effort and resources to prove urgency before the case could be heard. However, that is not a major problem. I concede that.

The Hon. K.T. Griffin: You can do that in the affidavit when you lodge your application.

The Hon. C.J. SUMNER: Well, maybe. It may require that. Difficulties may arise where a service has not been effected, for instance, where parents are separated. You could have a situation where there is service on one parent but not on the other.

The Hon. K.T. Griffin: The court has that discretion, hasn't it?

The Hon. C.J. SUMNER: That is so, and they proceed with it. It may be in the interests of the child to proceed with it more expeditiously. The problem with the Opposition's amendment is that it makes the service of the application the crucial point. The Government is saying that it is the filing of the application that is crucial and that the court, as a matter of discretion, would not proceed if there had been no service, inadequate service, or if it was concerned about the service.

Therefore, there is already an inbuilt protection that a court has: it must abide by the rules of natural justice and, if it proceeds without service, it would have to have good reasons for doing so. However, I am advised that there are a number of cases where, if parents or guardians are separated, there is service on one guardian or parent, the court should be able to proceed with that service being constituted. Under the Hon. Mr Griffin's amendment, as I understand it, the court would have to wait for the other parent to be served before the period of five days started to operate. That person may be in Darwin, Gove or anywhere interstate.

The Hon. K.T. Griffin: My amendment says that the court can still deal with it.

The Hon. C.J. SUMNER: Only if it thinks it is urgent.

The Hon. K.T. Griffin: That's right.

The Hon. C.J. SUMNER: But only if it thinks it is urgent.

The Hon. K.T. Griffin: That is right, but some of these roll over month after month after month. It is incredible what happens in some of these applications: the court keeps putting them off regardless of whether or not they are urgent.

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

The Hon. K.T. Griffin: I will tell you later.

The Hon. C.J. SUMNER: The point that the Opposition is making is that everyone must be served and that the five days starts when everyone has been served. We are saying that it should start from the date of the application. It may be that cases are put off, but that ought to be a matter that is left to the discretion of the court, and the honourable member's amendment does create problems where there has been service adequate on one party but service that is not adequate on another party. The court may decide to proceed, and it ought to be able to proceed if the service on that one party has in fact been properly carried out.

The Hon. DIANA LAIDLAW: Part of the responsibility for this amendment comes from representations that I have received from time to time. In fact, I had a case earlier this week of an extremely distraught woman who had just that morning been served with an application with advice that she was to appear in court that afternoon. She rang her lawyer but, not surprisingly, that lawyer was involved with other work, and the like. Then the Attorney says that that situation can be dealt with in court. The judge has the discretion not to proceed at that time. However, the fact is that this woman and others to whom I have spoken over time are extremely distraught individuals, and to tell them to get into court in those circumstances, when they have no legal representation and yet are facing a situation in which they may well lose a child, seems to me not to be in the interests of natural justice although I do appreciate that we are trying to serve the best interests of the child.

I am not calling for longer delays and I did not think that the amendment moved by the Hon. Trevor Griffin would in fact lead to that. I understand the argument that the Attorney puts, but with the way the system is working at the moment we are getting hellishly long delays in some cases because of the manner in which these applications are being served, and the cases are being put off, anyway. I am not sure whether it is the chicken and the egg situation. What I am troubled about is that, given the way it reads at the moment, the situation is condoned, and I know it has been the practice in the department at times when these applications, once filed, have sat in the in basket and have not been served as quickly as they should have been. I am not saying that that is the case in every instance, but certainly it has happened and that was one of the cases about which I received advice earlier this week.

I felt very strongly that in the interests of natural justice, which in this instance would also be balanced by the best interests of the child, it was important that we had a clear period of time between the filing and the serving of these applications so that proper representations could be made in court by all parties.

The Hon. K.T. GRIFFIN: The Hon. Diana Laidlaw has just reinforced the position which I put, that there are many occasions when there is quite inadequate notice. There is no equity in the situation where a parent gets a notice to go to court that afternoon or the next day. It is not an isolated instance. In the past year I have had two or three families who have been very upset because they have been served with an application and have had to go to court within a very short period of time, and they could not get a lawyer. I had to ring around to try to find them a lawyer who would deal with their case expeditiously and appear for them. The real problem is that, in the case to which the Hon. Diana Laidlaw referred, if that woman attended at court, it would be likely that the court would adjourn the matter for a month. It would not be just for a few days, but a 28 day rollover. Then the rot starts to set in.

In my view, it is important that the matters be dealt with quickly but that all parties have a reasonable opportunity to take proper advice and consider their position and try to work out what are the problems and what the remedies might be. That is why it is important to have a minimum period of time between the service of the notice and the actual hearing. I know the Attorney-General is saying that it may be that in some cases one party will be served but not the other, and that may hold up consideration of the case. If it is urgent, it can be dealt with anyway. If it is not

urgent, then it is not prejudicing any party any more than might be occurring at present.

So, I feel very strongly that equity requires that there be this minimum period of time. If the Act wants to provide for special circumstances or give some other description which enables the court to proceed in certain circumstances, I would be happy to consider that. There is a need to provide a minimum period. I would suggest that it is not good enough to go along with what the Government is proposing because of the way in which inequities occur at the present time and the way in which the matters are presently handled in many instances.

The Hon. M.J. ELLIOTT: Where will the interests of the child not be served by accepting the proposed amendment? I think the points are well made about the position that parents are put in from time to time.

The Hon. C.J. Sumner: Only greater delay in the hearing of the cases.

The Hon. Diana Laidlaw: But delays are occurring now.

The Hon. M.J. ELLIOTT: I think it is most certainly true that considerable delays are occurring at present and it would seem to me that, where urgent action was required, that has been allowed for under the amendment. Unless the Attorney-General can come up with something a little more convincing, I will accept the amendment.

Amendment carried; clause as amended passed.

Clause 9—'Orders court may make.'

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

Page 3, line 7—After 'and' insert ', subject to subsection (2),'.

This clause seeks to provide for the orders which a court may make if it finds on an application that a child is in need of care or protection. The court may place the child under the guardianship of the Minister or any other person for a specified period; direct that any specified guardian may have access or not have access; place the child under the control of the Director-General for a specified period; direct that the child reside or not reside with a specified person in a specified place; direct that a guardian of the child take specified steps to secure the proper care, protection or control of the child; and make such other ancilliary orders as the court deems fit.

I express some concern about this provision because it did not seem to address some of the concerns which had been expressed to me and to other members about the quality of the guardianship of the Minister and the involvement of the usual guardians in the decision-making process or in the care, control or protection of the child. Concern was also expressed in relation to the control of the Director-General.

The particular concern was that the court was leaving so much to the discretion of the Minister and to the Director-General under those respective provisions, was not addressing the need perhaps for something less than guardianship or control, and was not addressing something akin to directions to the Minister or to the Director-General about the way in which access should be granted or the child should be accommodated or otherwise educated or dealt with. The Bidmeade report, from my recollection, also recommended getting rid of the control of the Director-General and placing the responsibility firmly on the shoulders of the Minister who must ultimately be accountable, although the Minister may, of course, rely upon his or her officers for the purpose of ensuring that the child is properly cared for or protected or controlled.

Under this clause, I want to ultimately add a new subsection (2)—but I will deal with that when we get to it—to leave out paragrah *(b)* which relates to a direction that any other specified guardian of the child should be allowed or not allowed access to the child where the child is placed under the guardianship of the Minister. I want to leave out 'Director-General' and insert 'Minister' with respect to paragraph *(c)* which provides for placing the child under the control of the Director-General. I want to more specifically provide for access under a new paragraph *(ea)*, so that where a child is placed under the guardianship of the Minister or control of the Minister the court can allow or deny access to any specified person not limiting that to a guardian, and the court can give directions to the Minister or other guardian as to the way in which the powers will be exercised.

Then when we come to the new subsection (2) I want to pick up an objection which was made quite strongly by the family law section of the Law Society in relation to clause 7 *(b)* which sought to introduce the concept of a child being placed under the guardianship of the Minister as a result of maltreatment by a person residing with the child, a person who is not necessarily a guardian.

I have not taken any exception during the course of the Committee stage to paragraph *(b)*, but I want to ensure that where the court finds that a child is in need of care or protection on the ground that a person who is not the guardian but is residing with the child has maltreated or neglected the child the court may not make an order for guardianship unless satisfied that the guardians of the child knew or ought to have known of the maltreatment or neglect. That is fair and reasonable (and we can perhaps debate it more fully later) and relevant to the general concept of what I am trying to ensure under this clause.

Amendment carried.

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

Page 3, lines 11 to 14—Leave out paragraph *(b)*.

The Hon. C.J. SUMNER: This amendment is opposed and is a consequence of the Hon. Mr Griffin's proposal to insert a new paragraph *(ea)* dealing with access and other matters. The Government does not support the inclusion of proposed paragraph *(ea)* and considers that the power of the court to order access should be limited to access by guardians of the child, as provided by paragraph *(b)*.

The Hon. K.T. Griffin: What about grandparents who may not be guardians?

The Hon. C.J. SUMNER: A person who has the guardianship is entitled to—

The Hon. K.T. Griffin: I said grandparents who are not guardians.

The Hon. C.J. SUMNER: Whoever gets the guardianship is able to provide access to the grandparents.

The Hon. DIANNA LAIDLAW: The Attorney referred to the Hon. Trevor Griffin's amendment to insert a new paragraph *(ea)* when speaking to the amendment that had actually been moved to leave out paragraph *(b)*. Therefore, I will do the same. Presently one of the difficulties, when a child is placed in the guardianship of the Minister, is that the court does not have before it specific guidelines on what it should and could do, and this leaves an enormous amount of discretion essentially to the whim of the department which is all powerful in this situation, and parents, grandparents and the like, have enormous difficulties asking it to even justify why it has made decisions in the bounds of what the court has allowed.

This causes an enormous anxiety and extra stress not only for the parents but also, I suggest, for the children, because the department has the discretion provided by the courts and applies it in the best interests of the child but, as I have tried to point out in second reading debates on a variety of Bills, what is in the best interests of the child is very much open to question and debate. However, in this instance, the department is really not an appeal process

unless one goes back to the court. It is virtually impossible, if the Attorney is familiar with the workings of DCW in its present policing role, to get the department to see reason in trying to get the slightest change to its administrative decisions that are made within the ambit of the orders that the court might make.

Many lawyers and I would have preferred the section to be amended more specifically and to follow the guidelines in the Guardianship of Infants Act, but that is not the case and I am not moving accordingly. However, one small measure we could take is to address the problems I have highlighted tonight, and in very general terms it is to support the amendments moved by the Hon. Trevor Griffin.

In relation to the interjection of the Hon. Trevor Griffin about grandparents, if one puts oneself in the child's position, something traumatic has happened to it which may be sexual or physical abuse, and it is then removed from the parents' environment, often removed from school, and actions are taken in the perceived best interests of the child. However, that child is often quite distraught and distressed by those actions taken in its best interests. It is important that the court be provided with more specific powers to try to address that situation and, if the child is removed from offending parents or aggressive parents, provide that other members of the family could be nominated to maintain some contact between the child and other family members. I only highlight that as being one instance, but it is extremely important because there is no question that anybody in the whole matter has all knowledge and can assume overall that they know what is in the best interests of the child.

The Hon. M.J. ELLIOTT: The sorts of cases raised by the Hon. Miss Laidlaw have also come to my attention—not necessarily the same people but the same types of cases. I agree with the point made by the Hon. Mr Griffin that the court should be able to make the sort of directions that he contemplates in paragraph *(ea)*. There is some value in that and, in the absence of a stronger argument from the Attorney, I am tempted to support the amendment.

The Hon. C.J. SUMNER: The Government maintains its opposition to this provision, which will result in access fights in the Children's Court. That is not the role of the court in this area. It will impose significant burdens on the court in making decisions of this kind, and the Government believes that access can be granted to a specified guardian, and it is that guardian who is responsible for the child. That guardian has access to the child and therefore is able to take up the options for access. I am not sure what the honourable member is suggesting. Is he suggesting that dozens of other specified persons are able to come along and apply to the court to get access? Presumably that is what could happen if his amendment was passed.

The Hon. K.T. GRIFFIN: Where is the Attorney placing his emphasis? We are trying to act in the best interests of the child. The level of complaints about the difficulty in getting information about children who are the subject of an application or an order and the concern that the Children's Court, which is independent, is not exercising its responsibilities and resolving disputes suggest to me that we ought to be placing more emphasis on the independent arbiter.

It is all very well to give the responsibility to someone else to be the guardian and say, 'It is all over to you.' The fact is that the guardian is frequently a Minister of the Crown, who is totally unrelated to the child or the family of the child. So, there is a remoteness in respect of decision making, and that in itself creates tensions. It creates many problems in a number of cases. I would have thought that, even if this did have resource implications in giving to the court a wider jurisdiction, it would be in the best interests of the child in particular that the court exercised the responsibility and took some decisions objectively where there was a dispute.

That would be in the best interests of the child and his family, and I cannot understand why the Attorney would want to be concerned about what the ramifications would be for the court in giving it these wider powers when, after all, the conferring of those powers was designed to resolve disputes. That is what courts are for, and to provide for decisions in the best interests of the child.

The Hon. C.J. SUMNER: Basically, we say that a court ought not to be dealing with great reams of access applications; that would bog down its work. People do not want delays in court. We have just heard about more delays, and this will enable greater delays to occur. We say simply that we place the child under the guardianship of the Minister or some other person and that the Minister or that other person can determine access to other people. However, the court can provide access to a specified guardian, who would perhaps be the parents from whom the child had been taken. That access can be specifically granted. Once you get there, we can have grandad or the neighbour down the road, or it might be—

The Hon. K.T. Griffin: That is a bit extreme.

The Hon. C.J. SUMNER: It is not. It says 'any specified person'. Presumably, that could be anyone.

The Hon. K.T. Griffin: It could be, but in reality it is not going to be.

The Hon. C.J. SUMNER: The reality is that you are going to further delay the proceedings. You did not worry about delay before and, if you are not worried about delay now—

The Hon. K.T. Griffin: I do not believe you are going to cause delays.

The Hon. C.J. SUMNER: It will happen. There will be more applications for access to the decisions that the court has to make. We say simply that the Minister gets guardianship and can determine access beyond the immediate previous parents or guardians. They can still go and get their access from the court, and that is fair enough. But, with respect to access to other people, whether it be grandparents or whomever, the Minister can decide that, or another person who has been appointed the guardian can decide it. That is not an unreasonable situation.

It is left to the people who have the responsibility for the child under the order made by the court, except in the case of the specified guardians who are the parents or perhaps those from whom the child has been taken. The question of access by the immediate prior guardians of the child is dealt with by the court but, for the rest, it ought to be left to the person who is given the guardianship of the child. To broaden it out beyond that will again have resource problems and will result in greater delays, because there will be more parties before the court fighting over those issues.

The Hon. M.J. ELLIOTT: It is clear that the Attorney is ignorant of the sorts of problems that are being created now for many people. Problems are occurring which should not be occurring and which impact on both the child itself and on other innocent parties. The procedures as they currently stand are inadequate. If there was an offer of some other procedure that would resolve the problem, I would be willing to listen. The Minister's suggestions about resource implications are probably overstated. In most cases the court would be most interested in specifying who would not be allowed access. It would probably delegate the rest of the powers in the first instance to the Minister and, presuming that the department functions properly, the court would

never see any more of it. In some ways it puts a lot more pressure on the department to function and do its job properly. If it does that there are no resource implications at all.

Amendment carried.

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

Page 3, lines 15 and 16—Leave out 'Director-General' and insert 'Minister'.

I want to pick up the Bidmeade recommendation, as I recollect it, to place all the responsibility with the Minister who ultimately should be accountable, whether it is for guardianship or for control. There have been a number of unsatisfactory aspects of control by the Director-General. The Minister can delegate responsibility if appropriate, so no harm is done by my amendment. However, it means that ultimately the Minister will have the responsibility for control where the court deems it appropriate to grant that control, rather than guardianship, to the Minister.

The Hon. C.J. SUMNER: The Government opposes this amendment. The reference to the Director-General's order was retained on the advice of the Crown Solicitor. In Australia the matter of guardianship has historically rested with the Minister rather than the Government department. This is desirable given the implications of a guardianship order. However, the intent of a Director-General's order is to deal with matters of a lesser nature than guardianship. Often such an order would deal with administrative matters such as the school that the child should attend. Matters such as this are not seen as appropriate for the jurisdiction of the Minister. The court could be seen as directing a Minister on a minor matter.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: That may not be, but there may be many others that are. The Director-General's order was retained to provide greater flexibility for the court.

The Hon. M.J. ELLIOTT: I do not support the amendment.

Amendment negatived.

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

Page 3, after line 24—Insert new paragraph as follows:

(ea) direct a person who is, or has been, residing with the child (if that person is a party to the application) to do any one or more of the following:

(i) to cease or refrain from residing in the same premises as the child;

(ii) to refrain from coming within a specified distance of the child's residence;

(iii) to refrain from having any contact with the child except in the presence of some other person;

or

(iv) to refrain from having any contact at all with the child;.

This amendment provides for a range of orders to be made by the Children's Court against a person residing with a child who has maltreated or neglected the child. These orders will be available only after the court has made a declaration that the child is in need of care or protection within the meaning of section 12 of the Act, not at the interim stage.

The Hon. K.T. GRIFFIN: I support the amendment. It gives the court an additional power and, although I hope that it will be exercised with great caution, I can see that in some instances it may be necessary to make that sort of decision.

Amendment carried.

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

Page 3, after line 24—Insert new paragraph as follows:

(ea) if an order is made under paragraph *(a)* or *(c)*, direct—

(i) that any specified person be allowed, or not be allowed, access to the child;

(ii) that the Minister or other guardian exercise his or her powers under the order in a specified manner;.

This amendment is consequential upon the deletion of paragraph *(b)*.

Amendment carried.

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

Page 3, after line 26—Insert new subsection as follows:

(2) Where the court finds that a child is in need of care or protection on the ground that a person (not being a guardian) residing with the child has maltreated or neglected the child, the court may not make an order for guardianship under subsection (1) *(a)* unless satisfied that the guardians of the child knew, or ought to have known, of the maltreatment or neglect.

This amendment provides that, where the court finds that a child is in need of care or protection on the basis that a person residing with the child is not the guardian but that person has maltreated or neglected the child, the court cannot make an order for guardianship by the Minister unless it is satisfied that the actual guardian of the child knew or ought to have known of the maltreatment or neglect. I presume from the Attorney-General's earlier indication of acceptance of my first amendment on this clause that he would accept this amendment. If that is the case I need take it no further.

The Hon. C.J. SUMNER: The amendment is not opposed.

Amendment carried.

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

Page 3, lines 31 and 32—Leave out paragraph *(c)* and insert paragraphs as follows:

(c) by striking out subsection (5) and substituting the following subsection:

(5) On the expiration of the period of adjournment or at such earlier time as the Court, on application by a party to the application, allows, the Court may—

(a) declare that the child is no longer in need of care or protection and discharge any order;

(b) affirm the declaration that the child is in need of care or protection;

(c) affirm or vary the terms of any order;

(d) discharge any order;

or

(e) make any order that the Court is empowered to make under subsection (1).;

and

(d) by striking out subsection (7) and substituting the following subsection:

(7) A party to the application (other than the child) who, having been served personally with an order made under this section, contravenes or fails to comply with the order is guilty of an offence.

Penalty: Imprisonment for three months.

This amendment provides for a revision of section 14 (5) of the principal Act. The amendment removes a distinction between a child of or above the age of 10 years and a child below the age of 10 years for the purposes of making an application under section 14 (5). The amendment will allow any child who is capable of making an application to do so regardless of his or her age.

The amendment also inserts a new subsection (7) dealing with the penalty for breach of a court order. The penalty currently stands at $500. The amendment provides for a penalty of imprisonment of three months. This penalty is seen as more appropriate given that the offence involves a breach of a court order. The provision also requires that the order be served personally on a party before a breach of the order constitutes an offence. This is to ensure that the person is given an opportunity to be aware of the terms of the order before an offence can occur.

The Hon. K.T. GRIFFIN: I think that the amendment is appropriate, as it widens the power of the court and broadens the range of persons who may make an application. I

think it is also appropriate to provide for some offence in relation to a party who contravenes or fails to comply with an order. The maximum penalty is imprisonment for three months. Only yesterday we considered the various categories of penalty and the various divisions of fines and imprisonment. Does the Attorney-General have in mind for this particular offence that a fine will also be available to the court as a penalty option?

The Hon. C.J. SUMNER: Yes. There will be the option of a $1 000 fine or three months imprisonment.

The Hon. K.T. Griffin: That is not yet in the legislation?

The Hon. C.J. SUMNER: The Parliamentary Counsel advises me that apparently that is picked up in the sentencing Bill.

Amendment carried; clause as amended passed.

Clause 10—'Variation or discharge or orders.'

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

Page 3, line 33—After 'is amended' insert the following:
(a) by striking out from subsection (1) 'Subject to subsection (2) of this section, any' and substituting 'A';
(b) by striking out subsection (2);
and
(c).

This amendment deals with the variational discharge of orders. Currently, a child under the age of 10 years cannot make an application under this section for a review. The amendment would allow any child who is capable of making an application to do so regardless of his or her age.

The Hon. K.T. GRIFFIN: The Opposition is prepared to support that. It is consistent with the amendment just approved.

Amendment carried; clause as amended passed.

Clause 11—'General power of adjournment.'

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

Page 4, lines 7 to 10—Leave out paragraph *(b).*
After line 15—Insert new paragraph as follows:
(da) if an order is made under paragraph *(a)*, direct—
(i) that any specified person be allowed, or not be allowed, access to the child;
(ii) that the Minister exercise his or her powers under the order in a specified manner.

This amendment is consistent with the earlier amendment to clause 9 *(a)* that has already been passed. It relates to the orders which may be made on an adjournment in relation to access and to the way in which the Minister may be required to exercise his or her powers under the order.

Amendment carried.

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

Page 4, after line 19—Insert new subsection as follows:
(5) A party to the application (other than the child) who, having been served personally with an order made under this section, contravenes or fails to comply with the order is guilty of an offence.
Penalty: Imprisonment for three months.

This amendment inserts a new penalty section in the Act with regard to a breach of an order made by a court on the adjournment of in need of care applications. The provision is drafted in the same terms and with the same penalties as is proposed in relation to the breach of a long-term order under section 14.

The Hon. K.T. GRIFFIN: The Opposition is prepared to support this because, as indicated by the Attorney-General, it is consistent with what we have already approved.

Amendment carried.

The Hon. M.J. ELLIOTT: Before we began debating this Bill, I had a brief conversation with the Attorney. I indicated to him that I had a rather belated submission from a person in relation to this Bill and I had not had a chance to have an amendment drafted. It would relate to this clause and I would seek an opportunity later on for us to recommit this clause. It relates to the original recommendation of the task force in relation to interlocutory protection jurisdiction. The Government chose not to pursue that, but the submission made to me—and I really need to examine it a little further—was that some additional protection for children at immediate risk could be secured by an amendment to this clause, relating to section 16 of the principal Act, which provides:

Where proceedings adjourned under this section could expressly confer on the Children's Court under section 16 (3) the power to make an order by way of injunction or restraining order, such an order should enable the Children's Court where necessary for a child's protection to exclude a person from the child's place of residence or to restrain a person from approaching that place.

It is suggested that there are models, such as section 114 of the Family Law Act 1975 (Commonwealth legislation), and section 99 of the Justices Act (State legislation). I just indicate at this stage the substance of the submission made to me and I would like to pursue it further.

The Hon. C.J. Sumner: That is all in the task force report. There is nothing new about it.

The Hon. M.J. ELLIOTT: I didn't say that. It has just been brought to my attention that it is a major deficiency at this stage.

The Hon. C.J. Sumner: You've got to be joking.

The Hon. M.J. Elliott: Come on, don't carry on.

The Hon. C.J. SUMNER: It is all very well for the honourable member to come along and say this, but the Bill has been on the Notice Paper since early December, and he comes along and says that he has just received a letter about interlocutory orders which people knew were not in the Bill when it was introduced in December. They knew it was in the task force report, and now he comes along and says he wants the clause reconsidered. I do not know quite what he wants. It really is a pretty hopeless way to go about trying to legislate, when you are going through the Bill. To suggest that the Bill has been rushed through would be ludicrous in this case.

The Hon. M.J. Elliott: I am not suggesting that.

The Hon. C.J. SUMNER: I know. To suggest, as is often done—

The Hon. M.J. Elliott interjecting:

The Hon. C.J. SUMNER: I know, and you come along at the last moment, when we are just about to consider the Bill, on an issue that is not new. If it were a new issue, one might be able to give some consideration to the point. I do not know what he is trying to do—maybe curry favour with the group. I guess that is what all politicians do. One would have expected him to tell them, 'I am sorry. That is an issue that was in the task force report; it is not in the Bill; too bad.' I am not quite sure what he wants to do about it. I am not really inclined to postpone the Bill further.

The Hon. M.J. ELLIOTT: When the Attorney is talking about delay at this stage, we could go through the entire process and have every other clause determined. I have given a fair warning of the substance of what I would like to pursue. We are talking about five minutes early tomorrow afternoon which is not a considerable delay to this Bill. I agree with him that the matter is not new. In fact, I mentioned that in my second reading speech. I have looked at the Bill and all the amendments which have come from the Government, and the Opposition's amendments which emerged only two days ago. In light of all that, this was perhaps the most glaring deficiency and, as such, I would have liked the opportunity to further pursue it. That is the indication I was making.

The Hon. DIANA LAIDLAW: I would like to advise members that I received the same letter this afternoon.

The Hon. J.R. Cornwall: Who from?

The Hon. DIANA LAIDLAW: A university lecturer.

The Hon. C.J. Sumner: Who else?

The Hon. DIANA LAIDLAW: I will just finish to say—

Members interjecting:

The Hon. DIANA LAIDLAW: Stop getting so excited. It is rather late. I am just simply getting up—

The Hon. C.J. Sumner interjecting:

The Hon. DIANA LAIDLAW: I will seek to cooperate with you. If you do not behave, I will sit down and we can look at it tomorrow.

The Hon. C.J. Sumner: If you want to be bloody minded—

The Hon. DIANA LAIDLAW: I am not being bloody minded. You are the one who is being rather foolhardy at this hour. If you would only sit and listen just for a moment instead of thinking that you know everything on this issue. I was just indicating that I received the same letter.

The Hon. C.J. Sumner interjecting:

The Hon. DIANA LAIDLAW: You did not bother to ask that of the Hon. Mr Elliott. I received the same letter this afternoon. My view is that it raised matters that were addressed by the Attorney in his second reading explanation, at which time he indicated that the task force had recommended that a system of interlocutory protection jurisdiction be established in the Children's Court. The Attorney said that this was one matter which the Government would be reviewing over some time because of debate on this issue. I note that, in my second reading contribution to the Evidence Act, I referred to the Government's review of this issue and said that I was disappointed that the Government had not seen fit to introduce the system. Certainly interlocutory orders had been introduced into Victoria and I was prepared therefore to accept that the Government needed more time to look at this system.

While I am personally in favour of the task force report, other matters are to be considered. I was of the view therefore that I would not be raising this matter in the Committee stage but would be writing to this person indicating that I had raised the matters during the second reading debate and respected the fact that this issue attracted divided opinion in the community and that it warranted further debate. So, I stand now simply to say that I am personally not in favour, and I believe my Party would not be in favour of delaying this Bill further this evening to introduce a subject as major as interlocutory protection orders. While that may be the wish of the Hon. Mr Elliott, I do not believe it would have the support of my Party, and certainly not myself.

The Hon. M.J. ELLIOTT: With that indication, quite clearly I will not be proceeding with what I outlined, but I wanted at least the opportunity to exercise that thought in this place.

Clause as amended passed.

Clause 12—'Procedural provisions.'

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

Page 4, line 25—Leave out 'must' and insert 'should'.

I am seeking to amend a provision in the Bill that the court must not proceed to hear an application unless the child, the subject of the application, is represented in the proceedings by a legal practitioner, or the court is satisfied that the child has made an informed and independent decision not to be so represented. I want to change that to 'should'. I guess that the Attorney-General is taking a stronger line than I am on this issue—a reversal of the position on an earlier clause. I think that the court should have some discretion, even if it is minor, as long as the principle has been expressed as strongly as the word 'should' provides. I think that is adequate.

The Hon. C.J. SUMNER: The Government opposes the amendment. The Bill requires that legal representation must be provided, except as set out in proposed subsection (3a). The Government considers it important that legal representation should be mandatory and, in those circumstances, favours the use of the word 'must' rather than 'should'. So the roles are reversed.

The Hon. M.J. ELLIOTT: I indicate that I do not support the amendment.

Amendment negatived.

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

Page 4, after line 32—Insert new subsection as follows:

(3ab) Where the child is to be represented by, but is not capable of properly instructing, a legal practitioner, the legal practitioner must represent to the court his or her view as to what constitutes the interests of the child.

This provision modifies the new section dealing with the mandatory legal representation of children. It clarifies the role of a legal practitioner representing a child who is not capable of instructing the practitioner because of the child's age or some other reason. The practitioner will be required to present to the court what he or she considers to be in the best interests of the child.

The Hon. K.T. GRIFFIN: I do not oppose the amendment, because I can see that it could be somewhat difficult for a legal practitioner who was used to acting on instructions. Of course, all sorts of possibilities are opened up for claims of negligence, and I think that that puts legal practitioners in an invidious position. As I say, I will not oppose the amendment, although I think it needs further consideration. Has the Attorney-General consulted with the Law Society about this provision, because it markedly changes the normal responsibility of a legal practitioner to his or her client and the way in which legal practitioners are ordinarily required to act?

The Hon. C.J. SUMNER: There have been no specific consultations with the Law Society, but we believe that the amendment really incorporates existing practice. Lawyers with the Legal Services Commission tell us that this is what they are forced to do now in circumstances where a child is incapable of properly instructing a solicitor.

Amendment carried.

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

Page 4, lines 33 to 36—Leave out subsection (3b) and insert subsection as follows:

(3b) The court must not make a final order in any proceedings under this Part unless—

(a) the child has been afforded a reasonable opportunity to appear in person before the court and make such representations to the court as the child wishes;

or

(b) the court is satisfied that the child is not capable of appearing and making representations.

The amendment provides for the insertion of a new subsection (3b) dealing with a child's right to appear before and make representations to a court. The provision clarifies the situation that may arise where a child is not capable of appearing and making representations to a court.

The Hon. K.T. GRIFFIN: I am prepared to support the amendment.

Amendment carried.

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

Page 5, line 10—Leave out 'the parties to the proceedings will' and insert 'a party to the proceedings will, unless the party requests to the contrary,'.

The amendment seeks to modify the directory nature of proposed section 17 (8). The provision makes clear that legal counsel are able to appear at a pre-trial conference and not that they must appear.

The Hon. K.T. GRIFFIN: I support the amendment.

Amendment carried; clause as amended passed.

New clause 12a—'Orders for costs.'

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

Page 5, after line 15—Insert new clause as follows:

12a. Section 18 of the principal Act is amended by striking out 'the child the subject of the proceedings, or a guardian of the child,' and substituting 'any other party to the proceedings'.

This is consequential upon the amendment which allows a person residing with a child to be made a party to an application. The provision allows the court, on dismissal of an application, to award damages against the Minister in favour of any other party to the proceedings.

The Hon. K.T. GRIFFIN: I support the amendment.

New clause inserted.

Clauses 13 to 16 passed.

Clause 17—'Review of guardianship.'

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

Page 6, lines 1 to 5—Leave out paragraph *(a)* and insert the following paragraph:

(a) one must be—

(i) an employee of the department working with the Children's Interest Bureau;

or

(ii) some other person (not being an employee of the department) who is a suitable representative of the interests of the child;.

This amendment seeks to clarify the classes of people who may undertake a review under section 24 of the Act. Where possible the review would be conducted by an employee of the Department for Community Welfare and a child advocate from the Children's Interest Bureau. Where this is not possible some other person not being an employee of the department would be on the panel as a representative of the interests of the child.

The Hon. K.T. GRIFFIN: I raise no objection to the amendment.

Amendment carried.

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

Page 6, after line 7—Insert new subsection as follows:

(3) On the completion of a review under this section—

(a) a written report on the results of the review must be furnished to the Minister;

and

(b) a copy of that report must be furnished by the Minister to each other party to the proceedings in which the order was made.

I was concerned that the review should be conducted by a panel rather than an independent body such as a court. During the second reading debate I said that I would prefer to see the court undertake the review. However, when I thought through the procedures that would be appropriate for this and who would be the initiating party or parties, I encountered some difficulties. A court would not ordinarily initiate or conduct reviews but would merely be the arbiter to consider matters submitted to it.

I therefore concluded that it would be more appropriate for some body other than the court to conduct the review but that, when the review had been completed, a written report on the results should be furnished to the Minister and a copy of the report furnished by the Minister to each other party to the proceedings in which the order was made. That would then enable all parties to be acquainted with the result of any review and provide a basis on which an application could then be made to the court for some change in the order which was the subject of review.

The Hon. C.J. SUMNER: The amendment is opposed. The Bill provides for a review process with the presence of a person representing the interests of a child. Currently reviews are conducted internally. The Bill provides for an independent presence on the review panel. The Minister would be advised where arrangements were to be altered or where a court variation was to be sought.

Requiring a written report on the results of the Review to be furnished to the Minister in every case and a copy of the report to be sent to each party would really be bureaucracy gone mad. The amendment will result in huge resource implications. A few thousand reviews are conducted annually. To require each review to be the subject of a formal report to the Minister and other parties to the proceedings would be very time consuming and, in the majority of cases, would not serve any useful purpose. The review may not change the situation.

In those cases where some action is considered warranted the Minister would be advised and, if necessary, a variation or discharge of the court order would be sought. However, there is no recommendation that the order be varied or that the Minister do something; it would just be bureaucratically unnecessary to create all this paper work, which would be sent, essentially, internally because, as I said, the review would be conducted internally.

The Hon. K.T. Griffin: That is the problem: it is conducted internally.

The Hon. C.J. SUMNER: It may well be the problem, but it is conducted internally. There is not much point in one group in the Department for Community Welfare sending to someone else in the department a report that says, 'We are not going to take any action in this case.' The Minister will not read them, anyhow. It strikes me as not being a particularly sensible amendment.

The Hon. K.T. GRIFFIN: I think it is eminently sensible. I think that part of the problem with the review proposed in the Bill is that it is internal.

The Hon. C.J. Sumner: If it is internal, why should one section of the department, if it says that no action is necessary, send it to another section of the department?

The Hon. K.T. GRIFFIN: You know that you can put on a docket a pro forma report—

The Hon. C.J. Sumner: The Minister will not read them, anyhow.

The Hon. K.T. GRIFFIN: But you then need to send it out to the parties. I think it is important for the parties—

The Hon. C.J. Sumner: What if you are not doing anything? Why should they know?

The Hon. K.T. GRIFFIN: I think it is still important for the parties—

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: The fact that no action is recommended may, of itself, prompt one of the parties to suggest that that is not the appropriate recommendation. You must remember that more than the Government is involved—children, their families and various parties to particular proceedings are also involved. I do not think it is particularly burdensome to have a formal report by this internal panel (which can be pro forma, if necessary) and for information to be forwarded to the parties. I think it is in the interests of the child and the parties that that information be made available. If nothing else, it will ensure that while the review is internal it still remains accountable.

The Hon. M.J. ELLIOTT: I do not support the amendment. I might have given it some consideration if it had defined the circumstances in which those actions might have been carried out. The point about there being a large amount of paper work generated by it—

The Hon. K.T. Griffin: The Bill provides that every case has to be reviewed by the panel.

The Hon. M.J. ELLIOTT: I accept that, but I think we could perhaps have defined the circumstances. That has not been done and I will not support the amendment.

The Hon. K.T. GRIFFIN: I am disappointed with that because there is already the requirement for this internal panel in every case to review the progress and the circumstances of the child at least once each year. So, the work will be done, and it seems to me that it is appropriate that

a report be forwarded to the parties to the proceedings at least to reassure them that that review has occurred, even if no change is recommended. As I said, the Bidmeade report recommended a review by the court, but I did not regard that as being appropriate. Although I think the independence of that review would have been appropriate, procedurally it was inappropriate. However, there still ought to be some mechanism for ensuring that the parties are informed of the result of the review. I do not accept—

The Hon. C.J. Sumner: If there is a change in the situation they will be informed because that will be an application back to the court.

The Hon. K.T. GRIFFIN: There is no guarantee that they will, and there is no guarantee—

The Hon. C.J. Sumner: All you are suggesting is that there are thousands of applications and no change in the circumstances; and you set out—

The Hon. K.T. GRIFFIN: It is guardianship.

The Hon. C.J. Sumner: What is the point in doing it?

The Hon. K.T. GRIFFIN: There is a point in doing it. You have to be accountable to somebody, and this—

The Hon. C.J. Sumner: This does not achieve accountability to anyone.

The Hon. K.T. GRIFFIN: It does.

The Hon. C.J. Sumner: It just generates paper.

The Hon. K.T. GRIFFIN: It doesn't just generate paper. It requires a serious look by the panel at each of these cases once each year. I fear that the panel will just rather cursorily look at all these things and not be as diligent as I think it ought to be in reviewing each case.

Amendment negatived; clause as amended passed.

Clause 18—'Application of this division.'

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

Page 6, line 8—After 'is amended' insert '—*(a)*'.

This clause deals with so-called transit infringement notices. My amendments seek to limit the availability of these infringement notices to the State Transport Authority and to those cases where a child of or over the age of 15 years has committed an offence relating to the non-payment of fares when it is alleged that it is the first such offence committed by the child. I think it is inappropriate for infringement notices to be used in relation to young offenders except in the most exceptional circumstances. It ignores the fact that children need to feel that the penalty they are required to meet is something more than, in a sense, a surcharge on, say, a fare which has not been paid.

Penalties for offences like vandalism, harassment and interference with STA property more appropriately should be dealt with in respect to young offenders as they are currently dealt with and not be the subject of a mere parking-type ticket that can be expiated on the payment of a fee. That does nothing to establish the community's opposition to that sort of anti-social behaviour by young people. If they think that they can get away with it by merely paying an expiation fee—

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: You can take them to court. That is the Government taking them to court in certain circumstances.

The Hon. C.J. Sumner: It is the Crown.

The Hon. K.T. GRIFFIN: The Crown takes them to court. That will not happen frequently and the handing out of a ticket and the payment of an expiation fee will do nothing to establish in the mind of young offenders the undesirability of this form of anti-social behaviour.

The Hon. C.J. SUMNER: The Government opposes the amendment, which would mean that transit infringement notices could only be issued to young offenders for offences relating to the non-payment of fares, where it is alleged to be the first such offence committed by the child. In the case of fare evasion irregularities it would be impossible to know at the time of observing an offence whether the young offender was a first or subsequent offender. The practical difficulties of introducing a tiered system would be significant. Such a system does not exist in relation to adult offenders. The Government favours an approach of allowing transit infringement notices to be issued to young offenders over 15 years of age in the same case as such notices would be issued to adult offenders.

Of course, it is not obligatory to issue transit infringement notices, as I understand it, and there is always the option, as with traffic infringement notices, for the matter to proceed to court if the police and the Crown consider that the matter ought to go to court. The transit infringement system operates just as it would with adults and, in cases of repeated or serious offences, if the Crown believes that they need the attention of the court, they can prosecute in the normal way.

The Hon. M.J. ELLIOTT: Although the Attorney gets grumpier as the night goes on, he remains persuasive, and I will not support the amendment.

The Hon. K.T. GRIFFIN: I feel very strongly about this and I intend to divide if I do not win it on the voices.

The Committee divided on the amendment:

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

Noes (11)—The Hons G.L. Bruce, J.R. Cornwall, T. Crothers, M.J. Elliott, M.S. Feleppa, I. Gilfillan, Carolyn Pickles, T.G. Roberts, C.J. Sumner (teller), G. Weatherill, and Barbara Wiese.

Majority of 1 for the Noes.

Amendment thus negatived.

The Hon. K.T. GRIFFIN: In the light of that division, I accept it as a test of the other amendments on file, and I will not proceed with them.

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

Page 6, line 10—After 'an offence' insert ', other than a prescribed offence,'.

This provision allows for offences under the State Transport Authority Act to be prescribed so that they will not be excluded from the operation of section 25 of the Children's Protection and Young Offenders Act. The prescribed offences would be those offences not expiable by adults under the State Transport Authority Act. The prescribed offences would continue to be dealt with pursuant to the provisions of the Children's Protection and Young Offenders Act.

Amendment carried; clause as amended passed.

Clause 19 and title passed.

Bill read a third time and passed.

COMMUNITY WELFARE ACT AMENDMENT BILL

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

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

Page 1—After line 14 insert subclause as follows:

(2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

This amendment provides for the inclusion of a split proclamation clause in the Bill.

The Hon. DIANA LAIDLAW: I was surprised to note the condition of this amendment. I wonder what the Attorney proposes with this split proclamation? This Bill is not extensive. Is there a matter, such as the reference to the Children's Interest Bureau or mandatory reporting, that will not be proclaimed immediately?

The Hon. C.J. SUMNER: The Bill deals with a number of distinct areas including the function of the Children's Interest Bureau and the mandatory reporting provision. The amendment is precautionary. It may be necessary to proclaim sections to operate from different dates. For example, the amendment dealing with the function of the Children's Interest Bureau should operate from the date of commencement of sections of the Children's Protection and Young Offenders Act Amendment Bill with which we have dealt and which deals with in need of care applications. The proclamation of it will not necessarily be split but it is put there in case it needs to be.

Amendment carried; clause as amended passed.

New clause 2a—'Insertion of heading.'

The Hon. DIANA LAIDLAW: I move:

Page 1—After clause 2, insert new clause as follows:

2a. The following heading is inserted after section 25 of the principal Act:

DIVISION IA—CHILDREN'S INTEREST BUREAU.

This amendment seeks to insert a new heading of Division IA—Children's Interest Bureau into the principal Act. As a number of amendments arise from this amendment I will speak to the issue in general terms. The amendment relates to the Government's proposal to implement a system of independent advocates to support a child suspected of being a victim of abuse, maltreatment or neglect. As I indicated during the second reading debate, the Liberal Party supports this proposal. At various times over the past two years it has highlighted in this place the handicaps and pitfalls of the current practices within DCW because the department is required to undertake a whole range of roles in this area of child abuse and protection.

The Bidmeade report referred at some length to this matter and I do not propose to go through all the arguments again. The report is very firm on the fact that it is important that with any change to enhance protection for children in the future the new procedures be seen to be both fair and impartial and that at the conceptual level the roles of DCW and of any system of children's advocates be clear and that, in particular, the children's advocates be seen to be objective in their decision making. We believe that those references are extremely important and that there is a need for a clear delineation of roles and responsibilities in this area if the advocates are not only to be independent but seen to be. The Government intends to implement this whole measure by extending the functions of the Children's Interest Bureau. I should add that this decision does not reflect the recommendations of the Bidmeade report, which states:

> For the 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—

and I emphasise if—

> revamped and given independence from the department.

So the Bidmeade report noted that it is not independent from the department at present and that it could have this role of child's advocate if it was revamped. The Government has not seen fit to act on those observations and recommendations of the Bidmeade report. It is simply seeking to extend the current functions of the Children's Interest Bureau as set out in the Community Welfare Act. We find that solution to this problem to be unacceptable and therefore propose that the Children's Interest Bureau be transferred to the responsibility of the Attorney-General.

The Hon. J.R. Cornwall: That is a bit mischievous.

The Hon. DIANA LAIDLAW: It is not mischievous, Minister. All I am trying to do—

The Hon. J.R. Cornwall interjecting:

The Hon. DIANA LAIDLAW: It is very interesting that this debate and earlier Bills, have gone through very amicably until the Minister entered this Chamber. It does not surprise me at all that the Government did not give him responsibility for these Bills. No wonder it went to the Attorney-General. It has worked very amicably until you came—

The Hon. J.R. Cornwall interjecting:

The Hon. DIANA LAIDLAW: You just cannot help yourself, can you? You will not acknowledge what is even in the Bidmeade—

The Hon. J.R. Cornwall: Behave yourself Miss Laidlaw.

The Hon. DIANA LAIDLAW: I will. It is amazing: you can give it out but you cannot take any criticism at all.

The Hon. J.R. Cornwall interjecting:

The Hon. DIANA LAIDLAW: If you carry on you will be asked to withdraw and apologise.

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: I do not think we need to go to those lengths at this time of night. So, I will address the Chair. I am sorry, Madam President. We are not being mischievous, as is being suggested by the Minister of Community Welfare. We are trying to accommodate the recommendation of the Bidmeade report that the role of these advocates be independent, and be seen to be independent. In Mr Bidmeade's view this required the bureau to be revamped and given independence from the department. Mr Bidmeade suggested that a Commissioner for Children be established. The Liberal Party was loathe to get into that area because we envisaged that it would be a very costly exercise, and we thought that that should be the province of the Government. Therefore, we thought that the middle, and acceptable, course would be to transfer the responsibility to the Attorney-General.

In his second reading response, the Attorney-General said he believed that this would complicate the situation administratively between the bureau and the department. I found it extraordinary that when one is seeking to serve the best interests of the child—who is, in fact, the whole underlying theme of these Bills—the Minister's total response was related to administrative ease for the Government. I find that an unacceptable proposition.

The Attorney-General also indicated that the current functions of the Children's Interest Bureau were not compatible with the Attorney-General's office. However, that is quite wrong. Briefly, most of the work done recently, in fact, since the establishment of the Children's Interest Bureau, has been of a very legalistic nature. Certainly, all the issues addressed require major legislative change. For instance, in August 1985 the Children's Interest Bureau was looking at issues affecting children in relation to the laws covering legal issues, authority, discipline and the like. Those issues were quite compatible with the responsibilities of the Attorney-General.

In November 1985 a paper outlining the achievements of the Children's Interest Bureau noted that work had been done on policy and position papers in relation to corporal punishment, divided jurisdiction in the family law, fostering and children's rights, administration in family law, minors and informed consent to medical treatment. Of course, papers have also been prepared on female circumcision, video violence and the like.

The Attorney-General knows that all those areas fit quite neatly within his area of responsibility, because all of them

would require considerable legal change. Therefore, I believe that the Government was on shallow ground when stating earlier, that it could not support this amendment. I am sorry that it is indicated that that may be so. I add that what it has offered in this Bill is in fact a disappointing and inadequate response to the Bidmeade recommendations, and certainly it is highly questionable that it is in the best interests of children.

The Hon. C.J. SUMNER: The amendment is opposed for the reasons that I outlined in the second reading debate reply. We accept that child advocates perform their functions independently of the Department for Community Welfare, but that does not mean that ministerial responsibility must be altered. It is quite inappropriate for them to be responsible to the Attorney-General. The role of a child advocate is not limited to advising on in need of care applications in the Children's Court: it has a much broader function, including such matters as increasing public awareness of the rights of children and developing services for the promotion of the welfare of children. It is on both philosophical and practical grounds that the Government cannot support this amendment.

I do not want to sound unduly dramatic about it, and this might be more for the Democrats' use rather than anything else, but if this amendment is carried, the Bill will be laid aside. It is just not acceptable to the Government. It takes away from the Government a pretty fundamental right to allocate activities of Government amongst ministerial portfolios as the Premier and the Government see fit. If that is interfered with, then the Bill will be laid aside, and the other desirable amendments which are in it will not come into effect. I am not saying that in any dramatic way. I am just making it clear that, if that is the way it happens, it will be laid aside to short circuit the proceedings. The Democrats can make up their mind now which way they want to go. Either it goes into the Bill and the Bill is laid aside, or it stays out and the rest of the Bill is saved.

The Hon. M.J. ELLIOTT: I do not take that as a threat, because if I did I would probably change my mind in the direction that the Attorney would not want. Generally speaking, the allocation of such duties lies with the Government. I do not believe that what is proposed here is of such importance that it needs pursuing at this time. I do not support the amendment.

The Hon. DIANA LAIDLAW: I am disappointed that the Attorney would suggest threats and the like.

The Hon. C.J. Sumner interjecting:

The Hon. DIANA LAIDLAW: What could be a greater threat to pose in a Chamber such as this that, if one does not do what the Attorney wants, the whole Bill will be dropped? We saw that threat applied to—

The Hon. C.J. Sumner interjecting:

The Hon. DIANA LAIDLAW: Well, it could go through the processes without exercising that. Anyway, I am pleased that threats do not change his mind. Notwithstanding the Attorney's response—

The Hon. J.R. Cornwall interjecting:

The Hon. DIANA LAIDLAW: I will be, one day. What is disappointing in the Attorney's response is the fact that the propositions put in this Bill are most unsatisfactory and that they certainly do not meet the need for advocates to be independent and to be seen to be independent; that was really the whole theme of the recommendations in the Bidmeade report.

New clause negatived.

Clause 3—'The Children's Interest Bureau.'

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

Page 1, line 18—After 'who is,' insert 'has been,'.

This clarifies the proposed function of the Children's Interest Bureau to provide independent and objective advice to the Minister in relation to a child who is, has been or is likely to be the subject of proceedings.

The Hon. DIANA LAIDLAW: The Liberal Party supports the amendment and in fact sees it as a positive improvement to the Bill. As the Hon. Mike Elliott mentioned earlier, and as I did during debate on other Bills in this place tonight, there are many cases of which we are conscious where there is trouble and disaffection and the like. So it is heartening to see that this provision will be retrospective in that sense and will allow the Minister to have the advantage of children's advocates to assist in the review of some of these matters.

Amendment carried; clause as amended passed.

Clauses 4 to 6 passed.

New clause 6a—'Power of entry.'

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

Page 1—After clause 6, insert new clause as follows:

6a. Section 82 of the principal Act is amended by inserting in subsection (1) 'or protection' after 'in need of care'.

It is included to provide consistency in references in the Children's Protection and Young Offenders Act and the Community Welfare Act. Reference is now made to a child being in need of care or protection throughout both Acts.

New clause inserted.

Clause 7 passed.

Clause 8—'Notification of maltreatment.'

The Hon. DIANA LAIDLAW: I move:

Page 2, lines 28 and 29—Leave out paragraph *(m)*.

The amendment seeks to remove proposed subsection (2) *(m)* which provides, in relation to mandatory reporting provisions:

A person of a class declared by regulation to be a class of persons to which this section applies.

I acknowledge that this provision exists within the present Act, but I note that the Bill extends quite markedly the classes of persons who will be obliged to notify suspicion of abuse under fear of a penalty of $500 if they do not do so. In fact, it should be noted that South Australia now has the most extensive range of persons compelled to advise DCW of suspicion of abuse. Certainly New South Wales and Tasmania have similar mandatory reporting provisions, but they are much more limited in noting the class of persons.

As I noted during my second reading speech, even in relation to child sexual abuse New South Wales does not note any class of person. There is a voluntary system in that respect. The list, as I said, is now very long. Without question in this country and overseas there is a great deal of debate about the merits of mandatory reporting and whether that system or voluntary reporting is in the child's best interest. Most members who have taken an interest in this subject would know that a couple of years ago in Victoria the Carnie report recommended against mandatory reporting, and that is reflected in legislation passed last year. New Zealand, for instance, introduced a Bill last year endorsing mandatory reporting. It was referred to a select committee which overruled that aspect in its report and, as a result, New Zealand will adopt a voluntary code.

I understand that over the past year the Brotherhood of St Laurence has looked at this issue and the practices around Australia and overseas. Its report will reject mandatory counselling as being in the best interests of children. While the Liberal Party accepts the increase in the classes of persons as provided in the Bill, we believe that it is unwise and unsound to continue with this provision that further classes of persons can be declared by regulation, particularly

when there is a growing body of opinion in this country and overseas that questions the merits of mandatory reporting.

The Hon. C.J. SUMNER: The amendment is opposed. This particular provision has been in the legislation since at least 1976 without any complaint or problem. The provision is included to offer a degree of flexibility in the operation of the section. For example, it would allow technical change to a work situation—such as similar work being undertaken under another title—to be accommodated without the need to resort to Parliament to amend the legislation. As I said, this provision has been in the legislation since 1976 and no good reason has been given for its removal. There has been no problem with it and therefore it should remain.

The Hon. M.J. ELLIOTT: I indicate that I have no problem with the clause as it presently stands.

The Hon. DIANA LAIDLAW: The task force report on which this Bill is based recommended on page 91 that a research project be established under the auspices of the State council to assess the overall impact of disclosure of notification on the victim and the child. That recommendation was made because a task force considered that there was scant evidence or information on the effect of disclosure, and it received representations that mandatory reporting was not in the best interests of the child. Whilst the Government has supported the recommendations as detailed in this report to extend the classes of persons, has it also accepted the recommendation that a research project be established to actually assess the overall impact of disclosure on the victim and the family?

The Hon. C.J. SUMNER: I do not have that information. I will refer the matter to the Child Protection Council for its consideration.

Amendment negatived; clause passed.

Title passed.

Bill read a third time and passed.

ADJOURNMENT

At 12.22 a.m. the Council adjourned until Thursday 24 March at 2.15 p.m.