LEGISLATIVE COUNCIL

Friday 14 April 1989

The PRESIDENT (Hon. G.L. Bruce) took the Chair at 10 a.m. and read prayers.

MOTOR VEHICLES ACT AMENDMENT BILL

At 10.5 a.m. the following recommendation of the conference was reported to the Council:

As to Amendment No. 3:

That the Legislative Council do not further insist on this amendment.

Consideration in Committee of the recommendation of the conference.

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

That the recommendation of the conference be agreed to.

The Hon. M.B. CAMERON: As I understand it, some undertakings were given by the Minister in charge of the Bill in another place, assuring this Chamber that the matters of the control of data or the use of data that will be obtained or is presently held by the Motor Registration Division will be the subject of some inquiry. The Minister indicated that he will consider introducing legislation in the future once the problems that could arise from potential misuse of this data are identified.

The Hon. M.J. ELLIOTT: In conference, and later privately, the Minister said to me that the Government will seriously consider the matter, and I will take his word on that at this stage. In that private conversation, he said that the Registrar of Motor Vehicles would appreciate some legal protection against those people who put pressure on him. I will accept the recommendation not to insist on the amendment, but I make it plain that these issues will not go away. There is an increasing awareness in the community and I hope that the Government will do something legislatively, both with this Bill and other pieces of legislation.

Motion carried.

MOTOR VEHICLES ACT AMENDMENT BILL (No. 2)

At 10.14 a.m. the following recommendations of the conference were reported to the Council:

That the Legislative Council do not further insist on its amendment and make the following consequential amendments to the Bill:

Clause 4, page 1, line 22—

Leave out '17 years' and insert '16 years and six months'.

Page 1, line 25—

Leave out '17 years' and insert '16 years and six months'.

Consideration in Committee of the recommendations of the conference.

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

That the recommendations of the conference be agreed to.

The Hon. M.B. CAMERON: The conference came to a compromise decision and the amendment moved by the Hon. Mr Gilfillan was discussed. Persuasive arguments were presented on the administrative problems associated with this amendment. Those arguments seemed to present difficulties for the Motor Vehicles Department.

It was still the Opposition's view that 16 years and three months was suitable provided a person could drive. However, the Government indicated that it had evidence which persuaded it that the age for obtaining P plates should move upwards. The Opposition indicated that there were potential problems. Whilst, at the moment, the statistics might prove that there is a difficulty in the age group from 16 years to 17 years, there could well be other statistics which indicate that, if we move completely in this direction, it would lead to young people getting on to motorbikes at the age of 16 years. We could well find that a new set of statistics could destroy the supposed good effect of the move to P plates up to 17 years.

There seems to be a view that young people will not be able to afford motorbikes. There are some very cheap motorbikes around and I do not think that we should underestimate the wit of young people—they will find a way around a proposal like this and purchase motorbikes that do not cost a lot. We may well find that the statistics go in the wrong direction. However, this is a matter on which the Opposition is prepared to continue to receive evidence and on which we will keep an open mind. If evidence comes forward after a period of time—whether or not we are in Government—we will certainly take seriously any further evidence on the matter of whether the age limit should be varied—either upwards or downwards. Certainly, we are not averse to the idea of it going upwards if proper evidence could be presented that there is a need for such action. However, in the process we must keep in mind that we cannot foresee the future and if we do change the age limit we cannot foresee what will happen if young people climb onto motorbikes.

Secondly, this argument highlights the need for this Parliament, at some stage soon, to consider very earnestly the question of a road safety committee so that these differences are sorted out well before Bills come into Parliament. This occurs in New South Wales, and I do not see any reason why a similar situation should not apply here. Road safety is not something for political argument; it should be a matter of proper evidence being presented and not something on which we should make decisions in the dying moments of Parliament. It should be well sorted out beforehand.

The Hon. I. GILFILLAN: I was not party to the conference, but I am content that the Democrats' view was adequately represented by my colleague. I feel that the result is not entirely unsatisfactory, but I think that there are more important aspects than just what was the compromise in the conference. It is essential that the end result is not necessarily what is the neatest compromise between people with different points of view but a reduction in the accident rate involving this age group. I indicated yesterday that the research by the Road Safety Division was convincing and had been accepted by the Bureau of Statistics. Therefore, if this measure in its original form was going to dramatically reduce the accident rate for that age group it is irresponsible for us to tinker with the legislation just to suit a particular political point of view at the time.

Having accepted this amendment, I think it is essential that the Road Traffic Division be directed by the Government to repeat the survey for at least another year or possibly another couple of years so that the data can be established beyond all doubt, and so that we can have some accurate data on which to base any further amendment to this legislation. I am not content that either the original Bill or this amendment is the optimum solution for reducing the accident rate for that particularly vulnerable age group. I would like to have an undertaking from the Government that the Road Safety Division will be directed to repeat this survey at least during the next two successive years. I do not think that the Road Safety Division will need any encouragement; indeed, I congratulate it on its initiative and its devotion to the cause. I do not think it would resent

having that matter quite clearly expressed. The Democrats support this compromise (as I regard it), as we have done in the conference.

The other comment I would like to make is: I support the Hon. Martin Cameron's remarks on a parliamentary committee dealing with road safety legislation. Indeed, Parliament may be advantaged by having some form of legislative assessment procedures whereby other Bills, not just road safety measures, were assessed impartially before they came into this place.

Finally I indicate that the ultimate crunch is how many accidents we can prevent by this sensible legislation. It has gone some way towards that but I will not rest until further data is collected. If it shows that we need to amend the legislation, we must do that. I ask the Attorney for an assurance that he will make that point to the Minister and, if possible, get an assurance from the Government.

The Hon. C.J. SUMNER: The only commitment I can make is to take up the matter with the Minister. I have not discussed it with him, and I had not realised that a commitment from him was part of any agreement arising from the conference. At this point, unless the honourable member wants to adjourn consideration of this matter to enable me to discuss his proposition with the Minister, the only commitment I can give is to draw it to the Minister's attention.

SITTINGS AND BUSINESS

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

That so much of Standing Orders be suspended as to enable Question Time to be postponed and taken on motion.

This is an unusual course of action and I regret that I am forced to take it. We have a new day. The reason for the new day of sitting is that we have had a large number of Bills brought in during the past two weeks. The Opposition has cooperated fully with the Government in ensuring a smooth flow of business to the point of members meeting Ministers on a fairly continuous basis to try to sort out the difficulties with legislation beforehand. However, we believe that, if we do not indicate the unacceptability of so many Bills coming in in this way, this may occur again. We were sitting until 2 o'clock this morning. Some of us have been in here at a conference since the early hours of this morning.

The Hon. C.J. Sumner: 1 o'clock.

The Hon. M.B. CAMERON: Well, 1 o'clock this morning. We are so tired we probably cannot even see the clock. Some of us have been here since early this morning to enable conferences to take place.

The Hon. C.J. Sumner: 9 o'clock.

The Hon. M.B. CAMERON: Yes.

The Hon. C.J. Sumner: That's not early.

The Hon. M.B. CAMERON: That is all right for you. You are not a member of staff. I saw your attitude to staff last night. We have staff, too—not as many as you have—who also have to work. We have not had sufficient time to prepare the necessary material for Question Time today. Any time when we have a new sitting day, when we start early in the morning it has always been tradition in this place that Question Time commence at 2.15 p.m.: that has been an arrangement for years.

The Hon. C.J. Sumner: That's not true.

The Hon. M.B. CAMERON: It is true.

The Hon. Barbara Wiese: On a Friday?

The Hon. M.B. CAMERON: On a Friday, yes, because we have another sitting day. What should be occurring is that we should be sitting for another week. That is what the Senate does. It does not just shut off because the other House has finished. It is time there was a little common sense. We do not want to sit here all night. We are not going to postpone Bills. We are not going to continue the session deliberately or in any way interfere with Government business. We have done an enormous amount of work. Members opposite are not aware of what we have been doing behind the scenes to bring legislation on. If they were aware, they would understand the cooperation that they were getting. For some reason known only to themselves, they seem to be trying to destroy that cooperation, and that is really silly.

The Hon. C.J. SUMNER (Attorney-General): Not only is the move by the Leader of the Opposition unusual; it is in fact unprecedented.

The Hon. M.B. Cameron: No, it isn't.

The Hon. C.J. SUMNER: It is completely unprecedented for the Opposition to reorder the normal day's business. That is what it is purporting to do. The honourable member has held out a threat to the Government. He has said that he has cooperated. The threat is that he will not cooperate unless he gets his own way in certain matters in the Chamber. That is the effect of what he has said. One would have expected members opposite, in doing their duty as members of Parliament, to cooperate in any event with the Government and Ministers, in terms of—

Members interjecting:

The PRESIDENT: Order!

Members interjecting:

The Hon. C.J. SUMNER: That is absolute nonsense. Come on! What has this got to do with it? One would have expected members opposite to cooperate in any event to deal with matters. Today, what we have is a situation that is not uncommon in the parliamentary session. A number of matters must to be resolved towards the end of a session. It has happened virtually at every end of a session since I came into Parliament in 1975.

The Hon. M.B. Cameron: This is worse than any other time.

The Hon. C.J. SUMNER: This is certainly not worse than any other time. We have not been sitting late. We have been getting up before midnight all this week, except for last night, when we went to 1 a.m. I have sat in this Chamber under the power of the Liberal Government and the Labor Government until 3 a.m., 4 a.m., 5 a.m. or 5.30 a.m. dealing with issues. That has not happened this week.

The Hon. M.B. Cameron: Do you approve of that?

The Hon. C.J. SUMNER: No, of course I don't approve of it. I am just saying that it has happened in the past but that it has not happened this week. Normally, if we sit on Thursday morning—as we do sometimes—it is usual to have Question Time before lunch at the time we sat that morning—11 a.m. or 12 noon. Yesterday, the honourable member made a request to me that I should postpone Question Time until 2.15 p.m. I did that in the spirit of cooperation. Although—

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

The Hon. C.J. SUMNER: No, that has not been done. The honourable member can research it. It may have been done on occasions. My recollection is that when we sit on a Thursday morning we have Question Time in the normal way, at 11 a.m.—or we have on ocassions done it at 12 noon. This is the first time in my memory that we have actually had a separate day sitting on a Friday. Normally, when we are faced with this situation, we have adjourned the day's proceedings from the Thursday. If you are talking about assisting the Clerks at the table, that has generally

been done because it makes their life easier. So, I do not want any more nonsense about that from members opposite.

The Hon. Barbara Wiese: They have sat up all night preparing a Notice Paper.

The Hon. C.J. SUMNER: Yes, they just sit up all night preparing a Notice Paper.

Members interjecting:

The Hon. C.J. SUMNER: It is a problem. Normally, we do not have a fresh sitting day on the Friday. Now that they have insisted on their fresh day, I do not see why the day should not go along normally, with Question Time as it is at the beginning of the day.

The Hon. I. GILFILLAN: I plead with members to refrain from wandering into what I consider to be peripheral areas of debate in this matter. We have a job to do. Whether Question Time is to be at 11 a.m. or 2.15 p.m. is a very minor matter. However, if that was not clearly understood by all members of this Chamber, that matter should be considered, because it is a time that needs to be prepared for.

I therefore indicate that the Democrats support the motion moved by the Hon. Martin Cameron. All members in this Chamber should bear in mind that, in the ultimate assessment of things, this argument is surely the least significant of those that are before us. An unassailable argument has been advanced that we should have had more formal sitting time. We are doing our utmost to fulfil our responsibility to the Government and to the people of South Australia. That is one of the reasons why I accepted that we could have a full day with a Question Time at all—it is the entitlement of this Parliament. I therefore urge members to pass this motion as being a minor matter of prodedure, and let us get on with the work that we have to do.

The Council divided on the motion:

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

Noes (9)—The Hons T. Crothers, M.S. Feleppa, Anne Levy, Carolyn Pickles, R.R. Roberts, T.G. Roberts, C.J. Sumner (teller), G. Weatherill, and Barbara Wiese.

Majority of 3 for the Ayes.

Motion thus carried.

EVIDENCE ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 12 April. Page 2936.)

The Hon. C.J. SUMNER (Attorney-General): The Government has introduced this Bill because it has concluded that the present section 69a of the Evidence Act is not working and, indeed, is bringing the law into disrepute. Having taken that view, it is clear that options for reform must be considered. In considering the options, the major concern is to eliminate the unsatisfactory aspects of the present law. As I see it, the present law is unsatisfactory in that, first, it appears to operate inconsistently, capriciously or in a biased fashion in that the name of a medical practitioner or lawyer and such like appears to be more readily suppressed than that of a clerk or a labourer. This is no fault of the judiciary, as the discretion to suppress is so broad that the appearance of inconsistency is inevitable.

Secondly, suppression orders give rise to unnecessary gossip and rumour. Thirdly, suppression orders are made in inappropriate cases. Fourthly, the terms of some suppression orders are too wide. Fifthly, suppressed names and evidence, while not obtainable in South Australia, can be freely circulated in other States. Some critics of the amendments to section 69a currently before the Parliament assert that the answer is to prohibit the publication of a person's name until his or her guilt is proved beyond reasonable doubt, or at least until he or she is committed for trial. That is now reflected in this amendment which has been placed on file by the Hon. Mr Gilfillan.

Amending the law in this way would eliminate only the first of what I see as the unsatisfactory aspect of the existing law, that is, its apparently inconsistent, capricious or biased operation. Indeed, the capricious or biased reporting of cases was what led the Mitchell committee (the committee on the reform of criminal law which was chaired by Justice Mitchell as she was then) in about the mid-1970s or earlier to recommend that the identity of alleged offenders should not be published until a person is convicted in a summary matter or committed for trial. Unless a ban on publishing the identity of an alleged offender is fixed in an early time in the continuum, the ban also has the capacity to operate capriciously. As the Australian Law Reform Commission said in its report on contempt at paragraph 304:

> ... often the time when a warrant is issued or a suspect is arrested is the very time when a case involving a serious crime is most in the public eye. The circumstances of the arrest of prime suspects for the murder of Anita Cobby in Sydney in 1986 provide a good example. The development of satellite technology and other electronic techniques giving immediacy to sensational police arrests is likely to increase, if anything, this tendency of large segments of the media to give special prominence to the time when 'the police get their man' (or woman).

I refer to that statement, because we have before us at the present time a concrete example of the problems of at what point in the continuum through investigation and the court proceeding does one impose a suppression order.

I submit that it would be bizarre, for example, if the law were to provide that if John Friedrich, of recent National Safety Council fame, was arrested (as he now has been), his name could not be published. Under the blanket suppression provision, after Mr Friedrich has been chased around Australia for two weeks and has had his name on the front page of every paper with a whole series of allegations, if he had been charged in South Australia then, after that, his name would have been suppressed by a blanket suppression provision.

The Hon. K.T. Griffin: Not by my amendment.

The Hon. C.J. SUMNER: Well, it would be.

The Hon. K.T. Griffin: Not by my amendment.

The Hon. C.J. SUMNER: Well, I'm sorry, there is nothing to suggest that it would not be suppressed under the honourable member's amendment. The court would not suppress it, but basically one would have to go to the court to get the suppression lifted. The reality is that, as soon as Friedrich was charged and brought before the court, his name would be suppressed and that is it. That is the principle which the honourable member is trying to enshrine. I put the argument: at what point in the procedure does one say there is a suppression?

As I said, it is an example of how the law, in my view, by the suppression system is brought into disrepute. Under a blanket system the name of Mr Friedrich would be suspended or anyone else in those circumstances. Surely that is a recipe for having the law held up to ridicule even if you have a way of getting around it in the legislation. It still requires an application to the court to lift the suppression order. How does that overcome the problem that you are arguing, that the suppression ought to be there to protect

adverse pre-trial publicity. It has already had two weeks of pre-trial publicity.

Maybe the honourable member says one ought to suppress all information about potential criminal activity in the case that there might be prejudice down the line. This is an example of how the law can be held up to ridicule, and there are other examples. I have not been able to find any common law jurisdiction which has a blanket prohibition on the publication of the names of those accused of crimes. Indeed, in the United Kingdom the opposite is true, one of the few things that can be published about a committal hearing is the names, addresses and occupations of parties and witnesses. Presumably in the United Kingdom as the identity of the accused is known at all times the suppression of committal evidence occurs in order to ensure no prejudice to a fair trial.

The law can already handle the problem of prejudice to a fair trial through the court's power to punish for contempt. That is clear. The courts give paramountcy to a fair trial, just as the community does, just as Parliament does. If there is threat to a fair trial the courts already have the power under the existing law to deal with that. With respect to the question of publicity generally, the Australian Law Reform Commission's proposal for reform of the law of contempt tends to favour less restrictions and publicity rather than more.

The Australian Law Reform Commission in its report on contempt—paragraphs 327 and 328—advanced reasons why the United Kingdom approach should not be followed. They are:

- If such a ban were imposed, there would no longer be any incentive on the part of the media to report committal proceedings. There would cease to be any significant scrutiny by the media of the workings of a major segment of our system of administration of justice.
- In cases where an accused person, having been committed for trial following the hearing of evidence in open court, pleaded guilty at the trial itself, the evidence relating to the offence would be unlikely to see the light of day.
- There would be no public reporting of the evidence at committal proceedings in cases where, after the accused had been committed for trial, the Crown Law authorities entered a 'no bill', or simply failed to take any further steps to prosecute the matter of indictment.
- Empirical and psychological studies show that the limited repetition of detailed material may not of itself go very far in creating prejudice.
- Reporting of proceedings held in open court acts as a corrective to fabrication, gossip or rumour.
- A published report may stimulate witnesses to come forward and offer their testimony.

Presumably one can debate those reasons, but it seems to me that they certainly are worthy of serious consideration as arguments against the United Kingdom approach to this issue. What then is the alleged justification for a blanket ban on reporting names? It is the potential harm that can be done to a person, and that no person should suffer a penalty of any sort until convicted.

The publication of names is said to conflict with the principal that a person is innocent until proven guilty. However, in only looking at the effect on the alleged offender the wider interests of the community are in danger of being totally ignored. I think, for instance, that the community has a right to know, for example, that the head of the drug squad has been charged with a serious drug-related offence. Certainly, the fact that Moyse's name was suppressed for some 18 months was most undesirable in the public interest.

I think that the rights of others to be protected from false rumour or innuendo need also to be considered. If the name of a senior police officer, a leading banker or prominent lawyer is suppressed, what about the rights of other police officers, bankers and lawyers? This problem is exacerbated in a smaller community where the number of these categories may be limited. I am only too aware from personal experience how the rumour mills operate. Only last year the rumour mills had it that I was somehow tainted with corruption because of a connection with a so-called prominent businessman who was not prominent—Malvaso then before the courts and his identity was suppressed.

His name was only suppressed because he was charged jointly with Moyse. The court felt that, because Moyse's name was suppressed, the name of Malvaso and the others connected with the case should also be suppressed, whereas under—

The Hon. I. Gilfillan interjecting:

The Hon. C.J. SUMNER: Wait—one of them was released. In the normal course of events Malvaso's name and other names would not be suppressed. He certainly was not a prominent businessman as the rumour mill had it. This of course is one of the real dangers of suppression, because in the rumour mill around Adelaide and on the media this person was on occasions referred to as a prominent businessman, which clearly was not correct.

Nevertheless, that was the rumour that was spread, and which was allowed to be spread, with respect to my connection with this particular person; and the suppression order fuelled that rumour mill—there is no question about that. Some unscrupulous politicians and others were prepared to feed the rumour mill knowing full well that there was no substance in the allegation of any improper connection with this individual.

Of course, they were prepared to spread these rumours knowing full well that the Crown had in fact opposed the suppression order in the Malvaso case. In his column in the *News* of 4 November 1988, Tony Baker said that, if Malvaso's identity was known, the association of thousands of people with him would be instantly explicable. In this case, the suppression order enabled the rumour of some wrongdoing—a completely false rumour—to gain currency. That is a practical problem in respect of the operation of suppression orders.

There is another practical problem that members of Parliament may consider. I refer to a situation where an honourable member alleges in Parliament that people have lost money as a result of the wrongdoing of a certain individual. If the matter is referred to the appropriate authorities for investigation and the person is subsequently convicted (or acquitted, as the case may be), and his name was suppressed throughout the whole of the proceedings, it could be alleged in Parliament that the matter should not have been raised in Parliament, despite the fact that the end result was a prosecution and that hundreds of people who had lost money as a result of the activities of this particular individual were satisfied because the matter was raised publicly.

If a name is suppressed, it virtually stops Parliament discussing that matter in any sensible way in the future. It is just another small practical example of the problems with blanket suppression orders, or any sort of suppression orders. Justice Cox in *Roget and Others v Flavel* (1987) 47 SASR 402 specifically recognised that present section 69a does not prohibit unedifying gossip. I again quote Tony Baker, as follows:

> . . . when you have serious accusations tried in camera it is absolutely inevitable that the rumour mills will begin to grind and the reputations of honest men and women will be traduced.

The unsatisfactory operation of present section 69a confirms the wisdom of the long accepted essential aspect of the functions of our courts, namely, that they conduct their proceedings in public. The importance of open justice (and the appearance of open justice) has been stressed many

times. For example, Justice Gibbs in the High Court in *Russell v Russell* (1976) 134 CLR 495 at 520 states:

> This rule has the virtue that proceedings of every court are fully exposed to public and professional scrutiny and criticism, without which abuses may flourish undetected. Further, the public administration of justice tends to maintain confidence in the integrity and independence of the courts.

That the courts should be open to the public and the press is recognised by the International Covenant on Civil and Political Rights. Article 14.1 provides:

> . . . the press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*), or national security in a democratic society, or when the interests of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice, but any judgment rendered in a criminal case or in a suit at law should be made public except where the interests of juvenile persons otherwise requires, or the proceedings concern matrimonial disputes or the guardianship of children.

It is interesting to note that that declaration refers to any judgment in a criminal case being made public. Of course, recently in South Australia we had a notorious judgment that was specifically not made public by order of the judge.

This covenant recognises the special role of the press in providing the public with access to information about the administration of justice. Lord Denning, Master of the Rolls, put it very well when he said in *British Steel v Granada Television* (1981) AC 1096 at 1129:

> The public has a right of access to information which is of public concern and of which the public ought to know. The newspapers are the agents, so to speak, of the public to collect that information and tell the public of it.

The important part played by newspapers in promoting the free flow of information to the public has recently been acknowledged by the High Court in *John Fairfax and Sons v Cojuangco* (1988) 32 ALS 640. The case dealt with the principles involved in journalists revealing their sources. However, I commend that to members who are interested in the principles.

The Canadians regard the freedom of the press as so important that recently it was enshrined in the Canadian Charter of Rights and Freedoms. Section 2 *(b)* of that Charter provides that everyone has the following fundamental freedoms:

> Freedom of thought, belief, opinion and expression, including freedom of the press and other media communication.

Of course, as long ago as 1791 the United States Bill of Rights in the 1st Amendment specifically prohibited any law which abridged the freedom of speech or of the press. That freedom, of course, must be weighed up in the balance with the right of a fair trial, and no-one would deny that the right of an individual to a fair trial is paramount in weighing those rights.

The suppression of a name does not militate against a fair trial. There may be other publications of evidence or circumstances which do militate against a fair trial and, if that occurs, the courts have the power to take action for contempt in those circumstances. I repeat the point that I made that, with respect to the general question of pre-trial publicity, there already is in the law adequate power in the court to deal with that circumstance. The provision placed in the proposed section 69a (2) *(a)* requiring the court to take account of the consequential right of the news media to publish information has been put in to emphasise that it is a fundamental aspect of our system that the media be free to publish court proceedings.

The South Australian Full Court (Chief Justice King) in *G v R* (1984) 35 SASR, 349 at 350, 351 said that the law:

> . . . does not have any policy in favour of the dissemination of information by way of publication of an accused's name before conviction.

It is because of that statement that the Bill before us provides that substantial weight should be given, in deciding whether a suppression should be ordered, to the media's right to publish. It is a fundamental aspect of our system of justice that courts act in public, and the corollary to that is that there is a public right to, and interest in, free discussion and reporting of what transpires in court, provided the proper administration of justice is not thereby prejudiced. When the conflict is between the right to publish and the right to a fair trial then the issue is clearly resolved in favour of the latter. There are already mechanisms in the law for ensuring this.

It is a regrettable fact that the important democratic principle of freedom of the press is abused by some proprietors, editors and journalists. However, the answer to this does not lie in extensive suppression of names or evidence given in our courts. It should be addressed by the community insisting on a proper code of ethics for those who control and work in one of the important institutions of our democracy. I think everyone would agree that suppression orders have been made inappropriately in some cases. I have already referred to the suppression of the name of the head of the Drug Squad. Cases like this bring the law into disrepute, as do cases where the terms of an order are unduly wide, where, for example, not only is information suppressed but the very reasons for its being suppressed are also suppressed. Such orders do not allow scrutiny of the workings of our system of administration of justice.

The Hon. R.J. Ritson: They are exceptional, though.

The Hon. C.J. SUMNER: They may be exceptional, but they certainly bring the law into disrepute.

The Hon. R.J. Ritson interjecting:

The Hon. C.J. SUMNER: Well, that is true. On the other hand, it is also important that we go back to basic principles. It is also important that the law not be brought into disrepute. The fact of the matter is that the law has been brought into disrepute by the suppression order system operating in this State in recent times. I take it from the honourable member's interjection that he is in favour of a suppression order system. Presumably at some future time he will be able to express that view when the matter comes before the Committee.

When an order is made, as it was in 1987 in what has become known as the country hospital case, suppressing everything except the verdict of not guilty, the principle of the open administration of justice goes out the window. The fact of the matter is that there could have been a suppression order in that case but not an order which dealt with name and certain circumstances. To suppress everything is just quite amazing. At least following Cox J's comments in Roget to which I have referred, the case can be discussed in private, but he suggests that at a public meeting it is not possible to debate the merits of the order or the judgment even if some important issue of public policy is involved. Suppression means you probably cannot, on the existing law, discuss that case in public. We could not even discuss it in the Parliament.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: We have not discussed the details of the judgment. We can refer to it as a case. We can refer to it as the country hospital case.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: The law may not be clear but, technically, if you take Roget's case, if you take publication, a case like that cannot be discussed at a public meeting. It can be conveyed privately—

The Hon. K.T. Griffin: I thought you said in Parliament.

The Hon. C.J. SUMNER: I did. I am not sure that technically it can be discussed in Parliament. There would then be a dispute whether parliamentary privilege overrides a suppression order.

The Hon. K.T. Griffin: South Australian Supreme Court judges would say—

The Hon. C.J. SUMNER: It is not clear. There is the potential for even Parliament, in discussing the matter publicly, to be in conflict with the law.

The Hon. K.T. Griffin: Yes, conflict. The courts cannot prevent the Parliament from debating it. All they can do is prevent publication outside Parliament.

The Hon. C.J. SUMNER: That is not as clear as the honourable member makes it out to be. Parliament is in fact also subject to the law of the land. If a law of the land is clearly enough expressed, it can impact on the functionings of Parliament. I would have thought that that was clear. By passing a law, if it is clear enough, Parliament can govern whether or not it can discuss issues. Whether or not it is a side issue, the fact of the matter is that, if Cox is right in Roget's case, a case like that cannot be discussed in public. The only thing that can be done for victims or whatever is to discuss it in private. There is even a question—and I will put it that way if it will make the honourable member happier—whether that case could be fully discussed in the Parliament, even if a major issue of public policy was involved.

The victims are left in that circumstance to handle their grief in private. They, too, have no right to discuss the matter in public. Because this case resulted in an acquittal, suppression of the name was justifiable under the existing law (section 89a). However, a blanket suppression of the name, occupation, address and age of the accused; the name, occupation, address and age of the deceased victim who is not related to the accused; the name of any witness; the publication and reporting of any evidence; or counsel's addresses, opening, closing or interim and the judgment, which is what that suppression order provided for is, in my view, impossible to justify.

The Hon. K.T. Griffin: I would agree with that.

The Hon. C.J. SUMNER: I know. It is a totally undesirable situation that informed discussion cannot take place on an aspect of the administration of justice. When this happens the law falls into disrepute. The law is made to look more of an ass when a person can travel interstate and read in an interstate newspaper all about what has been suppressed in South Australia. While problems will always arise with interstate publication no matter what system is in place, the more out of step South Australian law is with that in other States the more likely, because of the novelty value, that South Australian suppressions will be reported in other States. The residents of Mildura can know; those from Renmark can not.

My experience, as Attorney-General, of the operation of suppression laws in this State (over six years now) leads me to the firm conclusion that they are unsatisfactory and must be amended. The issues of principle are in fact finely balanced between the right of the individual and the rights of the community. The critics of the Government's amendments fail to give sufficient weight to the rights of the community and the public interest.

In virtually all democracies this conflict of principle is resolved in favour of the public interest, the right to publish and the right of the public to know what is happening in our courts, provided however there is no prejudice to a fair trial. Curiously, it is only in South Australia that the issue of a blanket statutory suppression has gained support. However, even if it was felt that there was a case for suppression in principle, the reality is that it is impractical and unworkable. The cure (suppression) is worse than the disease (possible prejudice to the individual). The fostering of speculation, rumour and gossip, which suppression orders entail, and the fact that South Australia is but one State of a federation, means that unilateral action by South Australia is not a viable option.

If the present system is unsatisfactory—and I firmly assert that it is—there are two options: first, a more rigid system of suppressions. This is unworkable in practice and would soon be held up to ridicule. It is most unlikely to get support in the Parliament in any event. Previous attempts to do this in the 1960s were not proceeded with. The second option is to bring South Australian law and practice more in line with that of the other States of Australia. This the amendment seeks to do.

In summary, I have concluded that the present system is not working, it is bringing the law into disrepute and that a return to the principle of open justice is desirable. A quotation from the Australian Law Reform Commission's report on contempt is apposite:

> Reporting of proceedings held in open court acts a corrective to fabrication, gossip or rumour emanating from those few people who actually attend the proceedings, and to imaginative invention on the part of those who do not.

The Hon. Mr Griffin in his contribution quoted the Law Society's letter, which I have also considered. He then repudiated it, because he did not support the proposition that the Law Society was putting forward. The fact is that the Law Society has known of the issue of suppression orders ever since it has been an issue in this State, which goes back to 1967-68. It was only a few weeks or months ago (weeks rather than months) that the Law Society formulated a view on suppression, despite the publicity and concern expressed about this issue over many years.

That does not, of course, detract from its view and its right to put it, but it certainly meets the criticism that the Government has not consulted or that the Law Society's view, coming as it does now, means that there ought to be a delay in dealing with the issue. The South Australian community has had considerable time to debate the issue relating to suppression orders. I have considered the Law Society's submission. I note that the Hon. Mr Griffin considered it, recorded it in *Hansard* and promptly rejected it.

The Hon. Mr Gilfillan has moved for the establishment of a select committee. I do not believe that that would achieve very much. We are in a position to make up our mind on the principles involved. It is not a new issue. Discussion has been around in this State since 1967 or 1968, effectively, and we ought to be in a position to debate the Bill today. I point out that, in light of other comments made by members today, that this Bill has been on the Notice Paper since 15 March—almost one month—and it was only yesterday that the Hon. Mr Griffin circulated amendments for consideration in Committee.

The Council divided on the second reading:

Ayes (19)—The Hons J.C. Burdett, M.B. Cameron, T. Crothers, L.H. Davis, Peter Dunn, M.S. Feleppa, K.T. Griffin, J.C. Irwin, Diana Laidlaw, Anne Levy, R.I. Lucas, Carolyn Pickles, R.J. Ritson, R.R. Roberts, T.G. Roberts, J.F. Stefani, C.J. Sumner (teller), G. Weatherill, and Barbara Wiese.

Noes (2)—The Hons M.J. Elliott and I. Gilfillan (teller).

Majority of 17 for the Ayes.

Second reading thus carried.

The Hon. I. GILFILLAN: I move:

1. That this Bill be referred to a select committee.

2. That the committee consist of six members and that the quorum of members necessary to be present at all meetings of the committee be fixed at four members and that Standing Order No. 389 be so far suspended as to enable the Chairperson of the select committee to have a deliberative vote only.

3. That this Council permit the select committee to authorise the disclosure or publication as it thinks fit, of any evidence presented to the committee prior to such evidence being reported to this Council.

In my second reading speech I said that the Australian Democrats were thoroughly convinced that the only proper way with which to deal with this matter was by referral of the Bill to a select committee. Having heard what the Attorney-General has said and having had an informal discussion with the Hon. Mr Griffin, as well as bearing in mind my own experience in trying to get some position with which I would feel at ease, believing that the right result would come from this legislation with an attempt to draft amendments, I am even more firmly convinced that the Bill should be referred to a select committee.

I have tried twice to have amendments drafted and I make no apology for the fact that the first draft did not spell out the aims for which I asked: that is, primarily to have suppression until committal, with variations so that exemptions could be provided. The first draft did not achieve that aim, so I asked for a second draft, which has been circulated in the past 24 hours. I have tried to get an opinion from the President of the Law Society on these amendments, because the Law Society has shown, quite properly, a deep interest in this matter, but my efforts have been in vain. Indeed, I have a message from my personal assistant Genevieve saying that she has contacted the Law Society, Hanson Chambers, and the Federal courts, but that John Mansfield is nowhere to be found.

That indicates our dilemma in trying to get a balanced view of this critical and extraordinarily complex matter. Any honourable member who listened at least in part to the Attorney-General's reply on the second reading would realise the enormous range of implications and problems surrounding the Bill. The Attorney referred to the United Kingdom experience, as the United Kingdom has a specific method of dealing with this matter. Limited details are available to be published and the Attorney-General commented on the criticism of, and variations to, that. However, it was put forward as a reasonable proposal.

The Attorney-General talks about the John Friedrich case as being an embarrassment to the intention of our amendments to have suppression until committal, but he has not had a chance to analyse our amendments. If that is the only reason why the Government is not happy with this batch of amendments, the matter should be discussed calmly and rationally to see whether there are variations. My sense of frustration about this matter is enormous and I believe that the general public would share my frustration if they could see and feel this response to a media outcry. After all, the media are the ones that have been bouying for the relaxation of suppression orders, whereas in many cases a sense of human concern has led to a pleading for a wide extension of such orders lest innocent and vulnerable people be exposed to pillory and the social damage that is done by publication of their cases.

The issue of the Moyse-Malvaso case has been raised by the Attorney-General. It is outrageous that the name of Rocco Sergio, one of the lesser players, was made public immediately and that he and his family had to wear the opprobrium of that for many months. I do not think that it is too late for a change of heart in this Chamber. True, it is hard to make calm and rational decisions as we gallop on toward the end of the session. Unless I can persuade the Chamber to refer this Bill to a select committee, the mood in which members must deal with the final draft of the legislation is one in which there has been virtually no calm or rational debate among the parties to whom there should be a request for information and from whom there should be assurances that they have had a chance to consider it, and I put myself in that category.

It is all very well for the Minister to say that this matter has been on the Notice Paper for a month. A month is not adequate time in these circumstances to address all the complications of the issue. It has been impossible for anything other than a media loaded public debate to take place. Recently we have seen the results of effective select committee work on several matters, and Parliament and the people of South Australia have benefited from that. I plead with the Attorney-General because the time-lag in this matter would be only a few months. Without prejudice I state that it may well be that, after the select committee, the Democrats will support the Government's legislation. I plead for the chance to have a rational, calm opportunity to look at the matter, take evidence and have input from interested persons away from the glare of publicity and the posturing and pressure of the media.

My motion to refer the Bill to a select committee is not a frivolous, obstructionist move. It is not an effort to deny or oppose the Government's right to amend legislation to allow the media to have its rights, to allow the public the right of protection and to allow the courts to have their rights and discretion in various areas and not be dictated to by insensitive legislation. With all those matters in mind, I plead again to this Chamber. There will no loss of face. It is a reasonable step to refer this Bill to a select committee.

The Hon. C.J. SUMNER (Attorney-General): The Government opposes the motion, and I foreshadowed my reason for opposition in my second reading reply. The Hon. Mr Gilfillan has made his plea and argued forcefully that there should be a select committee. I believe that this issue should be resolved now because I do not think that a select committee is necessary. As I said, it is an issue that has been debated in the South Australian community since 1968; it is not as if there is anything new about it. Only a few years ago, in 1984, Parliament debated amendments to the Evidence Act dealing with suppression orders to try to clear up concerns that occurred then. Further concerns have been outlined and we should be in a position to make up our mind. The principles are reasonably clear and a decision must be made on policy grounds. Once a decision has been made on the question of principle, it seems to me that the detail of the legislation is not all that difficult.

The honourable member spoke about a media outcry. There is no question that there has been a media outcry. However, I do not feel compelled just by a media outcry or by the media's views on this topic, although those views must be considered seriously. I am more motivated by my experience and, over the past six years, I have been through a number of so-called crises or public debates about suppression orders—the first in late 1982, which led to the first review and, now, the most recent events of the past few months. I am firmly convinced that the existing system is not satisfactory. It needs reform; it needs change.

The Hon. I. Gilfillan: I agree.

The Hon. C.J. SUMNER: Okay. I will turn to the next point and say that I think that the proposition of blanket suppressions or a more frequent use of suppression orders is simply impractical. It is impractical on two grounds: first, because of problems of rumour, innuendo and smear which can arise to innocent people when suppressions occur and, secondly, wherever we get to, while we live in a Federation,

the notion that South Australia can have a suppression order regime which is dramatically out of step with the other States of Australia is not a tenable one. It brings South Australian law very quickly into disrepute. Even if we passed a blanket suppression order system in this State, I do not believe we could sustain it because it would be held up to ridicule.

The Hon. I. Gilfillan: Why do we not have a select committee?

The Hon. C.J. SUMNER: The honourable member says, 'Why not have a select committee?' He has put forward with some force a reasonable case, but in the final analysis we are in a position now to make a decision. This issue has been around—it is not as if it is a new issue—and I think it is time that we tried to resolve it and overcome the problems which have become quite evident in our supression order regime.

The Hon. K.T. GRIFFIN: When I spoke on the second reading of this Bill earlier this week I indicated that the Opposition did not believe that a select committee was an appropriate course to follow. I indicated then, as I do now, that this issue has been around for a long time and that, whilst the Bill has only been in the Council only since 15 March, and whilst there has been a mass of other legislation of which I made some criticism at the time at relatively short notice, the fact is that the present system is unsatisfactory, and I believe that some steps must be take to resolve it.

In passing, in the last sentence of his reply to the second reading, the Attorney-General made some veiled criticisms of the fact that this Bill has been on the Notice Paper since 15 March, yet my amendments were filed only yesterday. I do not think that I can be criticised for that because this is a complex issue. I have been endeavouring to do with this Bill what I have done with a number of other Bills which have been under my responsibility, that is, to ensure that there is adequate consultation. The issues which are raised by suppression order are particularly complex and not easy to resolve because there are so many different points of view.

For this reason alone, I doubt whether a select committee could come to a unanimous view—or even a view of a significant majority—as to which course was likely to be the appropriate one to follow for suppression orders. The other aspect is that, even if the select committee came to a unanimous view—which, as I say, I doubt—the fact is that there would still be controversy about the decision. There would be different legal interpretations, discretions exercised by judges and magistrates at first instance and by courts of appeal and, I suggest, there would be continuing debate about this issue.

As the Attorney-General indicated, the very fact that the suppression orders debate started as far back as 1968 (21 years ago), and the fact that there were some amendments in 1984 which were believed to go some way towards resolving some of the debate—and the debate still continues—indicates that it is not an easy question to resolve. I suggest that, whether there is a select committee, or whether we make some decisions today on the Bill and the amendments before us, the fact is that the question of suppression orders will continue to be an issue of public debate. Even under the very tight criteria which the Attorney-General has specified in his Bill, there will still be debate about the exercise of discretions which, to some extent, become subjective decisions by judges in particular circumstances.

No two circumstances will be the same. Whilst the principles can be established, it is still up to human beings to resolve the issues in particular cases where there are, of course, subjective assessments to be made of—under the Attorney's Bill—what is in the interests of proper administration of justice.

Therefore, whilst a select committee may have some immediate attraction to put off the day of decision, I am not convinced that it is an appropriate course of action. I have wrestled with the problem, and I believe that the amendment I have on file reflects the principles and the proper balance between the public interests and the rights of the media and of an accused person. Ultimately, it comes down to a question of one's assessment of where the line has to be drawn. Although this puts pressure on every member to make a decision about the issues before us today, I think that it is an issue that we should grapple with now. We ought not to postpone it for a select committee which would, undoubtedly, bring forward a lot of comment on the issue and provide some interesting material upon which decisions would then have to be made. The issue should be resolved now, and, as I have indicated, the Opposition believes that a select committee should not therefore be supported.

The Hon. I. GILFILLAN: I am persuaded even more by what I consider is a somewhat veiled recognition by the Hon. Trevor Griffin that a select committee could perform a useful task. Therefore, I am doubly disappointed that the indications are that my motion will not succeed unless there is an eleventh hour change of heart on the part of members. If, indeed, my prediction is correct and I will not be successful with this motion, I indicate that I will not call for a division. But I would like both the Attorney and the shadow Attorney to comment on the establishment of a review committee. That committee could review whatever legislation passes in this place. That measure would ensure that, if a select committee is not established, there is built into the process some form of parliamentary committee to review the workings of the suppression orders legislation. I realise that that is a comment to which neither the Attorney nor the shadow Attorney can respond in this debate. However, I ask that they consider it during the Committee stage. I make one final plea: I remain convinced—in fact, I am even more convinced—that a select committee is the appropriate way to deal with this issue. I urge members to support my motion.

Motion negatived.

In Committee.

Clauses 1 to 3 passed.

Clause 4—'Suppression orders.'

The Hon. I. GILFILLAN: I move:

Page 2, after line 3—Insert new subclauses as follow:

(a1) A person must not, before the relevant date, publish by newspaper, radio or television, any statement or representation—

(a) by which the identity of a person who has been, or is about to be, charged with any offence is revealed;

or

(b) from which the identity of a person who has been, or is about to be, charged with any offence might reasonably be inferred,

unless the accused person consents to the publication.

Penalty: Two thousand dollars.

(a2) In subsection (1)—

'the relevant date' means the date on which—

(a) the accused person is committed for trial or sentence;

(b) the accused person is convicted of the offence or a formal finding of guilt is made against the accused person;

or

(c) a court, on application, authorises publication in any case where—

(i) a warrant has been issued for the arrest of the accused person and the accused

person has not been arrested in pursuance of the warrant;

(ii) the accused person has escaped from lawful custody;

(iii) the accused person has contravened, or failed to comply with, a bail agreement;

or

(iv) there is in the opinion of the court some other sufficient reason why publication should be authorised.

All members will have an idea of the background of my amendments. I will not speak about them at length because I have made my point several times over: this is an attempt to get suppression to committal. There are some exemptions. The wording of the amendments (for those who have not had a chance to look at them) provides for the form of suppression and the relevant date, which is the date after which the blanket suppresssion no longer applies. Further on, subparagraph *(c)* provides for the authorisation of publication, in other words, the exemption under specific circumstances, one of which would have covered the John Friedrich situation raised by the Attorney-General.

This amendment reflects Democrat policy and it has some sympathy from the Law Society. However, I want to make the point that I am still in a dilemma, and wonder whether we may be better off as a society if we had no suppression orders. It may be argued that the limited release of detail along the lines of the UK experience would be the most effective and the fairest way to go. The reason I make those remarks is to repeat my dilemma in dealing with this legislation. It may be unusual, but I move this amendment as a logical alternative. I do so half-heartedly, because I do feel that there is still plenty of argument, some of which has been raised by the Attorney, to review even my own amendment.

However, I move the amendment, and I believe honourable members realise that it is an attempt to keep a virtually blanket suppression until committal for trial or sentence. Exceptions are built into the amendment which would allow for the extraordinary circumstances, a few of which the Attorney-General referred to.

The Hon. K.T. GRIFFIN: This reflects the position that the Hon. Mr Gilfillan has already dealt with during the second reading debate. I am not prepared to support the amendment. It involves a significant widening of the grounds upon which suppression orders can be made. In fact, it provides for automatic suppression unless certain exceptions are established. According to the amendment, the court may authorise publication in any case where a warrant has been issued for the arrest of the accused person and the accused person has not been arrested in pursuance of the warrant; the accused person has escaped from lawful custody; the accused person has contravened, or failed to comply with, a bail agreement; or there is in the opinion of the court some other sufficient reason why publication should be authorised.

In the case of a person escaping from lawful custody, the amendment means that the authorities have to go to the court and get approval to publish the name of the escapee before the law enforcement agencies can seek the assistance of the public. It would be an extraordinary situation if, in the case of someone who is charged with a serious offence who escapes from custody on the way from the watchhouse or the remand centre to the court for arraignment, there has to be a formal application to the court for publication of the name. It is not just the name; it is also the identity. One could not say that the person is 183 cm tall, has brown hair, has a scar on the left cheek and is dressed in particular clothes, because that deals with identity. That would be a considerable impediment to the administration of justice and the enforcement of the law if that were to apply.

The amendment refers to some other sufficient reason, other than failure to comply with bail agreements or warrants having been issued and the accused not having been arrested in pursuance of the warrant. What is a sufficient reason why publication should be authorised? It is a total discretion to the court with no guidelines about the circumstances in which it should be exercised.

For those reasons, the amendment is technically and practically defective. However, it also goes against the principles to which I referred in my second reading contribution and upon which I believe the Bill and the amendments ought to be considered, namely, that the administration of justice must be open to public scrutiny, that there must be a free press prepared to report responsibly the affairs of State, including proceedings in court, without fear or favour, that the public interest in the proper administration of justice must be recognised, and that the defendant has a right to a fair trial. In my view, the amendment goes beyond what I believe is appropriate based upon those principles. For those reasons, I am unable to support the amendment.

Naturally, I prefer the amendments which I have proposed. I hope that if the Hon. Mr Gilfillan's amendments are defeated, he may be persuaded, when the debate on my amendments take place, to support them. I am not asking to do a deal on it or anything like that. I hope that we can talk about this in rational terms, and that the Hon. Mr Gilfillan can be persuaded at that point that my amendments are appropriate for support. For the reasons I have indicated, I am not prepared to support the honourable member's amendments.

The Hon. C.J. SUMNER: We are dealing with a test debate on the issue of blanket statutory suppression that is proposed by the Hon. Mr Gilfillan. I will not say anything that goes beyond personally endorsing the remarks of the Hon. Mr Griffin and referring the Committee to general arguments of principle that I put against this proposal in my second reading contribution. The Hon. Mr Gilfillan's proposition would prohibit the publication of the identity of not just a person who has been charged, but a person who is about to be charged. One really has to ask how that would work in practice. Was Mr Friedrich for two weeks about to be charged? He was certainly to be charged if he could be found. Does 'about to be charged' mean a few minutes before it actually happens? If so, how is the media to know exactly where they stand in such a matter? That is a major problem with the practical operation of the proposal put forward by the Hon. Mr Gilfillan.

The Hon. R.J. RITSON: I have a brief question to the Attorney-General, relating to subclause (2a). It states, 'Rights, in general terms, of the news media to publish.' If that proposition wins the day—that rights probably existing already are declared for guidance of the court in this statute—and given that all rights carry duties (to which the Attorney has already referred) would he indicate whether or not he objects to amendments such as Mr Griffin's, which insert also some general duties of the media into this statute?

The Hon. C.J. SUMNER: That is an amendment that will be considered when the Hon. Mr Griffin moves it. In fact, it is not the duties that the Hon. Mr Griffin is trying to impose on the media. Those duties are dealt with in a subsequent amendment.

The Hon. R.J. Ritson: It is implicit.

The Hon. C.J. SUMNER: I would prefer to hear the Hon. Mr Griffin's argument in favour of his amendment before responding.

The Hon. I. GILFILLAN: I would like to respond to what I thought was a peripheral matter raised by the Attorney. If we were to be treating this seriously, with a view to it being introduced, it ought to be analysed more thoroughly. It seems to me that the wording is an attempt to prevent the media from circumventing any suppression which would be the result of this amendment becoming law, by whipping in quickly and technically avoiding its suppression by publication just prior to a person who was charged with an offence, when it was quite clear that that process was about to take place, or would in the immediate future. It strikes me that that is a provisional wording to cover what could have been a loophole open for abuse.

I remind both the Attorney and the shadow Attorney to be good enough to comment on my request, when I spoke in support of a select committee, for some inbuilt form of parliamentary review of the working of suppression legislation in whatever form it finally passes Parliament. Is it appropriate that such a provision be inserted in the Act, and can either honourable member give any firm undertakings about that? I ask them to make their opinions known in Committee.

I hope that this is not too cynical a remark, but I feel concern that at least in part one reason why this legislation is not being referred to a select committee is that it would leave the decks clear for an election. It has been an emotional and much publicised issue. However, it is regrettable if that is one of the reasons why there is no support to refer the issue to a select committee. I cannot help but be slightly suspicious that it would be very comfortable for both Liberal and Labor to have a clear position on this already tidied up and finished before an election was upon us. Depite that, I urge the Committee to support my amendment.

The Hon. C.J. SUMNER: The honourable member should set aside his cynicism at this stage of the session. In respect of his proposition about a procedure for inbuilt review, I would not support that as far as formal introduction into the legislation. I do not believe it is necessary. If we want to review the legislation there are means whereby that can be done. Parliament can review it by establishing a select committee at some time in the future.

The Hon. I. Gilfillan: Do you support it?

The Hon. C.J. SUMNER: At this stage I would not say that I oppose it. I would consider it at the time. If it looked as if there was public disquiet and concern about the operation of the new law, it may be a sensible approach. I would not want to commit myself absolutely to having a select committee on it, but certainly the question of review of the legislation in future is not something that I would turn against. It has been pointed out that the principles are important; they are finely balanced and at some stage in the future a review of the operation of the new law could be useful. I am not giving a firm commitment to do that, but that should be sufficient indication for the honourable member.

The Hon. K.T. GRIFFIN: Regardless of whether or not there is an election—and only the Government knows when that is going to occur—there must be a clear position on this issue, as there will have to be on a variety of other issues. My motivation for dealing with this now is, as I have said: the issue has been around for a long time and I do not believe that a select committee will be able any more satisfactorily to resolve the issues and principles—

The Hon. I. Gilfillan: What about later?

The Hon. K.T. GRIFFIN: It depends on the final form of the legislation. This sort of legislation has to be reviewed on a periodical basis. The Attorney of the day has a responsibilty to ensure that it is working fairly and not harshly, that it is not providing serious doubts about whether or not an accused person gains a fair trial. If there is an election and I become Attorney-General, I would certainly want to see the legislation, along with a lot of other legislation, reviewed as to its operation.

I suggest that, because of the history of this piece of legislation, it would undoubtedly be the subject of fairly intense review by whichever Government was in office. The principle that I would apply is: is it operating fairly and justly? Further, I would want to ensure that on a periodic basis—and I cannot tell you what that period would be; maybe every year or every two years—there was a careful and deliberate look at the legislation to ensure that it was not working unjustly.

So far as a committee is concerned, I would be averse to including in the Bill some formal review committee. One then has to ask: in what sort of legislation does one provide for a separate parliamentary committee by a piece of legislation to conduct reviews and to monitor? I do know that in respect of Aboriginal lands a parliamentary committee is established in the relevant statutes. But, that is such an exceptional situation that there is a need for such a committee.

Of course, the Planning Act provides for material to be referred to the Joint Standing Committee on Subordinate Legislation, but that deals with delegated legislation; and, I think that that is in a different context from this. If in two years the majority of members in the Chamber decided that they wanted to have a select committee on this, I see no difficulty, like the Attorney-General, in serving on it. I think that one has to make a judgment in the light of experience. I certainly would not rule it out, and I think it may provide a useful basis for considering the way in which the legislation is being administered.

The Hon. I. GILFILLAN: I have just received a message from the President of the Law Society, John Mansfield (he was not elusive, but difficult to contact). He informs me that the amendments presently before the Committee achieve exactly what the society wants, although it would prefer 'conviction' rather than 'commital' as being the relevant date. In the society's opinion the amendments are drafted satisfactorily. I think it important to convey that opinion to the Committee.

Amendment negatived.

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

Page 2, lines 4 to 6— Leave out subsection (1) and substitute:

(1) Where a court is satisfied that a suppression order should be made—

(a) in the case of criminal proceedings—to prevent prejudice to the proper administration of justice;

or

(b) in the case of other proceedings—to prevent prejudice to the proper administration of justice or to prevent undue hardship to any person,

the court may, subject to this section, make such an order.

During the second reading debate I indicated that I wanted to distinguish between criminal and civil proceedings and that one could see quite legitimate reasons for wanting to make that distinction. Criminal proceedings relate to alleged breaches of the law which regulates the conduct between citizens. The law that Parliaments make endeavours to identify these areas of conduct which are unacceptable to the community and, if such conduct is undertaken by any citizen and is detected, that citizen may be brought before an independent court and tried with the Crown presenting its evidence to establish its case beyond reasonable doubt.

So, the criminal law is, in effect, the resolution of an alleged breach of conduct required of citizens one to the other and is, I suppose, an offence by an individual against

society at large and the behaviour which it would regard as being abnormal or subnormal. On the other hand, civil proceedings, for example, are proceedings between citizens. Those proceedings determine issues that have arisen between citizens—not between a citizen and the State or a citizen and the community in general, but between citizen and citizen. Those issues of a civil nature are, largely, matters of a private nature. Generally speaking, those disputes ought to be accessible to public scrutiny but, more particularly, the way in which the courts deal with those issues ought to be the subject of scrutiny. Of course, one must remember that in civil cases the resolution of disputes between citizens in the majority of cases (I suppose 90 per cent of cases or perhaps more) is achieved before they get to the courts, and all that will ever be on the public file will be the names of the parties, perhaps a writ, perhaps a statement of claim and perhaps a defence.

In those circumstances, if there is an issue that is likely to prejudice a particular party or a witness, it seems to me appropriate that in some circumstances the court may be able to grant a suppression order. What I am seeking to do is to provide that in those criminal cases to which I have referred the criterion is prejudice to the proper administration of justice. With respect to civil proceedings, the criteria are to prevent prejudice to the proper administration of justice or to prevent undue hardship to any person. It seems to me that that is the proper balance of the public interest with respect to those particular matters.

Of course, there is still a discretion that the judge or magistrate must exercise. Later in my amendments I will seek to develop that distinction (page 2) to deal more specifically in criminal proceedings with the interests of victims and witnesses because, again, they are not the persons on trial in criminal proceedings: they are mere players in a drama that pits the State against an individual, where the individual is alleged to have broken the law of society in relation to conduct.

In some instances there may be danger to a witness or to a victim; there may be considerable hardship to a victim or to a witness by the publication of name or address, and in those circumstances there ought to be a discretion to suppress that information which would put that witness or victim at risk or create other hardship.

So far as the accused person is concerned, the issue is what is in the interests of the proper administration of justice. Other issues follow from that. A later amendment deals with the recognition of the right of the public to information, the right of the media consequentially to publish information, and the right to a fair trial. However, I think it important to establish right from the outset that there is a distinction between criminal and other proceedings and, from that point, to determine the criteria which will apply for names to be made available or, more particularly, to be suppressed. So, I move my amendment in that context, with a view to developing it later, particularly if it is carried.

The Hon. C.J. SUMNER: The Government opposes this amendment and, indeed, will oppose all the amendments proposed by the Hon. Mr Griffin in their present form. The Government does not believe that in principle there is a valid distinction between criminal and civil proceedings. If the honourable member is to introduce the notion of undue hardship, which he has purported to do, there may be undue hardship in criminal proceedings just as there may be in civil proceedings. It seems to me that, if this concept is to be dealt with, it is better dealt with as a whole rather than trying to work through these amendments and the distinction between criminal and civil proceedings. I say that as a matter of principle.

Secondly, the drafting of these amendments, even to achieve his objective, is unnecessarily complex and would result in greater difficulties of interpretation than, for instance, the reasonably clear position in the Bill as introduced by the Government. As I said, the distinction is not a valid one and, in any event, the solution has produced a rather contorted approach to the matter.

The Hon. I. GILFILLAN: I recognise that the distinction between the two categories of legal proceedings is well worth discussing, but I certainly do not feel that the case has been presented satisfactorily for us to take a firm position on it. In the light of that and the conservative approach to the work before the Committee, the Democrats will oppose the amendment.

The Hon. K.T. GRIFFIN: I am disappointed to hear the Hon. Mr Gilfillan express that view. I would have thought that, if he has some concern about this, in order to enable this place to retain some measure of control over the Bill, he ought to support the amendments with a view to further discussion, say, at a conference. If he rejects the amendments, that really is the end of the matter. I do not agree with the Attorney-General that what I am proposing is difficult or contorted. The principles are clear, as set out in the amendments. Taken with the others I have yet to move, the first amendment indicates, in my view, a number of principles which must apply if a suppression order is to be made.

Making the distinction between criminal and other proceedings is an appropriate distinction for the very reasons I have stated: criminal proceedings relate to a citizen's breach of a law of society and the way in which individuals ought to conduct themselves with respect to others. Those laws are of critical public importance and interest, and breaches of the laws are of critical public importance, whereas civil proceedings are not of such significance in that context.

The criminal law is the minimum code of conduct below which society will not allow its citizens to go. It is, in a sense, the corporate or community view of a code of conduct. In those circumstances where it is appropriate that, where a person is accused, those proceedings are of much clearer importance and much greater significance to the public at large (and they ought to be) than other proceedings which are of a more personal nature. So, I intend to push the issue as hard as I possibly can because what I have sought to do is reasonable and straight-forward.

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), J.C. Irwin, Diana Laidlaw, R.I. Lucas, R.J. Ritson, and J.F. Stefani.

Noes (11)—The Hons T. Crothers, M.J. Elliott, M.S. Feleppa, I. Gilfillan, Anne Levy, Carolyn Pickles, R.R. Roberts, T.G. Roberts, C.J. Sumner (teller), G. Weatherill, and Barbara Wiese.

Majority of one for the Noes.

Amendment thus negatived.

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

Page 2, lines 7 to 16—leave out subsection 2 and substitute:

(2) Subject to subsection (2a), where the question arises whether a suppression order (other than an interim suppression order) should be made to prevent prejudice to the proper administration of justice—

(a) the court must have regard to the public interest in publication of information related to court proceedings and the consequential right of the news media to publish such information; and

(b) the prejudice to the proper administration of justice that would occur if the order were not made will not be taken to justify the making of the order unless the court is satisfied that it would be suf-

ficiently severe to outweigh the considerations referred to in paragraph *(a)*.

My amendment is divided into two subclauses, namely (2) and (2a). I will move the first part of my amendment and treat the second as a subsequent amendment.

My amendment seeks to reflect a modification of the Bill as it stands. Nevertheless, it recognises that the court must have regard to the public interest in the publication of information related to court proceedings and the consequential right of the news media to publish such information. It recognises that an order may be made to prevent prejudice to the proper administration of justice. Where that prejudice would occur if the order were not made will not be taken to justify the making of the order unless the court is satisfied that it would be sufficiently severe to outweigh the considerations referred to in paragraph *(a)*. This still gives appropriate weight to the public interest.

Subsection (2) in the Bill is in a form which suggests that the right of the news media is overriding. I am not sure whether that is what the Attorney-General intended. He may have done, but I think that there needs to be an emphasis on the public interest and that the news media have a consequential right to publish. It is correct that, to some extent, the amendment is qualified by a subsequent amendment, which tries to ensure that the right of an accused person to a fair trial is not prejudiced. As the Attorney-General said in one of his statements during the course of this debate, this is a paramount right.

My subsequent amendment seeks to ensure that that right is specifically recognised. There may be an argument that in law that is encompassed in the concept of the administration of justice. However, I think that in this sort of legislation, even if that were so legally, from a public and practical point of view it is important to recognise that principle of an accused person's right to a fair trial. I think that my amendment sets a proper balance between the public interest and the right of the news media to publish, and I believe that this provision is in a more preferable form to that which is in the Bill.

The Hon. C.J. SUMNER: The Government opposes the amendment. It is a significant amendment and it could alter what the Bill is trying to achieve. It would remove the idea of the right of the news media to publish, having substantial weight, in considerations of whether or not to suppress. The honourable member's amendment would relegate that right—which I suppose it can be called in broad terms—to the status of one of the factors, along with the others to which the courts are to have regard. In other words, this involves a significant detraction from the media's right to publish. If this amendment was passed we could well end up in the most unsatisfactory situation of having passed legislation but with the suppression system going on and on the way it has in the past.

The Hon. K.T. Griffin: It won't.

The Hon. C.J. SUMNER: With the honourable member's amendment I think we would run the risk of that occurring. We amended the law in 1984—we reviewed it. The suppression order system in this State nevertheless continued on and on as if that law had not been changed. What we are dealing with in South Australia is a judicial culture and judicial decisions, and a judicial discretion which has been exercised much more broadly in South Australia than in any other State in Australia.

Although the terms for granting suppression orders in other States are quite similar to those in South Australia—or at least they were before the 1984 amendment—in South Australia the judicial culture has been much more in favour of suppression than otherwise. I think that goes back to the principles espoused by Chief Justice Bray that suppression orders promote equality and do not detract from it. I do not think that has turned out to be a practical philosophy or principle in terms of its operation, even if correct—and I am not sure about that, either.

The important point is that, unless it is made quite clear to the judiciary that Parliament has said that suppression orders should be used only in very exceptional circumstances, we run the risk, having passed legislation, of finding that the previous system continues. If the Committee accepts the Hon. Mr Griffin's amendment, I believe that that is a real risk.

The Government has tried to overcome the statement of the Chief Justice in that case to which I referred (in *G. v R.*), where he said that nothing in common law indicates that there is a right in the media to publish the names of accused persons before conviction. That has to be overcome somehow if the law is to be changed. The judiciary has to be given a signal that Parliament wants the use of that discretion restricted and, if we only include that the right of the news media to publish is just one of the factors that the court has to take into account, I do not think the objective will be achieved.

The Hon. R.J. Ritson: You're against fair trial.

The Hon. C.J. SUMNER: You're wrong, and that is an irrelevant interjection. The courts will not allow a fair trial to be prejudiced, and that is clear. If it is prejudicial to the administration of justice—

The Hon. J.C. Burdett interjecting:

The Hon. C.J. SUMNER: Prejudice to the administration of justice is quite clear. If there is prejudice to the administration of justice, the suppression order will be granted. A right to a fair trial is one of the most important aspects of administration of justice.

The Hon. J.C. Burdett: Why not say so?

The Hon. C.J. SUMNER: There is no need to say so. Prejudice to the administration of justice is well understood. The courts will not (or should not) permit publicity to interfere with a fair trial, and there is simply no need to spell that out. I think the Committee needs to understand the objectives that we are trying to achieve: the basic objective of restricting the use of suppression orders. I made it quite clear in my public statement that the right to a fair trial will take paramountcy over publicity, and that is the law now. Indeed, it should be enforced by the court through contempt proceedings. That situation will not change under this legislation.

However, what will change is that, when considering whether to grant suppression orders, the courts will have to give substantial weight to a factor which they have ignored in the past, and that is the right of the media to publish. That will remove the sick grandmother cases and, hopefully, it will remove cases like the Moyse case and the country hospital case. Hopefully, we will return essentially to what we ought to be doing, that is, to have a suppression order regime which is similar to that in other States. As part of the Federation, South Australia cannot operate a suppression order system which is out of kilter with that which applies in the other States, and that should be the objective. I believe that the Hon. Mr Griffin's amendment runs the risk of quite seriously subverting that objective and allowing the existing system to continue.

The Hon. J.C. BURDETT: I support the amendment. The Bill would be acceptable to me only if this amendment were inserted, because at present the Bill sets out certain matters that the court must consider, including the right of the news media to publish, and this is to be recognised as having substantial weight. If we say that, it is necessary to

recognise specifically and expressly in the legislation the defendant's right to receive a fair trial.

The Hon. C.J. Sumner: The amendment takes out 'substantial weight'.

The Hon. J.C. BURDETT: All right, but I am satisfied with the Bill at all only on the ground that it enables the court to take into consideration if there is an overriding provision in favour of a fair trial. That is, in effect, what the amendment does: it makes the overriding consideration that of the defendant's right to a fair trial. No honourable member would be opposed to a defendant having a fair trial, and I have not been persuaded by what the Attorney-General has said. I cannot see how this adversely affects the rest of the Bill and the intention of the Bill if we provide specifically that the court is to take into account the defendant's right to receive a fair trial.

The Hon. K.T. GRIFFIN: The Attorney-General talks about signals to the judiciary. I should have thought that my new subsection (2) was a clear signal, just as the Attorney's new subsection (2) is equally a signal, because neither of them is at present in the Evidence Act. Neither the fact that the court must have regard to the public interest nor the fact that there is a consequential right of the news media to publish is recognised in our legislation. So, whichever one is passed will be the signal to which the Attorney-General has referred.

The Attorney's second point is that we should be moving more closely towards what happens in other States. As I said in my second reading speech, neither his proposition in new subsection (2) nor mine is in line with the present provisions in other States. So, there will be a distinction there, anyway. My amendment provides what I regard as a more appropriate balance, still recognising and giving quite heavy weight to the fact that the court must have regard to the public interest and the consequential right of the news media to publish such information.

Under new section 69 (1) there is a reference to the court's being satisfied that the prejudice to the proper administration of justice must be sufficiently severe to outweigh the considerations referred to in the earlier paragraph *(a)*. Therefore, I suggest that there is a proper balance there. There is a recognition of the issues, but there is also a recognition of balance which I do not believe is provided by the Attorney-General's Bill. So, I prefer the amendment that I have moved.

The Hon. I. GILFILLAN: The Democrats oppose the amendment. However, that is not to say that we reject the value, at least in part, of some of the intention of the amendment. I feel severe disquiet about such injunctions, as 'the court must have regard to the public interest in publication of information related to court proceedings and the consequential right of the news media to publish such information'. How will that be interpreted by the court? It will still be subject to the individual vagaries of a court.

As with the whole approach to this matter, we are still surrounded by a lot of unknown and unpredictable factors. I make plain to the Committee that the Democrats intend to vote against the Hon. Trevor Griffin's amendments but that is not a rejection of the potential value of some of the amendments but an indication that we are not in a position to judge them to our satisfaction. Therefore, we will leave the Bill unamended as far as these amendments are concerned.

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), J.C. Irwin, Diana Laidlaw, R.I. Lucas, R.J. Ritson, and J.F. Stefani.

Noes (11)—The Hons T. Crothers, M.J. Elliott, M.S. Feleppa, I. Gilfillan, Anne Levy, Carolyn Pickles, R.R. Roberts, T.G. Roberts, C.J. Sumner (teller), G. Weatherill, and Barbara Wiese.

Majority of 1 for the Ayes.

Amendment thus negatived.

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

Page 2, after new subsection (2) insert:

(2a) A suppression order must be made in respect of criminal proceedings to prevent prejudice to the proper administration of justice if—

(a) the court is satisfied, on the application of the defendant, that a decision not to make the order would materially prejudice the defendant's right to receive a fair trial;

or

(b) —

(i) the order is sought in respect of the name, or other material tending to identify, a witness or potential witness in the proceedings (other than the defendant);

and

(ii) it appears to the court that a decision not to make the order—

(A) would discourage the witness from giving evidence in the proceedings or in subsequent criminal proceedings;

(B) would discourage victims of crime from reporting the crime to the relevant authorities;

or

(C) would otherwise cause undue concern or hardship to the witness or potential witness.

If the Attorney agrees that the right to a fair trial is paramount, I suggest he will have no difficulty with this amendment which seeks to ensure that it is clearly expressed that the accused person must have a fair trial. A suppression order must be made in respect of criminal proceedings to prevent prejudice to the proper administration of justice if the court is satisfied that a decision not to make the order would materially prejudice the defendant's right to receive a fair trial—note the emphasis on 'materially prejudice'.

The second paragraph of my amendment seeks to come to terms with an issue I do not think the Attorney-General has addressed at all: what happens to witnesses or potential witnesses, particularly in circumstances where a witness may be discouraged from giving evidence in proceedings or in subsequent criminal proceedings, or where the publication of the name would discourage victims of crime from reporting the crime to the relevant authorities, or where publication would otherwise cause undue concern or hardship to the witness or potential witness?

It is well established that a lot of victims do not report criminal behaviour, particularly in the area of domestic violence and rape, because they are afraid of the consequences and of the trauma of court proceedings, particularly the trauma of publication of their names or some measure of identification of their victimisation. In those circumstances I think there ought to exist a right of the court to make an order.

In discussing this Bill with other people, it was suggested that we should also give some consideration to persons who might be named in proceedings but who are not defendants, victims of crime or witnesses. There is some merit in this suggestion, but my primary focus is on the witnesses and victims of crime—those people ought to be protected.

One only has to look at the situation of a crime of demanding money with menaces (blackmail). In those circumstances, it is proper that the victim's name and anything tending to identify the victim should be suppressed. If names are not suppressed people will not come forward to make a complaint and will not be prepared to go through

the trauma of court proceedings and prior investigations to bring those sorts of criminals to justice. Because of this sort of situation, it is appropriate to have protection built into the Act, as is provided by new subsection (2a).

The Hon. C.J. SUMNER: The honourable member's amendment is divided into two parts. The first matter deals with enshrining in the legislation the right to receive a fair trial. To say that a suppression order must be made in those circumstances is mandatory. There is no argument that a right to a fair trial is paramount in this situation—it always has been and always will be. The Bill that I introduced copes with that situation—

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: Well, it does—by talking about prejudice to the proper administration of justice. Clearly, if a fair trial cannot be obtained there is prejudice to the proper administration of justice. That is clear, it is not in dispute, and therefore on this point the amendment is unnecessary. The honourable member's amendment is divided into two parts which are unrelated. It is interesting to note on a technical matter that the Hon. Mr Griffin's amendment talks about the application having to be made by the defendant, but the Crown may apply as well in these circumstances. My argument is that the principle is not in dispute, it is covered by the Bill and it is not necessary to insert it specifically.

My second point relates to the second part of this amendment which is an unrelated matter. That is, the question of the right of witnesses and victims to have their names suppressed. That is partly related to the first amendment moved by the Hon. Mr Griffin which tried to split the concept between civil and criminal. I have some sympathy with the situation of witnesses and victims. It may be that that issue does need to be examined further. However, I do not believe it can be examined in its current form—it is too prescriptive to say that there must, under every circumstance, be a suppression order in the circumstances enumerated in the amendment relating to victims and witnesses. If one wants to deal with the question of witnesses and victims, perhaps there is another way which does not impose a mandatory obligation on the court to suppress in those circumstances, but which enables the court to suppress on perhaps slightly more flexible grounds with respect to witnesses and victims than it would with respect to defendants in criminal trials.

I oppose the amendment but, with respect to the second issue, it is a matter that could, perhaps, be the subject of further attention. If the Bill passes the Council in the form in which it was introduced, I would be prepared to give further consideration to that particular section before the matter is passed in the other place.

The Hon. I. GILFILLAN: The Democrats oppose this amendment without prejudice but on the basis of lack of information and adequate discussion of the issue. That opposition also relates to the other amendments—we will hold that line in relation to all of the Hon. Trevor Griffin's amendments.

The Hon. K.T. GRIFFIN: That is an abdication of responsibility. It is all very well to plead lack of discussion but, in my view, the principles are clear. I cannot accept the Attorney-General's argument that the first aspect of the amendment is already in the Bill, so why include it? That it is too prescriptive, anyway. As I said earlier, the right of an accused person to a fair trial should be clearly stated in the Bill. It is all very well to say that it is encompassed by the concept of proper administration of justice—

The Hon. C.J. Sumner: Prejudice!

The Hon. K.T. GRIFFIN: —prejudicial to the proper administration of justice. But, because this legislation will attract a great deal of interest and constant scrutiny by people who have to work with it—not just lawyers, but lay people—there should be no doubt about the principle and that should be clearly expressed. In relation to the other aspects of the amendment, there does need to be attention directed towards protecting witnesses and victims or even other persons who might be named in the proceedings but who are not defendants. I am disapointed that, if the Attorney is now receptive to that, he did not include it in the Bill which was introduced, or even in the statement that he made in February this year.

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), J.C. Irwin, Diana Laidlaw, R.I. Lucas, R.J. Ritson, and J.F. Stefani.

Noes (11)—The Hons T. Crothers, M.J. Elliott, M.S. Feleppa, I. Gilfillan, Anne Levy, Carolyn Pickles, R.R. Roberts, 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: I move:

Page 3, after line 35—Insert new subsection as follows:

(10a) Where a court varies or revokes a suppression order (other than an interim suppression order), the court must forward to the Registrar a written notification of the variation or revocation.

This amendment relates to the central registry of suppression orders. What this seeks to do is to provide for variations or revocations; notices of those are also to be given to the Registrar.

Amendment carried; clause as amended passed.

Clause 5 passed.

New clause 6—'Fair reporting of criminal proceedings.'

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

Page 4, after line 11—Insert new clause as follows:

Insertion of s. 70a.

6. The following section is inserted after section 70 of the principal Act:

Fair reporting of criminal proceedings

70a. (1) A person must not publish, by newspaper, radio or television, material relating to criminal proceedings, or to an offence to which criminal proceedings relate—

(a) in a manner calculated to inflame public opinion against the defendant;

or

(b) in a manner that is unfair to the defendant and could reasonably be expected to prejudice the defendant's right to receive a fair trial.

(2) A person who publishes material in contravention of this section commits a contempt of court.

(3) The contempt is punishable by the court before which the criminal proceedings have been brought if that court has, apart from this section, power to punish for contempt but, if not, the contempt is punishable by the Supreme Court as if it were a contempt of the Supreme Court.

As I said at the second reading stage, I want to try to have a number of principles reflected in this legislation. I said that they are, the administration of justice being open to public scrutiny, there must be a free press prepared to report responsibly the affairs of State, including proceedings in courts, without fear or favour; the public interest in the proper administration of justice must be recognised; and the defendant has a right to a fair deal. The Attorney-General has indicated that the Bill recognises the paramountcy of the right of an accused to a fair trial.

In the context of those principles, I believe there must be a clear indication in respect of criminal proceedings of a general principle that the media must report those proceedings responsibly. I seek to establish the criteria that the crime and the proceedings must not be published in a

manner calculated to inflame public opinion against the defendant or in a manner that is unfair to the defendant and could reasonably be expected to prejudice the defendant's right to receive a fair trial.

Those two criteria are serious. They do not place any reasonable limitations upon publication. They conform with what the Attorney-General has said he wants to achieve in respect of suppression orders. He said that if there are breaches of suppression orders, if the administration of justice is prejudiced, there ought to be provision for contempt proceedings to ensure that justice is done. My amendment seeks to recognise the principle to which he referred: to include in the legislation one of the four main principles to which I referred and to ensure that, as far as it is possible and practical to do so, the accused person receives a fair trial.

The Hon. C.J. SUMNER: The Government opposes the amendment. Section 6 of the Wrongs Act already provides for penalties for unfair and inaccurate reports of matters before the courts. That, combined with the powers of the courts relating to contempt, should be adequate. In any event, the general question of contempt is at present the subject of a report from the Australian Law Reform Commission. It is a complex area. As I said earlier, the Australian Law Reform Commission tends towards liberalisation rather than restriction of publicity. That is not to suggest that it would support publications which contravene the Hon. Mr Griffin's proposal.

We must keep in mind the central purpose of the legislation, and get back to that, and not try to introduce this extraneous material. The question of contempt ought to be dealt with in the context of the Australian Law Reform Commission report. In the meantime, there is in place, through the inherent powers of contempt or the Wrongs Act, sufficient law to deal with publications which are prejudicial to a fair trial or are in contempt of a trial while it is proceeding.

The Hon. R.J. RITSON: I would like the Attorney-General to clearly state his view of the balance between rights and duties, and what he sees wrong in a general statement of the duties and rights of publishers.

The Hon. C.J. SUMNER: I do not see anything particularly wrong with that, except that there is already such a statement, in the law (in the Wrongs Act), or alternatively in the general provisions relating to contempt of court, which are well established and subject to some discussion and criticism at the present time.

I refer the honourable member to the Australian Law Reform Commission report on contempt—a substantial document that discusses all these matters. There is no problem with rejecting this amendment at the present time because the courts already have the power to deal with the question of the balancing of rights.

The Hon. J.C. BURDETT: I support the amendment, which is vital to my support for the Bill and especially now that the Hon. Mr Griffin's earlier amendments have been defeated. The Bill gives the press a special place in the sun. In the light of that, it is only proper that the standards that they have to abide by are set down and sanctions are provided in case they should break them. I support the amendment.

The Hon. I. GILFILLAN: As a result of the lack of information and discussion, and without prejudice, the Democrats oppose the amendment. New clause 70a *(a)*, in a manner calculated to inflame public opinion against the defendant, contains a point which will be almost impossible to establish. Another point that must be considered is the equivalent justice for a person who has suffered adverse publicity and whether they should to be entitled to an equivalent measure countermanding publicity, if he or she is acquitted of the offence. These are minor questions. I indicate that we oppose the amendment.

The Hon. K.T. GRIFFIN: The difficulty with equivalent countermanding publicity is that the person who is the subject of the publicity may not want it. You have to take that into consideration. So far as the Attorney-General's opposition to the amendment is concerned, I know the area of contempt is complex, but in this particular instance there is nothing complex about it. The principles clearly are set forth. It is only in the most exceptional cases I would suggest that a contempt would be committed, and proceedings taken in relation to it. As the Attorney-General said, there is already provision in the Wrongs Act for unfair reporting of court proceedings. My proposed new clause needs to be in this Bill to ensure that the legislation is read as a coherent whole.

The Committee divided on the new clause:

Ayes (10)—The Hons J.C. Burdett, M.B. Cameron, L.H. Davis, Peter Dunn, K.T. Griffin (teller), J.C. Irwin, Diana Laidlaw, R.I. Lucas, R.J. Ritson, and J.F. Stefani.

Noes (11)—The Hons T. Crothers, M.J. Elliott, M.S. Feleppa, I. Gilfillan, Anne Levy, Carolyn Pickles, R.R. Roberts, T.G. Roberts, C.J. Sumner (teller), G. Weatherill, and Barbara Wiese.

Majority of 1 for the Noes.

New clause thus negatived.

Title passed.

Bill reported with an amendment; Committee's report adopted.

[*Sitting suspended from 1.5 to 2.15 p.m.*]

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

That this Bill be now read a third time.

The Hon. K.T. GRIFFIN: I wish to make just a few observations about the Bill. The first is that this is the Attorney-General's Bill and the Government's Bill: they must carry the responsibility for the consequences thereof. During the course of the Committee stage the Attorney-General indicated that he was of the view that the concept of the proper administration of justice requires that emphasis be given to the paramount right of an accused person to a fair trial. Of course, he has included in the Bill what he calls a signal to the judges, (which is also an important provision) that the public have an interest in the proceedings before the court and that the media have a consequential right to report.

I indicated in my proposed amendments, which were unsuccessful, that I believed four major areas had to be focused upon. The first was that the administration of justice must be open to public scrutiny. The second was that there must be a free press prepared to report responsibly the affairs of State, including proceedings in courts, without fear or favour. The third was that the public interest in the proper administration of justice has to be recognised, and the fourth was that a defendant has a right to a fair deal. They are the four principles which I believe my amendments would make clear on the record.

The Attorney-General has argued that some of those areas are implicit. I take the view that, because this legislation is of such public interest upon which lawyers and lay people have to work, it should express clearly all the principles and not cloud them with concepts of proper administration of justice. For that reason, I have sought to ensure, by my amendments, that these principles are recognised in the legislation itself.

The Attorney-General and the Australian Democrats have chosen not to accept those amendments, which I believe would have significantly improved the legislation and ensured a proper balance for those principles. I believe also that it is important for the rights of victims and witnesses to be protected, particularly in criminal proceedings. What surprised me was that these were not covered in the Attorney-General's Bill, and they should have been, particularly because previously he has placed emphasis on the rights of victims in criminal cases.

I am pleased that the Attorney-General will at least consider these matters before the Bill is dealt with in the other place, and I suspect that, as a result of my raising and discussing it here, he will arrange for amendments to be moved in the other place that will pick up that issue. I am also pleased that the Attorney-General has recognised the need not only for a central register upon which I placed some focus publicly but also the need for that register to be kept up to date and to record not only the details of suppression orders made but also variations and revocations.

The media and others who have an interest in this area will be able, by a quick telephone call or perusal of the legislation, to know what orders have been made and in what context they have been made in any courts in South Australia. It is for that reason that I have taken the stand I have on this Bill. I must say that I have some feelings of uneasiness about the Bill as it has come out of the Committee stage but, as I said at the outset, it is a Bill which is the responsibility of the Attorney-General, and he must account for the consequences of it.

Because of that, I am prepared to let the Attorney-General and the Government have the Bill and to watch very carefully how it works in practice to ensure that it does not create the injustice to which I referred in my contributions on this Bill. The media will continue to have the very heavy responsibility to report fairly and accurately without fear or favour, to be critical and to be complimentary. I hope that, as this Bill passes, the media's sense of responsibility will be heightened by the additional weight given to their interests under this Bill.

I hope that the media will recognise that the administration of justice requires not only openness but responsibility and that, when it comes to prejudicing the rights of an accused person to a fair trial, the media will recognise and respect that principle and will not take steps that may prejudice that fairness and equity. In that context I am prepared to let the Government have its Bill and, if there is a division, I will support the third reading.

The Hon. I. GILFILLAN: The Democrats will vote against the third reading. It seems to me that it may be a matter of some doubt whether the Bill will pass the third reading. I consider that the Hon. Trevor Griffin's remarks show that he has misgivings about the Bill as it has come out of Committee, and he has passed the buck to the Government. The Democrats are not prepared to do that, but I will not repeat our arguments. We acknowledge that it is necessary to amend the suppression provisions of the legislation but we do not believe that this Bill is satisfactory or that, without it being referred to a select committee, any legislation should be passed.

The Hon. J.C. BURDETT: I oppose the third reading. I made it quite clear when I spoke to the amendments moved by the Hon. Trevor Griffin that I was prepared to support the Bill in its further stages only if his amendments were passed, and they were not. The honourable member sought two major amendments to the Bill. The first was to insert new subsection (2a) providing that, if a court is satisfied on the application of the defendant that the decision not to make the order would materially prejudice the defendant's right to receive a fair trial, a suppression order should be made.

I strongly believe that that ought to apply because, for the first time, this Bill officially recognises in law the rights of the press to publish information. That is fine. However, there ought to be an overriding provision that the principal factor to be taken into account is the right of the defendant to a fair trial. It has been said by the Attorney-General that the Bill contains that provision, anyway, in regard to the administration of justice; but why not say so? I would feel much more comfortable if that were spelt out. Other things that the court must consider have been spelt out, one being the right of the news media to publish such information. That right must be recognised as a consideration and given substantial weight.

That should not be done by default. We should not neglect to put in provisions about the right of a fair trial. If one thing is spelt out, so should the other to make it explicit in the Bill and according to law that the rights of a defendant to a fair trial, and especially in relation to the question whether a suppression order should be made, are paramount.

The other matter that I said was essential in my opinion was the insertion of new section 70a proposed by the Hon. Trevor Griffin—but that failed. I am concerned about this because the Bill provides a real place in the sun for the press. It expresses a right of the press, to which I have no objection. I have no argument with the press and I believe that it has done nothing wrong in the past under the present law. The fault under the present law is probably that of the law itself and not of the press.

If we are to introduce legislation to change the law and to set things out, we should set all of it out and not just part. Proposed new section 70a would have provided, as a balance to the right given to the press and the recognition of that right—and I agree that that right should be recognised—standards spelt out. If those standards are not complied with, sanctions should apply. That is absolutely essential. I do not think that the press has done anything wrong, but if we recognise its right and give it a special place saying that this must be taken into account by the courts, we should also stipulate the standards with which the press should comply. We are giving the courts standards which they should take into account, so we should say what the press has to do and provide sanctions if it does not comply.

It is probably fairly unlikely that the press will breach the standards set out, but if standards are set out sanctions should be provided in case of breach. To me, the vital points in this Bill were the two amendments moved by the Hon. Trevor Griffin. So that there could not be any shadow of doubt—and there should not be about this matter—his first amendment provided explicitly that in regard to suppression orders the paramount consideration should be the right to a fair trial. The second amendment provided that the press, which is expressly given a privilege—and I believe that this is right—ought to be told what the standards are because if it is not provided in the Bill the press will not know the standards. Also, a sanction should be provided in the unlikely event that the standards are not complied with. For these reasons I intend to vote against the third reading.

The Hon. R.J. RITSON: This has been an interesting debate. I will briefly review the possible positions that can

be taken in regard to this Bill starting with the *status quo* as the median position. One step up from that would be the proposition that names should be suppressed automatically but with the right to make an exception in preliminary hearings up to the point of conviction in a lower court or indictment or committal for trial in a higher court.

The position taken by the Law Society as its ideal was that names and details should be suppressed automatically until the end of the judicial process—either acquittal or conviction. Downwards from the median position we had, first, the position taken by the shadow Attorney-General. That is, some deregulation along the lines suggested by the shadow Attorney-General but with safeguards in civil cases—at least the retention of the ground of hardship as a ground for the granting of an application for suppression and, amongst other things, where the rights of the press are stated in the Act so too are the duties.

I have a sense of regret that the attempt at restoration of hardship as a ground, at least in civil cases, proposed by the Hon. Mr Griffin, was defeated. During the second reading debate I said that I recognised and valued the role of a free press in the whole process of Western government. I maintain that position. However, I also believe that there are instances where litigants would suffer undue hardship in matters in which it is not particularly important that the public have information; and the problem of people making complaints about blackmail was a point in question. I am realistic enough to know that there was never any chance that this Parliament would enact the Law Society's ideal. However, I hoped that in the process of freeing up the rights of publication that we have seen today there would be some set of circumstances where hardship to the individual was not sacrificed.

The Hon. J.C. Burdett: It is out altogether.

The Hon. R.J. RITSON: Yes. It was only put in in 1984 and it was very good that it was. If the Labor Government had not lost the election in 1979, it would have implemented the Law Society's ideal.

The Hon. C.J. Sumner interjecting:

The Hon. R.J. RITSON: It had the Bill drafted. I have seen it. However, I was prepared, as a realist, to accept a substantial degree of freeing up, provided that we included some of the essence of the amendments proposed by the Hon. Mr Griffin. However, the Attorney-General is not prepared to have the principles of obligations of the press inserted. He is not prepared to have protection for victims of blackmail. He is not prepared to have protection for witnesses who may, in testifying, have to give distasteful evidence or evidence that is adverse to their own general reputation. For that reason I cannot support the third reading of this Bill. I am sorry, it would have been easier had I been able to support it. I wonder why the Democrats do not support it because their position is a far stricter position than ours. I do not want to be cynical, but I would have thought that—

The Hon. T.G. Roberts: No-one else has any problems with being cynical.

The Hon. R.J. RITSON: The Hon. Mr Roberts has just made the very astute observation that no-one else has any problems being cynical. I have been here 10 years and I am just starting to learn. That is sad because the Democrats wanted a stricter view. It appeared that they agreed with the Law Society. We went halfway with them, but they would not support us. So here we are out on a limb, and I am sad about that. I cannot support legislation which, without exception, without any codified structure, eradicates the reference to hardship in relation to people who may perhaps be wrongly or maliciously accused and be subject to inaccurate evidence in bail applications.

I cannot understand why the Attorney-General—a member of a Party which previously drafted a much stricter Bill on the subject—was not prepared to accept the Hon. Mr Griffin's amendments. However, he will have to live with that; I will not. I shall be opposing the third reading.

The Hon. R.I. LUCAS: It is interesting on the third reading debate to explore why the Attorney-General has introduced the Bill. I want to take members back to the contribution from the Attorney-General in this Chamber on 16 October 1985. On that occasion I spoke of the need for more suppressions in South Australia. I am happy to put on record my view that we ought to be looking to suppression in relation to conviction or committal. I said:

> This is something that I have not raised previously, but I will touch on it now.
>
> **The Hon. C.J. Sumner:** The media won't like you after this.
>
> **The Hon. R.I. LUCAS:** The Attorney-General has hit the nail on the head. I suppose one reason that people are fearful of raising this matter is that they will end up being the subject of an unfavourable editorial in a newspaper.
>
> **The Hon. C.J. Sumner:** It's not the editorials that should worry you—it's the headlines.

I think that encapsulates in a short section of *Hansard* the Attorney-General's arguments and reasons for this legislation. I do not believe there is anything more than that in the Attorney-General's introduction of this legislation. It is an attitude that is well known around and about Parliament House. Those are the reasons why the Attorney-General is bringing forward legislation along these lines. I want to refer to one of the many cogent representations that have been made to me and to other members about the effects of this legislation. What I thought was a very simple explanation for someone like me—a non lawyer—came from Mr Mark Griffin who represented the opinions and attitudes of a large number of—

The PRESIDENT: Order! I do not want to interrupt, but you are ranging far and wide over the debate. You must confine yourself to the Bill as it came from the Committee stage rather than open it up into a new debate and new area.

The Hon. R.I. LUCAS: There is no new area.

The PRESIDENT: Order! The Chair would appreciate it if you would keep your remarks to the Bill as it came from the Committee.

The Hon. R.I. LUCAS: I certainly will. The heading of the section is 'The practical effect of the new legislation.' The new legislation, as proposed, is the legislation that comes out of the Committee stage and is now being addressed by us on the third reading. Under 'Undue hardship', Mr Griffin explains what the practical effect of the new legislation will be:

> People, whether as defendants or otherwise, will no longer have their names suppressed on the ground of undue hardship. Consequently, many people will experience undue hardship on the basis of unproven allegations. The new provisions do not contain any indemnity or compensation for damage suffered by innocent people as a result of publicity. For many, a penalty will have already been imposed by the time of a finding of no case to answer, or the acquittal at trial.

On the second section, under the heading 'Proof of sufficient prejudice to outweigh the media's right to publish', Mr Griffin says:

> Prejudice to the proper administration of justice must be established, and be shown to be of greater weight than the right of the news media to publish that information. In my opinion, anything which prejudices the proper administration of justice must necessarily have more weight than the right of the media to publish. How is the court expected to do this balancing act?
>
> How much prejudice does the Attorney expect an accused person to endure before he could be said to have displaced the 'substantial weight', of the media rights? Under the proposed law,

the proper administration of justice is subordinate to the rights of the media.

If an applicant can establish some prejudice, but not enough to displace the requisite test, then he will not get the order. The media are then free to publish such information as they see fit. The allegations made by the prosecutor at a bail application in the Magistrates' Court may attract media attention. The fact that an accused has allegedly made admissions to police might be published. Potential jurors may read or hear these allegations.

Ultimately upon a *voir dire* enquiry, those alleged admissions may be inadmissible, resulting in their exclusion from evidence before the jury. How substantial is this type of prejudice? Why should an accused person be exposed to such risks in such an arbitrary way? He is presumed to be innocent, but must somehow prove that his right to a fair trial outweighs the media rights, which are deemed to be of substantial weight.

Mr President, I take your advice, and I will not spend a long time in the third reading, going through this excellent submission from Marie Shaw in the same vein. My view is that the net result of this Bill before us now would be that we would have very few suppression orders in South Australia under the proposed legislation. I cannot accept that position. I believe in two simple principles: one is that you are innocent until you are proven guilty and the other is that you have a right to a fair trial. That right and the previous principle ought not to be subordinated to the rights of the media to publish in South Australia. With those two simple principles, I must oppose the third reading of this Bill.

The Hon. DIANA LAIDLAW: I rise briefly to oppose the third reading. I will not elaborate on all the previous remarks made by my colleagues because I essentially share their views. However, I wish to be less constrained in my remarks in relation to the Government's motivation in this matter. I believe very strongly that in this matter the Government has (and I do not use the word lightly) prostituted itself towards the media. I feel that very strongly. I note that the definition of 'prostitution' in this sense is 'selling for base gain', and I believe that that is the motivation for this Bill. It has very little to do with a fair trial and very little to do with innocence until proven guilty.

I share the comments that were made by Ms Marie Shaw in her submission to all members of the Legislative Council (a point made by the Hon. Mr Lucas) that in fact this Bill, notwithstanding all the other pressures on an accused person, requires an accused person to convince the court that their rights to a fair trial must now have more weight than the substantial weight that this Parliament is giving to the media. I find that issue most unacceptable, and there is no way that I could support the third reading of this Bill.

The Hon. J.C. IRWIN: I rise to indicate that I also oppose the third reading.

Members interjecting:

The Hon. J.C. IRWIN: It is good to have interjections, certainly when members of the Government are on the move from their side to ours. The new Whip is a little more mobile than the old one. I had misgivings about this Bill as it came out of Committee and I had misgivings before it went into Committee, as I have misgivings about the workings of the conditions presently applying to suppression orders. My contribution will be very brief, as the points I seek to make have already been addressed by my colleagues opposing this third reading. Indeed, some were raised by my colleague, the Hon. Trevor Griffin. I simply say that I oppose the third reading.

The Hon. C.J. SUMNER (Attorney-General): It looks as though we will have a close vote.

The Hon. I. Gilfillan: All bets are off.

The Hon. C.J. SUMNER: That's right. I suppose the Hon. Mr Gilfillan would say that, if the Hon. Mr Griffin actually stood up for what he believed and did not behave like Pontius Pilate by washing his hands of the whole matter, he would oppose the third reading, also.

The Hon. R.I. Lucas: That's not fair.

The Hon. C.J. SUMNER: Well, it is very fair, because that is exactly what the Hon. Mr Griffin did. I have never seen a more Pontius Pilate performance in the Parliament before. In effect, he said that it is the Government's Bill, so the Government can take responsibility for it and, 'I'm washing my hands of it.' He did not want to know about it.

The Hon. K.T. Griffin: You do that all the time; you blame the Parliament. What about the Parole Board?

The Hon. C.J. SUMNER: That's right, in the final analysis, it is the Parliament—

Members interjecting:

The Hon. C.J. SUMNER: Members opposite do not understand basic principles. In the final analysis, particularly in a bicameral system where the Government does not have a majority in the Upper House, it is clearly nonsense to say that the Government has total responsibility for legislation. As I said, it is the Hon. Mr Griffin doing a Pontius Pilate act. Of course, he says that after having spent the past two years or more wandering around the State and complaining about suppression orders.

Every time a suppression order is made, the Hon. Mr Griffin speaks on the radio, or is quoted in the newspapers complaining about it. Not only does he complain about suppression orders but also he then implies that the Government is responsible for them. He has done that on numerous occasions over the past few years. He has carried on about suppression orders. He has said that there are too many suppression orders and, 'The Government is responsible for them. Why does the Crown agree to suppression orders?' In most cases, the Crown does not agree to suppression orders and, as the Crown, we have not agreed to them. However, the courts have granted them.

Up to the present time that has been the Hon. Mr Griffin's stance. Now that the Government has introduced a proper Bill to resolve the matter, he has decided that it is all the Government's responsibility. He has decided that the Government can accept responsibility for the consequences of this Bill; he will vote for it, but really it has nothing to do with him. It is Pontius Pilate washing his hands and not wanting anything to do with it.

Whether or not one agrees with it, at least the Democrats have stood up and said where they stand. I am sure that the Hon. Mr Gilfillan would say that, if the Hon. Mr Griffin has the courage of his convictions, then he should vote against the third reading and not present some sort of mealy-mouthed third reading response to this Parliament, particularly in the light of his public statements on this issue over the past few months.

The proposition has been put that this Bill will interfere with two principles: first, innocent until proven guilty; and, secondly, the right to a fair trial. That is clearly wrong and incorrect. The Bill does not interfere with those two principles. The Hon. Mr Lucas referred to a submission from Mr Griffin, a lawyer, that in his opinion anything that prejudices the proper administration of justice should necessarily have more weight than the right of the media to publish. The question is what one includes in the administration of justice.

Under the suppression order system which has operated in this State, if one had a sick grandmother one could put that forward as a reason for suppressing a name—as grounds

that it was in the interests of the administration of justice to suppress that name. In those circumstances, I would say that the right to the media to publish would outweigh the administration of justice in that sense, because the administration of justice has been used in the past.

The Hon. R.J. Ritson: Are you saying it includes hardship?

The Hon. C.J. SUMNER: The administration of justice has previously included hardship. Prior to the 1984 amendment, (which included 'undue hardship'), undue hardship was used as a ground for the suppression of names. That is clear. That is the problem.

The Hon. R.J. Ritson interjecting:

The Hon. C.J. SUMNER: Quite right. In any event, that is not the effect of the Bill. The Bill does not prejudice, and it is specifically designed not to prejudice, the proper administration of justice. If there is prejudice to the administration of justice, there is a ground for suppression. That is clear. The problem is that the administration of justice, as previously considered by the courts in this State, particularly, picked up things such as the sick grandmother excuse.

If one weighs up the fair trial against the right of the media to publish, the fair trial takes precedence. However, if one weighs up a person's right to have his or her name suppressed because of a sick grandmother against the right of the media to publish, I would have thought, depending on the circumstances, the right of the media to publish would, in terms of openness, take precedence.

The Hon. R.J. Ritson interjecting:

The Hon. C.J. SUMNER: I will get to that in a minute. It needs to be said that, first of all, I do not agree that Mr Griffin's statement represents a proper analysis of the Bill. Secondly, I reaffirm that in no way does the Bill interfere with the principle of innocent until proven guilty; nor does it interfere with the question of fair trial.

The Hon. Diana Laidlaw: It absolutely prejudices it.

The Hon. C.J. SUMNER: I'm sorry, but you don't know what you are talking about. To suggest that it interferes with the principle of innocent until proven guilty is ridiculous. The Bill does not interfere with that principle any more than the existing suppression order system interferes with it. With respect to the question of fair trial, it is so obvious that it is part of the administration of justice that it does not need to be stated. The Bill has not just been introduced off the top of my head. It was the subject of considerable discussion before it was introduced. It has been discussed within the Attorney-General's Department and it has been examined by the Solicitor-General.

The Hon. J.C. Burdett: What about the Law Society?

The Hon. C.J. SUMNER: The Law Society got it when it was introduced a month ago. It has had an opportunity to comment on it. Without implying that officers in the Attorney-General's Department are in any sense involved in the policy of the issue, what I am saying is that the technical drafting of the Bill has not just been done off the top of my head. It has been discussed with Parliamentary Counsel (Mr Hackett-Jones, QC) and the Solicitor-General (Mr John Doyle, QC).

As to whether the Bill should specifically include the right to a fair trial as one of the aspects of the administration of justice, I point out that they all agree it is totally unnecessary. It is so obvious and such a central part of prejudice to the administration of justice that it is not necessary. It may well be that debate would be raised about what other issues have been excluded because one aspect of the administration of justice is included. It is so obvious to the courts, and the Bill does not interfere with that matter.

On the question of witnesses and victims, I indicated in the Committee stage that that matter would be considered further. The amendment moved by the Hon. Mr Griffin was unacceptable for the technical reasons that I outlined. However, I am considering that matter further and the Government will address it in the other place.

The Council divided on the third reading:

Ayes (10)—The Hons M.B. Cameron, T. Crothers, Peter Dunn, M.S. Feleppa, K.T. Griffin, Carolyn Pickles, T.G. Roberts, C.J. Sumner (teller), G. Weatherill, and Barbara Wiese.

Noes (7)—The Hons J.C. Burdett (teller), L.H. Davis, M.J. Elliott, I. Gilfillan, Diana Laidlaw, R.I. Lucas, and R.J. Ritson.

Pairs—Ayes—The Hons Anne Levy and R.R. Roberts. Noes—The Hons J.C. Irwin and J.F. Stefani.

Majority of 3 for the Ayes.

Third reading thus carried.

Bill read a third time and passed.

QUESTIONS

RU RUA NURSING HOME

The Hon. M.B. CAMERON: I seek leave to make a brief statement before asking the Minister of Tourism, representing the Minister of Health, a question about the Ru Rua Nursing Home.

Leave granted.

The Hon. M.B. CAMERON: Members would be aware of the media reports today of a fire at the Ru Rua Nursing Home which forced the evacuation of 24 of that institution's disabled residents in the early hours of this morning. I point out that none of these people would be able to evacuate themselves, so potentially they were in a serious position. These people were shifted from North Adelaide to this institution because of the dangers in the original North Adelaide building, which is double storied.

I am advised by sources at the home that it appears there was quite a deliberate attempt by someone to cause what could have been a major blaze with possibly tragic results had there not been prompt action by nursing staff who were on duty. I am told that bags containing linen were set alight between two buildings at the home, and whoever set them alight had also 'tried to block entrances with burning linen to stop people getting out'. Luckily, fire authorities were able to confine the fires and spread of smoke to the east wing area, before it could spread to the west wing. Luckily, I understand that two of the night staff at Ru Rua were experienced nursing staff who were well aware of the appropriate fire drill.

Their experience was able to counter the lack of a night porter, who no longer works the midnight to 6 a.m. shift (presumably as a cost-cutting measure) and could have also been able to assist with evacuation. I am advised, however, that there were moves to alter the night roster so that no trained staff would, from next week, be on this overnight shift. Indeed, I am told the residents would be under the care of 'untrained staff'—staff formerly known as nurse attendants.

I do not know the terminology, but that is the information that has been given to me. At the same time I am told that from 28 November last year, when a new developmental educator staff classification came in at Ru Rua, there has been no regular fire drill training of new staff. Previously, I understand, fire drills were regularly conducted and were a regular feature of training for new nurses coming to Ru

Rua. I would have thought that in view of the disabilities that these people suffer, that that would have been one essential item within the institution. While staff at Ru Rua must be commended for the prompt action this morning in avoiding a major tragedy by quickly evacuating 24 disabled and intellectually disabled young people, it appears some serious questions arise about security and safety at that institution. My questions are:

1. In view of the fire at Ru Rua, will the Government look at the need for increased security at that nursing home, including examining the need for an overnight porter/security member?

2. Is it the case that Ru Rua is considering changing overnight rosters so that only untrained staff will be on duty overnight?

3. If so, does the Government believe that untrained staff—who reportedly have received no fire drill training—will be able to cope with a similar emergency as occurred today? If that is the case, are we not putting them in a very difficult position personally and forcing them to cope with a very difficult situation? Will the Government ensure that, from now on, there is adequate fire drill given to all staff working and assisting at Ru Rua?

The Hon. BARBARA WIESE: As I have indicated in this place before when questions about Ru Rua have been raised, it is the intention of the Government to relocate all of the people who reside in Ru Rua to more appropriate accommodation by the end of June this year—that is not very far away. However, I am sure that the Minister of Health would be keen to ensure that appropriate procedures are in place to protect the residents of Ru Rua in the event of a disaster such as the fire that occurred last night and would now be examining the fire drill procedures and other matters. I will refer the honourable member's question to my colleague and bring back a reply about exactly what is intended.

SOUTH AUSTRALIAN TIMBER CORPORATION

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Attorney-General, as Leader of the Government in this place, a question about Satco.

Leave granted.

The Hon. L.H. DAVIS: Last night the report of the Select Committee of the Legislative Council into the Effectiveness and Efficiency of Operations of the South Australian Timber Corporation was tabled. The report was supported by both the Government and Opposition members of the committee. A summary of Satco's operations shows that since its formation in 1979, it has made a loss in each year. The report also shows that at 30 June 1988 the accumulated losses stood at $16.8 million. The report further shows that the New Zealand plywood mill, in which Satco took an interest in December 1985, made a trading loss of $6.6 million in the first two and a half years of operation and that it is still trading at a loss in the current financial year.

The report, which was supported by both Government and Opposition members, shows that the Auditor-General issued a supplementary report on the financial position of IPL (Holdings) Pty Limited in February this year—just a few weeks ago. This showed that IPL (New Zealand) still needs to finance $12 million to meet its repayment schedule.

The Hon. R.J. Ritson: Would you advise clients to invest in an outfit with that history?

The Hon. L.H. DAVIS: If I had clients I would have told them never to invest in that outfit. The final responsibility for this obligation will rest with Satco unless IPL (New Zealand) can achieve sufficient profitability and cash flow to cover dividend payments and the principal repayment in September 1989. The Auditor-General said that the final responsibility for this $12 million shortfall will rest with Satco.

All the evidence shows that IPL (New Zealand) is still unable to make a profit, but today we have heard extraordinary statements from the Treasurer, Mr Bannon, and the Minister of Forests, Mr Klunder. They claim that South Australian taxpayers have not been affected in any way by the continual losses of Satco over the past 10 years and in particular by the financial fiasco at the Greymouth mill.

An Honourable member: Where did they go to school?

The Hon. L.H. DAVIS: Accountants would claim that Mr Klunder and Mr Bannon have rewritten the accountancy textbooks with this startling suggestion that they have made today. Will the Attorney-General explain why taxpayers in South Australia have not been affected in any way by the losses incurred by Satco? Will he suggest, as a matter of urgency, that the Treasurer, Mr Bannon, and the Minister of Forests, Mr Klunder, enrol in a basic accountancy course so that in future they will understand that ultimately South Australian taxpayers have to bear the brunt of Satco's losses?

The Hon. C.J. SUMNER: Honourable members had four hours on this topic last night.

The Hon. L.H. Davis: But we did not have a chance to ask you any questions.

The Hon. C.J. SUMNER: That is true. I have not seen the statements made by the Premier or the Minister of Forests today. However, I am privy to a statement that the Minister of Forests made yesterday, which I will read. The statement indicates that the Government and the select committee are in broad agreement on the history of the events with respect to Satco's investment and that the Government has for some time now been concentrating on ensuring a continuing improvement in all areas of Satco's performance. The statement goes on:

Remedial action taken in relation to Satco includes:

- a complete management restructure to increase the efficiency of all Satco subsidiaries;
- the appointment of prominent South Australian businessman, Mr Graeme Higginson, as Chairman and Chief Executive Officer of Satco and reconstitution of the board;
- the pending appointment of a marketing manager to help develop markets for Satco products;
- the preparation and implementation of a business plan to provide Satco management and personnel with appropriate goals and objectives;
- the introduction of performance monitoring and constant review of all Satco operations; and
- the creation of an improved equity basis for Satco.

Achievements in relation to IPL (NZ) include:

- reduced labour costs and increased productivity;
- improved cooperation between IPL's Australian and New Zealand operations;
- improved log supply arrangements which reduce transport costs to the factory gate by 40-50 per cent;
- technical staff exchanges leading to better plant performance; and
- an operating profit of $1.056 million in the first half of the current financial year compared with an operating loss of $2.065 million in the previous full financial year.

Satco's performance overall has improved in the first half of the current year with a consolidated profit of $701 000.

In addition, reporting of Satco's affairs will be improved by the appointment of the Auditor-General as external auditor for all Satco's Australian subsidiaries.

That is the action that the Government has taken and is taking in respect to the report that was tabled. The problems with Satco's investment in New Zealand have been known to the Government for some time, and the select committee report confirms those concerns which the Government has been working on and addressing for some time.

The Hon. L.H. DAVIS: As a supplementary question, given that the Attorney-General fancies himself as something of an economist, will he explain why taxpayers of South Australia have not been affected in any way by the continual losses incurred by Satco?

The Hon. C.J. SUMNER: The honourable member's question is based on an assumption of a statement apparently made by the Premier and the Hon. Mr Klunder. I have not seen those statements and therefore am not in a position to comment on the question, given the assumption that the honourable member has made. I have indicated on the public record, based on information provided to me by the Hon. Mr Klunder, what the Government's action has been with respect to this matter.

The Hon. L.H. DAVIS: As a further supplementary question, given that the Auditor-General has clearly shown that the continued losses in the New Zealand operation—the shortfall of $12 million—will ultimately have to be funded by Satco, and given that the select committee unanimously supported that view of the Auditor-General, will he explain the conflict which now exists between the select committee's statement and the statement made by the Premier and Treasurer (Mr Bannon) and the Minister of Forests (Mr Klunder)?

The Hon. C.J. SUMNER: The only statement which I have seen from those two gentlemen is the one that I have summarised to the Council today. I do not have the Premier's statement. The question is therefore based on an assumption of which I am not aware. I have provided the answer insofar as the response of the Government is concerned.

HEALTH COMMISSION SUBMISSION ON ROXBY DOWNS

The Hon. I. GILFILLAN: I seek leave to make a brief explanation before asking the Minister of Tourism, representing the Minister of Health, a question about the Health Commission's submission to the Select Committee on Roxby Downs, 1982.

Leave granted.

The Hon. I. GILFILLAN: I have a copy of a letter dated 20 May 1982, written to the Hon. E.R. Goldsworthy, the Chairman of the Select Committee on the Roxby Downs (Indenture Ratification) Bill, 1982. It is signed by the Chairman of the South Australian Health Commission (Mr B.V. McKay) and reads:

> Dear Sir,
>
> The South Australian Health Commission prepared a submission following the oral evidence given by Dr K. Wilson and Mrs J. Fitch, and incorporating the information requested by the committee.
>
> This submission was subsequently withdrawn because new information of the current knowledge relating to risks of excess cancer from exposure to radon and its daughters has been received since the preparation of the submission. This current information indicates that the linear hypothesis, and estimates of risk derived therefrom, probably over-estimates the possibility of increased risk.
>
> A revised submission incorporating that new knowledge is attached.
>
> Yours faithfully,
> B. V. McKay

Members will recall that I asked a question on this matter last year and an answer was provided with copies of both submissions earlier this week. Indeed, it was the subject of some publicity. This letter, which has only just come into my hands, indicates what I believe, and other members would agree, is a very alarming situation: that the two reports had been prepared by an identical group of people. The allegation had been made by me previously that there had been ministerial interference.

There are a few points to be related to this before I ask the Minister the question. First, regarding the statement in the letter that new information has come to hand, it needs to be borne in mind that these two reports were both dated May 1982, so it is reasonable to assume that there was very little time between them. Secondly, the linear hypothesis that this letter states, namely, 'That estimates of risk derived therefrom probably over-estimates the probability of increased risk' has been steadfastly denied. The so-called ALARA principle (that is, 'as low as reasonably achievable' radiation protection) has been a principle that has been steadfastly maintained since that report was prepared by the Health Commission.

Since that date the linear hypothesis has never been challenged by anyone in any department, and certainly not by the Health Commission. Although the letter that I have quoted states that new knowledge was attached in the report, having studied those reports, it is quite obvious that no new knowledge is contained in the second report. Although the question of safety of miners at Roxby Downs and their exposure to the risk of radon gas and its effects—radioactivity generally—is important, in posing this question, I feel that there is an even more profound and underlying concern, and that is what I alleged before—direct interference in the preparation by Government departments of reports.

I believe that this letter illustrates even more clearly that there was no basis for altering the two reports, other than the wish of the then Minister, and perhaps the Government at that time, to put Roxby Downs in the most favourable light. If that can happen in such a serious situation and in relation to a Government department report as critical as one which relates to health, what confidence can the public have in the integrity of statements of Government departments when this sort of interference has occurred but has not been revealed until now?

With that in mind, I ask the Minister of Health, through the Minister of Tourism, what new information about the current knowledge in relation to excess cancer risks from exposure to radons and its daughters was received by the commission during the period between the preparation of the two reports to which I referred? Would the Minister make that new information publicly available? Finally, does the present Minister believe that undue influence was exerted on the Health Commission so that, between the first and second drafts, it would change the contents of its submission to the select committee on Roxby Downs in May 1982?

The Hon. BARBARA WIESE: I will refer those questions to my colleague in another place and bring back a reply. From looking at the two reports and the sort of changes that were made, I think it is likely that the Minister of Health would agree that undue influence was exerted on officers of the Health Commission by the then Minister to bring about the nature of the changes that appeared in the second report on this matter. However, to confirm that point, I will be happy to refer the question to the Minister of Health and bring back a reply.

LOCAL GOVERNMENT PECUNIARY INTERESTS

The Hon. T. CROTHERS: I seek leave to make a brief explanation before asking the Minister of Local Government a question about pecuniary interests in local government.

Leave granted.

The Hon. T. CROTHERS: I understand that local government elections are to be held in three weeks. However,

I also understand that all sorts of rumours are circulating in various areas about the pecuniary interests of candidates. This seems to be particularly prevalent in the Port Adelaide area, where there are rumours that a candidate or candidates are being investigated by the Department of Local Government and the Crown Law Department following allegations of breaches of the pecuniary interests section of the Local Government Act.

This sort of rumour can be most unfair to candidates who know that scuttlebutt is being circulated about them in the council area. However, because no direct allegations are made public, they are unable to counter such allegations openly. Obviously, if official complaints regarding pecuniary interests are made to the Department of Local Government, they are investigated thoroughly and the appropriate action is then taken. To help resolve this issue, and in order to restore the reputations of the Port Adelaide candidates who fear that they are being unfairly maligned, can the Minister indicate, first, whether any candidates to the forthcoming local elections in Port Adelaide are currently being investigated by the Crown Law Department following complaints that they have breached the pecuniary interest provisions of the Local Government Act; and, secondly, if so, when the results of such investigations will be available? It is important that candidates for public office be cleared of unfair allegations and damage to their reputations prior to the election day.

The Hon. BARBARA WIESE: I share the concern of the honourable member about the nature of some of the election campaigns in various council elections. In the run-up to council elections in numerous parts of the State allegations and rumours frequently circulate about individual candidates, whether they be sitting members or candidates challenging sitting members, regarding improper conduct or allegations of breaches of the Local Government Act. On some of these occasions they turn out to be quite proper allegations; on other occasions it would appear that they are merely part of an election campaign.

This question is rather difficult for us to address. A couple of weeks ago the Hon. Mr Cameron raised questions in this place about the Port Adelaide council in particular, and concerns that were being expressed in the area about the nature of the employment package for the Chief Executive Officer. I warned the Hon. Mr Cameron about the dangers of becoming involved in the debate that was taking place in the Port Adelaide area about this matter, because I believe that there was evidence that some of the stories that were circulated in the area were based very much on personality conflicts between councillors and their Chief Executive Officer. They were also based on factional differences within the councils, so it is always a difficult question for members to address when they are approached at election time by people who have concerns in this area. Because of the nature of the allegations that can sometimes emerge, I am always quite reluctant to become too involved in those issues that are raised during the heat of an election campaign.

However, to answer the specific question, as I understand it, at the moment one investigation is being undertaken as a result of a complaint made about one of the members of the Port Adelaide council. I refer to a complaint about Alderman Roy Marten, who was the subject of an allegation made by a fellow member of the council that he may have been present for a discussion about an issue in which he may have had some pecuniary interst. As I recall, that complaint was made late last year or early this year to the Department of Local Government and it was referred to the Crown Solicitor for investigation. As far as I am aware, that investigation has not been completed. I cannot say whether or not it will be completed prior to the local government election on 6 May, but the Crown Solicitor tries to deal with these things as expeditiously as possible.

JOHN SHEARER DISPUTE

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Attorney-General, as Leader of the Government, a question on the John Shearer dispute.

Leave granted.

The Hon. J.F. STEFANI: I refer to the current dispute at the Kilkenny factory of Australia's largest agricultural machinery manufacturer, John Shearer Ltd. For 12 days, 300 workers at the factory have been on strike over a dispute involving the company's decision to end the practice of requiring new employees to sign union tickets. This restoration of what should be a basic human right for every individual has led to picket lines preventing customers of the company taking delivery of goods. The dispute has now taken a very serious turn for the worse with the announcement this afternoon that the company will move to shut down the factory next week unless strikers return to work on Monday.

The company statement points out the reasonable approach that it has taken in this dispute. It has been willing to negotiate with the unions for the past fortnight. On Wednesday, an industrial commissioner recommended that the striking workers lift their picket lines and return to work. They have continued to refuse to do so. As a result of the strike and the scrapping of a bounty on agricultural machinery manufactured in Australia, which was announced by the Treasurer in Wednesday's economic statement, the company's future viability is threatened. My questions are:

1. Will the Government make urgent representations to the unions involved in this dispute to abide by the decision of the Industrial Commission?

2. Will a senior Minister address tonight's Trades and Labor Council meeting where this dispute will be discussed to ensure that the strikers return to work on Monday?

The Hon. C.J. SUMNER: I cannot answer the second question because I have not been informed one way or the other by the Minister concerned. However, I am sure that the Minister of Labour is taking an active interest in the dispute with a view to trying to get it resolved. Clearly, if an industrial commissioner has made an order for workers to lift the picket and return to work, the Government would support that ruling and would urge the workers concerned to abide by it. I cannot say whether the Minister of Labour has had a direct involvement in that but, in principle, that would be the Government's stand.

HOSPITAL WAITING LISTS

The Hon. R.J. RITSON: I seek leave to make a brief explanation before asking the Minister representing the Minister of Health a question on the subject of waiting lists.

Leave granted.

The Hon. R.J. RITSON: In January this year, during the course of my medical practice, I consulted with a patient who is suffering from a very painful but non life-threatening orthopaedic condition which is capable of being cured with a relatively common and simple operation. Attempts to gain a specialist consultation from a public hospital resulted in an appointment for her for June 1989. So, I went shopping and the best I could do within the public system was an

appointment for July. Further questioning of the clinic that was to see this patient revealed that the waiting time for the operation would be 12 to 18 months. When asked whether that was from now or from when the patient sees the specialist, I was told that was the waiting time from when the patient sees the specialist.

In the course of socialising with various surgeons over the past year or two, I have become aware that some overstressed units have been directed to limit the number of new patients included in each outpatient consulting session to keep the pressure off the waiting lists. This is not an attempt by the clinicians to manipulate the waiting list for political purposes—it is not an attempt to please their masters. As one surgeon put it, there is simply not much point in seeing certain types of cases if they cannot do them. I realise that is anecdotal and it relates only to a few instances. It does not really tell us what is happening but it makes us suspicious.

With all the resources of Government, the Minister should be able to determine the answer for me. The problem is that waiting lists have become unacceptably long and are still growing. However, are they growing more than we really think in a hidden way? Is the increased number of patients waiting on the booking lists after they have seen the doctor indicative of the whole problem or are lots of them being parked invisibly on a waiting list to see the doctor for the first time? My questions are:

1. Will the Minister cause a review to be undertaken of the outpatient records of the major teaching hospitals to determine the period between the requests for outpatient appointment and the actual appointment, with particular reference to the disciplines of orthopaedic surgery and ear, nose and throat surgery?

2. Will the Minister cause a comparison to be made with similar data of three years ago?

The Hon. BARBARA WIESE: I will refer those questions and bring back a reply.

SATCO

The Hon. R.I. LUCAS: I seek leave to make a brief explanation before asking the Attorney-General a question about Satco and the declaration of shareholdings in a related company.

Leave granted.

The Hon. R.I. LUCAS: Mr Geoffrey Sanderson, a key figure in the Satco investment strategy over a number of years, in 1984-85 was the Chief Executive Officer for O.R. Beddison Pty Ltd, which operated the Nangwarry mill of the South Australian Timber Corporation. At that time he also marketed plywood for Aorangi Forest Industries, which operated the Greymouth mill subsequently invested in by Satco. In January 1985, Mr Sanderson took up 100 000 50c shares in Wincorp. He purchased 30 000 shares and was issued 70 000 shares. Wincorp was the company which became the overall holding company of Aorangi Forest Industries, so was the controlling company for the Greymouth mill.

The select committee of the Legislative Council heard a lot of conflicting evidence on this issue of Mr Sanderson's shareholding, and on the important questions of whether he had declared those shares and, if he did, when he made such a declaration. Mr Curtis from Satco said that, when Mr Sanderson was issued the shares in Wincorp, which he understood was some time in January 1985, Mr Sanderson, as a Director of O.R. Beddison, was obliged by the Companies Code of South Australia to declare that interest at the first board meeting after the shares were issued to him. Mr Curtis indicated in evidence to the committee that this declaration by Mr Sanderson was recorded in the board minutes at the time.

Mr Sanderson also indicated in a letter that he wrote to the then Minister of Forests, which was read out in another place last year, that he had declared his interest at the time. In evidence to the select committee, Mr South, the Director of the Woods and Forests Department, supported the claim by Mr Sanderson. However, when members of the select committee investigated and personally inspected the board minutes, no minute or any written record of such a declaration of shareholding in Wincorp by Mr Sanderson was found. In fact, in their last appearance before the select committee, Mr South and Mr Curtis of Satco conceded that there was no written record in a board minute of such a declaration and that they were in error in their previous evidence.

The only written evidence which Satco executives could produce to the committee about any sort of a declaration was an unsigned document dated July 1985—some six months later—which listed the shareholders of Wincorp and showed a shareholding of 20 000 shares by Mr Sanderson. In fact, that was incorrect—the number of shares was 100 000. The Satco executives were unable to establish the authorship of this document which, as I indicated, was unsigned.

Other evidence taken by the committee disclosed that Mr Curtis, who had been one of the key figures in the merger discussions and who had been working on the merger as a consultant since September 1985, was not personally aware of Mr Sanderson's interests until early 1986, at least 12 months after Mr Sanderson had indicated that he had declared his interest in Wincorp.

Evidence was also taken from Mr Lawson, a director of Satco, who said that, when he visited New Zealand in June 1985 to investigate the Greymouth mill, he, as a director of Satco, was unaware of Mr Sanderson's shareholding in Wincorp. The question of shareholdings in companies like Wincorp, which is the holding company for the New Zealand mill, is obviously important. As Mr Sanderson was involved for Satco at the Australia end, if there were to be negotiations and discussions, any such shareholding ought to have been declared, as Mr Curtis agreed the Companies Code provided.

Section 228 of the Companies Code requires any director to declare such an interest and provides that the secretary of the company shall record every declaration under this section in the minutes of the meeting at which it was made. In its report, the select committee noted a possible breach of this section of the Companies Code. Lawyers to whom I have spoken, who are very experienced in company law, indicate that there has been a clear breach of the Companies Code in this matter. Will the Attorney investigate this breach of the Companies Code by Mr Sanderson and bring back a report to the Parliament or indicate during the recess the action he will take in relation to this matter?

The Hon. C.J. SUMNER: This is interesting. The honourable member refers to the select committee's report and then asserts that there has been a breach of the Companies Code, which is not what the select committee found. I suppose we are used to the Hon. Mr Lucas playing with the truth.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: I did not say that at all. We are used to the Hon. Mr Lucas playing with the truth in the Parliament and the community generally.

The Hon. Barbara Wiese interjecting:

The Hon. C.J. SUMNER: That's right.

The Hon. R.I. Lucas: At least some of us stick to our principles, and don't sell our souls.

The Hon. C.J. SUMNER: You are probably the greatest failure the Catholic church has ever had. I will have the report examined by the Corporate Affairs Commission, which is the responsible agency in this matter.

JUSTICE INFORMATION SYSTEM

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation before asking the Minister of Local Government, representing the Minister of Community Welfare, a question about the Justice Information System.

Leave granted.

The Hon. DIANA LAIDLAW: The Department for Community Welfare in recent years has been enthusiastic about the prospect of utilising the JIS for the storage and cross-reference of its records systems and as a database not only in respect of child protection policies but domestic violence, emergency financial assistance, adoption and a whole range of services.

I understand that the enthusiasm of the department for the potential of the JIS is one of the reasons for the blowout of that system. Certainly, a user committee within DCW has been working with the JIS people for some two and a bit years on this matter and also in respect of privacy and access concerns.

Following the statement by the Premier yesterday that the original plan was no longer an option and that the applications to which the JIS is to be used will be cut, will the Minister supply information, either now or during the parliamentary recess, whether databases within the Department for Community Welfare will be cut and, if so, which databases will be cut, whether child protection, domestic violence, adoption, emergency financial assistance, concessions, or some other database?

The Hon. C.J. SUMNER: It is not clear whether any of those applications will be cut but, as has already been announced, the JIS is and has been under review for some time. Decisions will be made shortly as to its future—whether it will proceed as originally intended—which is not likely—or whether it will be modified in some form. When these decisions are taken an announcement will be made.

SUPREME COURT ACCOMMODATION

The Hon. K.T. GRIFFIN: I seek leave to make a brief explanation before asking the Attorney-General a question about Supreme Court accommodation.

Leave granted.

The Hon. K.T. GRIFFIN: The judges report tabled yesterday, among other things, focused on accommodation and indicated that stage 2 of the Supreme Court development was to have been completed following earlier postponements during the current financial year, but in fact it has not even been commenced. The judges go on to observe:

> The result is that two of the courtrooms in the court precinct remain unsuitable, by reason of the inadequacy and squalor of the appurtenant area, for the conduct of Supreme Court litigation. Facilities for pre-trial conferences in the Supreme Court precinct are quite unsuitable. The public toilet facilities in the precinct are grossly inadequate and there are none at all for the disabled. Two sets of judges' chambers in the library building open directly on to a public corridor which must often be traversed by the judges in the course of their duties, a situation which is fraught with risk to the personal security of the judge and the security of his chambers, and exposes the judge to the danger of hearing remarks which might prejudice trials, not to mention exposure to embarrassing and undesirable encounters with parties and witnesses.
>
> There is no fire escape for the protection of judges and staff in the library building, nor of members of the legal profession and the public having business in it, notwithstanding that they are engaged on their business in locations, for the most part, separated from the only staircase by the area in which the liftwell is situated. The library area is in a state of crisis, which is described in the section of this report relating to the library.

My questions are:

1. Does the Attorney-General agree with the description of those conditions by the judges?
2. Does he believe that they are appropriate for the courts.
3. What action will the Government take to remedy these gross deficiencies?

The Hon. C.J. SUMNER: I am not in a position to agree or disagree with the Chief Justice's description of his accommodation at the Supreme Court. Stage 2 will proceed as soon as funds are available. I believe it has a high priority. I believe that preliminary work on stage 2 of the Supreme Court has already started in this financial year. In all probability it will be dealt with in the next budget. Therefore, there is no disagreement that these matters need attention. They will be given that attention as soon as resources permit.

The Supreme Court is not the only court that needs upgrading. The Government felt that in this financial year more attention should be given to the Magistrates Courts—or planning for the redevelopment of the Magistrates Courts, than stage 2 of the Supreme Court. On becoming Attorney-General I asked the Department of Housing and Construction (the then Department of Public Works) together with the Courts Department, to prepare a comprehensive plan for the upgrading of court facilities in this State. That plan was produced and I believe it has been made available to the honourable member. It is now for the Government to set priorities for the implementation of that plan according to resources. Stage 2 of the Supreme Court plan has a high priority, but there are other demands on resources. I anticipate that the Supreme Court will be funded in the next financial year to overcome the problems outlined by the Chief Justice.

CAFHS IN SCHOOLS

The Hon. PETER DUNN: I seek leave to make a brief explanation before asking the Minister of Tourism, representing the Minister of Health, a question about CAFHS.

Leave granted.

The Hon. PETER DUNN: The Opposition has been contacted by a number of primary schools who are experiencing 'increasing difficulty' in obtaining the services of a Child, Adolescent and Family Health Services (CAFHS) nurse in their school. I am told, for example, by the principal of the Kilkenny Primary School, that his school last year had no problems in obtaining the services of a nurse to check the health of students. This year, however, as Kilkenny is not designated a 'priority program school', it will be denied the following services:

- Health assessment by CAFHS staff of individual children between designated screening times.
- CAFHS involvement in health education activities in classrooms, on camps and in other school activities.
- A designed local nurse/medical officer to consult about child health issues as they arise in schools.

Those cuts in services are detailed in the *Education Gazette* on 11 November 1988 under a section titled 'CAFHS Serv-

ices in Schools—New Directions'. It seems the only way the services are going is in fact backwards.

I should point out that of the schools that have contacted me, none has been critical of CAFHS' role in this reduction in services. Rather, they believe CAFHS is being forced into the move by increasing constraints being placed on it by the Government. This certainly seems to be borne out by both the *Education Gazette* notice, and allocations to CAFHS this year.

Consider this statement from the *Gazette*, which attempts to justify reduced CAFHS services in schools for 1989:

> In 1986-87 the South Australian Health Commission and CAFHS jointly undertook a program review of all of CAFHS services. An earlier role and function study had determined that CAFHS was attempting to be all things to all people and that there was a need for a program review to establish service priorities and directions. The program review and additional projects conducted by CAFHS in 1987 examined the service implications of the Government's social justice strategy. As a result, the framework of targeted services for disadvantaged groups of children, from a base of universal services, has been adopted by CAFHS.
>
> What has happened, from this review, is that only about 15 per cent of schools are classed as priority program schools, and therefore have access to the full range of CAFHS visits. If you do not fall into the criteria of a school which has 40 per cent of your students on the free book list, you are not a priority school, and your CAFHS services will be cut.

At the same time, CAFHS' funding for 1988-89, going on Health Commission figures, has been cut in real terms by almost $700 000 compared to what it received in 1987-88. Little wonder that CAFHS is having to cut back on a range of services which were previously available to schoolchildren.

It has been put to me by one irate school principal that the Government should not be determining a school's need by the number of children it has on a free book list, but rather the demand for health services by students at that school. My questions to the Minister are:

1. Will the Minister, in conjunction with his colleague, the Minister of Education, review the decision to cut CAFHS services in up to 85 per cent of South Australian primary schools because of the new priority program schools system of assessing health services required by a school?

2. Will the Minister examine a new method of assessing a school's need for CAFHS nurse visits, based on that school's need for health services rather than one based on the number of students receiving free books?

The Hon. BARBARA WIESE: I will refer those questions to the Minister of Health and bring back a reply.

SOUTH AUSTRALIAN TIMBER CORPORATION

The Hon. R.I. LUCAS: I seek leave to make a brief explanation before asking the Attorney-General, as Leader of the Government in this place, a question about Satco.

Leave granted.

The Hon. R.I. LUCAS: The select committee on Satco took evidence from a Mr Bob Cowan, a former director of the South Australian Timber Corporation. Mr Cowan stated:

> Regarding amalgamation [between the Timber Corporation and the Woods and Forests Department] that has now been recommended for five years [by the Woods and Forests Department and Satco].

Mr Cowan also stated:

> There are very good reasons for its not happening. I will not go into them because they are political rather than any other. There is no question that it would lead to savings of millions of dollars.

I will not go over the rest of Mr Cowan's evidence. It is on the record in my contribution last evening. Suffice to say that he instanced, in great detail, how savings could be made by the Government in relation to the operations of the South Australian Timber Corporation and, in Mr Cowan's assessment, there were potential savings of millions of dollars which, in his assessment, had not been realised by the Bannon Government for political reasons. My simple questions to the Attorney-General, either as Leader of the Government in this place, or to refer to an appropriate Minister are:

1. Will the Attorney-General bring back a report explaining why the Woods and Forests Department and Satco recommendations were not approved?

2. Why did the Bannon Cabinet not undertake the necessary action that would have saved the taxpayers of South Australia millions of dollars, as recommended by Mr Cowan, a director of Satco?

The Hon. C.J. SUMNER: I would have thought that the honourable member would examine that matter as part of his lengthy select committee consideration of the issue. I am not sure if that opinion is even in the report. If it is not, one would ask why it is not, but presumably because the select committee did not consider that it was of sufficient consequence to be included in the report.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: That is not what I said. I said that you did not consider that the statement was of sufficient consequence to be included in the report. The honourable member is apparently referring to evidence given to the committee. One would have expected that if the committee considered that the advice was significant, it would have followed up the matter. All I can do is refer the question to the Minister and bring back a reply.

COUNTRY FIRES BILL

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Preliminary.'

The Hon. M.J. ELLIOTT: I move:

> Page 2, after line 19—Insert new definition as follows:
> 'fire management plan' means a fire management plan prescribed by the regulations.

There are a number of consequential amendments. I shall need to point out other places in the Bill so that the purpose of the fire management plan can be understood. One of the amendments to which it refers is an amendment to clause 76 (2) *(g)*. This clause has caused two concerns to people to whom I have spoken. The first concern is that the only means by which a person can protect his property is by the use of firebreaks, clearing, or burning off of land. That is a rather narrow approach to ways of protecting property. There is no mention of the potential for people to have sprinkler systems, lawns, or other things around their houses or property. Clause 76 (2) *(g)* is very narrow there.

The second concern is that it will lead to legal action or have legal implications. That is a matter I shall debate further when we get to the relevant clause. It is particularly the first part of the clause which has a narrow attitude towards ways in which property can be protected. It has been suggested to me that we can consider producing a fire management plan. The fire management plan will be produced under the auspices of the board and can act as directions to landholders on ways in which they can protect their properties.

References to a fire management plan appear in a couple of other clauses. In clause 41 again, we are looking at a similar concern where people must take reasonable steps to

protect property on the land from fire and to prevent or inhibit the outbreak or spread of fire on or through the land. I am looking to an amendment which requires that people apply proper land management practices. In other words, whilst they are trying to protect the land and prevent the spread of fire, they should be aware of other responsibilities that they have—in particular, that they comply with the appropriate fire management plan which I mentioned in relation to the regulations.

There is a further proposal to insert similar amendments in clauses 42 and 43. They relate to council and Crown land. I seek the concurrence of the Committee in respect of this amendment.

The Hon. C.J. SUMNER: The Government opposes the amendment.

The Hon. J.C. IRWIN: The Opposition recognises that fire management plans have to be prepared anyway. It may be a requirement of the Act when it is passed. We have no problem with this amendment at the moment. We have not had great consultation on this point, but we do not see any great problem with it. We will study the regulations when they are written and presented and we will have an opportunity through the parliamentary process to do that.

I refer the Committee to clause 34, which relates to the responsibilities of a district committee. Subsection (1) *(c)* reads: 'to prepare plans for bushfire prevention within its area'. Those are not the exact words of the amendment, but it is clear that there was an intention by those who drafted this legislation that it would be the responsibility of a district committee to prepare plans. Therefore, we accept it.

Amendment carried.

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

Page 3, line 20—Leave out 'Council' and substitute 'Advisory Committee'.

I do not want the Committee to see any sinister intention in this small amendment. I think I have counted 20-odd instances through the Act where the word 'council' is mentioned. The Hon. Mr Elliott has just mentioned when moving his amendment that the word 'council', as I want it changed, applies 20 times through the Act. I admit that I have not added up the number of times that the word 'council' does not need to be changed.

Some clauses become confusing when one is trying to work out whether they relate to local councils or, as in this case, the Fire Prevention Council. In 1979 I recall the Minister of Local Government (Hon. J.C. Bannon) tried to introduce the concept of community development councils. I remember that the word 'council' was very much opposed by local government. I was involved with local government at that time and I have consulted with it on this. They would be happy to see that word dropped, and for it to apply to local councils only.

I refer the Committee to clause 34 (1) *(e)*. If my amendment is not adopted and other amendments are carried, this provision will read as follows:

> *(c)* to advise the council or councils, the Board, the Council, any regional bushfire prevention committee whose region includes its area . . .

That is a very brief example of how confusing this is. I hope that the Committee will accept my amendment.

The Hon. C.J. SUMNER: The Government sees it as unnecessary.

The Hon. M.J. ELLIOTT: I have no problems with the amendment. The Attorney-General says it is unnecessary but has no other argument against it. We will support the amendment.

Amendment carried.

The Hon. M.J. ELLIOTT: I move:

Page 3—

Line 22—After 'Act' insert—

(a) .

After line 23—Insert—

and

(b) must seek to achieve a proper balance between bushfire prevention and proper land management in the country.

A great deal of concern has been expressed that this Bill is not only about fire management protection and control, it must also be seen to involve land management. It is a subset of it. Land management is mentioned in a number of places throughout the Bill. I am merely trying to ensure that there is a recognition of proper land management in the Bill.

The Hon. C.J. SUMNER: The Government opposes this amendment. There are already considerable environmental protections in this legislation and we do not believe that this added one is necessary.

The Hon. J.C. IRWIN: Once again, I support this amendment, because, as I read it, the achievement of a proper balance between bushfire prevention and proper land management in the country is very sensible and, I would have thought, an objective of anyone. Perhaps I am being misled on this, although not by the Hon. Mr Elliott. However, I have had no information, and the Minister has provided none, to suggest that we should not support this. Therefore, I support the amendment.

Amendments carried; clause as amended passed.

Clause 4—'CFS regions.'

The Hon. J.C. IRWIN: Under this clause the board may, by notice in the *Gazette*, declare any specified part of the State to be a CFS region. Are there any established regions? Will they equate with established rural local government regions, and what criteria will be used for forming a region?

The Hon. C.J. SUMNER: Yes, they all have been established.

The Hon. J.C. IRWIN: Regarding subclause *(a)*, I take it that fringe urban councils with some rural land are controlled by the Metropolitan Fire Service. What is the liason between MFS and CFS, and is there an established and proper link between them?

The Hon. C.J. SUMNER: There is a mutual aid plan between the two services. It has been in operation since 1983.

Clause passed.

Clauses 5 to 8 passed.

Clause 9—'The CFS Board.'

The Hon. J.C. IRWIN: Will the Minister say how the two volunteer representatives will be elected? As it is now, two out of seven names are put forward by the Minister. How are those two volunteers chosen? Who elects the representative board members? What is the annual general meeting structure? Are those who can vote at those meetings restricted only to trained volunteers? I remind the Committee of the figures supplied by the Minister after my second reading speech. I thank him for that. A total of 19 994 volunteers are registered, and 3 795, or about 5 per cent of the total, have at least level 1 training. There will be two representatives on the board, and seven names have to be put forward to the Minister. How are those seven names arrived at?

The Hon. C.J. SUMNER: The names are submitted by the South Australian Volunteer Fire Brigades Association. The Minister is to choose two of the seven names submitted to him.

The Hon. J.C. IRWIN: How do they arrive at the seven names to give the Minister from which two are picked?

The Hon. C.J. SUMNER: That is a matter for the South Australian Volunteer Fire Brigades Association.

The Hon. J.C. IRWIN: That is what I am asking.

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

The Hon. J.C. IRWIN: How are those names arrived at?

The Hon. C.J. SUMNER: That is a matter for the South Australian Volunteer Fire Brigades Association.

The Hon. J.C. IRWIN: Are those trained people from the Volunteer Fire-Brigades Association the only ones who are allowed to vote in the process which produces those seven people?

The Hon. C.J. SUMNER: No.

The Hon. J.C. IRWIN: It is open to all.

The Hon. C.J. SUMNER: I presume it is open to all members.

The Hon. M.J. ELLIOTT: I move:

Page 4, line 29—Leave out 'seven' and substitute 'five'.
Page 4, line 30—Leave out 'seven' and substitute 'five'.

The Local Government Association is being asked to submit seven nominees from which the Government will choose two. The Volunteer Fire-Brigades Association likewise will be asked to nominate seven, from which two will be chosen. I believe it is really quite outrageous for a Government to say that it wants that much choice between people.There is a very real chance that, although nominees of the associations are being put forward, because the Government can pick and choose, the Government may decide to look for people who are more pliable to its wants and needs rather than the people who these associations really want. In fact, I think my preferred position would be that the Local Government Association should put up their two nominees and that is it. Likewise, the Volunteer Fire-Brigades Association should be able to put up two people and that is it. However, I suggest at this stage at least, we decrease the number from seven to five and still allow the Government some choice.

The Hon. J.C. IRWIN: We support this amendment.

The Hon. BARBARA WIESE: To try to short-circuit this debate as much as possible, the Government would be prepared to accept an amendment of that kind. It makes very little difference if the number is seven or five. We are pleased to agree to the amendment.

Amendments carried.

The Hon. M.J. ELLIOTT: Subparagraph (iii) of paragraph *(a)* is rather confusing. It provides for two nominess from the Minister and I do not have any problems with that. Subparagraph (iii) provides:

(A) one being a person with experience in financial administration and land management;
or
(B) one being a person with experience in financial administration and the other being a person with experience in land management.

There is an option. One person can wear both hats and a second person is still free to have some other experience or you have two people with separate experience. I move:

Page 4, lines 33 to 39—Leave out subparagraph (iii) and substitute:

(iii) two will be nominated by the Minister, one being a person with experience in financial administration and the other being a person with experience in land management.

I hope that the Government will appoint one person who has complete expertise in land management. I do not like the idea of having a person wearing two hats. Unfortunately, I think it is likely that the appointee will be a financial administrator with some land management understanding. I would rather have a land management expert on the board. As I said earlier when I spoke to my first amendment, this is not just a fire Bill: it is also a land management Bill. It is important that we have a person with a very high level of expertise in land management.

While the Government has the option to do that, I believe that it should be mandatory that one of the members of the board has land management experience. If they have other experience, that is fine, but that knowledge must be the prime ingredient.

The Hon. J.C. IRWIN: The Opposition does not support the amendment but has its own amendment.

The Hon. BARBARA WIESE: The Government opposes the amendment. There has been considerable discussion about this matter and this part of the Bill has already been amended at least once. The Bill provides adequately for the two areas of expertise to be present on the board and the Government can see no reason to change that.

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

Page 4, lines 32 to 39—Leave out all words in these lines and substitute new subparagraphs as follows:

(iii) one will be chosen from a panel of three submitted by the United Farmers and Stockowners Association;
and
(iv) two will be nominated by the Minister, one being a person with experience in financial administration;

The Hon. BARBARA WIESE: The Government opposes both the Liberal amendment and the Democrat amendment.

The Hon. M.J. ELLIOTT: The Democrats do not support the Hon. Mr Irwin's amendment, and that may affect his attitude to my amendment. The honourable member's amendment seeks to have a representative of the United Farmers and Stockowners Association as a member of the board. The Australian Democrats have attempted, sometimes successfully, to insert clauses into other Bills to give representation to the UF&S. I intend to make clear when debating the Pastoral Lands Management and Conservation Bill that the UF&S should be represented, which is not the case at present. However, in this regard it is inappropriate.

The Local Government Association will put up two people and I would be very surprised if one of those were not a farmer. Indeed, it would be disappointing if the Government did not choose one farmer, because most fires occur in the country. Likewise with the Volunteer Fire Brigades Association, most of its members, especially in the near Hills areas, are farmers, so there is no question that farmers will not be represented. More than likely, most of them will be members of the UF&S, and it is my experience from travelling around the country that they will be active members.

While I understand the sentiment, I argue very strongly that it is not appropriate to have a UF&S representative. Having said that, I reiterate that it is important that one member of the board have land management experience. Under the restructuring, the board will take on responsibility for fires in forests and national parks, as well as on farmland. Comprehensive land management issues will arise, for example, burning off near reservoirs and the impact on soils. I believe that the board needs a person who has broad land management experience. Farmers have particular land management experience but we need people with a different form of experience from that proposed by the Hon. Mr Irwin. I am confident that farmers will be represented, anyway. In that light, I ask the Hon. Mr Irwin to reconsider his position.

The Hon. J.C. IRWIN: Had there been more time, the three Parties involved in this discussion could have sorted out some of these amendments. My amendment provides that the Minister will nominate two members of the board, one being a person with experience in financial administration. The other nominee could quite easily be a person with bushfire and proper land management experience. I argue that my amendment be carried, providing for a representative of the United Farmers and Stockowners Association.

It does not really matter to me whether the volunteers, local government representatives or UF&S people are farmers. Their loyalty on a board such as this will be to the Local Government Association, the volunteer firefighters, and the UF&S, as well as the board itself.

UF&S members are loyal to that organisation, not just because they happen to be a representative of the UF&S and on the board as a volunteer. Such a person would have particular experience in land management and land use generally. They have a very representative structure in the organisation and a vested and fundamental interest in land management. Although the Opposition is not inclined to support the Democrat amendment, if we do not support each other, we will finish up with nothing, or only with what is already in the Bill. On reflection, I state that the Opposition will support the Democrat amendment in order to resolve this issue.

Amendment carried.

The Hon. M.J. ELLIOTT: I move:

Page 5, lines 1 and 2—Leave out paragraph *(b)*.

The purpose of this amendment—and the following consequential amendments—is that the Chief Executive Officer of the CFS should not be a voting member of the board but should act at the direction of the board. This is similar to a recommendation which came from the Christies Beach Women's Shelter select committee recently which suggested that the administrator should be controlled by the committee rather than be a member of the committee. It is a fairly common situation in business that the person who operates the business—who carries out the day-to-day business—is at the direction of the board and not a voting member of it. I think it is inappropriate that the Chief Executive Officer be a member of the board. This is quite distinct from the Chief Executive Officer being able to address board meetings and both give information and receive instruction.

The Hon. BARBARA WIESE: The Government opposes this amendment. It believes that it is appropriate for the Chief Executive Officer of the CFS to be a member of the board. I am aware that some opportunity has been expressed to the idea that the Chief Executive Officer of the CFS might also be the chairman of the board. I point out that, under the provisions of the Bill, this would be a decision which the Government would take at the relevant time: whether the Chief Executive Officer should be an ordinary board member or the Chair. It is possible to vary the position depending on the wish at the time. So, the fear that has been expressed in some quarters need not necessarily materialise. The substance of the Democrats' amendment is not acceptable to the Government and is opposed.

The Hon. J.C. IRWIN: The Opposition does not support the amendment and believes that the Chief Executive Officer should be a member of the board.

The Hon. M.J. ELLIOTT: I do not know whether the Liberals held a different position at one time. I was under the impression that they would oppose the Chief Executive Officer being on the board. The lobbying I received from a wide cross-section of the community was that they felt it inappropriate that such a person should be on the board. I am very surprised; in fact, stunned.

Amendment negatived.

The Hon. M.J. ELLIOTT: My amendment to clause 9, page 5, lines 3 to 8 is a consequential amendment which I will not move. The amendments which follow after line 13 are also consequential and, as such, I will not move them.

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

Page 5, line 9—After 'Board' insert ', other than the Chief Executive Officer,'.

We are saying that that person will not be and cannot be the chairman of the board. I ask the Democrats to support this amendment as a halfway measure.

The Hon. M.J. ELLIOTT: The Democrats support this amendment as a halfway measure.

The Hon. BARBARA WIESE: This amendment is not acceptable to the Government. We believe that the Government should have the authority to decide who at any one time ought to be in the chair of the board and any member of the board ought to be eligible for that position.

Amendment carried; clause as amended passed.

Clauses 10 and 11 passed.

Clause 12—'Establishment of CFS organisations.'

The Hon. J.C. IRWIN: I have a very brief question on subclause (8) which provides:

On dissolution of a CFS organisation, its property, rights and liabilities vest in the CFS.

If a number of property owners obtained a unit and got the CFS under their umbrella, would that be regarded as its property if the unit was asked to dissolve?

The Hon. BARBARA WIESE: In such a circulation, the equipment, etc. would be privately owned and therefore would not be vested in the CFS upon the dissolution of that group.

Clause passed.

Clause 14—'The Australian Volunteer Fire-Brigades Association.'

The Hon. J.C. IRWIN: Clause 14 (1) provides:

The South Australian Volunteer Fire-Brigades Association is recognised as an association that represents the interests of members of CFS organisations.

I thought that the SAVFBA was the only organisation which represents the interests of the CFS. If that is not so, can the Minister name the other organisations which could represent the interests of the CFS? If there are two or more representative bodies, what are the mechanisms in place to stop or minimise conflict?

The Hon. BARBARA WIESE: The SAVFBA is the only organisation which at present represents the interests of CFS organisations. The Government is not aware of any other organisations likely to come into being, but the clause has been drafted in this way to accommodate that, should it occur at some stage in the future.

Clause passed.

Clause 15 passed.

Clause 16—'The command structure.'

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

Page 8, line 12—Leave out 'until approved by the board' and substitute:

(a) in the case of the election of a group officer or brigade captain—until after consultation with the council or councils (if any) for the area or areas where the group or brigade operates;.

The Opposition is simply asking that consultation takes place before any approval is given by the board to an election to a rank in the CFS, and that the consultation will be with council or councils in the area where the brigade operates.

The Hon. BARBARA WIESE: The Government opposes this amendment. The responsibility for managing the fire control provisions rests with the board through a proper chain of command. The Government has already accepted an amendment to this section in another place to ensure that the brigade and group officers are properly elected by their peers. This amendment merely puts in another administrative level in the appointment of CFS officers. The Government does not believe that it is necessary and opposes it.

The Hon. M.J. ELLIOTT: I am aware that there has been some dissent in relation to this proposed amendment amongst volunteer fire brigades. I believe that they feel that they should be consulted rather than the councils. There are a couple of key parts to this. First, that the word is 'consult', and in light of the way that the CFS is presently structured and, in particular in the way it is presently funded, where local government is required to supply about 50 per cent of the moneys which are to go to fire brigades, that it is reasonable, at this stage, that its interests be taken into account.

That does not suggest that I do not think it is reasonable that the volunteers should not be consulted. However, this amendment does not preclude that possibility. It is possible that, at a later stage, if such an amendment came forward, I would support it. Even this amendment might become unnecessary if the way in which fire brigades were funded was changed. That is an issue that will be addressed at a later stage. In supporting this amendment I understand the consternation of volunteers, but, as the clause states 'consult', and because local government has an important monetary role, I think it is only reasonable in the circumstances.

Amendment carried; clause as amended passed.

Clause 17—'The Country Fire Services Fund.'

The Hon. J.C. IRWIN: Subclause (2) provides:

> any money received or recovered by the board in the administration of this Act.

If money is recovered by the CFS using the clause relating to recovery of costs from uninsured or under-insured landholders, will the money be paid into the brigade fund? If not, where will it be paid?

The Hon. BARBARA WIESE: I am advised that in the circumstances outlined by the honourable member, the money would be paid into the fund and it would then be a board decision as to whether or not it would be reimbursed to the brigade later.

The Hon. J.C. IRWIN: Subclause (5) provides:

> The board may borrow money for the purposes of the fund on terms and conditions approved by the Treasurer.

Will there be any limit imposed on the board regarding the amount that can be borrowed in relation to the total amount available to the board in cash each year? I believe that some constraint must be applied so that the board's repayment and interest bill does not equal its annual grants or any other amount of money that it may have received through grant or whatever. I believe the Minister handling this would know that local government has some limitations on the ratio between its borrowing requirements and its total income. Will the Treasury, or anyone else, impose any limit on borrowing?

The Hon. BARBARA WIESE: I am not sure whether this will be the sort of answer for which the honourable member is looking. Any loan funds for which the CFS might be looking would come through Treasury. The CFS board does not borrow funds outside Treasury. It does not go to lending institutions without Treasury being involved in that process. The extent to which that activity will occur in any one financial year will depend on the Government's capacity to provide or allocate funds to the CFS and its capacity to allocate loan funds in any one year where the CFS requests fit into the broader Government picture with respect to loan funds.

Clause passed.

Clause 18—'Insurers' contributions.'

The Hon. J.C. IRWIN: I should like to make a brief comment on this clause, which relates to insurers' contributions. Subclauses (1) and (2) provide:

> (1) Before the commencement of each financial year the Treasurer will make an estimate of the total expenditure to be incurred in the administration of this Act for that financial year.
>
> (2) The Board may, with the approval of the Treasurer, by notice published in the *Gazette*, recommend an amount (being not less than one-quarter and not more than one-half of the Treasurer's estimate made under subsection (1)) to be contributed by insurers towards the cost of the administration of this Act in that financial year.

Subclause (5) provides:

> A decision of the Treasurer under subsection (4) is final.

Subclause (2) gives scope to the Treasurer to ask the insurance industry to provide not less than one-quarter but not more than one-half of the Treasurer's estimate of the cost of running the CFS for the financial year. I remind those members who do not know that during the last year the contribution from the insurance industry was $3.7 million and that was matched by another $3.7 million from the Treasurer. That is right up to the top end of the scale of between one-quarter and one-half. That takes no consideration of the contribution by local government. That does not go to the CFS as such, but it contributes towards capital costs of machinery, and maintenance is subsidised to some extent. I understand that that amounts to at least $4.5 million. That figure may be a conglomeration of capital being paid for vehicles and equipment with money for maintenance as well.

This is another example of the mish-mash of part of the finances of the CFS. I am being advised about how bad some local councils are in their funding. On the other hand, it is feared that some councils will become antagonistic if too many changes are made to the operation of the CFS as they knew it a year or so ago. If local government backs off in its funding commitments, the Treasurer will have nowhere to go except to increase the Government's share. In the present economic climate, I do not think anyone would want to do that, although there may be pertinent reasons for doing it and, by calculation, increase the insurers' share that comes from the property owners.

I do not like the import of this provision. It was no doubt in the old Act, but the way things are going it is too broad. Its impact on country insurance policies—the amount that local people must pay for insurance—could result in great jumps from year to year. Hopefully, it has been a smooth process so far, but I see some potential for that to jump fairly dramatically from year to year. If it is too demanding, property owners will compensate in the only way that they know how. They will conserve their funds by under-insuring, and that will raise a problem which the Bill tries to pick up later.

I would prefer to have a formula in the legislation or in the regulations so that it was predictable. In that way Parliament could be made aware of it and have some control over the formula. I am not accusing the Treasurer of being irresponsible, but neither the Treasurer nor the insurance industry has to foot the bill. In each instance it is collected from others to be passed on to satisfy the needs of the CFS through the insurance levy and what is matched by the Government. I do not have a question to ask, but I wanted to make that point. However, the Minister may feel inclined to reply.

The Hon. M.J. ELLIOTT: I have an amendment later for a sunset clause to apply to this and a number of other clauses which relate to the raising of funds, largely as a result of sentiments similar to those expressed by the Hon. Mr Irwin.

I also have on the Notice Paper a motion to set up a select committee to consider the funding of the CFS. There are a number of difficulties in terms not only of insurance but also of local government and other areas. An all-Party

select committee might find a way through the morass. For that reason, I shall move for a select committee by way of a separate motion, and I shall seek to insert a sunset provision in this and other clauses.

Clause passed.

Clause 19 passed.

Clause 20—'Provision of information to the board.'

The Hon. J.C. IRWIN: Is the Minister satisfied that the insurance industry in South Australia is accounting properly for the levy moneys collected? How can that be checked at present?

The Hon. BARBARA WIESE: One of the Government's concerns is that we cannot be certain that the insurers are dealing with these matters appropriately. That is why amendments to clause 20 in particular have been included. That will bring some certainty into the area. The board will have power to make investigations, where that is deemed desirable, to ensure that the funds are being used properly.

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

Page 9, after line 35—Insert new subclause as follows:

(a1) In this section—

'authorised officer' means the Auditor-General or any other person authorised by the Auditor-General to exercise powers under this section.

This seeks to give the Auditor-General or his nominee the job of auditing the insurance industry's books to check the levy payments rather than leaving it to the board's authorised officer. We think this person is independent of both the insurance industry and the board.

The Hon. BARBARA WIESE: The Government opposes this amendment, which was also moved in another place, because we believe it is quite unnecessary. Of course, the board would appoint a responsible person to undertake the tasks that are contained in clause 20 and we cannot see any point in including the provisions that the honourable member is suggesting. Of course, as my colleague in another place pointed out, a provision of this kind is already contained in the MFS Act; it has been there for quite some time, and there have been no problems with its operation. I cannot see any reason why the same sort of provision should not be effective in this piece of legislation.

The Hon. M.J. ELLIOTT: I do not share the Hon. Mr Irwin's concerns, so I do not support the amendment. I point out that, if we put in a sunset clause and there is a renegotiation of the way in which funding is done in the future, the whole thing could become totally unnecessary.

Amendment negatived; clause passed.

Clause 21 passed.

Clause 22—'Provision of firefighting equipment by council.'

The Hon. BARBARA WIESE: On behalf of the Hon. C.J. Sumner, I move:

Page 11—

Lines 13 and 14—Leave out 'and the Minister may vary the requirement'.

After line 14—Insert new subclauses as follows:

'(3a) If a council appeals under subsection (3)—

(a) the Minister must give the council a reasonable opportunity to make written submissions to the Minister in relation to the matter;

and

(b) if the council so requests—the Minister must discuss the matter with a delegation representing the council.

(3b) After complying with subsection (3a), the Minister may—

(a) confirm the requirement;

(b) vary the requirement in such manner as the Minister thinks fit;

(c) cancel the requirement;

or

(d) refer the matter back to the board for further consideration.'

Line 16—After 'such requirement as' insert 'confirmed or'.

Under clause 22, a rural council must provide adequate equipment for firefighting within its area. If the board considers that a council is not complying with this requirement, it may, after consultation with the council, direct that it do so. A right of appeal lies to the Minister. Concerns have been raised as to the appeal rights of a council.

The Government maintains that an appeal to the Minister is the most appropriate alternative. However, it has been decided that the statute should set out the rights of a council on an appeal. In particular, a council will be entitled to put written submissions to the Minister and, if it so desires, to appoint a delegation to meet with the Minister. A council will therefore be given every opportunity to present its case. The amendment should allay concerns that a council would not be treated fairly on an appeal. The amendment being proposed by the Government should address the concerns that are expressed by the Hon. Mr Irwin. In fact, I hope that he will support the amendment.

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

Page 11, lines 13 and 14—Leave out subclause (3) and substitute:

(3) A council may appeal to the District Court against any such requirement.

(3a) An appeal must be instituted within 5 weeks of the requirement being imposed unless the District Court, in its discretion, allows an extension of time for instituting the appeal.

(3b) Subject to a determination of the District Court, where an appeal is instituted, the requirement being appealed against is suspended until the appeal is determined or withdrawn.

(3c) On hearing an appeal, the District Court may—

(a) confirm, vary or cancel the requirement, and make any incidental or other order that may be appropriate in the circumstances;

(b) refer the matter back to the Board for further consideration;

(c) make any order as to costs.

The Opposition is simply against the provisions of this clause as it stands now, especially where a rural council is responsible for providing adequate equipment for firefighting within its area. This is a pivotal provision and the contents caused a great deal of public debate, as most members are aware. Local government is providing a good deal of the money for the CFS. The back-up services are very difficult to cost. The back-up services for the CFS in a local area might be the local government officer's time, the typist's time or whatever. The Local Government Association advised me that its contribution towards funding the CFS is in its own area, when aggregated, close to $4.7 million. If that is added to the $3.7 million coming from the levy (which comes from rural property owners), that is more than two-thirds funding from the CFS.

As a result of the provision of this Act, local government is being moved further and further from the decision-making process. I will not argue here whether or not it deserves that. There is a lack of measures in this Act to address properly the future funding needs of the CFS. We are left with the indisputable fact that local government and insurers within the area provide up to two-thirds of the funds. Further, clause 22 (2) provided:

If the board is of the opinion that a council has not provided adequate equipment as required by this section, the board may give notice in writing to the council requiring it to move such equipment as is specified in the notice.

Clause 22 (4) provides:

A council must comply with a requirement made under this section, (or with any other requirement as varied by the Minister) within such time as is stipulated in the requirement.

Clause 22 (5) provides:

If a council fails to comply with a requirement under this section, the board may procure the equipment to which the requirement relates and recover the cost as debt due to the CFS, from the council.

In my second reading speech I said that it was commonly stated throughout the rural areas of South Australia—to use that hackneyed phrase—'If you won't buy the equipment we think you need, then we will damn well buy it for you and send you the bill.' That, no doubt, has antagonised a great deal of people in country areas.

We are not opposing the total clause, but we are seeking to amend it so the council can have better protection from these provisions.

The Hon. M.J. ELLIOTT: I am in something of a quandary. While I am not completely satisfied with the way in which the amendment that the Hon. Mr Irwin is proposing will work, I am in total sympathy with what he is setting out to achieve. The amendment moved by the Minister is not at all satisfactory in addressing the very real problems that the honourable member has raised.

Again, this is another clause in which I am seeking to put a sunset provision on, because there are very real problems in this area and we do need to address the areas of funding. Whilst this amendment is perhaps a little cumbersome, it certainly addresses the problems in a more realistic way than does the Minister's amendment, so I support the amendment moved by the Hon. Mr Irwin.

The Hon. BARBARA WIESE: I do not think that the problem to which the Hon. Mr Irwin referred is quite the problem he believes. In fact, the provision which allows the board to direct that certain equipment, etc., be purchased for the use in particular brigade areas has been in place now for some 12 years. That power has been used only once during that time, so it is pretty clear that the board is very careful about the use of powers of this kind. Only in extreme circumstances would it use those powers. If the Hon. Mr Elliott is interested in preserving the *status quo* until he gets an opportunity to look at these matters again by way of a sunset clause or whatever it might be, he should also support the Government on this issue, because that is exactly what he would achieve.

The Hon. M.J. ELLIOTT: Will the Government support my amendment which seeks to include a sunset provision, or is it willing to include some form of sunset provision itself in relation to funding clauses, because that issue needs to be addressed, and/or will it support the setting up of a select committee to look at the question of funding of the CFS?

The Hon. BARBARA WIESE: The Government does not support either the sunset clause or the setting up of a select committee, because it believes that there are much more effective ways of dealing with the issues that are of concern to the Hon. Mr Elliott.

The Hon. M.J. ELLIOTT: The Government is not addressing and has not addressed the issues. Therefore, I have no option but to support the amendment.

The Hon. J.C. Irwin's amendment carried. Consequently, the Hon. Barbara Wiese's amendments not proceeded with.

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

Page 11, line 16—Leave out 'by the Minister' and substitute 'on an appeal'.

The Hon. BARBARA WIESE: This is consequential on the previous amendment. The Government opposes it, but I am sure that it is likely to be carried.

Amendment carried; clause as amended passed.

Clause 23 passed.

Clause 24—'Grants and payments by and to the board.'

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

Page 11, lines 43 and 45—Leave out subclause (3).

We believe that this clause should be deleted. This is another indication of local government, through this Act, requiring local government to contribute to the board an amount determined by the Treasurer towards the board's liability in respect of workers compensation. As most members know, local government has its own workers compensation scheme, of which it is very proud. Why is it not allowed to use its own scheme and negotiate with the board for the cheapest and best option? It is not good enough for the Minister in another place to suggest his reasons for subclause (3) and his concern that, if it was the board's responsibility to pay workers compensation premiums, councils would run around signing up people.

That is a load of nonsense and pays no respect to local government; it is a reflection on local authorities in country areas. Councils do not do that now so why should they start doing it? I guess that local authorities are proud that nearly 20 000 volunteers are already registered. They are responsible bodies. This is another example of the board telling councils how to spend their money, and I urge the Committee to support the amendment.

The Hon. BARBARA WIESE: My colleague in another place referred to two occasions when well in excess of 100 members were signed up for brigades. For that reason, the Government believes that some attempt should be made to control that practice.

The Hon. M.J. ELLIOTT: A little more consultation on this point would have been useful had time been available. What is the current position with respect to workers compensation? Who pays it and how does this provision change the current situation?

The Hon. BARBARA WIESE: At present, councils pay 50 per cent of workers compensation premiums. This Bill does not alter the present provision.

The Hon. M.J. Elliott: Where does the Bill say anything about 50 per cent?

The Hon. BARBARA WIESE: I do not think that it does. The Bill does not change anything that is in the present Act in that respect.

The Hon. M.J. ELLIOTT: Is workers compensation determined by the board as a result of negotiation or by some other measure?

The Hon. BARBARA WIESE: At the moment, workers compensation payments are determined on a negotiated basis by the board and councils. It has been determined that it be a 50/50 arrangement.

The Hon. M.J. ELLIOTT: Is that determination covered by an existing clause in the Country Fires Act or is it simply an agreement?

The Hon. BARBARA WIESE: Section 35 (3) of the Act provides:

> A council whose area lies wholly or partially outside a fire brigade district is liable to contribute to the board an amount determined by the Treasurer for the insurance of—
>
> *(a)* fire control officers;
>
> *(b)* fire party leaders;
>
> and
>
> *(c)* members of CFS brigades,
>
> who may be engaged in fire-fighting or in dealing with any other emergency within the area of the council.

Councils are therefore required to contribute to workers compensation payments, and the amount for which they are responsible is negotiated between councils and the board. At the moment it is a 50/50 share arrangement.

The Hon. M.J. ELLIOTT: I do not support the Hon. Mr Irwin's amendment to delete the entire clause but I do indicate support for the insertion of the words 'after consultation with the Local Government Association'.

The Hon. J.C. IRWIN: I thank the Hon. Mr Elliott for that indication, but I seek clarification about the wording of subclause (3). I seek assurance from the Minister that 'towards' is the operative word in the measure, allowing for some formula to be used to determine how much local

government puts towards workers compensation payments. I am not sure whether the measure provides for total liability. If it is taken literally, the provision means that councils have to make total contribution.

The Hon. BARBARA WIESE: The wording is quite specific to provide for negotiation.

The Hon. J.C. IRWIN: If the first part of my amendment is lost, am I able to move the other part?

The CHAIRMAN: Yes. This is the test case. If Mr Irwin wants this amendment he votes No and if the Government or the Minister, or whoever else wants it, votes Yes they defeat Mr Irwin. I shall put it this way: that the words in line 43 down to Treasurer in line 44 stand part of the Bill.

Amendment carried.

The CHAIRMAN: The next amendment is to line 44, after the word 'Treasurer'.

The Hon. J.C. IRWIN: I formally move that amendment and I do not believe that we need any further discussion about it.

The Hon. BARBARA WIESE: The Government has no problem with this amendment.

Amendment carried; clause as amended passed.

Clauses 25 and 26 passed.

Clause 27—'Recovery of costs against uninsured owners.'

The Hon. J.C. IRWIN: I indicate that the Opposition will not support this clause.

The Hon. BARBARA WIESE: I move:

Page 12, lines 21 to 25—Leave out subclause (1) and substitute new subclauses as follows:

(1) In this section—

(a) 'property' means buildings and building improvements; and

(b) the replacement value of property is the cost for their complete replacement including the cost of any necessary preliminary demolition work, any necessary surveying or engineering work and any other associated or incidental costs.

(1a) Where—

(a) the owner of property in the country (other than the Crown or a council)—

(i) is not insured against loss or damage to the property by fire;

or

(ii) is under-insured to the extent that 50 per cent or more of the replacement value of the property is not covered by insurance against loss or damage to the property by fire;

(b) some or all of the property is damaged by a fire at which a CFS brigade attends;

and

(c) the owner of the property had not taken reasonable steps (by the installation, provision or maintenance of fire-fighting equipment, or otherwise) to protect or minimise damage to the property by fire,

the CFS may recover the cost of the attendance, and of fire-fighting operations carried out to protect or minimise damage to the property, as a debt due to the CFS from the owner.

This matter was raised in the other place and the Deputy Premier indicated that the Government would further consider the clause before it was debated in the Council and that has led to this amendment. This clause is designed to enable the CFS to recover the costs of a CFS brigade attending to fight a fire on land where the relevant owner has not insured or has not adequately insured his or her property against damage by fire.

All owners of property in the country may receive the assistance of the CFS in the event of fire. Those owners who insure their property help to contribute to the cost of the CFS through the levy imposed on insurers. Those who do not insure do not contribute, although they may receive the same benefits. Their decision not to insure also places a heavier burden on those owners who do insure.

Therefore, it can be seen that the owners who do not insure receive an unfair advantage over those owners who do insure. This clause is intended to attempt to go some way towards redressing this unfair advantage. However, it is acknowledged that an uninsured property owner may have taken steps to protect his or her property from fire. Furthermore, a person may choose to take out partial insurance and, in some cases, it might be unreasonable to expect an owner to insure some items of property at all.

Accordingly, the Government has decided to address these points. It is proposed to amend the clause to define what kind of property should be insured and to provide that the proposed right of recovery will only arise if the owner is not insured or is under-insured to the extent of 50 per cent or more. No right of recovery would exist if the owner has taken reasonable steps to protect his or her property through self-help. Finally, it must be noted that the onus would lie on the CFS to prove in court as part of the recovery proceedings the various elements which constitute a cause of action as set out in proposed new subsection 1 *(a)*.

The Hon. M.J. ELLIOTT: There seems to be a bizarre notion that someone can have damage done to their property and the CFS can come on to it, but there is no suggestion that they have asked the CFS to come. Having come on to the property the CFS can charge the property owner. In an extreme example, someone may have a scrub block say, in the Sedan area. A person may decide to live on a scrub block and would not care whether the scrub got burned. They may have built their houses in a cleared area and fire-proofed their house, but somebody else decides that a fire which did not start on their property, but went through it, is to be fought on their property and then gives them a bill for it. That seems slightly unjust.

I know I have given an extreme example, but it illustrates the point that this is a very murky area. It raises once again the problems we have with funding and why I have suggested looking at setting up a select committee to inquire into the funding of the CFS. Without wishing to pre-empt what such a committee would conclude, it seems to me that it would be reasonable to look at some sort of rating plan in various areas rather than getting into this sort of system which ends up taking people into courts with very complicated proceedings. Some people do not have the resources and would not be able to defend themselves. On my reading of this clause it is an illustration of the problems we have with funding and that is why we need to find another way of addressing the problem.

The Hon. BARBARA WIESE: I point out that this amendment is designed to apply only to buildings. 'Property' means buildings, not scrubland.

The Hon. M.J. ELLIOTT: If property owners have fire-proofed their buildings as best they can by design and proper clearance, and a fire is blazing, I doubt very much whether the CFS would ask them whether they wanted them to be there. I should imagine that the CFS's first reaction would be to fight the fire and give the property owner a bill afterwards.

The Hon. J.C. IRWIN: This clause is about the recovery of costs against uninsured owners. The Minister has indicated the Government's amendment and I have briefly indicated that the Opposition is opposed to the whole clause. We do not think that the exclusion of this clause will have any great influence on the financing of the CFS or, in fact, that it will make any difference at all, although we do not have any figures. In fact, the Opposition thinks quite the opposite, that this may cost the CFS in a number of ways, such as legal fees, time and energy and the physical problem of going around and finding out who is and who is not insured, to what extent they are, and whether they have a liability under this clause.

The Opposition sees this clause as significant and has great concerns about it. Concern has been expressed to members of the Opposition about such matters as: who will determine what is or is not adequate insurance, and how will this be determined. I venture to say, as members have in the other House, that most people do not have full insurance—whatever that may be. Who will make the assessments? This matter is not spelt out totally. Will they take into account a highly equipped private unit, fire-breaks around every fence line, areas of irrigation, sheds and houses, etc., being properly protected? How will they take those matters into account? I realise that the owner does not have the right to exclude the CFS from his property because the CFS is given immunity, but members of the CFS, or those who have seen it operating, know that at times there is an element which is a little bit gung ho about other people's property.

The CFS may have good intentions about putting out a fire at any cost, but I have seen unnecessarily great areas of fencing and other property damaged in the quest to put out a fire. Again, if the Government had the fortitude to fix up the whole funding area before we started, we would not have to intrude into the lives of people to ascertain whether or not they are insured.

The amendment does not go far enough in addressing all the fears expressed in the other place, although certainly it goes quite some way towards that. There will be an enormous amount of unnecessary intrusion into the life of every landholder affected by a fire. On balance, that is worse than the fact that money may eventually be made—if any money is made—out of this exercise in the recovery of costs. I do not believe that that is quite good enough. I would certainly like to find a more equitable way of dealing with the problem. The Opposition opposes the clause.

The Hon. M.J. ELLIOTT: It appears that with this clause, even with the Minister's amendment, people who decide not to insure, should they be lucky enough not to have a fire go through their property, will never make any contribution to fire protection. On the other hand, if a fire does go through their property they may be caught with a very large bill. I suppose one could say that there is a dirty big stick hanging over them and one hopes that it scares a lot of them into insuring. The reality is that it does not address the more basic problem of people who are failing to insure: it just means that, if they happen to have a fire and they do not insure, they will be landed with a bill. I think that the concerns raised by the Hon. Mr Irwin, of just how equitable the terms of such a Bill will be, are justified. This funding situation is a real problem. The Government is seeking to charge those costs because it is a way of compensating for the fact that the uninsured people are not being levied. It seems to me to be a rather cumbersome and somewhat inequitable way of going about the whole operation.

The Hon. Barbara Wiese: What is the alternative?

The Hon. M.J. ELLIOTT: That is one of the reasons why I am suggesting a select committee. One can certainly have a land tax based system which can work in fire risk areas, and the like, so that it varies from zone to zone.

The Hon. Barbara Wiese interjecting:

The Hon. M.J. ELLIOTT: Why do you not make it compulsory then? We have compulsory third party insurance. The Democrats oppose the clause and the amendment.

Amendment negatived; clause negatived.

Clause 28—'Recovery of contributions from insurers outside the State.'

The Hon. J.C. IRWIN: The Minister may be aware that I raised concerns about the provisions of this clause. I referred in my second reading contribution to the advice of the Insurance Council of Australia. Can the Minister assure me that the concerns that I raised will be addressed by the contents of this clause or, indeed, other clauses in the Act relating to insurance and recovery of contributions from insurers outside the State?

The Hon. BARBARA WIESE: This clause is designed to deal with the concerns raised by the honourable member.

Clause passed.

Clause 29—'The South Australian Bushfire Prevention Council.'

The Hon. J.C. IRWIN: I move the following consequential amendments:

Page 13—

Line 15—Leave out 'Council' and substitute 'Advisory Committee'.

Line 16—Leave out 'Council' and substitute 'Advisory Committee'.

Line 36—Leave out 'Council' and substitute 'Advisory Committee'.

Line 37—Leave out 'Council' and substitute 'Advisory Committee'.

Amendments carried; clause as amended passed.

Clause 30—'Council's responsibilities.'

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

Page 14—

Line 2—Leave out 'Council's' and substitute 'Advisory Committee's'.

Line 5—Leave out 'Council' and substitute 'Advisory Committee'.

Line 6—Leave out 'Council' and substitute 'Advisory Committee'.

These, too, are consequential amendments.

Amendments carried; clause as amended passed.

Clause 31 passed.

Clause 32—'The responsibilities of a regional committee.'

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

Page 14, line 39—Leave out 'prepare plans for, and to'.

Page 15—

Line 3—Leave out 'Council' and substitute 'Advisory Committee'.

Line 4—Leave out 'Council' and substitute 'Advisory Committee'.

These, too, are consequential amendments.

Amendments carried; clause as amended passed.

Clause 33—'District bushfire prevention committees.'

The Hon. M.J. ELLIOTT: I move:

Page 15, lines 11 to 28—Leave out subclauses (1) and (2) and substitute:

(1) A rural council, or two or more rural councils acting together, must, by notice in the *Gazette*, establish a district bushfire prevention committee in relation to its area, or their areas.

(2) A district bushfire prevention committee will consist of—

(a) the fire prevention officer or officers of the council or councils;

and

(b) the following persons appointed by the council or councils—

(i) one representative of each CFS brigade operating in the area or areas, selected in accordance with the regulations;

(ii) two representatives of the council, or of each council;

(iii) if there is a reserve (or part of a reserve) administered under the National Parks and Wildlife Act 1972 within the area or areas—an officer of the National Parks and Wildlife Service nominated by the Minister for Environment and Planning;

(iv) if there is a forest reserve (or part of a forest reserve) within the area or areas—a nominee of the Minister of Forests;

and

(v) any person nominated under subsection (3).

The Local Government Association and individual councils are keen to see a larger role played by councils at the level of the district bushfire prevention committees. The purpose of the amendment is to recognise a greater role. With the change in the chain of command and other changes in the Bill, local government is losing a great deal of say, yet a great obligation is being placed upon it.

The amendment would allow a rural council or group of councils to get together to set up a district bushfire prevention committee. They have an obligation to set up a committee, so a council does not avoid its obligation. I also have on file, and will move separately, a further amendment which would give the board the capacity to exempt a council from the requirement to set up a district bushfire prevention committee. In some areas such committees are not necessary. Therefore, the power for the board to grant an exemption is necessary.

The Hon. BARBARA WIESE: The Government opposes the amendment. The functions undertaken by a district committee are under the power of the board to prescribe. Therefore, it is inappropriate for councils to be establishing authorities in that respect.

The Hon. J.C. IRWIN: The Opposition supports the amendment as it will give councils a major responsibility in planning bushfire prevention and fighting in their areas. The amendment, like many others proposed by the Opposition and the Democrats—of course, I cannot speak for the Democrats—is an example of legislation on the run. I am satisfied about the overall representation on the district committee, but I am not comfortable with the fact that the committee does not have a strong enough link with the board. Will the Chairman of the committee be elected by the committee? I indicate support for the Democrats' other amendments to this clause.

Amendment carried.

[*Sitting suspended from 5.58 to 7.45 p.m.*]

The Hon. M.J. ELLIOTT: This amendment is consequential on the amendment we passed before the dinner adjournment.

Amendment carried.

The Hon. M.J. ELLIOTT: I move:

Page 15, line 32—Leave out 'The Board' and substitute 'The council or councils'. Leave out 'a district' and substitute 'the district'.

Line 34—Leave out 'The Board' and substitute 'A council'.

Line 35—After 'established under this section' insert '(but in that event the council must undertake, or participate in, the establishment of a new committee)'.

They are all consequential amendments.

Amendments carried.

The Hon. M.J. ELLIOTT: I move:

Page 15, after line 35—Insert new subclause as follows:

(6) The Board may, after consultation with a rural council, exempt a council from a requirement of this section.

This is also a consequential amendment.

Amendment carried; clause as amended passed.

Clause 34—'The responsibilities of a district committee.'

The Hon. M.J. ELLIOTT: I move:

Page 16, line 1—After 'to advise' insert 'the council or councils,'.

This, too, is consequential.

Amendment carried.

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

Page 16, line 1—Leave out 'council' and substitute 'advisory committee'.

This is a consequential amendment.

Amendment carried; clause as amended passed.

Clauses 35 to 40 passed.

Clause 41—'Private land.'

The Hon. M.J. ELLIOTT: I move:

Page 20, lines 25 and 26—Leave out, 'or the spread of fire through the land'.

There is a further part to the amendment. I do not know whether or not it is possible to move it as a whole and then, after line 27, to insert a new subclause as follows:

(2a) Where an owner of private land must, in acting under subsection (2)—

(a) apply proper land management practices; and

(b) comply with the appropriate fire management plan.

I note that the Government has picked up part of this amendment in that in amendments it has on file it has talked about taking account of proper land management principles, so I am not sure that I need to argue on that count.

In my amendment I have also used the term 'appropriate fire management plan'. People may recall that, during the debate on the first amendment, the concept of fire management was introduced. I indicated at that stage that it had two applications. One application was within the regulations. Under clauses 41, 42 and 43 particular fire management plans can be directed by the board and need to be undertaken.

The Hon. BARBARA WIESE: At this stage I indicate my opposition to the amendment moved by the Hon. Mr Elliott. I will comment in advance on my own amendment, which is partly related to the issues involved here. The Bill presently provides that regional and district bushfire prevention committees must, in the performance of their functions, take into account proper land management principles. The amendment which has been moved by the Hon. Mr Elliott seeks to require that owners of private land in the country, who must take reasonable steps to protect their property from fire and to prevent or inhibit the outbreak or spread of fire, must apply proper land management practices in taking those steps.

Advice received by the Government is that this is unrealistic and unworkable. Land management practices will be one of many matters that will need to be considered. However, the Government is willing to provide under this clause that proper land management principles be taken into account.

The Hon. M.J. ELLIOTT: I wonder if I can clarify with the Minister the section we shall vote on second. I am not sure whether I follow what you are saying, Mr Chairman. You seem to be trying to distinguish between the two votes.

The CHAIRMAN: Your case is going to be the test case. If you get the first part of the amendment that you have raised, it is natural that the second part of it will flow on, but if you lose it, the Minister will have the call.

The Hon. M.J. ELLIOTT: With respect, Mr Chairman, that is not quite true. I think those two amendments can stand apart. I want to check exactly what differentiation the Minister was making between land management principles and land management practices.

The Hon. BARBARA WIESE: It is considered important that a landowner should take responsibility for the spread of fire through his land. That is one of the issues that needs to be taken into consideration. It is simply not enough to say that he will employ proper land management practices as they relate to fire prevention or control on the perimeter of the property. It needs to apply to the whole property. The spread of fire throughout the land is one of the issues that must be addressed. So, whilst we agree there must be proper land management practices, we do not wish to delete any responsibility for the spread of fire through the land.

The Hon. M.J. ELLIOTT: I thought you were distinguishing between the terminology that you would use in taking an account of land principles and applying land management practices. I thought that is what you were saying. That had me a mite confused.

The CHAIRMAN: I shall put the amendment as regards lines 25 and 26.

The Hon. J.C. IRWIN: I support the amendment.

Amendment carried.

The Hon. M.J. ELLIOTT: I move:

Page 20, after line 27—Insert new subclause as follows:

(2a) An owner of private land must, in acting under subsection (2)—

(a) apply proper land management practices; and

(b) comply with the appropriate fire management plan.

I have covered much of this argument already. It is most important that, following the deletion of the other words, this amendment is carried. It is my expectation that a fire management plan will cover the concept of the need to retard the spread of fire. The management practices that would be applied within that plan would address that particular issue.

The Hon. BARBARA WIESE: I move:

Page 20, after line 27—Insert new subclause as follows:

(2a) An owner of private land must, in acting under subsection (2), take into account proper land management principles.

The Government's amendment goes part of the way towards agreeing with the Hon. Mr Elliott's amendment. The Government is in favour of proper land management principles being one of the considerations that must be taken into account. I foreshadow that, when we debate clause 76, the Government will oppose the amendment to be moved by the Hon. Mr Elliott that fire management plans be prepared because the Government feels that the proposal is unrealistic and unworkable in the sense that it will take an enormous amount of time for such plans to be prepared for the entire State. If such an amendment were carried, in those areas in which fire management plans had not been prepared, no action could be taken for hazard reduction under the clause currently before the Committee.

I remind members that the National Parks and Wildlife Service has undertaken to prepare fire management plans for the national parks system. It has taken five to six years to prepare approximately 100 plans, and the honourable member has proposed that plans be prepared for the rest of the State. That would take a very long time. That is not to say that fire control plans of some kind for particular parts of the State will not be in place in a reasonable time. However, a proposal for the whole State in this way is unworkable. It is for that reason that the Government will not support the second part of the Hon. Mr Elliott's amendment, although it has gone part of the way by including land management principles in the amendment that I have moved.

The Hon. J.C. IRWIN: I oppose both amendments.

The Hon. M.J. ELLIOTT: It depends how specific the fire management plans are and how quickly they are prepared. I see no reason why, in fire prone areas such as the Adelaide Hills or the Clare district, highly detailed fire plans cannot be drawn up, concentrating resources in that area. In those areas in which the fire danger is not as great, fire plans can be more general in the initial stages, so that they do not have to gobble up enormous resources.

The Hon. BARBARA WIESE: It would take enormous resources to prepare proper fire management plans for the areas mentioned by the honourable member and it is the Government's view that it is unrealistic to expect such a course of action.

The Hon. M.J. Elliott's amendment negatived; the Hon. Barbara Wiese's amendment carried.

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

Page 21, lines 13 to 15—Leave out subclause (11) and substitute:

(11) An appeal under subsection (10) must be made to the District Court.

This amendment seeks to change the appellate authority to the District Court.

The Hon. M.J. ELLIOTT: I support the amendment.

The Hon. BARBARA WIESE: The Government believes that the appeal provisions as they stand are appropriate and workable; therefore, I oppose this amendment.

Amendment carried.

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

Page 21—

Line 20—Leave out 'appellate authority' and substitute 'District Court'.

Line 24—Leave out 'appellate authority' and substitute 'District Court'.

Line 27—Leave out 'appellate authority' and substitute 'District Court'.

Line 29—Leave out 'appellate authority' and substitute 'District Court'.

Line 36—Leave out 'appellate authority' and substitute 'District Court'.

Line 38—Leave out 'appellate authority' and substitute 'District Court'.

These are consequential amendments.

Amendments carried; clause as amended passed.

Clause 42—'Council land.'

The Hon. J.C. IRWIN: I have already indicated that the Opposition opposes clauses 42 and 43, which deal with council land and Crown land respectively. We will seek to insert a new clause 42, relating to public land, which basically puts the Crown and its instrumentalities on the same level as other landholders. Reasonable steps must be taken to protect property on the land from fire and to prevent or inhibit the outbreak of fire on the land.

In my second reading speech I made a number of references to what I and others see happening on Crown land. We are not satisfied that the correct steps are being taken and we are critical of the already inadequate resources being diverted to deal with outbreaks of fires in parks and a number of other such matters.

I also raised extensive points regarding various reviews in the process of consideration, such as the Mount Lofty Ranges Review soil conservation paper affecting Crown and public land. The proposed new clause provides the same sort of appeal mechanism we have argued elsewhere. We believe that national parks and other Crown land will be adequately represented by the various organisations set up in this Act: the board, the region, the district committees, etc.

There is scope—and indeed need—for extensive consultation to take place. I should comment on the great problems that we have had in the country in relation to multiple fires started by the Australian National Railways and their rolling stock. We are seeing less and less rolling stock but, when we do have it, we have enormous problems with fires being started by faulty equipment on the trains. I suggest that proper plans should be made to contain this problem.

The Hon. M.J. ELLIOTT: I move:

Page 21, line 43—Leave out ', or the spread of fire through the land'.

The words 'or the spread of fire' are particularly important, especially when one looks at clause 43.

The Hon. BARBARA WIESE: The Government opposes the Hon. Mr Elliott's amendment for the reasons that I have already stated.

Amendment carried.

The Hon. BARBARA WIESE: The Government opposes the Hon. Mr Irwin's proposed amendment. We believe that there are already sufficient mechanisms within Government to resolve the sorts of conflicts that could arise from time to time between bodies such as the board of the CFS, the National Parks and Wildlife Service, and the Woods and Forests Department. There is already ample evidence of excellent cooperation between those services and the CFS Board. In fact, there is an adherence to a similar philosophy between the organisations. The Government does not therefore feel that the Hon. Mr Irwin's proposed amendment is necessary. I move:

Page 21, after line 43—Insert new subclause as follows:

(2) A rural council must, in acting under subsection (1), take into account proper land management principles.

This amendment, which is consistent with the amendment that I moved to clause 41, relates to the responsibilities of owners of private land in the country to protect their property from fire. Clause 42 relates to the similar responsibilities of rural councils. By moving this amendment I will make those two clauses consistent.

Amendment carried; clause as amended passed.

Clause 43—'Crown lands.'

The Hon. M.J. ELLIOTT: I move:

Page 22, lines 4 and 5—Leave out 'or the spread of fire through the land'.

Although we have had two positive votes on this, I think that in many ways it is the most significant amendment. I intend to move the second amendment to this clause as well because, amongst Crown land, we are starting to talk about things like large tracts of native lands. It is most important that we have proper fire management plans in those areas because, if we do not have those plans, the very nature of those areas could be severely changed. It is here, more than in any other place, where our having appropriate fire management plans is so important.

The Hon. BARBARA WIESE: I have already indicated that the Government opposes amendments of this kind.

Amendment carried.

The Hon. M.J. ELLIOTT: I move:

Page 22, after line 5—Insert new subclause as follows:

(1a) A Minister, agency or instrumentality of the Crown must, in acting under subsection (1)—

(a) apply proper land management practices; and

(b) comply with the appropriate fire management plan.

It is most important that we have fire management plans for Crown lands. In fact, it is far more important in some ways because of the amount of native vegetation they contain. It is more important in these areas than it is on council and private land. For that reason I wish to pursue the question of appropriate fire management plans.

The Hon. BARBARA WIESE: I move:

Page 22, after line 5—Insert new subclause as follows:

(1a) A Minister, agency or instrumentality of the Crown must, in acting under subsection (1), take into account proper land management principles.

The Hon. M.J. Elliott's amendment negatived; the Hon. Barbara Wiese's amendment carried; clause as amended passed.

Clauses 44 to 46 passed.

Clause 47—'Restriction on the use of certain appliances.'

The Hon. J.C. IRWIN: The Opposition and many people in the country will be interested in the regulations prescribing the engines, vehicles and appliances which can be used in the open air during the fire danger season. How restrictive will the regulations be to normal farming practices? Will farmers be forced to use diesel only, or will there be any major restriction on current farm practices?

The Hon. BARBARA WIESE: It is intended that the regulations accompanying this legislation will be exactly the same as those that have applied for the past 12 years. It is not intended to change them in any way.

The Hon. J.C. IRWIN: During my second reading contribution I raised the question of charcoal burning. I know that this practice took place, because I supervised it in my local council area. It was a great problem to some people. Is that still allowed and what happens if a charcoal pit has been started prior to a fire ban day and is either only partly burned or about to end its production run when a fire ban day is proclaimed?

The Hon. BARBARA WIESE: It is proposed that the regulations and permits that cover charcoal burners will be simplified from the current 15 to two and that they will cover the ability of charcoal burners being lit and maintained throughout the fire ban season in the same manner as occurs now.

The Hon. PETER DUNN: I have a letter which indicates that some of the new trucks become overweight. I understand that the new Hino trucks, when fully laden with water, equipment and a crew of six, are 80 kilograms overweight. Am I correct in assuming that that is the case? If they are, can they legally travel on the open highway?

The Hon. BARBARA WIESE: Yes, they are well within the legal limits. That was checked with the road safety people today.

Clause passed.

Clause 51—'Failure by a council to exercise statutory powers.'

The Hon. BARBARA WIESE: I move:

Page 23, lines 35 to 38—Leave out subclause (4) and insert new subclauses as follows:

(4) If the board makes a recommendation to the Minister under subsection (2)—

(a) the Minister must give the council a reasonable opportunity to make written submissions to the Minister in relation to the matter; and

(b) if the council so requests at the time that it makes such written submissions—the Minister must discuss the matter with a delegation representing the council.

(4a) If, after complying with subsection (4), the Minister is satisfied that it is appropriate to do so, the Minister may, by notice in the *Gazette*, withdraw the powers and functions of the council and vest them in an officer of the CFS nominated by the board.

(4b) The Minister must, within 14 days of publishing a notice under subsection (4a), furnish the council with written reasons for his or her decision.

This clause empowers the board to take action if a local council fails to exercise or discharge a power or function under Part V of the Act relating to fire prevention. In particular, the board may, in an extreme case, after consultation with the council, recommend to the Minister that particular powers of the council be withdrawn and vested in an officer of the CFS nominated by the board. The provision may be compared to provisions under the Public and Environmental Health Act 1987 and powers in relation to defaulting councils under the Local Government Act 1934.

The Government considers that if a recommendation were to be made under this provision, the Minister would always afford the council a reasonable opportunity to make representations to him or her before taking such serious action. However, it has been decided to include a provision which would expressly require the Minister to allow the council to put its case. Furthermore, the amendment provides that if a Minister takes action against a council, the Minister must furnish that council with written reasons for his or her actions.

The Hon. J.C. IRWIN: I have already indicated that we oppose this clause. Perhaps I may give some reasons for doing that and, if successful in having the clause taken out, I have already indicated a new clause 51.

The amendment certainly goes some way towards allaying the fears and problems of appeals taken against the failure of a council to exercise statutory powers. What the Minister has suggested goes some way towards making the whole process slightly more drawn out, so that more people can be involved in it and take out any question of Caesar appealing to Caesar.

This is a significant clause. We think that our replacement clause will improve it. The amendment gives a council, which has had its authority removed by a decision of the board, the opportunity to appeal to an independent umpire. I thought that nothing could be fairer. However, as I said earlier, an appeal to the Minister is like Caesar appealing to Caesar.

The clause as it stands, like others, is contrary to fairness and justice, which I thought was one of the basic planks on which this Government stood. It is dangerous because of its consequences. It will not appeal to local government, especially as the funding issue is so messy. Councils bear much of the burden of funding and most of the responsibility and may find themselves without any say in view of the way things could go.

The Local Government Act contains substantial provisions for the Minister of Local Government to intervene in the affairs of a council which fails to undertake a statutory duty under that or any other Act. There may be a conflict between two ministerial areas. If those Ministers are going to sort out their differences, if there are any, the argument adopted by the Minister in the other place that the whole appeal procedure might take too long, does not stand up. Sometimes action can be too swift and decisive. Certain cases will not come up overnight, such as an arson attack, where the evidence will be wanted in a hurry. Therefore, I see no problem with the appeal process there.

I am confident that councils will not act in an irresponsible manner. They will not wish to jeopardise their districts, and most councillors on rural district councils are farmers and landholders themselves. That is my reason for opposing clause 51 and why I shall support the new clause.

The Hon. M.J. ELLIOTT: The argument that is developing is indicative of the problems that we have with the CFS generally and the Bill in particular. It plainly indicates that significant sections of local government have lost their confidence in the CFS hierarchy. That is not necessarily attributing blame, but that is the case. I have travelled all over the State and got that sort of response. Suspicion in country areas towards the CFS hierarchy has got to the point where few councils trust what will happen.

We would not be in this position of distrust if the Government had taken on the issue of funding. If councils did not feel that they were being required to make such a large contribution and having such potentially onerous provisions directed towards them, we would not have all these problems.

I appreciate that the Government is in a hurry to get the Bill through, particularly due to the chain of command issues which are very high on the agenda of the Government and the VFBA. However, some of the amendments that we have already passed, and some that we are yet to consider, do create problems. The Bill will probably leave this place in an imperfect form. I lay the blame on the Government. The Government has not even bothered to send an adviser to spend one minute with me to talk about the Bill. If the Government worries about what happens to any of these clauses, it is its own stupid fault. Other Ministers, like the Hon. Susan Lenehan, who administers Lands, have had their advisers spend countless hours going through the clauses and we have made progress. If there are problems here, I know where the blame lies.

There is a great deal of suspicion about the clause. I can understand local government's not wanting to have to appeal to the very people who are making the judgments. For that reason, I oppose the amendment and the clause and will support the new clause.

Amendment negatived; clause negatived.

New clause 51—'Failure by a council to exercise statutory powers.'

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

Page 23, after line 26— Insert new clause as follows:

51. (1) If, in the opinion of the board, a council fails to exercise or discharge any of its powers or functions under this Part, the board may, by notice in writing, require the council to take specified action to remedy the default within such time as may be specified in the notice.

(2) A council may appeal to the District Court against any such requirement.

(3) An appeal must be instituted within six weeks of the requirement being imposed unless the District Court, in its discretion, allows an extension of time for instituting the appeal.

(4) Subject to a determination of the District Court, where an appeal is instituted, the requirement being appealed against is suspended until the appeal is determined or withdrawn.

(5) On hearing an appeal, the District Court may—

(a) confirm, vary or cancel the requirement, and make any incidental or other order that may be appropriate in the circumstances;

(b) refer the matter back to the board for further consideration;

(c) make any order as to costs.

(6) A council must comply with a requirement made under this section (or with any such requirement as varied on an appeal) within such time as is stipulated in the requirement.

(7) If a council fails to comply with a requirement under this section, the board may proceed to carry out the requirement and may recover the expenses incurred, as a debt due to the CFS, from the council.

I have already spoken to this new clause.

The Hon. BARBARA WIESE: The Government opposes this new clause. As the honourable member has already indicated, the Minister of Emergency Services believes that the logical conclusion would be that it could allow a council to do nothing about fire prevention for up to two months. Of course, with the onset of the fire season, that would be unacceptable. For that reason, we could not possibly accept that amendment.

New clause inserted.

Clauses 52 to 55 passed.

Clause 56—'Power of entry and search'.

The Hon. J.C. IRWIN: This clause says that a CFS officer, an authorised officer or a member of the Police Force may do certain things, with or without assistance. I want the Minister to clarify what 'with assistance' means. Does it mean with the assistance of another officer who is also qualified or does it mean a suitably authorised CFS officer with a member of the public? This may be taking it to an absurd area, but could 'with assistance' mean with a mechanical device, like a tractor, grader, or other machinery?

The Hon. BARBARA WIESE: The wording that has been included here is consistent with the wording that appears in numerous pieces of legislation. It is designed to provide for situations where one of these authorised persons may need to take another person or persons with them to undertake these functions. It is not the intention that pieces of machinery or equipment would be included within that terminology.

The Hon. J.C. IRWIN: I will not move my amendment. Having had consultation, I am satisfied the need for the

issuing of a warrant would be fairly time consuming, especially during the middle of the night, if authorised officers, particularly CFS officers, had to keep evidence for arson or any sort of house fire. I am satisfied that the authority is already there in the MFS Act, where a warrant is not needed to do what is required.

The Hon. BARBARA WIESE: I move:

Page 26, after line 19—Insert new subclause as follows:

(3) A CFS officer, an authorised officer or a member of the Police Force exercising a power under this section must, at the request of a person affected by the exercise of the power, produce his or her certificate of identity or other authority to exercise the power.

This certainly covers the concern raised by the Hon. Mr Irwin. This clause empowers certain officers to go onto land or premises and carry out investigations. Concerns have been expressed in relation to the operation of this provision. The powers prescribed by the provision might have to be exercised quickly and expeditiously and should not be unreasonably fettered. However, it is proposed to amend the provision so that an officer will be required to produce some form of identification on request to the landowner or other person affected by an exercise of power under the section.

The Hon. J.C. IRWIN: We will support this amendment. I point out that CFS personnel will have identity cards issued to them. I understand that they will be issued with identification cards. If they are not in uniform, then they will be able to produce a card. I do not know what happens if they do not have the card with them at the appropriate time. We support the amendment, which is quite sensible.

The Hon. BARBARA WIESE: Under the new regulations it is intended that all officers be issued with identity cards, so it should be quite possible for this new provision to work very effectively.

Amendment carried; clause as amended passed.

Clause 57—'Power of inspection.'

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

Page 26, line 22—After 'any reasonable time' insert ', after giving reasonable notice to the occupier of the land or premises,'.

This amendment seeks to insert words so that the clause would read:

A CFS officer, an authorised officer, a fire prevention officer or a fire control officer may at any reasonable time, after giving reasonable notice to the occupier of the land or the premises, enter any land or premises for the purposes of determining what measures have been taken on that land.

This amendment seeks to provide reasonable notice to the occupier and owner of the land and/or house before entry is made. In this day and age, there is absolutely no reason for unreasonable raids to be made on people's homes. I do not mean to use emotive language like 'jackboots' or 'raids', but I am trying to make the point that it is unreasonable, without reasonable notice, for people to come on to your land and look in your sheds, etc. This clause does not seem to require an officer to proceed at great haste and I think that most of the work would be done in the normal course of preparation for the summer fire season. The same could be said with regard to dangerous substance storage. This wording is also used in clause 41 (7).

The Hon. BARBARA WIESE: The Government accepts this amendment.

Amendment carried.

The Hon. BARBARA WIESE: I move:

Page 26, after line 25—Insert new subclause as follows:

(2) A CFS officer, an authorised officer, a fire prevention officer or a fire control officer exercising a power under this section must, at the request of a person affected by the exercise of the power, produce his or her certificate of identity or other authority to exercise the power.

This amendment is consistent with the one I moved in relation to clause 56. It clarifies the point even further and provides protection even beyond that which the Hon. Mr Irwin has proposed, by requiring that an authorised officer must produce his or her identification.

The Hon. J.C. IRWIN: We accept the amendment.

Amendment carried; clause as amended passed.

Clauses 58 to 62 passed.

Clause 63—'Fire control officers.'

The Hon. BARBARA WIESE: We have two amendments on file. I wish to withdraw the first one and replace it with the amendment which was filed yesterday. I move:

Page 27, line 22—After 'may' insert ', on its initiative or at the request of a council,'.

After line 23—Insert new subclause as follows:

(1a) Before the board on its own initiative appoints a person as a fire control officer for a designated area of the State that is inside (or partially inside) a council area, the board must consult with the council in relation to the proposed amendment.

This clause allows the board to appoint fire control officers for designated areas of the State. These officers will be able to exercise and perform statutory powers and functions to fight fires until a brigade arrives. After considering various submissions in relation to this clause and the proposed amendment which has been placed on file by the Hon. Mr Irwin, the Government has decided to amend the clause to provide that the board must, in appointing a fire control officer, consult with any council whose area is within the designated area. I hope that the Hon. Mr Irwin will agree that this is consistent with the provision that he is attempting to build into the legislation.

The Hon. J.C. IRWIN: No, I cannot signal agreement to that. I am not sure whether the Minister of Local Government has some sort of conflict in handling this legislation.

The Hon. Barbara Wiese: I represent the Minister of Emergency Services.

The Hon. J.C. IRWIN: Yes, I know that the Minister has to do that and, as part of Cabinet, she has to do that. I will not accept this amendment. Our proposed amendment seeks to have local government nominate fire control officers for its own area after consulting its brigades, and the board makes the final appointment. We have considered the wording of the Government's amendment which goes some way towards meeting our aim. The clause ensures Government consultation, which was not there before. We believe that commonsense will prevail and that the new board, with its expanded representation, will ensure that it works. In relation to subclause (4), I hope that the board consults with councils before terminating an appointment. We are not supporting the Minister's amendment.

The Hon. M.J. ELLIOTT: I will accept the Minister's amendment. The forshadowed amendment of the Hon. Mr Irwin reiterates the concerns that local government has about what is going to happen with the CFS under this Bill. It is highly suspicious. However, I support the Government's amendment.

Amendment carried.

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

Page 27, after line 23—Insert new subclause as follows:

(1a) The ability to appoint a person as a fire control officer under subsection (1) is subject to the following qualifications:

(a) if the designated area in relation to which an appointment is proposed to be made is inside (or partially inside) a council area—the fire control officer must be a person nominated by the council after consultation with any brigade that operates in the designated area;

and

(b) if the designated area is wholly outside a council area—the Board must, before appointing a person as a fire

control officer, consult with any brigade that operates in the designated area.

This is a consequential amendment.

Amendment carried; clause as amended passed.

Clauses 64 and 65 passed.

Clause 66—'Immunity in relation to bushfire prevention.'

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

Page 28, line 6—Leave out 'Council' and substititue 'Advisory Committee.'

Amendment carried; Clause as amended passed.

Clause 67—'Unauthorised fire brigades.'

The Hon. J.C. IRWIN: I indicate that the Opposition opposes this clause. It smacks of the Government or the board running scared. At times its totalitarian management of volunteers is going to come unstuck. Of course, total control and volunteers do not sit easily together. In the cold hard light of day, individuals who are volunteers (under pressure conditions) can make very good decisions and can look after themselves, both individually and collectively. The Government almost totally overlooks that.

In another place, the Minister has given an assurance regarding Apcel, SAs Sapfor and CSR Softwoods because those companies will have exemptions from the board for their specific functions which cover the whole State. They have very efficient units, and may be given exemption so they may carry on the same as they have done in the past. I see no reason why that same exemption cannot be applied to other private collective units around the State.

We shall have to wait and see what the board decides because it is very much in its court as to whether it will allow two or three neighbours to build up some fire trucks. I have had some discussions on this with a number of people, and I can see no problem with a group of farmers getting together to share equipment. I would not be in favour of that extending to the major towns of South Australia to the point at which opposing fire forces were set up. However, unauthorised brigades belonging to local farmers or groups of farmers should not be jeopardised. I ask the Committee to support my opposition to this clause.

The Hon. BARBARA WIESE: I indicate firmly that it has never been the Government's intention that the rights of farmers to have their own equipment would be affected by the provisions of this Bill. However, it is intended to prevent the establishment in towns of rival fire services by dissident groups of people who, for some reason or another, may not support the work of the accepted or recognised groups. It is felt that this would make things unworkable and, for that reason, the provision has been included in the Bill. The fears that have been expressed by the Hon. Mr Irwin will not be realised and I urge the Committee to support the Bill as it stands.

The Hon. M.J. ELLIOTT: If any clause indicates that the CFS has problems, it is this one. That the board is worried that groups of people are contemplating setting up their own brigades must ring warning bells somewhere. I have not made up my mind yet. It seems bizarre that many years ago there were entirely voluntary organisations, that councils used to do their bit, that local people chipped in, and that they formed brigades. Slowly but surely people decided that it was best to be centralised. Increasing centralisation has been good in terms of the rational use of resources and efficient radio systems which enable the coordination of firefighting units. However, we have become so centralised that people are becoming dissatisfied. That indicates that there are problems, and this clause simply reflects that. What is the likely interpretation of 'local community'? If two, five or 20 neighbouring farmers get together, does that make a community? How many people must get together to make a community?

The Hon. BARBARA WIESE: This clause applies to those people who set up a fire brigade to deal with fires on behalf of a local community. They are the operative words. We are not talking about a farmer who sets up a brigade for the protection of his own property or a couple of farmers who set up a brigade for their collective protection. The provision relates to people who set up a brigade to protect a community, and that is the difference. It is difficult to be more specific than that, but anyone who is reasonable will understand what it means.

The Hon. M.J. ELLIOTT: I have more than a vague suspicion that the only way we will know what it means is if someone is prosecuted under this provision. The courts might find it entertaining. I will support the clause because I acknowledge the need for coordination and recognise the damage that can be done by discordant operations. However, as I said before, the very fact that the Government has included such a clause means that it has a real problem. It must do some navel gazing soon.

Clause passed.

Clauses 68 to 74 passed.

Clause 75—'Control of dangerous substances, etc.'

The Hon. J.C. IRWIN: I have never understood why the SES and the CFS are separate bodies. If both organisations arrive together at the scene of a spill of a dangerous substance, who has seniority if the officers are of the same rank: the CFS officer or the SES officer?

The Hon. BARBARA WIESE: Under the legislation which covers the transport, storage and handling of dangerous substances, the prime operational functions come under the control of the fire services—whichever one it is—and the SES plays a subordinate and supportive role to fire services in these instances.

Clause passed.

Clause 76—'Regulations.'

The Hon. M.J. ELLIOTT: I move:

Page 30, lines 8 to 12—Leave out paragraph *(g)*.

I indicated that I had two problems with this clause. As I understand it, the purpose of this clause is to ensure that people protect their property. The first part of this clause talks about the clearing of firebreaks and the clearing or burning off of land. It further provides that failure to clear a firebreak or to clear or to burn off land in accordance with regulations constitutes evidence of negligence.

I am worried about this clause because I do not believe that these particular actions—clearing of firebreaks and the clearing and burning off of land—are the only actions which one can carry out to protect land. In other words, regulations to protect land can be more all encompassing than just covering those few aspects.

It would certainly cause a panic among some people who think that every time the CFS wants to protect anything they will go there with the slash and burn techniques. I am sure that there are CFS officers who say that that is not the case, but the way this clause reads at the moment, the regulations to protect land rely entirely on firebreaks, clearing and burning off. Of course, they are useful techniques but they are not the only ones. As to my amendment to allow the Government to set up a fire management plan, I alluded to this at the beginning of the Committee stage of this Bill. The fire management plan would be prepared under regulations and would include such aspects as firebreaks.

The CHAIRMAN: The amendment before the Commitee at present relates only to paragraph *(g)*.

The Hon. M.J. ELLIOTT: I believe that the provisions in paragraph *(g)* are too narrow. The second question that I wish to address concerns the fact that regulations are to

be used. I am not a lawyer, but it strikes me as being extremely unusual to use regulations to determine whether or not a person has committed an offence which constitutes negligence. A number of people have come to me and have suggested that the way this clause is currently structured there will be a very real danger of setting up chain litigation something along the lines as has occurred in the Adelaide Hills with the Stirling Council. This has been a common theme from quite a few of my contacts who believe that this clause could be dangerous in this regard.

The Hon. BARBARA WIESE: The regulations relating to paragraph *(g)* which are proposed to be attached are exactly the same as the regulations which have been in place for the past 12 years without any trouble at all. I fail to see why the Hon. Mr Elliott now suggests that we should oppose this paragraph.

Amendment negatived; clause passed.

Clause 77 passed.

New clause 78—'Certain sections to expire.'

The Hon. M.J. ELLIOTT: I move:

Page 30, after line 31—Insert new clause as follows:

78. The following sections will expire on the first anniversary of the commencement of this Act:

Section 18
Section 19
Section 20
Section 22
Section 27
Section 28.

I have two major reservations about this Bill. One is in relation to how well it will work as a land management Act. The second is in relation to the financial obligations that are placed on certain people. I recognise that some of what has happened here tonight is unsatisfactory—I have felt that from my position. I believe that the problems go back to the financial aspects. It is time to very seriously address the way in which the CFS is financed. If we could tackle that major issue, many of the other problems we have confronted here tonight would be clarified. There is nervousness on the part of the CFS as a result of the Bill and certain obligations being thrown at them, yet it does not have as much say as it believes it should in the light of those obligations and costs. I understand those concerns.

Of course, once the CFS started seeking input, the next thing that happened was that the volunteer firefighters were offside because they felt the councils were getting more say than they should get when they did not know as much about the situation as the volunteers. As a result, disputes flare. From discussions I have had with people I understand that this is a difficult problem for individual governments to tackle, particularly if the solution is some other way of levying money that might look like a tax.

For that reason, I am also proposing a select committee. I hope that we might have an all-Party committee which would come to consensus about where we should go in terms of financing the CFS. I have also taken into account some political considerations in suggesting that the sunset clause should be one year. That way it would be very early in the life of the next Government and, if the Government has to take any tough decisions on finances, it will be able to do it without upsetting its political applecart too much. I hope that the other Parties will consider this amendment.

I note that the Hon. Mr Irwin has a similar amendment, although he is looking at the third anniversary. I suggest that one year is reasonable. I believe a select committee is capable of looking at these issues in a matter of months quite impartially and coming up with constructive solutions to these problems.

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

Page 30, after line 31—Insert new clause as follows:

78. The following sections will expire on the third anniversary of the commencement of this Act.

Section 18
Section 19
Section 20
Section 22
Section 27
Section 28.

There are some obvious areas in which the Democrats and the Liberal Opposition are as one. The only area in which we disagree is in relation to time. That will be a problem. However, we are together in the sense that we want the sunset clause to operate within the term of the next Government. I understand what the Democrats are saying and the Liberal Party wants to stretch it out a little bit further to let the funding process flow from this legislation so that it can work over a reasonable period of time and so that the Government of the day could then review it. We want some water to flow under the bridge so that the review could come up with recommendations for the Government before the sunset clause is activated and the Bill, in the financial areas, falls over. No Government will let that happen. At this stage, I will not support the sunset clause as it is written and as it has been moved by the Democrats. We have only one area of disagreement, but we agree with the rest of it in principle.

The Hon. M.J. ELLIOTT: I neglected to point out another reason why the Democrats wanted to move the time along a bit. Some of the volunteer firefighters have expressed concern about some local government resistance to putting funds into the CFS at the local level—that is understandable for other reasons that I have discussed tonight. They are a little worried that the longer it takes to resolve this matter, the greater the problems will be in running down equipment, and so on. They are certainly very keen to see such a provision come into force as soon as possible. Perhaps we can sort this problem out. I wonder if the Hon. Mr Irwin would indicate whether or not two years would make him a little happier.

The Hon. J.C. IRWIN: The Opposition would support a two year sunset clause.

The Hon. M.J. ELLIOTT: I seek leave to amend my amendment by replacing the word 'first' with the word 'second'.

Leave granted.

The Hon. BARBARA WIESE: The Government will not support one, two or three years as a sunset provision. It is a matter on which the Government feels strongly indeed. All of the sections of the Act that would be covered by a sunset clause are issues related to funding questions. The Government has already indicated that the issue of funding will be dealt with and that there will be consultation on those questions. It is believed that, should a sunset clause be written into the legislation, the very considerable groundwork that has been achieved in the upgrading of equipment and removal of unroadworthy appliances, and so on, could be very seriously jeopardised. There is no doubt that, if some people who are not happy with some of the changes that have been taking place recently were to feel that there was an opportunity in one, two or three years that the whole thing might be turned around, they will be reluctant, in the short term, to take action to continue the very considerable work that has already taken place. For that reason, we very strongly oppose the notion of a sunset clause being attached to this legislation.

The Hon. J.C. IRWIN: I seek leave to withdraw my amendment.

Leave granted.

New clause as amended inserted.

Schedule 1.

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

Page 31—

Heading—Leave out 'Council' and substitute 'Advisory Committee'.

Clause 2 (2)—Leave out 'Council' and substitute 'Advisory Committee'.

Clause 2 (4)—Leave out 'Council' twice occurring and substitute, in each case, 'Advisory Committee'.

Clause 2 (6)—Leave out 'Council' twice occurring and substitute, in each case, 'Advisory Committee'.

Clause 3—Leave out 'Council' and substitute 'Advisory Committee'.

Clause 4 (1)—Leave out 'or Council' twice occurring.

Clause 4 (1) *(b)*—Leave out 'or Council'.

Clause 4 (2)—Leave out 'or Council (as the case may be)'.

These are consequential amendments.

Amendments carried; schedule as amended passed.

Schedule 2.

The Hon. M.J. ELLIOTT: I move:

Page 32—Before clause 1 insert new clause as follows:

Interpretation

(a1) In this schedule—

'the responsible authority' means—

(a) in relation to a regional bushfire prevention committee—the Board;

(b) in relation to a district bushfire prevention committee—the council, or councils, that established the committee.

Page 32—

Clause 1 (1)—Leave out 'a member of a committee appointed by the Board' and substitute 'A person appointed to a committee'.

Leave out 'the Board' and substitute 'the responsible authority'.

Clause 1 (2)—Leave out 'the Board' and substitute 'The responsible authority'.

Clause 1 (3)—Leave out 'the Board' and substitute 'The responsible authority'.

Clause 2—Leave out 'Board' twice occurring and substitute, in each case, 'responsible authority'.

Clause 3 (9)—Leave out 'Board' twice occurring and substitute, in each case, 'responsible authority'.

These are consequential amendments.

Amendments carried; schedule as amended passed.

Schedule 3 passed.

Title passed.

Bill reported with amendments; Committee's report adopted.

Bill recommitted.

Clause 3—'Preliminary'—reconsidered.

The Hon. M.J. ELLIOTT: I move:

Page 2, after line 19—Insert new definition as follows:

'fire management plan' means a fire management plan prescribed by the regulations.

The Committee agreed to inserting this definition. I explained why I wanted it. Later, when we got to using it, those who had supported it in the first place voted against it. Therefore, we have a definition of something which is not mentioned anywhere else in the Bill. That is a mildly ludicrous position. As such, I move that the definition be removed from the Bill.

Amendment carried; clause as further amended passed.

Clause 41—'Private land'—reconsidered.

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

Page 20, lines 20 to 23—Leave out all words in these lines.

I am doing this on advice.

Amendment carried; clause as further amended passed.

Bill reported with further amendments; Committee's report adopted.

Bill read a third time and passed.

ADELAIDE UNIVERSITY COUNCIL

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

That the Council elect the Hon. G.L. Bruce to be a member of the council of the University of Adelaide in the place of the Hon. Anne Levy, resigned.

Motion carried.

INDUSTRIAL CONCILIATION AND ARBITRATION ACT AMENDMENT BILL

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

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

That the amendment made by the House of Assembly to an amendment made by the Legislative Council be agreed to.

This deals with a situation where costs can be awarded in a reinstatement case. The provision put in by the Council was that costs would be awarded against an individual where they had behaved unreasonably. The House of Assembly has put in the word 'clearly' (unreasonably) to make it clear that the unreasonable behaviour must be manifest, obvious and clear, and I suggest that Council accept that.

The Hon. J.F. STEFANI: The Opposition has no objection to that and we support the wording accordingly.

Motion carried.

STATUTE LAW REVISION BILL

Adjourned debate on second reading.

(Continued from 13 April. Page 2982.)

The Hon. K.T. GRIFFIN: This Bill was introduced yesterday. It is somewhat unusual to deal with a Bill so quickly after its introduction. The Bill seeks to provide some statute law revision amendments to the Correctional Services Act, to the South Australian Heritage Act and to the State Transport Authority Act, in order that these Acts can be reprinted. Essentially, the statute law revision amendments relate to a description of fines and imprisonment in the new divisional form; that is, for example, a division 7 fine, a division 8 imprisonment, or whatever is the nearest division to the penalty previously included in the principal Act. I understand that some existing penalties do not correlate exactly to the particular divisional levels and, in those circumstances, they have been taken up to the next divisional level. I see no difficulty with that.

There are several other minor amendments which relate to duplication of subclauses and also a slight redrafting of one provision which does not alter the substance of that provision. In order to facilitate the reprinting of those three Acts and because it is of a Statute law revision nature only, the Opposition supports the Bill.

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

TAXATION (RECIPROCAL POWERS) BILL

In Committee.

Clauses 1 to 7 passed.

Clause 8—'General investigatory powers.'

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

Page 4, lines 32 to 34—Leave out subclause (3) and insert new subclause as follows:

(3) A person who has appeared before the commissioner or has furnished the commissioner with information pursuant to subsection (1) is entitled to be paid by the commissioner an allowance fixed by agreement between the commissioner and that person or by a Master of the Supreme Court.

I raised this issue yesterday during the second reading debate particularly because of representations which had been made to me about the inadequacy of the provision for allowances payable to witnesses where the commissioner requires persons to appear and to answer questions, when the commissioner acts on behalf of another State or Federal commissioner. The same concern was expressed about the cost of furnishing information to the commissioner by notice, acting in the same context. My amendment allows an agreement to be reached with respect to the costs incurred in complying with such notice, either to appear, or to provide information. It can either be agreed or fixed by a Master of the Supreme Court. I believe that there is more justice in that than in limiting the allowance to those which are equivalent to allowances payable to witnesses in local courts.

The Hon. C.J. SUMNER: The Government opposes this amendment. This clause relating to allowances or expenses is similar to the one contained in the Pay-roll Tax Act. Taxation legislation in other States provides that regulations may prescribe the scale of expenses. The honourable member's proposal is, in my view, far too cumbersome in involving the Master of the Supreme Court. It seems reasonable to fix the allowances by regulation, and that is the procedure followed in other tax legislation. I oppose the amendment.

The Hon. I. GILFILLAN: The Democrats oppose the amendment.

The Hon. K.T. GRIFFIN: I indicate that, if I lose on the voices, I do not intend to call for a division.

Amendment negatived; clause passed.

Clauses 9 to 13 passed.

Clause 14—'Immunity from civil liability.'

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

Page 6, after line 34 insert new subclause as follows:

(2) The immunity provided by subsection (1) does not extend to the Crown in right of any other State or the Commonwealth.

This amendment seeks to clarify the fact that the immunity from civil liability is given to the Crown in the right of South Australia, the commissioner or other person, and that 'other person' is not intended to extend to the Crown in the right of any other State or the Commonwealth. I believe that is the appropriate level at which to maintain that immunity from civil liability. I indicated that I am always cautious about accepting in legislation provisions which grant that sort of immunity to the Crown. I think it is dangerous, and I would want to see it limited as much as possible.

The Hon. C.J. SUMNER: The Government opposes the amendment. The whole purpose of the Bill is to provide for reciprocal powers and arrangements between States and, therefore, we believe that the immunity ought to apply in accordance with the scheme of the Bill.

The Hon. I. GILFILLAN: The Democrats oppose the amendment.

The Hon. K.T. GRIFFIN: In the event that the Democrats and the Government oppose the amendment, I indicate that I will not call for a division.

Amendment negatived; clause passed.

Remaining clauses (15 and 16) and title passed.

Bill read a third time and passed.

AUSTRALIAN AIRLINES (INTRASTATE SERVICES) BILL

Second reading.

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

That this Bill be now read a second time.

State Governments have jurisdiction over intrastate air transport, but South Australia chooses not to regulate air serivces within the State and has maintained a consistent policy of allowing access to any operation wishing to engage in intrastate airline operations. However, provisions of the Commonwealth Constitution prevent Australian Airlines, because it is a Commonwealth instrumentality, from operating intrastate air routes without enabling State legislation.

The effect of this Bill is to enable Australian Airlines and its subsidiaries to operate air services between airports within South Australia, or to enter into operating agreements with intrastate operators. The Bill neither grants any rights or privileges to Australian Airlines that other carriers do not already have, nor relinquishes jurisdiction over South Australian intrastate services to the Commonwealth.

Clause 1 is formal. Clause 2 provides that the Act will come into operation on a day to be fixed by proclamation. Clause 3 provides that section 54 of the Australian Airlines (Conversion to Public Company) Act 1988 of the Commonwealth is adopted, thereby enabling Australian Airlines and its subsidiaries to operate South Australian intrastate services.

The Hon. M.B. CAMERON (Leader of the Opposition): In a spirit of cooperation of the Opposition will support this Bill so that it can proceed immediately. It is a Bill to enable Australian Airlines to operate on the same basis as Ansett Airlines. Therefore, it merely brings in the spirit of competition that should have existed years ago.

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

EDUCATION ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 6 April. Page 2742.)

The Hon. R.I. LUCAS: To try to expedite the proceedings of the Council, in my second reading contribution I will raise a series of questions that I would usually raise with the Minister in charge of the Bill during the Committee stage. I understand that a departmental officer has been patiently waiting off and on for the past few days to advise the Minister and I hope that the Minister will be able to indicate the Government's response to the questions that I pose. It depends on the Minister's responses whether I will move amendments during the Committee stage of the Bill.

The Bill seeks to amend the Act in four principal areas. First, to appoint the presiding officer of the Teachers Appeal Board from the ranks of Industrial Court judges or magistrates. Secondly, acting appointments to promotion positions in schools will not have to be undertaken using the provisions of section 53 of the Act which apply to substantive appointments. For example, an external selection panel will not have to be used for a short-term appointment. Thirdly, the Bill provides for an appropriate framework for non-government schools to be able to accept full fee paying overseas students. A code of practice approved by the Australian Education Council is included as part of the changes. The fourth general amendment concerns the regulation-

making provisions of the Act, which are to be amended to allow changes to the regulations to increase the powers of school councils. In the main, I understand that those changes are only to validate certain practices that have been in operation for a number of years. For example, using council funds, some councils have employed extra ground staff hours or specialist teachers such as music teachers.

The Liberal Party has no concern with two of those areas: that which relates to the Teachers Appeal Board and the code of conduct for non-government schools, although I will ask the Minister a number of questions on that matter. The two areas that I will explore in some detail during the second reading debate and, dependent on that, in the Committee stage concern the amendment to the provision for acting appointments and those relating to the powers and functions of school councils. Clauses 5 and 6 make changes to sections 53 and 54 of the principal Act. Clause 5 seeks to amend section 53 by striking out a reference to promotion lists, substituting the phrase, 'by an appointment in an acting capacity for a period not exceeding 12 months'. In my judgment, there are two separate provisions in this clause.

The current procedures for appointing persons to promotion positions of a substantive nature in the Education Department are carried out in two general ways. In the past, appointees to promotion positions have been taken off lists called promotion lists within the Education Department. Once a person reached the top of the list, he or she was taken off the list and achieved a particular promotion position, such as Principal, in a school. The other way of appointing promotion positions was to use section 53 of the Education Act. Under that section and associated regulations, principals were appointed through the use of procedures whereby the Minister advised the Institute of Teachers some weeks prior to the appointment of the intention to use section 53 and an external selection panel was established to interview a short list of applicants. The successful applicant would be appointed under the provisions of section 53.

My first question to the Minister is whether promotion lists are still being used in the Education Department. I refer to advice given by the Crown Solicitor to the Director-General of Education dated 15 November 1987 which states:

Re: Government Management and Employment Act 1985: Section 6 (1) *(a)*—Whether appointment of Teachers from Eligibility Roles is in Breach of Merit Principle

1. I am instructed that the practice in the Education Department has been to effect promotions by following a strict order from eligibility rolls. This involves teachers applying to be assessed as eligible for promotion to the next promotion level. Those assessed as not being eligible may not be considered for promotion to the next level. A small number of promotion positions are filled as 'special', which does not require eligibility for appointment to that particular level. The detailed guidelines which apply to assessment for promotion are contained in the assessment handbook developed by the department. I am further instructed that the Education Department is proceeding toward discontinuance of assessment and eligibility roles over a three-year period.

This is why I directed the question to the Minister. This advice was provided in late 1987 and it indicates that the department's then intention was that over a three-year period the use of eligibility or promotion lists would be discontinued. This timeframe would mean that at present in 1989 promotion lists would still be used within the Education Department.

As I said, it is my understanding that, certainly for this year at least and I thought for part of last year, the Education Department has not been using promotion lists. I seek a response from the Minister in relation to the department's use, if at all, of promotion lists. On page 10 of the advice to the Director-General of Education the Crown Solicitor says:

It seems to me that a promotion list in which the order of ranking is determined having regard to the various qualities specified in the definition of 'merit' in the GME Act would satisfy both the requirements of regulation 59 and section 6 (1) *(a)* of the GME Act. This can be achieved by the department amending its assessment guidelines so that the order in a promotion list was determined by merit (as defined in the GME Act) and not as at present based in part on years of service or years since initial assessment.

This is an important part of the advice from the Crown Solicitor to the Director-General of Education because he says that whilst he believes there is a problem in relation to the current method of compiling promotion lists—that is, in part on the basis of seniority—that it would be possible for the Education Department to retain promotion lists while one of the criteria is years of service and while the lists are based on a definition of merit as covered by the GME Act.

Representatives of principal and teacher associations have put the view to me that, rather than throwing out completely the promotion list system as it exists within the Education Department, the department should have considered the advice from the Crown Solicitor to see whether it would be possible to retain an amended version of promotion lists.

I seek a response from the Minister who is handling the Bill in this Council as to why the Minister of Education and/or the Director-General of Education chose to ignore that part of the recommendation from the Crown Solicitor in relation to the possible amendment of promotion lists.

The clause 5 amendment to section 53 comprises, in my view, two separate and distinct sections: first, it removes any reference at all to promotion lists in the Education Department. The related amendment in clause 6 of the Bill removes the only other remaining reference in the parent Act, as far as I can see; that is an amendment to section 54 of the Education Act which refers to promotion lists.

Those two related provisions remove any reference in the Education Act to promotion lists. In part, they seek to pave the way for the Education Department either to continue down the path of removing any reference to the use of promotion lists or to validate in some way their decision not to use promotion lists at present. As I said, this depends in part on the answer to the first question from the department where the promotion lists are still being used in some form or another.

The other part of the amendment to clause 5 which I see as being different (although the way the clause is constructed they are related) is that the department and the Government are introducing a new provision for making acting appointments within schools. I say, in general, before returning to the question of promotion lists, that the Liberal Party supports this part of the amendment; that is, it seems sensible to the Liberal Party that acting appointments should be treated in a different way to substantive appointments and promotion positions within schools.

As I understand it, Crown law advice to the department is that acting appointments—for example, an acting deputy principal in a school for a period of one month up to 12 months—would have to be conducted using the provisions of section 53 of the Education Act, given that the Education Department is no longer using promotion lists. In days gone by, if a deputy principal went on holidays for two months someone was taken off the appropriate promotion list and appointed acting deputy principal for that school. This was an easy procedure—there was a list and the acting deputy principal acted for the period of two months. Because the department no longer uses promotion lists, according to

Crown Law it must use the onerous provisions of section 53 of the Education Act.

I am advised that the department has not been using the provisions of section 53 and its associated regulations as they were meant to be used. Crown law has highlighted this fact. It says that if the department is going to use section 53 it will have to give advice of the period—two or three weeks—to the Institute of Teachers and appoint panels in a certain way. With this long and cumbersome procedure, many schools would say, 'We are only appointing a deputy for four to six weeks. Why go through all this procedural rigmarole and red tape? By the time we complete it, the substantive deputy principal will have returned to the school anyway.'

Therefore, the Liberal Party supports that part of the amendment which intends to provide, in a separate way, for acting appointments to schools. We would be looking for some form of commitment from the Government that this provision would not be used in a rolling capacity because the acting provisions can be for 12 months, to subvert the intention of section 53 of the Act. As I understand it, the Minister, or the department, has already had discussions with the Institute of Teachers on this matter. I do not envisage that getting a commitment from the Minister in charge of the Bill here this evening should be difficult. However, nevertheless, I think it should be on the record in this Parliament.

The provisions relating to promotion lists remain a matter of concern. Having discussed the background to promotion lists, I want to look at them in relation to the department's current moves towards limited tenure for promotion positions. The Hon. Harold Allison in another place sought from the Minister detail of limited tenure promotions of the Education Department. We have yet to receive that advice. We would be interested to receive any information that might be available. I certainly would not be holding proceedings up this evening on this matter, but the Liberal Party does want to understand the current state of negotiations between the Institute of Teachers and the department on limited tenure proposals. I want to know how this removal of promotion lists relates to the current move towards limited tenure. For example, if the provisions for promotion lists is retained within sections 53 and 54 of the Education Act, does that in any way prevent or inhibit the department's intention to move down the path towards limited tenure? Or, is it the department's view, that, even if the reference to promotion lists were left in sections 53 and 54, the department could move ahead with its intentions for limited tenure within schools in South Australia, if that is the way the department and the Government intend to move?

Related to that, I want to ask: under what head of the Education Act or its associated regulations is the Government currently appointing limited tenure for principals in our schools? The Minister of Education made an announcement some time earlier this year that there would be a number of appointments to principal positions which would be on a five-year limited tenure basis. I seek a response from the Minister as to where within the Education Act the Minister and the Government have the power to make limited tenure appointments.

I want to refer to some advice given to the General Secretary of the Institute of Teachers (Jan Lee). On 1 March 1989, the Institute of Teachers received advice from Johnston Withers, solicitors, in relation to the question of limited tenure. Without boring the Parliament, I indicate that Johnston Withers' conclusion in relation to the powers of the Education Department as they relate to limited tenure appointments was as follows:

> It is therefore our opinion that in the absence of any enabling regulation to the contrary, an appointment to the position of a principle described in regulation 55 can only therefore be a permanent appointment.
>
> In view of this opinion, it would appear that the purported appointments of temporary principals under regulation 55 are invalid and the remedy would lie in the issue of a summons in the nature of the old prerogative writ out of the Supreme Court of South Australia.

As I understand it, the Institute of Teachers, or teachers who are aware of this advice, are considering their positions in relation to the current decision of the Minister and the Education Department to go ahead under the current Act and regulations to make limited tenure appointments to schools.

The last matter I want to raise in relation to promotion lists and acting appointments is that, given the Liberal Party and presumably Parliament are supporting this part of the amendment which relates to a separate provision for acting appointments to school up to a period of 12 months, what will be the new procedure which (and I presume it will be outlined in an administrative instruction sometime soon) for the appointment of acting promotion positions within schools?

The Hon. Harold Allison put the question to the Minister in another place and received a reply along the lines, 'Well, there will be a whole series of ways that acting appointments can be made to schools.' I would certainly be seeking a little more detail as to how that might be achieved. I believe that the appointment of schools-based panels is expected, and I presume that the department, in its administrative instructions to schools, would be issuing guidelines. I also presume that departmental officers have already gone some way, if not all the way, down the path in indicating how schools should go about filling acting positions if this legislation goes ahead. Finally, what appeal provisions, if any, exist for teachers who feel they might have been wronged in any way in the appointment of an acting deputy principal or principal at a particular school?

In summary, the Liberal Party supports that part of the amendment in relation to acting appointments. I have concerns about the promotion list. I have had drafted an amendment which separates those two questions. Whether I, on behalf of the Liberal Party, would move ahead in the Committee stages will depend on the answers provided to the questions that I have put in relation to promotion positions. The possible stance of the Liberal Party will be that if we are not satisfied with the answers we get in relation to promotion lists, we would seek to amend that clause to make provision for acting appointments but to leave within the parent Act, in both sections 53 and 54, reference to the promotion list.

In relation to non-government schools, I do not intend to put questions to the Minister that would seek to delay the Bill. However, at some stage, I would be looking to receive from the Minister a report on how it is planned to bring in the 100 overseas students who are to attend four Government schools in South Australia. Advice provided to me is that there may well have been only 10 overseas students brought in thus far. Some of the schools promised additional staff to cope with these overseas fee-paying students have not received that staff. I seek a response from the Minister in relation to that.

However, the general concept of a code of conduct for non-government schools, in the way in which they might seek to attract full fee-paying overseas students, is certainly supported by the Liberal Party. Again, the Hon. Harold Allison sought a copy of the code of practice that is to be

implemented. We sought an assurance that the code of practice that the department is to implement related to this legislation, is exactly the same as the code of practice approved by the Australian Education Council.

We want an assurance that the code of practice is the same as the code of practice approved by the Australian Education Council. The non-government schools are very relaxed about, and supportive of, the code of practice as approved by the Australian Education Council, but they want to be assured that there will not be any South Australian-based changes to the national code of practice.

Why does the code of practice not apply to Government schools? If a code of practice is required to be followed by non-government schools bringing in full fee-paying overseas students, it is a genuine question to ask why the four Government schools which are bringing in full fee-paying students are not required to follow the code of practice. We shall be looking to move an amendment in the Committee stage to make the code of practice apply to Government schools as well, unless we can be assured that in some other way the restrictions placed on non-government schools by the code of practice will apply to the operation of Government schools.

The last important area relates to the powers and functions of school councils. Regulation 206 under the Education Act looks at the role of the school council. It sets out eight roles for school councils. The eighth role is 'to carry out such other duties as are prescribed by these regulations or required by the Minister'. Regulation 201 (1) says: 'Unless the Minister determines otherwise in the case of any particular school by notice published in the *Education Gazette*, the council of any Government school shall consist of'—and it sets out the composition of the school council. Regulation 201 (3) says: 'Unless the Minister otherwise determines for any particular council by notice published in the *Education Gazette*, no school council shall consist of more than 19 members.'

I return to regulation 206—'The role of a school council.' Advice given to me is that regulations 206 and 201 are *ultra vires* the Education Act; that is, there is no power within the Education Act to allow the Minister to do what these regulations seek to allow him to do. As I understand it, the regulations have been in force for many years. The Liberal Party is relaxed about allowing greater flexibility in the role of school councils. We are certainly supportive of increasing the powers and functions of school councils. That has been part of our policy for many years. We are happy about a provision in the regulations 'to carry out such other duties as are prescribed by these regulations'. But, unless I can be convinced otherwise, I do not support a provision 'to carry out such other duties as are prescribed by these regulations or required by the Minister'.

If the powers and functions of school councils are increased by the use of the regulation-making power of the Act, both Houses of Parliament are able to express a view on that matter. Parliament can support the regulations or vote to disallow them. If the Minister seeks to give a particular power to a school council under the regulation-making provisions, Parliament can oppose or support those regulations. But, this provision, which says 'or required by the Minister', gives any Minister of any Government of the day complete power to alter the functions and role of school councils without reference to Parliament. If that is the effect of these regulations and the Act, the Liberal Party will not be supporting that intention.

Similarly, regulation 201 (1) says: 'Unless the Minister determines otherwise in the case of a particular school by notice published in the *Education Gazette*, the council of any Government school shall consist of'—and it lists the composition of the school council. On my understanding that is saying that the Minister, and the Minister alone, can determine whether or not, for example, 'A member nominated by the House of Assembly member of Parliament for the district in which the school is situated' can be a member of a school council. I have no evidence of that occurring, and I doubt whether it has. However, it is unacceptable that a Minister, because he or she happens not to like the local member of Parliament, who might come from a different political Party, could, without reference to Parliament, alter the composition of the school council by removing, for example, that local member of Parliament for that particular school. There are other representatives of various organisations. Equally, I do not believe that the Minister should have the power, unhindered, to remove such people from a school council. If it were to be done by regulations, Parliament would have some oversight and it would be able to agree or disagree with the use of that power.

I have more flexibility with regulation 201 (3), which indicates that the Minister, in effect, can determine that the school council can be increased from, say, 19 to any number above that figure. Virtually every week in the *Education Gazette* is a notice from the Minister of Education indicating that he has agreed to increasing a local school council from, say, 19 to 22 members. That is not of much concern to me. It still remains within the overall purview of the general principle that I am raising, but, because the issue is not so significant, I am more relaxed about that provision.

I am more concerned about the provision in regulations 201 (1) and 206 (8). As I said, my advice is that the use by the Minister of this power can be argued to be *ultra vires* the Act. If anyone wanted to challenge any changes to the role of a school council or an increase in its size, of which the Minister has done hundreds, and any changes to the composition of a school council, it would be a difficult case for the Minister of Education to argue if it were to be determined in a court of law.

That is the background to the regulations. On my understanding, what we now have in the legislation before us is an attempt by the Minister of Education to validate that sort of procedure. In particular, paragraph (sb), referred to in clause 11, covers the sort of arguments that I have been talking about. I indicate that the Liberal Party supports paragraph (sa), which gives power to the Minister to make regulations on the constitution, powers, functions, authorities, duties or obligations of school councils or any other matter relating to school councils or their operations. On my reading of the legislation, that gives the Minister the power to make virtually all the sorts of changes to the regulations on the functions and composition of school councils that the Minister would want to make. It also preserves the right of the Parliament and, in particular, of the Liberal Party and the Australian Democrats, to say where we agree or disagree with a decision of the Minister of Education.

I have grave concern about the need for paragraph (sb), under clause 11 of the Bill. That says it would give the Minister the power to make regulations:

> ... conferring on the Minister power to specify any matter; power to enlarge the functions of school councils and power to determine any specified matter relating to the constitution of school councils, power to enlarge the functions of school councils and power to resolve disputes between head teachers and schools councils.

As I said, what that amendment is trying to do, in my judgment, is to validate what is currently invalid in the current education regulations. All those provisions to which I have referred, which I believe could arguably be *ultra vires*

to the Act, would be validated by this change to the Education Act. If that is the only purpose for these changes, then we will be seeking, either in part or in full, to defeat paragraph (sb) in this Bill for all the reasons I have given.

The Minister of Education and the department may well have other reasons for these changes. What I need to know from the departmental officers and the Minister is: are there any other intentions behind these changes or are these the only reasons for them? In relation to paragraph (sb), I have talked about the power to enlarge the functions of school councils and, if there is no other argument for that provision, I will seek to delete those words.

In relation to the constitution of school councils, I would want to have further discussions with the Minister's advisers. As I said, I am certainly flexible in relation to the numbers of members of a school council; that is, increasing it above the number of 19 (regulation 201 (3)). However, in relation to regulation 201 (1) I have some concerns and I want some discussions about the department's and the Minister's intentions. The other provision (which has been introduced, but I cannot find a reference to it in the regulations) concerns the Minister being given power to determine any specified matter relating to resolving disputes between head teachers and school councils.

I have received representations from the South Australian Primary Principals Association and a number of other interested education groups (including the South Australian Association of School Parent Clubs) expressing concern about the very broad nature of this part of the Education Act Amendment Bill. The South Australian Primary Principals Association in particular is concerned about this conferral on the Minister of the power to resolve disputes between head teachers and school councils. It would like to see that sort of responsibility left with the Director-General of Education, or a delegated officer, such as the Area Director, in a particular case.

The Minister addressed this in part in another place, but it is still not clear to me in what circumstances and under what procedures the Minister of Education would seek to use this power for himself or, as I understand it, to appoint some independent arbitrator to resolve a dispute between head teachers and school councils. The Primary Principals Association also wants to know the intention of the Minister of Education. Are we to have someone from within the Education Department but not directly related to the local district or area coming in as the outside arbitrator: are we talking about someone from completely outside the Education Department—someone versed in industrial law or whatever: or are we talking about the Minister? Basically, the Primary Principals Association wants to know the intention behind this provision.

I believe that I have outlined the concerns of the Liberal Party about these provisions. As I indicated earlier, the responses I receive from the Minister will determine the nature of amendments that we have to move during the Committee stage of this debate. I support the second reading.

The Hon. T. CROTHERS secured the adjournment of the debate.

EVIDENCE ACT AMENDMENT BILL

Returned from the House of Assembly with the following amendments:

No. 1 Clause 4, page 2, lines 4 to 6—Leave out subsection (1) and substitute:

(1) Where a court is satisfied that a suppression order should be made—

(a) to prevent prejudice to the proper administration of justice;

or

(b) to prevent undue hardship—

(i) to a victim of crime; or

(ii) to a witness or potential witness in civil or criminal proceedings who is not a party to those proceedings,

the court may, subject to this section, make such an order.

No. 2 Clause 4, page 2, line 14—After 'administration of justice' insert 'or the undue hardship,'.

No. 3 Clause 4, page 3, line 27—After '*(a)*' insert 'immediately'.

No. 4. Clause 4, page 3, line 29—After '*(b)*' insert 'within 30 days'.

Consideration in Committee.

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

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

There are four separate amendments, and I will deal with them all. The first amendment relates to proposed section 69a and is designed to make it clear that, where undue hardship may occur in respect of a witness, or a potential witness other than the accused, which expressly may include a victim of a crime in criminal proceedings, a court may make a suppression order, subject of course to other provisions of the section.

This ground of undue hardship for witnesses and victims is in addition to the general ground of prevention of prejudice to the proper administration of justice. The example that has been given where there may be an injustice if a provision such as this is not included is in the case of blackmail, for instance, where a blackmail victim could be subject to undue hardship. This issue has been addressed fully in the earlier debate in this place. I indicated then that I would consider this matter, and I did. The Government has moved this amendment, which accommodates at least some of the concerns of members opposite.

The other two amendments deal with the imposing of time constraints in courts getting the suppression orders to the Registrar and the Attorney-General respectively. They were suggested by the Chief Magistrate. Presently there are no such constraints and their imposition is considered desirable in order to enhance the public administration of the law on this topic.

The Hon. K.T. GRIFFIN: I will not oppose these amendments. The time limits contained in amendments Nos 3 and 4 are appropriate and amendments Nos 1 and 2 go some way towards picking up the issues that I raised in relation to victims and witnesses. However, it seems to me that, in the drafting of this proposed subsection (1), the Attorney-General has not addressed some important issues. If one looks at the drafting of subsection (2) of new section 69, one sees that when a suppression order is made (and that will apply to not only defendants but also to victims and witnesses) the public interest in publication of information relating to court proceedings and the consequential right of the news media to publish such information must be recognised as considerations of substantial weight.

However, the court may make the order only if satisfied that the prejudice to the proper administration of justice or the undue hardship that would occur if the order were not made should be afforded greater weight than the considerations referred to above. What is happening is that the public interest and the consequential right of the news media to publish are really to be given substantial weight which, in a sense, will make it very much more difficult for victims and witnesses to obtain a suppression order where undue hardship is demonstrated.

I should have thought that the area of victims would be of particular concern. I hold the view that, with victims in particular (but also with other witnesses), if undue hardship is established, that really ought to be enough for a court to grant an order, but it will not be enough under the amendments as drafted. I would like the Attorney-General to consider that it will still be very difficult for a witness—and particularly a victim—to gain a suppression order even if there is undue hardship, unless it can be demonstrated that that undue hardship should be accorded greater weight than the public interest and the right of the media to publish. I see some difficulties with the way in which this has been drafted. I ask the Attorney-General to indicate if that is what he intends.

The Hon. C.J. SUMNER: As far as the drafting is concerned, there are no problems. As far as I am concerned, the clause gives some added protection for witnesses and victims, which is what members argued for.

The Hon. K.T. GRIFFIN: I argued that it does give more protection, but it does not give the sort of protection that I argued for. I think that there is a problem with the drafting and I put that reservation on the record. I do not think that there is any generosity in the Attorney-General in the way in which he has approached this problem.

The Hon. C.J. SUMNER: That is a gratuitous performance at the end of the session.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: The honourable member said there was no generosity. This particular amendment meets, at least part of the way, the objection that the honourable member raised before. He may have disagreed with it—that is fine. But, it is the approach that the Government has decided to take.

The Hon. K.T. GRIFFIN: That is all I wanted to know. It is all very well for the Attorney-General to get uptight about it. I was asking him to clarify whether what I expressed as my interpretation was what he intended. He has indicated that that is so. With respect to the way in which victims of crime and witnesses should achieve some protection, there is a difference between the two of us. I suggest to the Committee that the amendment really does not go as far as it ought in relation to victims and witnesses in criminal proceedings.

The Hon. C.J. SUMNER: It does. It goes quite adequately in the direction of protection of the interests of victims and witnesses. It still retains the provision relating to the interests of the media being given substantial weight as it ought. Undue hardship is introduced as a criterion in addition to the administration of justice for victims of crime and witnesses. I assume that that is what the council wanted.

The Hon. I. GILFILLAN: For this amendment to be accepted it has to be by consent of the Opposition. The shadow Attorney has applied a reasonable thought and analysis to this amendment. It is our intention not to support the measure, and that leaves the ball in the Opposition's court.

The Hon. K.T. GRIFFIN: I have not stated that I am going to oppose the amendment. In fact, I have made it quite clear. I merely wanted to clarify it. I was expressing a view that it does go—in my interpretation of the drafting—part of the way towards providing the additional protection which is necessary for victims and witnesses. But it does not go to the same extent as I had proposed when the Bill was in the Committee stages before this Chamber. That is where it rests.

Motion carried.

EDUCATION ACT AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

(Continued page 3143.)

The Hon. BARBARA WIESE (Minister of Tourism): In his second reading contribution the Hon. Mr Lucas asked a series of questions and I hope that I might be able to respond to them to his satisfaction. I will deal, first, with promotional vacancies and promotion lists. I draw the honourable member's attention to the second reading explanation, which made clear the Government's intention in this respect, and I remind him that the Education Act provides for promotional vacancies within the teaching service to be filled from either promotion eligibility lists or in accordance with section 53 of the Act, which operates in association with certain education regulations.

The Education Department has modified its personal selection processes to ensure strict compliance with the merit provisions of the Government Management and Employment Act and as a consequence promotion eligibility lists have been discontinued. This makes promotional appointments subject to section 53.

Reference was made to the advice from the Crown Solicitor. I point out that the advice was two fold. The suggestion referred to by the honourable member was considered to be not practical, given that the list would need continuous reassessment. There would still have to be selection conducted within the list. The Government has given parents a position on panels selecting principals. Each school has particular requirements that need to be written into the job and person specification for that position. Any notion of a list could otherwise not be contemplated. For the factors above it was not possible to take that suggestion and implement it. The Crown Law advice provided an alternative, namely, that direct competition for each vacancy could be introduced by amendment to section 53. In the meantime, it is open to the Minister to give notice to the Institute of Teachers in accordance with regulation 60 (1).

The Education Department has not used eligibility lists since early 1988. Departmental policy in filling promotion positions, other than short-term acting appointments for leave, sickness and so on, is to follow the requirements of section 53. Short-term vacancies have been filled under regulation 60 (1).

All positions at deputy principal and senior level have been filled in an acting capacity given the requirements of circular 33 from the Commissioner for Public Employment, which relates to the filling of vacancies through surplus officers before recruiting further to an area of surplus. There is a surplus at both levels in respect to these positions. These positions have been subject to section 53 and will continue to be so subject. The amendment will not exclude them. There is no relationship between the amendment to section 53 and any move towards fixed term appointments.

I turn now to the method of filling vacancies. The *Education Gazette* notice of 6 May 1988 describes the way in which acting promotional positions would be filled. I am not sure whether the Hon. Mr Lucas has seen this gazette, so I seek leave to table the document so that he has that opportunity.

Leave granted.

The Hon. BARBARA WIESE: I turn now to appeal rights. The proposed amendment does not interfere in any way with the existing appeal provisions available to teachers either in terms of those filled under section 53 or at school level for short-term vacancies. The appeal rights have been reiterated to the South Australian Institute of Teachers through an exchange of letters.

I will now deal with the code of conduct, that is, the AEC code of conduct. I seek leave to table this document so that the Hon. Mr Lucas may look at it.

Leave granted.

The Hon. BARBARA WIESE: With respect to this code of conduct, the Non-Government Schools Registration Board was involved in consultations prior to the drafting of these amendments. The code of conduct approved by the AEC provides the framework within which each State develops a code that will protect the rights of full fee paying overseas students.

The South Australian code seeks to provide a guarantee of the quality of education standards, the accuracy with which educational institutions market their product and sufficient and accurate information so that decisions are well-informed. The code also seeks to guarantee the quality of recruitment procedures and offshore agents. Institutions are required also to provide adequate support services for accommodation, counselling, welfare, remedial education, and so on. The code seeks, therefore, to protect the quality of education provided.

The Non-Government Schools Registration Board governs the quality of curricula and occupational, health, safety and welfare. The changes extend that protection to full fee-paying overseas students. The Hon. Mr Lucas also asked questions about the number of full fee-paying students so far. As at February 1989, 16 schools have received a total of 116 students, and five schools have been registered since that time. The question of additional staff for those schoools taking full fee-paying students was raised. An advertisement for a counsellor has been gazetted. The position is being created to serve the student welfare needs of full fee-paying students in Government schools.

The Hon. Mr Lucas also asked whether the AEC code of conduct would apply to Government schools. It is implicit that it will apply to both sectors. The Director-General of Education guarantees the quality of curriculum, welfare and safety for all students within the Government sector.

I now turn to the questions asked about school councils on clause 11. Initiatives for changes to the powers, duties, and responsibilities of schools came out of a State-wide review involving all relevant interest groups in the mid 1980s. Some of the changes involved amendments to regulations. Those changes were supported by interest groups, including extension to employment powers, resolution of disputes by area directors and authority to be invested in area directors to increase the size of school councils.

Since regulations are delegated legislation they cannot be used to delegate responsibilities to other persons unless the Act provides for it. Therefore, the amendments that are being moved here are intended to clarify the areas for which the Minister is responsible so that at his discretion he can delegate specific powers, for example, approval to increase the size of a school council. That covers the points raised by the honourable member and I trust it covers them to his satisfaction.

Bill read a second time.

PASTORAL LAND MANAGEMENT AND CONSERVATION BILL

Adjourned debate on second reading.

(Continued from 6 April. Page 2725.)

The Hon. M.J. ELLIOTT: Here we are at 11.30 p.m. on a Friday night after starting work at 9 a.m. this morning commencing a debate on the pastoral Bill, and let it be on the record in *Hansard* that the Government decided that that was the time to treat this Bill and that the Opposition Parties were most upset by the decision to treat it at this time. We were quite willing to treat it on another day.

The Hon. Carolyn Pickles: It has been sitting around since before Christmas.

The Hon. M.J. ELLIOTT: It has not been sitting around since before Christmas. The draft before Christmas was significantly different from the one we have before us. So, check your facts before you say things like that. You were way out of line there. This is an important Bill. It has quite profound impacts. I will not explore the full range of the Bill, but I will explore some of the concerns about this Bill that have been expressed to me by various interest groups and will state my own general philosophical attitude towards it. This Bill has wide ramifications and I have gone through a great deal of consultation with environmentalists, pastoralists, with four-wheel drive vehicle owners and almost anyone else who considers that they have some sort of interest in the pastoral lands.

This Bill has caused some concern among environmentalists. It certainly has some very good clauses and is quite strong. However, there are still some perceived deficiencies. At the request of environmental interests, I will pursue the issue of third party standing in the courts and third party appeals. It is a question whether or not one concedes that lands which are public lands allow the public to have an interest other than through the control which is exercised by the Parliament.

It is my belief that, if they are public lands, members of the public who are interested should have a chance to pursue their interest by way of having standing in the courts and by way of third party appeals in various hearings, such as tribunal hearings. I am fully aware of the concerns that some people have in relation to third party appeals. People are afraid that appeals could be vexatious or frivolous. However, there is no reason why such appeals can be ruled out of order. If need be, the Act can be amended accordingly so that we do not have vexatious or frivolous appeals. That is the approach used in the United States. In fact, people who have a regular record of appearing under certain Acts can be excluded from the court permanently for continuously arriving and behaving in that fashion.

Third party appeals could be attractive to not only environmentalists (who first raised the issue with me) but also other groups. I believe that these appeals will open up an avenue for the United Farmers and Stockowners, and other groups, that may have some difficulty in establishing third party standing in the courts, to test the law in the courts.

I would like to see third party appeals covered in a lot of legislation. In fact, some years ago this issue was looked at in some length by a South Australian law review committee and all but one member of that committee, as I recall it, was in favour of third party appeals being made available generally, and the one dissenting member suggested that third party appeals should be legislated on a Bill by Bill basis. In either case, I believe that all those people who signed the report supported third party appeals in the courts in one form or another. This Parliament should be looking at third party appeals, particularly in public lands.

There is a lot of conflict between various groups about how we should approach pastoral lands. Some say we should use a stick and others say we should use a carrot. It would be nice if we could find a middle road between those two extremes. There are always some people in any group—pastoralists, teachers, doctors, parliamentarians, or whatever—who do not do the right thing. I believe that in this day and age most people find it untenable that pastoralists

should be allowed to grossly abuse their property. Even under this legislation, things have been considerably tightened up. I think that recently the board has behaved more responsibly than it did in the past.

The Hon. Peter Dunn: What does that mean?

The Hon. M.J. ELLIOTT: It has carried out its obligations. In recent years it has lifted its game and many pastoralists have claimed—and I believe them—that some properties have improved significantly because of better land management practices. Nevertheless, it is necessary to have legislation which guarantees that the land is looked after. That is consistent with the approach that the Democrats have towards the environment generally.

We talk about a sustainable economy and, in this case, it means sustainable in relation to agriculture. That means that we want the land to be able to be used indefinitely for purposes that are good not only in terms of providing food (and, in the case of pastoral countries, providing fibre for clothing manufacture) but also in relation to providing a refuge for native species of animals and plants that live in the area. We should be looking to the land staying in a good condition. Clearly the environmentalists were concerned about the possibility of degradation and they have lobbied me to strengthen a number of clauses to tackle degradation, as the Bill does, but they felt that in places the Bill could be tightened up further.

Representations have been made to me that there is insufficient knowledge of the pastoral lands. The amount of research carried out there has been relatively low compared with what has been done in the more intensively settled parts of the State. By that I mean not just scientific research, but agricultural research as well. I believe that there is an urgent need for a better understanding of the land. Certainly practising pastoralists who have been there a long time have a good local working knowledge, but good scientific research can be of benefit.

There has been some lobbying about more money possibly being set aside via this legislation to ensure that research is carried out. If research is properly applied, it can assist in the aim of making the agricultural use of that land sustainable in the long term. That is of benefit not only to pastoralists—they want the land to be sustainable in the long term—but for the State and country.

The Hon. Peter Dunn interjecting:

The Hon. M.J. ELLIOTT: You can talk about where the money comes from and where it goes, but the important thing is that money needs to be earmarked for particular areas. There has been a request for information to be freely available to the public. A request was made that scientific assessments should be freely available. I think that at this stage they find their way into the State Library as official Government documents, although there is doubt about what is or is not an official State Government document. I shall be moving an amendment to ensure that there will always be copies of documents, such as scientific assessments, lodged at the State Library so that interested members of the public will be able to peruse them.

It is recognised that the Democrats are interested in environmental issues. We are accused at times of being a one issue Party. It is a claim that I refute. However, it is not necessary for me to dwell any further on the environmental aspects of the Bill. We support those parts of the Bill which seek to secure the long-term sustainability of the environment and will be moving a number of amendments to strengthen that further.

There is another side to the Bill. Many families live in that area. Some of them have been there for generations. It does not really matter whether they have been there for generations or have bought a property there only a few years ago. People are earning their livelihoods there and the Bill clearly could have a drastic effect upon them. I assume that the number of Democrat votes in that area is about zero. However, I do not think that any responsible politician has the right to say, 'Because people do not vote for me, I do not give a damn about them.'

I have looked at the Bill and considered some of the fears expressed by the pastoralists, and I believe that some of those fears are justified. I have spoken to the Government and its advisers on a number of occasions and made that clear. It has been rather interesting to look at the volume of amendments the Government itself has brought into this place. When one considers that this is the Government's own Bill yet it can bring in so many amendments, it is some sort of admission that the Bill was deficient to start with—and that is one of the reasons why we have an Upper House. It prevents the arrogance of Governments steamrolling through things which have the capacity to do people harm.

There are a couple of big issues as far as the pastoralists are concerned, and perhaps the biggest is the question of rents. I want to make my position on rents clear before I look at the way we can tackle this question. The land is leasehold and I believe it should remain so. I am not willing to support any move towards freeholding. Rents have been quite low. One could argue what is low and what is high but, in my opinion, the rents have been low for a very long time.

I believe that that must have some ramifications. Before one purchases a property one looks at the potential return as well as how much one has to pay out, and one of the things to pay out is rent. So, the decision to purchase a lease and the question of how much one pays for it must in part be affected by the level of rents. Although some people would disagree, I believe that because of the historically low rents (and this is something which has gone on for many decades) leasehold values have probably been slightly higher than otherwise would have been the case. In some ways, without legally changing, the land has behaved a bit like freehold land. I am concerned that we are looking at a real change here. The point is quite clearly made that the people on the pastoral lands at the moment have a contract which is being taken away from them and they are getting another one.

Of course, with 42 year contracts, that can be a long time to wait, although most of them now might have about 20 years to run. The Government has made a decision to change the rules and it is saying that it wants to change the rents, in particular, as well as a number of other things. The Government has indicated that it wants to see rents escalate quite considerably. The current average rental works out to about 32c a sheep and something like three times that for cattle. The sorts of figures I am seeing bandied about mean that the Government would like to see the cost of rentals go up to around $2.20 per sheep and, I assume, cattle would reach a figure of something like $6.60. That is a very rapid escalation in rental levels.

I personally believe that if the land is leasehold, you pay the market rent. You then have an argument about what is a fair market rent. I believe that rents historically have been too low. I believe that we should move towards market rents. I also believe that it is unreasonable to make that transition in a very short period. It is asking too much to say that we will move to market rents tomorrow because the pastoralists have made a number of investment decisions based upon what have been historically (that is, for a very long time) much lower rentals.

It is my intention to move an amendment which tackles the question of rents whereby rent levels will be higher than they are now but still well below the market rent. This formula may take about 15 years before full market rent is reached, so it is a transition from what I believe are low rents to eventually the full market rent. Initially, the Government was looking at going straight to market rents, but once it realised that there was resistance to that proposal—and I was part of that resistance—it tabled an amendment suggesting a transition over six years whereby rent would by charged at the rate of about $1 per sheep per year for the first three years. Thereafter it would go to $1.50 and then, at the seventh year, it moved to the market rent. That is a very rapid transition. It would mean significant costs to the pastoralists and I would argue that that is unreasonable. It is for that reason that I filed my amendment making the transition much slower. With the drafting of my amendment, the Valuer-General will still conduct a yearly assessment of market rents, but the pastoralists will only pay whichever is the lower—whether it be the market value rents or the rents produced under the formula that I intend to introduce.

My expectation is that, for quite a few years—between 10 and 15 years—the formula rent will apply and market rents will not come into force until the 13th to 15th years. That final transition will depend on the market rents. There is a possibility under my proposal that, should there be a drought, for instance, with massive destocking, market rents, which will be directly linked to stocking levels, would collapse to a very low level and fall below the formula I am proposing. So it has the capacity to allow rents to drop very low. Also, if prices for produce collapse (and we are obviously talking about wool and meat) there is also the capacity for the market rent to drop, and it may drop below the formula. Once again, the pastoralists would pay the lower of the two figures.

I recognise that this is not an attractive proposition to the pastoralists. All I can say is that the option when the Bill was introduced was for full market rents eventually, and I am suggesting full market rents in about 13 to 15 years. In fact, at about the seven year mark when they would have been paying full rents under the Government proposal, according to the formula, the rent would be only just over 50 per cent of the market rent. So, the transition is a gradual one, and I believe that that is a considerable improvement. However, I do not expect pastoralists to say that it is such a wonderful thing.

Great concern has always been expressed about tenure. A number of problems are associated with tenure and the rollover of leases. One concern was that many pastoralists were fearful that, because of the way in which the drafting had occurred, they might be faced with capital gains tax. They would have lost one lease and been given a new one. If there had been a capital gain in the process, they could be looking at a capital gains tax. The Democrats have supported capital gains taxes in the Federal Parliament, and we continue to do that here. However, when we were in the Senate and supported the concept of capital gains tax, we amended the Bill so that capital gains tax would not apply to properties held retrospectively. We are behaving in a similar fashion in this situation. It is not a business decision of the person: it is something that is forced on them by the Government. It is plainly inequitable to have to pay a capital gains tax in those circumstances, so we would not support it.

The Government has redrafted the amendment. There has been a ruling from the Commissioner of Taxation that, under the clause, no capital gains tax will apply and that is, in part, some comfort. A number of other concerns have been expressed about tenure, but I will leave those to the Committee stage.

Other matters were also raised with me by pastoralists. They wanted it made quite clear in the legislation that the improvements were owned by the lessee, and that seems reasonable to me. One would not do that in a metropolitan area where something was rented out, but we are not talking about the metropolitan area. The Government leases the land to the pastoralists. The stock carrying capacity, if you like, is being leased to the pastoralists. The pastoralists, who erect fences and sheds, sink bores and construct pipelines and everything else at their expense, own those things. The land cannot really be put to any use other than leaving it as a native reserve. It is reasonable that they should be considered the owners of those improvements and, when assessing rents, for instance, the rent should not take into account the improvements. When properties are resumed by the Government, it is reasonable that the improvements are accepted to be the property of the lessee. As I understand it, the Government has accepted that notion now.

Pastoralists were concerned that compensation should be made for improvements alone when a lease was resumed. Under the conditions now, if a lease has been terminated early and a resumption may occur, it is unreasonable to give compensation on the basis of improvements alone. I believe that compensation needs to take into account the other value within the lease. I refer to a value which the pastoralists had owned. It seems reasonable that they should receive fair compensation. The Democrats have the same attitude towards the native vegetation clearance controls. We supported a similar notion, but we made it quite clear that we believed there should be adequate compensation. I think it is another example where the Democrats have shared the Government's claimed environmental ideals, but we have recognised the fact that one cannot simply have environmental ideals and say 'Too bad' to the people who are being adversely affected by those decisions.

It is not the fault of the Native Vegetation Authority but, rather, it is the Government's fault. The great shame is that the authority has not been given enough money to operate, so the Government has let it down rather badly. That is why it is so important that we try to make it quite clear in the legislation what compensation is available and what things are compensable. We will certainly seek to move an amendment which makes that clear.

Pastoralists are concerned about the criteria for non-renewal of leases. In particular, one concern which has been raised with me is the possibility that the Government may decide that a particular property is uneconomic and therefore should be resumed. It would seem to me that it is not for the Government to decide whether or not a property is economic. If the person living on the property is quite happy to run a small property with a relatively small number of stock, as long as they are looking after the land, I would say that it is no damn business of the Government. I took exactly the same attitude in relation to the cray fishermen in the South-East when the Government decided, against the wishes of the fishermen, that it would remove so many boats and set up a buy-back scheme. I do not think that the Government has the right to decide whether or not people should earn more money, because that is the decision of the people concerned.

Pastoralists have expressed concern that they should have rights of appeals on property plans and on destocking. I must be consistent: I argued earlier that the environmental groups had said that they would like to have a chance to have third party standing in certain places and, if I am

going to support that (which I do), it is only consistent that I also support the third party appeal rights of the pastoralists—the people with a very great financial vested interest—in certain areas which this Bill does not include at this stage. I refer in particular to the right of appeal on property plans and on destocking orders.

However, I must mention one reservation about destocking. I believe it would be unreasonable while the appeal is being processed for the destocking not to occur. Quite clearly, it could be used as an instrument to avoid a legitimate order. I think that there should be some mechanism to ensure that decisions on that matter are handled quickly.

Arguments were presented about public access routes. I thought that one important argument was that if, in its wisdom, the Government decided that a particular road was an access route (and the road ran through a pastoralist's property), who would bear the cost of the public access route? I believe it is plainly unreasonable that the pastoralist, who unfortunately has a road through his property, should be expected to maintain it for the use of others. I will seek to amend the Bill to require the Government to take into account the fact that the public access routes are being used by the public and therefore need extra work. In those circumstances, the public should make some contribution towards the maintenance of those routes.

Probably one of the most difficult questions relates to access. There is real conflict on this topic. The pastoralists have very sensitive items, such as bores which can be tampered with, sheds containing equipment, and fencing which can be cut; all sorts of damage can be done by people coming onto the land. South Australia still has a relatively small population, but I believe that many people have a great desire to get out of the city and breathe some fresh country air. Most people who have that genuine desire are very responsible people. Where should we let them go? Should we just let them go up and down the main highways and five yards on either side? There are national parks, but that is it. There is some very beautiful pastoral country and we must find some mechanism whereby people can have access to the land while at the same time the rightful interest of the pastoralists are protected adequately.

Another problem for pastoralists in this area is water supply—although it is not so much in short supply at the moment. If some people decide to tamper with a watering point, and if stock go a couple of days without water, very real problems arise. If people stay too long near a watering point, once again problems will arise if the stock is kept away from it. So, there are legitimate concerns about what can happen when people are given access to these properties.

I will refer to a number of other matters in Committee. As I said, there is a need to balance the interests of the public at large who, technically at least, own the land—it is public land—against the legitimate interests of the people who earn their livelihood from the land and have a significant investment in it. Such investment should not be put at unreasonable risk or compromised as far as we can help. A balancing act is required.

This Bill is not in the form which I would choose, but then it is not my Bill. I will seek to amend it to, as far as possible, cater for the interests of all the groups who have spoken with me. In some cases, I will seek amendments which have been asked for by environmentalists but which pastoralists do not care about one way or the other. Likewise, the pastoralists have asked for things in which environmentalists are not interested. For instance, one of the sticking points concerns rent. The Government has come so far and will go no further, and has threatened to throw out the whole Bill unless it gets certain things.

One eventually comes to the point of deciding on balance whether or not to let things go ahead. At this stage, given the Government's reaction to the amendments I have indicated, the Bill will proceed. Of course, I will have to wait till Committee to be certain that the undertakings which I believe I have been given at this stage are upheld. The Democrats support the second reading of the Bill.

The Hon. BARBARA WIESE (Minister of Tourism): I thank members for their second reading contributions and I would like to make a few closing remarks prior to the Committee stage. The comments that have been made about this legislation point to a high degree of misunderstanding about the intent of the Bill currently before us.

Like my colleague in another place I believe that this Bill is a victory for commonsense. It recognises that many different groups in the community have an interest in the use and long-term survival of these pastoral lands. It also recognises that only sensible land management techniques implemented by those most directly affected—the pastoralists—will achieve this aim.

There has been some ridiculing of the degree of consultation and discussion which has occured prior to the preparation of this legislation. Members opposite have warned pastoralists that this legislation represents a takeover by bureaucracy and a displacement of management by pastoralists. I strongly refute such nonsense. The amendments that I will be moving in Committee are a further refutation of these claims that the Bill has been designed to exclude pastoralists and vest power in faceless city-based administators. These will be discussed in detail in Committee, but I believe it is appropriate at this time to set what I hope will be the tone for this debate. The Government does not see this legislation as driving a wedge between what should be regarded as concerned members of the community who happen to live in the metropolitan areas and concerned members of the community who live in the pastoral areas of this State.

Both groups have a vital interest in preserving these lands: metropolitan-based citizens because these lands are part of the community heritage, and pastoral-based citizens who have a dual interest in these lands both in terms of heritage and the source of their livelihood. The Government's amendments have been prepared in the spirit of clarifying matters of detail and allaying concerns about the interpretation and administration of this Bill. They have been prepared on the basis that we will not allow pastoralists to be subject to fear and scare tactics about their future. At the same time the Government reinforces its basic message to the community that it intends to ensure that these lands are protected for the benefit of all members of the community. I believe that the Bill does achieve these dual objectives and I commend it to the Council.

In conclusion, I point out that during the past two or three days in particular extensive discussions have taken place between various members of the Council, representing the Liberal Party and the Australian Democrats. To a large extent the issues of substance over which there was considerable difference when the Bill was debated in another place have largely been resolved. I believe that is a tribute to all those people who took part in the discussions.

I trust that when we reach the Committee stage the spirit of compromise that has been present in many of those discussions in the past couple of days will come to fruition and we will see in place a Bill that will be viewed by all who have an interest in it as a responsible and reasonable document.

Bill read a second time.

The Hon. PETER DUNN: I move:

1. That this Bill be referred to a select committee.

2. That the committee consist of six members and that the quorum of members necessary to be present at all meetings of the committee be fixed at four members and that Standing Order No. 389 be so far suspended as to enable the Chairman of the select committee to have a deliberative vote only.

3. That this Council permits the select committee to authorise the disclosure or publication, as it thinks fit, of any evidence presented to the committee prior to such evidence being reported to this Council.

I do not wish to take up too much time, because here we are on a Friday night past the hour of midnight. This has never happened in my time in this place, and it is an indictment on the Government. I have said in this Council before that the Government could not organise a good kelpie dog show, and here we are on a Friday night. The Government has not been able to organise this Bill—it has not organised the day. We should have had the Bill out of this place, but the Government could not organise things properly and it has not achieved that. It goes on and on like this every time.

We were adjourning at 3.30 p.m. a month ago, when we could have been dealing with some of the business that the Government has tried to deal with tonight. As I said, the Government could not organise a good kelpie dog show. As a result, it is in a bind, it consulted the people concerned—and I have just heard the Minister say that there was a long consultation process—and showed them a Bill. But then it brought back entirely different legislation. Even the Hon. Mr Elliott agrees with that. I tried to have some amendments drafted and, although the staff obviously worked very hard at trying to get those amendments prepared, I received them two weeks later. That is no reflection on the Parliamentary Counsel, but the business put to them—probably by the Government—did not allow them to draft the amendments I requested.

We had amendments moved this evening at 11 p.m. That is no way to run a Parliament. The Government is handling a Bill that is totally changing the life of a group of people who work very hard for this community. The Government tries to fiddle around the edges with it. I have tried to be as expedient as I can. I have been to the Government, I have tried to work out an agreement, and yet it still fiddles around with these amendments. The Government has introduced a heap of things in this Bill that do not help either the pastoralists or city residents. It is designed to take control—and I said this in the second reading speech—from the people who live in the country and give it to the city. If the Government can tell me that it does not do that, I would be interested to know how it will work because it changes the control absolutely from the country to the Lands Department and to the Department of Environment and Planning. These are all reasons why a select committee is essential to examine the issue properly.

First, the Government is doing something that no one else would be allowed to do: it is cancelling a contract. Between 1980 and 1989, 26 leases will expire and from 1990 to 1999—10 years on—28 leases will expire. These figures are taken from a total of 358 leases in the pastoral area. In the years 2000 to 2009, 281 leases will expire. Therefore, we have 10 or 11 years before the contracts cease. In the years 2010 to 2019, 20 leases will expire and, from 2020 to 2023, three will expire. In effect, people have contracts with this Government to continue on as they have up to the year 2023. Those people have been to the banks and borrowed money on the assumption that they have a licence until that time. What does the Government do? It cancels those contracts; it brings in a whole plethora of new amendments which absolutely control them. If the Government continues in that vain it will not have a pastoral industry.

I do not believe that any Government can cancel a legally binding contract in that way and have any credibility at all. That is why this issue should go to a select committee for thorough examination. We should allow those people who live 500 to 600 kilometres from this city (and there are some a lot further than that) to put their point of view. It is fine for the Minister in another place to go to Marree once and then say that she has conferred—it was probably in the middle of winter anyway, when it was nice and cool—and that she understands the situation. I do not believe that. Her officers have been up there and I believe that they have done a pretty good job in assessing what is going on. However, the results of this Bill will be devastating to those people.

In the long term, the Government will lose those people. They will not cooperate with the Government—I would not do so if I was there. In fact, if we look at the past few years, people in the north have had a tough time because of droughts. None of the members opposite would understand that; they all have salaries at the end of the week. It is easy to budget in that situation. Members should try budgeting during a drought, or going to a bank manager when the situation is bleak, or when destocking is required. Pastoralists must know when to buy, when to sell and when to borrow more money.

The PRESIDENT: Order! I do not want to cut across the honourable member, but he is is ranging fairly widely. He is virtually getting into a second reading speech when his motion is that the Bill be referred to a select committee. I ask him to confine his remarks to the Bill and not range too widely.

The Hon. PETER DUNN: One does get a bit carried away. However, it is necessary to demonstrate that the Bill must go to a select committee for thorough investigation before it goes much further. I am demonstrating that those people are faced with conditions that no one in the city understands. I would like this Bill to go to a select committee so that those people have an opportunity to put their point of view. They have not had that opportunity. The Government is cancelling a legally binding lease and giving the pastoralists a lease with a lot more impediments. The Government is breaking its contract with the pastoralists and, if it continues to do that sort of thing, how can the rest of the community believe in it as a credible Government? When the Government does that it is saying, 'We will put some impediments on you—you will do this, you will do that, and you will like it,' I find that repulsive.

The Government said—and it was reported in the paper—that it wanted $3.50 a head for sheep. The figure was then to be $2.20. Negotiations have been going on, and I have amendments here saying that the Government is prepared to take $1. What does the Government want? No wonder the pastoralists are confused. They do not know what their position is and neither does the Government. If it did it would not be making statements like that and it would not be suggesting a dollar for three years, $1.50 for the next three years and then $2.20 after that. We need a select committee to look at rentals.

The problem of capital gains tax has not been resolved. I can assure the Government that the issue of capital tax gains tax is as rife today as it ever was. If the Government imposes that on those people, it will be the end of the pastoral industry. The Federal Government imposed that tax. I do not believe that this Bill solves that problem, because the Government is cancelling the leases and the Federal law merely states that compensation can be granted.

This Government is not compensating pastoralists if it does that. One cannot compensate a person when one takes away a legal lease. These people will have to pay capital gains tax if the Government continues on this line. I need pretty good evidence to be convinced that that is not so.

The Bill has one other very bad element. It does not define the exact responsibility of the pastoralists when the country is damaged. I do not believe that any member of the Opposition has lived in that country; not one of them understands the effect of drought. Drought is a very insidious thing; it can happen very suddenly, or it can happen over a very long period—just as a flood is a very rapid event.

It needs to be brought to a select committee—I notice you are going to press the button again, Mr President—to demonstrate to people that, when we draw up a Bill, we understand what it is about and the effect that it will have. The Bill, in effect, says, 'You will repair any damage which has been created while you are there.' It does not define what the pastoralists might do. It is rather broad. The damage could be the result of drought, pestilence, fire or flood.

The Hon. Mr Elliott introduces third party appeals in his amendments which I have seen. That matter needs to be looked at carefully by a select committee, because we do not know the legal ramifications of a third party appeal. I am convinced that it needs to go to a select committee to work those things out. We cannot bring in a Bill which makes such an enormous number of changes and say that it will work. Somebody said that we should try it and amend it as we go on. People do not know what they are saying when they say such things. We must understand the effect of such significant things in legislation.

I ask the Council to approve the setting up of a select committee to allow pastoralists and their representatives to give evidence in order that we can draw up a Bill to reflect their views. I hope that the environmentalists will give evidence. Let us get together and talk about it. People in the city have the advantage of being close to the Government but the pastoralists are a long way off. For the reasons that I have given, I suggest that we should have a select committee to consider this matter.

The Hon. M.B. CAMERON (Leader of the Opposition): I support what has been said by the Hon. Mr Dunn. I am puzzled by the fact that the Bill will not now be going to a select committee. We are obviously not going to finish the Bill in this immediate session, so there is plenty of time. There were time constraints earlier, for reasons with which I do not necessarily agree, but now we have sufficient time for a select committee.

The Hon. Mr Dunn made an extremely good point: that the people most affected by the Bill—the pastoral industry—have a problem with regard to access to Parliament. Not many people here understand the difficulties attached to attending the sessions of this Parliament if one is interested in the industry. One has only to go to the southern stations for a brief time to know that a trip to town can be an extremely expensive and time consuming event. People there do not have the opportunity that other citizens have in presenting their cases to Parliament. One of the most efficient and effective methods for enabling people to bring matters before Parliament is to bring their ideas and problems to a select committee.

It is well known in the corridors that a number of negotiations have been going on. One of the best ways for matters to be resolved, which in the end will benefit not only the pastoral industry but the land that that industry uses, is for members of all parties to sit down together and listen to all sides of the argument. It is well known that when that happens a reasonable solution, which is acceptable to all parties, is often arrived at. That is important.

I give this warning—I have indicated this within the Parliament recently—that if the Bill proceeds without the support of those who live on the land it will fail. Unless we have the willing support of the pastoralists to ensure that the effect of the legislation and the leases takes place, it will not work. If anyone thinks that it will work in those circumstances, they have rocks in their head, because it will not. This is a very serious step. Therefore, I urge members to support the establishment of a select committee, because I believe that in the end that is the way to achieve the best result.

The Hon. M.J. ELLIOTT: I am in a state of confusion. I have been told that there was great urgency to get the Bill through. I acknowledge that it is unreasonable to sit any later tonight. Several of us started our first meetings at 9 o'clock this morning, so we cannot debate sensibly. I expected to come back next week and finish this off. Now I understand we are not coming back until August. Is that the case as far as this Bill is concerned?

The Hon. BARBARA WIESE (Minister of Tourism): I am not sure whether the sitting dates for the next session have yet been set.

The Hon. M.J. Elliott: What about next week? Are we coming back next week?

The Hon. BARBARA WIESE: I understand that we will not be sitting next week. It will be about August, as it usually is when we start the budget session, that this Bill will be resumed.

The PRESIDENT: I take it that was in reply to the question regarding the sitting hours and times. That has nothing to do with the motion moved by the Hon. Mr Dunn, that this matter be referred to a select committee. Does the Minister want to enter into that debate?

The Hon. BARBARA WIESE: The Government opposes the motion that has been moved by the Hon. Mr Dunn. I do not want to take up the time of the Council going through this debate again. Suffice to say, there have been about 17 years of consultation on the content of a Bill dealing with these issues. There have been extensive discussions with all those groups in the community who have a keen interest in the matters with which the Bill deals. Therefore, it is unnecessary for a select committee to be established to go through that process again. Nothing will be gained by that. There has been extensive discussion and, I understand, agreement reached on what should form a satisfactory compromise as the overall package for this Bill. I believe that the Council should reject the motion.

The Council divided on the motion:

Ayes (9)—The Hons J.C. Burdett, M.B. Cameron, L.H. Davis, Peter Dunn (teller), M.J. Elliott, K.T. Griffin, J.C. Irwin, R.I. Lucas, and J.F. Stefani.

Noes (6)—The Hons T. Crothers, Carolyn Pickles, R.R. Roberts, T.G. Roberts, G. Weatherill, and Barbara Wiese (teller).

Pairs—Ayes—The Hons I. Gilfillan, Diana Laidlaw and R.J. Ritson. Noes—The Hons Anne Levy, M.S. Feleppa and C.J. Sumner.

Majority of 3 for the Ayes.

Motion thus carried.

Bill referred to a select committee consisting of the Hons M.B. Cameron, T. Crothers, Peter Dunn, M.J. Elliott, R.R. Roberts, and T.G. Roberts; the committee to have power

to send for persons, papers and records, and to adjourn from place to place; to sit during the recess; and to report on the first day of the next session.

The Hon. M.B. CAMERON (Leader of the Opposition): I seek leave to make a short statement.

Leave granted.

The Hon. M.B. CAMERON: I indicate to the Minister that it is the Opposition's intention to ensure that this select committee will proceed expeditiously and that necessary matters will be resolved by the first day of the next session unless there is total disagreement. We will certainly cooperate in whatever way is necessary.

The Hon. M.J. ELLIOTT: I seek leave to make a personal explanation.

Leave granted.

The Hon. M.J. ELLIOTT: I spoke with the Opposition a short while ago. An aside has been thrown at me—a comment of contempt. They said, 'Why did you do that?' I made clear at the end of the second reading speech that I supported the Bill, but I thought I had come to an agreed position with the Government. This is quite clearly on the record. While I was speaking, I was approached and told that we would finish tonight if I would sit down and the Hon. Mr Dunn could move his select committee motion. We would then finish for the night.

After I had done this and cleared everything aside, I was then told that we were not coming back until August. I do not think it is unreasonable that a brief select committee should be set up so that we can have an opportunity to look at evidence. I am not amused by this. I have tried all day to have this Bill brought on earlier. I do not know how many approaches I have made to the Government to have the matter dealt with earlier. Several people in this Chamber know that that is the case—that approaches were made. This matter was called on late in the day and now they want to turn around and make this kind of comment.

[*Sitting suspended from 12.33 to 12.40 a.m.*]

COUNTRY FIRES BILL

The House of Assembly intimated that it had agreed to the Legislative Council's amendments Nos 1 to 5, 11 to 32, 35, 44, 46, 48 to 53, and 55 to 68; and had disagreed to amendments Nos 6 to 8, 33, 34, 36 to 43, 45, and 54; and had disagreed to amendments Nos 9, 10 and 47 and made alternative amendments as follows:

No. 9. Clause 22, page 11, lines 13 and 14—Leave out 'and the Minister may vary requirements'.

After line 14—Insert new subclauses as follow:

(3a) If a council appeals under subsection (3)—

(a) the Minister must give the council a reasonable opportunity to make written submissions to the Minister in relation to the matter;

and

(b) if the council so requests—the Minister must discuss the matter with a delegation representing the council.

(3b) After complying with subsection (3a), the Minister may—

(a) confirm the requirement;

(b) vary the requirement in such manner as the Minister thinks fit;

(c) cancel the requirement;

or

(d) refer the matter back to the board for further consideration.

No. 10. Clause 22, page 11, line 16—After 'such requirement as' insert 'confirmed or'.

No. 47. Clause 51, page 23, lines 35 to 38—Leave out subclause (4) and insert new subclauses as follow:

(4) If the board makes a recommendation to the Minister under subsection (2)—

(a) the Minister must give the council a reasonable opportunity to make written submissions to the Minister in relation to the matter;

and

(b) if the council so requests at the time that it makes such written submissions—the Minister must discuss the matter with a delegation representing the council.

(4a) If, after complying with subsection (4), the Minister is satisfied that it is appropriate to do so, the Minister may, by notice in the *Gazette*, withdraw the powers and functions of the council and vest them in an officer of the CFS nominated by the board.

(4b) The Minister must, within 14 days of publishing a notice under subsection (4a), furnish the council with written reasons for his or her decision.

Consideration in Committee.

The Hon. BARBARA WIESE: I move:

That the Legislative Council do not insist on its amendments Nos 6 to 8, 33, 34, 36 to 43, 45 and 54.

The Hon. J.C. IRWIN: The Opposition supports the motion.

Motion carried.

The Hon. BARBARA WIESE: I move:

That the Legislative Council do not insist on its amendments Nos 9, 10 and 47, to which the House of Assembly had disagreed, but agree to the alternative amendments made by the House of Assembly in lieu thereof.

The Hon. J.C. IRWIN: The Opposition supports the motion.

Motion carried.

EDUCATION ACT AMENDMENT BILL

In Committee.

Clauses 1 to 4 passed.

Clause 5—'Appeals against recommendations.'

The Hon. R.I. LUCAS: Having now had the opportunity to have some discussions with Education Department officers, I am satisfied that the intention of the department to remove any reference to promotion lists in this clause and the next clause is in no way a necessary condition for the department's move towards limited tenure for promotion positions and that the department could move towards limited tenure with or without reference to the promotion lists which, as the Minister indicated during the second reading debate, have not been used by the department since May 1988. The Liberal Party supports this clause and the next clause, and will not seek to amend them in any way.

Clause passed.

Clauses 6 to 10 passed.

Clause 11—'Regulations.'

The Hon. R.I. LUCAS: Again, having had discussions with Parliamentary Counsel and Education Department officers, for a number of reasons I will not move amendments to this clause. That is due in part to some assurances and understandings I have from the department about this provision and is in part due to a desire in effect not to let the Bill lapse by the movement of amendments in this Chamber. The fact is that the Minister of Education is in Tasmania at the moment and, if the committee moved amendments at this stage, the whole Bill would lapse until the August session.

There are some very important provisions in the Bill and I would not wish to see it lapse until August. The concern I have with paragraph (sb) still remains as a matter of principle. If the Minister is to enlarge the functions of school councils, the Minister should do so through the use of the

normal regulation-making provisions. As a matter of principle, I do not support the power that currently exists within the regulations. Advice indicates that that power could well be *ultra vires* the Act. The Minister can increase the powers of school councils by just making a determination, and on one occasion the Minister has had that published in the *Education Gazette*.

I am assured by Education Department officers that there has been only one occasion in the past 13 years that this provision has been used by a Minister of Education. That case did not involve a very large increase in the powers of school councils. Given that information, the Liberal Party would not have oppposed the measure. I am further advised that the major amendments to school council functions will be introduced in the normal way for changes in regulations and will therefore be subject to the normal oversight of Parliament. I am sure that that is what honourable members would wish. Therefore, the Parliament will be able to give its view in one way or another on the proposed changes to the regulations to increase the functions of school councils. Whilst, as a matter of principle, I still object to this provision in the Act and in the regulations, I do not deem it so significant that I will delay the passage of the whole Bill until August. I will not seek to amend the clause during the Committee stage.

Clause passed.

Title passed.

Bill read a third time and passed.

STATUTE LAW REVISION BILL

Returned from the House of Assembly without amendment.

ADJOURNMENT

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

That the Council at its rising do adjourn until Tuesday 16 May at 2.15 p.m.

As this is the last night of this session of Parliament, Mr President, it is an opportunity for us again to place on record our appreciation of your efforts since you have been in the Chair, and I take this opportunity formally to congratulate you on your appointment. We all look forward to a long and happy relationship with you. I know that you will fulfil your role with dignity.

I should also like to take the opportunity to thank all the staff who serve us in this Council and support us in the work that we do. This session, particularly the latter part, has been amongst the more difficult of sessions since I have been a member of the Parliament. In the past couple of weeks there seems to have been much more business and a larger number of difficult Bills for us to deal with than has been the case in the past.

We have come to the end of the session with less of an idea about exactly how much of the program might have been completed than has been completed at the end of other sessions. However, a considerable amount of legislation which has been passed during the course of this sitting will benefit the people of the State. Although the process has been a little painful at times, it has been a worthwhile experience.

I would particularly like to thank the table staff, *Hansard*, the messengers, the refreshment room staff, library staff, secretarial staff and all others who make the job of members of Parliament so much easier. I hope that they will forgive our poor temper and other things that sometimes develop, particularly late in the session. With those few words, I would like to wish everyone a happy break until we all resume in the next session.

The Hon. M.B. CAMERON (Leader of the Opposition): I second the remarks of the Minister about the staff. Two of the staff in particular all of us would wish well, that is, one of the messengers, Ron Smith, who is to enter hospital for an operation, and also Trevor Blowes. I am sure that in this wonderful public health system that we have in South Australia they will be well catered for. I am delighted that they are able to join the waiting list and get through the system of public health in South Australia.

On a more serious note I thank all members of staff for the excellent service that they have given us as members, particularly the table staff who rarely lose their temper and, when they do, I have no doubt that it is justified, because from time to time we all perhaps take them for granted. Their services are certainly appreciated by members on both sides of the Council.

The *Hansard* staff have the wonderful job, even when we are thanking them, of taking down the words of thanks. I thank them sincerely for the excellent service they give. They do a marvellous job. I have never had to correct anything that they have written for me. (It could be because I am too lazy to look at what they have written for me). Nevertheless, *Hansard* does an excellent job recording the words that very few people read afterwards.

I thank the messengers who ensure that our lives are livable in this place, and all other members of staff, particularly those in the Blue Room downstairs. For members of the Opposition (as I am sure Government members will find out), the Blue Room is marvellous, providing excellent service. I wish everyone a happy break. Some members now find themselves on an unexpected select committee and they will spend a lot of time during the break working to ensure that the Council when it resumes will be presented with reports. We will ensure that that select committee finishes its work, which will be, as I indicated to the Minister earlier, by the time of the next session. I wish everyone a happy break.

The PRESIDENT: Would the Hon. Ms Levy like to make a few comments?

The Hon. ANNE LEVY: Thank you, Mr President. This is an unexpected pleasure indeed. I would certainly like to thank the staff of the Council most sincerely for all the help that they provide. Many people are quite unaware of just what they contribute to the functioning of this House of Parliament but, from my experience over the past three years, and as I am sure you will rapidly find out, Mr President, if you have not found already, they are absolutely invaluable to the working of this place and we owe them a great debt indeed. I want to put on record my appreciation for all that they did during my term as President. I could say that the view of the Council from the back bench is rather different from the view from the red velvet chair.

The Hon. L.H. Davis interjecting:

The Hon. ANNE LEVY: No, the view may be different, but the individuals opposite do not necessarily look any better. I could say that the red velvet chair is more comfortable to sit on than the red vinyl ones—and I stress this so that, if people are invited to give the President a temporary break, they can be assured they will be very comfortable while doing so. It is perhaps an added incentive. I mentioned that the view from the backbench is certainly different from that at one end of the Chamber. I hope that

when the Parliament resumes in August I will have a different view of the Council from yet another seat and I am sure that the appearance of members opposite will be even worse than it is now.

Seriously, I wish everyone well for the break and reiterate my thanks to all the staff of the Legislative Council for the incredible help and support they give to all members, particularly the President.

The PRESIDENT: I want to add a few words. I do not want to prolong this sitting, as it has been long and hard these past few days. I hate to embarrass the staff, but I will say that I do not think the sittings could proceed without their cooperation and goodwill. They do a marvellous job. I do not want to single out anyone in particular. All the staff are dependent on our cups of coffee just as much as we are dependent on the clerical work of the clerks and the work of the messengers. Each in their own way contributes to the smooth running of the Parliament.

I would like to wish our clerk the very best for his operation and I also wish Ron well. They do a sterling job and I am sure that the rest will do them as much good as anything after the past few days. I thank members for the cooperation I have received in the two brief days I have been in the Chair. It was a hard time for members, but they managed to restrain their enthusiasm and keep themselves under control. I am grateful for that and I hope that we come into the new session with members refreshed and not too acidy with one another so that we can get through a bit more legislation in the future.

Motion carried.

MOTOR VEHICLES ACT AMENDMENT BILL

The House of Assembly intimated that it had agreed to the recommendations of the conference.

MOTOR VEHICLES ACT AMENDMENT BILL (No. 2)

The House of Assembly intimated that it had agreed to the recommendations of the conference.

ADJOURNMENT

At 1.45 a.m. the Council adjourned until Tuesday 16 May at 2.15 p.m.