LEGISLATIVE COUNCIL

Tuesday 3 April 1990

The PRESIDENT (Hon. G.L. Bruce) took the Chair at 2.15 p.m. and read prayers.

ASSENT TO BILLS

His Excellency the Governor's Deputy, by message, intimated his assent to the following Bills:

Da Costa Samaritan Fund (Incorporation of Trustees) Act Amendment

Stamp Duties Act Amendment

Supply (No. 1).

PETITIONS: ABORTION

A petition signed by 266 residents of South Australia concerning abortions praying that the Council amend the South Australian law to prohibit abortions after 12 weeks of pregnancy except to prevent the mother's death and prohibit the operation of free-standing abortion clinics was presented by the Hon. J.F. Stefani.

Petition received.

PETITION: LITHUANIA

A petition signed by 750 residents of South Australia concerning Soviet Union presence in Lithuania praying that the Council urge the Federal Government as a matter of urgency to recognise *de facto* the independent State of Lithuania and establish normal diplomatic relations with the State of Lithuania was presented by the Hon. J.F. Stefani.

Petition received.

PUBLIC WORKS COMMITTEE REPORT

The PRESIDENT laid on the table the following report by the Parliamentary Standing Committee on Public Works, together with minutes of evidence:

RN 3500 Port Wakefield Road, Port Wakefield-Two Wells Duplication—Report (Paper No. 176).

PAPERS TABLED

The following papers were laid on the table:

By the Attorney-General (Hon. C.J. Sumner)—

Industrial Relations Advisory Council—Report, 1989.
Casino Act 1983—Regulations—Video Machines.
Dangerous Substances Act 1979—Regulations—Licences.

By the Minister of Tourism (Hon. Barbara Wiese)—

South Australian Health Commission Act 1976—Regulations—Compensable Patient Fees.
Forestry Act 1950—Tailem Bend Forest Reserve—Variation of —Proclamation—Hundred of Seymour.

By the Minister of Local Government (Hon. Anne Levy)—

Local Government Superannuation Scheme—Amendments—Report on Actuarial Investigation, 1 July 1987.
Teachers Registration Board of South Australia—Report, 1989.
Clean Air Act 1984—Regulations—Backyard Burning.
Urban Land Trust Act 1981—Regulations—Seaford Development.
District Council of Murat Bay—By-law No. 4—Taxis.

MINISTERIAL STATEMENT: DUNCAN REPORT

The Hon. C.J. SUMNER (Attorney-General): I seek leave to make a statement.

Leave granted.

The Hon. C.J. SUMNER: I advise members that the Commissioner of Police has now provided me with the Duncan Task Force Final Report. The Duncan Task Force was formed on 1 August 1985, as a result of a joint announcement by myself and the Commissioner of Police. The brief of the task force was to:

- identify the person or persons responsible for the death of Dr Duncan;
- determine Vice Squad policing practices relative to homosexuals in 1972;
- reveal any allegations of corrupt practices amongst Vice Squad members;
- determine whether any of the inquiries were thwarted due to political interference.

On 13 August 1985 I made a detailed ministerial statement on the death of Dr G. Duncan, and I would suggest members refer to that statement for further information and background material on this matter. Members will also recall a ministerial statement I made on Thursday 15 February 1990, concerning the Duncan Task Force investigations. This was in response to a question asked by the Hon. Mr Gilfillan, MLC. In that statement I said, *inter alia*:

> The Duncan Task Force is currently preparing a final report. This report will canvass all the issues which were the subject of investigation, including those matters raised in the interviews with Allen. At this point of time indications are that there is insufficient evidence to substantiate the allegations made. I am advised by the Commissioner of Police that this report should be completed and available for my consideration in the next few weeks. It will then be examined by officers within my department and I would then expect to be able to provide the public with a further statement.

It is with this background that I now make this statement. As members are aware, the mere making of allegations is one thing; whether those allegations are, or can ever be, substantiated by investigation is an entirely different matter. From the investigation undertaken in this case there is insufficient evidence to lead to any further prosecutions.

However, I propose to release the task force report with the names deleted. This has been possible in this case because the simple deletion of the names is sufficient to protect the anonymity of the persons concerned. They are not identified by the context of the report. There are appendices, which it is also not appropriate to release, because the release of the material would prejudice or affect the safety and reputation of individuals and also the material contains the names of informants. I seek leave to table the Final Report of the South Australian Police Duncan Task Force.

Leave granted.

The Hon. C.J. SUMNER: On receipt of the report and appendices, I referred it to the Crown Prosecutor, Mr Paul Rofe. He has advised me that in his opinion:

(a) there are no further investigations that need to be undertaken in respect of the issues examined by the report; and

(b) the report and the accompanying material do not reveal any basis for the laying of criminal charges.

The task force interviewed and/or reinterviewed 81 people. Additionally, the task force examined the investigative files of all inquiries undertaken prior to 1985. In that task

there was some 448 statements on file (from the earlier investigations into this matter), as well as all the documentation following the 1972 coronial inquest into the cause of Dr Duncan's death. Further, the task force investigation resulted in its investigating 22 separate allegations, ranging from identifying the person or persons responsible for Dr Duncan's death to allegations of police impropriety and misconduct during the 1972 era. It should be noted that there are no allegations (other than the matter relating to the juror) which relate to any events which occurred after 1978 (that is, 12 years ago), and most relate to the circumstances surrounding Dr Duncan's death and Vice Squad practices in 1972 (that is, 18 years ago).

The task force investigation resulted in the arrest of three former Vice Squad members over the death of Dr Duncan, and subsequent lengthy court trials ranging from committal hearings, abuse of process hearings, to the Supreme Court trial of the two former members charged with the manslaughter of Dr Duncan, and their subsequent acquittal on 30 September 1988. I again stress that the investigation by the task force was as comprehensive and exhaustive as the information permitted. In addition, there has been a Supreme Court jury trial, at which the Crown in an open and extremely well publicised hearing presented all the relevant available admissible evidence as a consequence of all investigations. The verdict of acquittal by the jury must be accepted: the Crown is not permitted, by the substantive criminal law (*autrefois acquit*), to reopen those issues determined by the verdict at trial. Quite clearly, the functions of the task force were rendered more difficult by the lapse of time, the loss of memory of witnesses, and the fact that, overwhelmingly, the task force was, for a considerable part, confronted with unsubstantiated and anonymous allegations.

However, as is the case with any inquiry, nothing is closed should new information be forthcoming. Following the presentation of the report to me, and this statement to Parliament, the Duncan task force is to be disbanded, but I give members the undertaking that, should any person have any fresh information (and I emphasise the word 'fresh'), that information should be forwarded to the Officer in Charge, Internal Investigation Branch, for follow-up inquiry. In addition, the Officer in Charge, Internal Investigation Branch, will undertake to advise all informants and persons against whom allegations have been made, of the extent and findings emanating from the investigations undertaken by the Duncan task force.

In closing, I say that this investigation has been a complex and protracted one. However, it was the initiative of the Government to establish a task force to investigate the matters alleged, with independent facilities being made available for persons wishing to come forward (who might not wish to speak to the police), so as to ensure that all the information that could be reasonably obtained was, in fact, gathered. Additionally, it was the initiative of the Government to establish a reward for the first person giving information leading to the arrest of the principal offender or offenders and, in addition, offering a full immunity from prosecution, and a free pardon to be extended to any person not being the person, or persons, who actually committed the crime, but who were able to give evidence leading to the identification of any person or persons who committed the crime. I doubt that the Government could have done more to ensure the fullest possible inquiry available.

I believe that all has been done that could be done. Criminal responsibility for Dr Duncan's death 18 years ago has not been fixed to any person or persons, despite all the extensive investigations and inquiries that have been made, in the administrative, police, coronial, judicial and parliamentary spheres. Regrettably, despite an extensive police investigation immediately after Dr Duncan's death, a coronial inquiry, an independent investigation by Scotland Yard detectives, further extensive inquiries by this task force and charging of three former police officers (one of whom was not committed for trial and the other two of whom were acquitted), it has not been possible to bring to justice those responsible for Dr Duncan's death.

There must remain doubts about who was responsible; there must remain some unease about certain police practices in the early 1970s. However, it is clear that there is insufficient evidence to prosecute any other persons in relation to these matters. I suggest that the time has come to close this sad chapter in South Australia's legal and social history.

QUESTIONS

NATIONAL CRIME AUTHORITY

The Hon. K.T. GRIFFIN: I seek leave to make an explanation before asking the Attorney-General a question about the National Crime Authority.

Leave granted.

The Hon. K.T. GRIFFIN: Last Thursday the Attorney-General referred to a letter he wrote to the National Crime Authority on 19 March 1990 in relation to the terms of reference of its inquiry in South Australia. He also disclosed that before this letter was sent the Premier had had a discussion with Mr Leckie, the then Acting Chairman of the NCA. He also suggested that prior to the letter being sent there had been some other discussion on that subject. My questions are:

1. What matters were discussed between the Premier and Mr Leckie prior to the letter being sent?

2. When were there discussions about the terms of reference, and what circumstances prompted those discussions?

3. On how many occasions had the Premier met with a member of the NCA before this time?

The Hon. C.J. SUMNER: I cannot speak on behalf of the Premier in relation to those matters and will have to refer the question to him. However, the letter that I wrote on 19 March with respect to the terms of reference was to clarify to the authority that, if there was any need in the authority's view for the terms of reference to be altered in any way, the Government would be amenable to that. That is the response that I gave last week to some of the questions asked by members opposite. However, with respect to the specific questions, I will have to get an answer. Prior to that letter, the Premier had spoken to Mr Leckie and had effectively informed him of what I have said, which was confirmed by the correspondence.

The Hon. K.T. GRIFFIN: As a supplementary question, can the Attorney-General indicate what prompted that discussion between the Premier and Mr Leckie, and will he indicate whether he has yet made a decision as to whether or not he will table the letter?

The Hon. C.J. SUMNER: I have not yet made a decision as to whether to table the letter. The discussion between the Premier and Mr Leckie occurred at my instigation, because I suggested to the Premier that he should make it clear to the new Acting Chairman of the authority that, if there were any concerns within the authority about the reference that had been issued to it, the Government wanted to make it quite clear to the authority that it would support any alteration to the reference which the authority would

recommend. I did that, because earlier there had been some discussion—and I mention Mr Le Grand in this context—about whether or not the reference that had been given to the authority was adequate to cover all the matters that the Government expected from it.

Members will also be aware that I have previously referred to statements that were made by Dr Hopgood at the time that the reference was granted in November. Those statements outlined the Government's expectations of the National Crime Authority in South Australia. As I have said, some issues were raised as to whether the reference to the authority was adequate in certain respects, and I indicated last week that those matters were raised by Mr Le Grand.

The purpose of the Premier's contacting Mr Leckie and my subsequent correspondence was to ensure that Mr Leckie, as the Acting Chairman and the new head of the authority, for the time being at least, was aware of the Government's position on this topic. Mr Faris had previously been advised that, if the authority saw any problems with the reference, the Government would support—and, indeed would want—the reference to be amended, or replaced if that was necessary, to ensure that there could be a proper investigation of the matters that the Government expected to be investigated when the authority was invited to come to South Australia.

ROAD SAFETY

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation before asking the Minister of Local Government, representing the Minister of Transport, a question about road safety and head injuries.

Leave granted.

The Hon. DIANA LAIDLAW: At a road safety conference in Sydney last week, various speakers, including the South Australian Chairman of the Road Trauma Committee, Royal Australasian College of Surgeons, Dr Peter Tamblyn, called for Australian vehicle manufacturers to introduce air bags into Australian cars. Such bags, which are attached to the steering wheel, inflate on impact and protect the driver from head injuries caused by contact with the steering wheel.

Air bags are compulsory features in convertible vehicles manufactured in or exported to the United States and in several European countries. In fact, Ford Australia is installing air bags in cars that it is presently manufacturing for sale in the United States. However, identical Capri models for sale in Australia do not feature an air bag as either a standard or optional safety feature. Dr Tamblyn accused vehicle manufacturers of showing contempt for the safety of Australian drivers. Certainly in Australia vehicle manufacturers have been consistently keen to incorporate the latest technology in cars whether that be turbo-charged engines, electronic windows or upgraded air-conditioning. By comparison, they seem most reluctant to include safety features. For instance, the technology for air bags has been around for some decades but, as I said earlier, they are not included as a standard or optional feature in any Australian vehicle.

Vehicle manufacturers argue that it would cost some $6 000 to install the air bags in Australian vehicles, but in America it costs a maximum of $600. They also argue that the air bags are unnecessary because of our mandatory seat belt laws. However, it is a fact that about 40 per cent of vehicle occupants killed in road crashes have been found to not have been wearing seat belts. Also, at the relatively low speed of 48 km/h a driver can be expected to hit the steering wheel even if they are wearing a seat belt; and the impact of such contact will be progressively more severe at any speed above 48 km/h.

In addition, I note that the Road Accident Prevention Unit based at the Adelaide University estimates that, as a result of car accidents, the cost per annum for treatment, compensation, long-term care and loss of production amounts to a massive $500 million to $1 000 million per annum. Does the Minister accept that air bags should be a mandatory safety feature incorporated in all cars sold in Australia to complement our mandatory seat belt laws? If not, why not? If so, will he undertake to present to the next meeting of the Australian Transport Advisory Council a proposal that air bags be accepted as a future Australian design standard?

The Hon. ANNE LEVY: I will refer that question to my colleague in another place and bring back a reply.

CAPITAL WORKS AND CONSTRUCTION EXPENDITURE

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Minister of Tourism, representing the Minister of Housing and Construction, a question about capital works expenditure and construction expenditure in South Australia.

Leave granted.

The Hon. L.H. DAVIS: A recent official Commonwealth Government publication entitled 'The Commonwealth Construction Program 1989-90' provides further stark evidence of the frightening lack of economic growth in South Australia in 1989-90. In a detailed State by State assessment of non-residential construction activity by both the private and public sectors, this publication reveals that South Australia will trail the other mainland States by the length of the straight in the 1989-90 construction stakes. Non-residential building construction activity and engineering construction is expected to increase, on average, by 5 per cent in Australia. However, in South Australia a 4 per cent decrease in construction is expected in the current year. A figure of $1.5 billion is involved—a 4 per cent decrease on 1988-89.

This is easily the worst result forecast for any mainland State. Capital works expenditure by the South Australian Government is expected to be approximately the same as last year in real terms. The Commonwealth Government capital works spending in South Australia however represents only a niggardly 2.7 per cent of total Commonwealth Government capital works expenditure, which is in fact the same as for 1988-89. I think that this is quite unacceptable, in view of South Australia's 8.5 per cent share of national population.

An analysis of public sector and private sector construction spending in South Australia, which projects a 4 per cent fall in the current financial year, is bad enough, but a further decrease in 1990-91 is projected by the Commonwealth Government committee, which has put this very detailed analysis together. It believes that, in the next financial year (1990-91), building activity will slacken even further.

These are not Party political projections or from a private sector group with an axe to grind; these are official figures assembled and presented by the Federal Labor Government. If this scenario is correct, quite clearly there will be a loss of many thousands of jobs in the construction and engineering sector in South Australia.

As the Minister is aware, there has already been a sharp jump in the South Australian unemployment rate in the

opening months of 1990, and obviously these figures will jump even higher as building and construction work slows down in the remainder of this financial year and in 1990-91. Indeed, it is not fanciful to project that South Australia's unemployment rate could approach 10 per cent before the end of this calendar year, as firms in the construction industry have to respond to the very dramatic fall-off in work and, as a result, lay off staff.

My questions to the Minister are: first, does the Minister accept the accuracy of the Commonwealth Construction Program 1989-90 forecast which has been recently made public and, secondly, does the Minister accept that South Australia is receiving its fair share of Commonwealth Government capital works spending, given that South Australia has received only 2.7 per cent of this spending in each of the past two financial years?

The Hon. BARBARA WIESE: I will refer the honourable member's questions to my colleague in another place and bring back a reply.

OLYMPIC DAM BOREFIELD B

The Hon. M.J. ELLIOTT: I seek leave to give an explanation before asking the Minister of Local Government, representing the Minister of Aboriginal Affairs, a question about the Olympic Dam project, Borefield B development.

Leave granted.

The Hon. M.J. ELLIOTT: In preparation for the proposed expansion of the Olymic Dam project, environmental assessment studies have been commissioned by the Olympic Dam operations to determine the impacts of a second borefield and its associated pipeline corridor.

The aforementioned studies pertain to a development that, if approved, will have an impact on the local communities and lead to further degradation of the Great Artesian Basin and the mound springs. Therefore, the studies form an integral part of the environmental assessment procedure, a procedure that normally involves consultation with all interested parties and one which is subject to full public disclosure of information. As part of this environmental impact assessment an anthropological and archaeological study of the potentially affected area has recently been completed, a process that involved consultation with some local Aboriginal individuals and communities.

There is a long history of tense relations between developers and Aboriginal groups in the area and development of a second borefield and its pipeline corridor will inevitably result in hostility and opposition from some groups. To ensure that these divisions are not propagated and wittingly exploited and to facilitate development, all interested parties should be consulted. In the light of this, I ask the Minister:

1. Are the aforementioned studies to be publically released to allow for the vital appraisal of information by all groups with an interest in the region? If not, why not?

2. Is the Minister satisfied that all Aboriginal groups with interests in the area have been consulted and that divisions within the Aboriginal community are not being actively exploited and encouraged by the Olympic Dam project developers and their agents?

3. Have the potential effects on the artesian basin and on the mound springs in the Borefield B area and the actual requirements of the pipeline corridor—that is clearance and disturbance—been disseminated to the Aboriginal and white communities in lay form and terms?

The Hon. ANNE LEVY: I will refer that question to my colleague in another place and bring back a reply.

PLAGIARISM

The Hon. M.S. FELEPPA: I seek leave to make a brief explanation before asking the Minister of Local Government, representing the Minister of Employment and Education, a question about plagiarism in universities.

Leave granted.

The Hon. M.S. FELEPPA: To use unattributed chapters and ideas in a study—that is plagiarism—can be charged against a student as he or she is working for a degree. An astute examiner or tutor, who knows the subject well, can detect wholesale plagiarism. There are mechanisms at the faculty level as well as at the administrative level to deal with the students by way of warning, a suspension or a fine.

Amanda Lynch, in the *Advertiser* on 22 and 24 March this year, writes:

> A 'hidden problem' of academics stealing their post-graduate students' work and publishing it in learned journals existed. Students did not 'create a fuss', fearing it may affect their degrees.

Ian Brice, the executive member for academic matters at the university, said that the university had received no formal complaints.

The research officer of the Post Graduate Students Association of Adelaide University, Mark Leahy, is quoted as saying that 'he had documentation of the 12 cases but no academics had been punished because of the lack of any effective system of redress and the the fact "vulnerable students" had no confidence they would achieve justice'.

Given that the published work of academics is protected under the wide-ranging copyright law, is there any way the unpublished works of students can be similarly protected? In cases where a student has a complaint of plagiarism against an academic, what protection does a student have against covert or overt academic discrimination for making such a challenge?

The Hon. ANNE LEVY: I will refer that question to my colleague in another place and bring back a reply. I would point out to the honourable member that copyright law is covered by Federal law, not State law. However, there are many aspects of his question which I am sure the Minister of Employment and Further Education would wish to respond to.

GRAND PRIX

The Hon. J.C. BURDETT: I seek leave to make a brief explanation before asking the Minister of Tourism, representing the Minister of Recreation and Sport, a question about the Australian Formula One Grand Prix.

Leave granted.

The Hon. J.C. BURDETT: I have been informed by my constituents that the continued success of the Australian Formula One Grand Prix largely depends upon the patronage of motor sport enthusiasts. This is born out by the fact that people follow this sport throughout the world. As I have a daughter who follows this sport, I know about the intensity of that enthusiasm.

The complaint that has been made to me by enthusiasts is that the number of paddock stands, which are in the pit area, has been reduced. The enthusiasts want to be in that area so that they can have access to the pits, which is something they prize very much. In 1988, there were six paddock stands; last year it was down to two. I am informed that it will be two again this year. The paddock stands to which I refer are ordinary stands, where gold, silver or bronze passes apply. However, that area has been taken over by corporate stands. The authority has provided for this by reducing the number of public stands and increasing

the number of corporate stands. I suppose that this has been done for financial reasons, because it is neat and because there is no question of selling all the seats and so on.

I have been informed also that in the past the paddock stands were well used by tourists. Of course, this is now denied to them by the reduction of paddock stands and the provision of corporate stands instead. So, there does seem to be some sort of forgetting about the basics. I have been informed by my constituents that the reason is that, in the eyes of the authority, it is financially and administratively easier to have the corporate stands. I have been informed that the corporate stands are not usually patronised by enthusiasts, but by people who go there for social reasons.

Will the Grand Prix authority get back to basics and provide for public stands in the public stand area where motor racing enthusiasts—and that is what it is all about—can have access to the pit area which they want to see?

The Hon. BARBARA WIESE: It is obviously difficult for the Grand Prix authorities to balance the interests of all those who have an interest in the Australian Formula One Grand Prix. However, those who are responsible for this event must, to the best of their ability, strike a balance between ensuring the financial viability of the event as well as providing the best possible facilities and services for patrons and enthusiasts. It is well known that the corporate boxes and corporate clients of the Grand Prix are important to the financial success of the event.

The demand in that area certainly outweighs the provision of facilities, just as the honourable member is suggesting the demand for enthusiasts outweighs the capacity of the organisers to provide appropriate locations for people to view the Grand Prix. However, I am sure that the Grand Prix authorities will have a well argued case for the approach they are taking to this matter.

I am very much assured by people within the Grand Prix office and the Grand Prix board that they do try to strike a balance between the interests of the various sectors of the community that take an interest in this major international event. I am not sure that the Minister of Recreation and Sport is the appropriate Minister to whom I should refer this question. In fact, the Premier is the Minister responsible for the Australian Formula One Grand Prix. However, I will make sure that the question is referred to the appropriate Minister and I will bring back a full reply as soon as I can.

ELDERS PASTORAL COMPANY

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Minister of Tourism, representing the Minister of Agriculture, a question about Elders Pastoral Company.

Leave granted.

The Hon. T.G. ROBERTS: This is the same question I was interrupted in asking on Thursday last, Mr President, through lack of time, and I will continue with the question because it is important to many rural people. In the recent edition of the *Stock Journal*, Elders Pastoral Company announced that it had closed 10 of its 49 branches in South Australia, and it appears that that number seems certain to double the number first outlined. In some country towns, the closure will impact on rural services such as schools, hospitals, garages, hotels etc., where these services by the pastoral companies are basically supported by small rural businesses. Many rural people are concerned about the foreshadowed restructuring, without actually knowing what is the final plan envisaged by Elders Pastoral.

The Hon. J.C. Irwin: Is that a question for Mr Keating?

The Hon. T.G. ROBERTS: Mr Keating or Mr Elliott? I think Mr Elliott has closer association with Elders Pastoral than does Mr Keating. The restructuring being put into place is due more to some of the financial difficulties that Elders is finding at different levels, and it is impacting on country regions. I refer to the *Naracoorte Herald* of 22 March. Union secretary, Mr Darryl Foster—son of the Hon. Norm Foster, a member in this Chamber for some time—took up the matter in the commission for his members in stock firms, but could not get any more information out of Elders than could anyone else.

Many members opposite would sympathise with the lot of the stockmen and agents who were dismissed with 24 hours notice and who had to leave homes and give up cars. If it is reported accurately in the rural press, without any prior notification one car had to be given up on a Sunday. That was in the Balaklava region. The people of Balaklava rallied to the stockman's call and supported him in Balaklava's main street. The Balaklava paper was scathing in its reference to the industrial relations procedures applied by Elders IXL in its restructuring program.

Many of these employees had given long service and had been completely loyal to the company. Unfortunately, the loyalty was not repaid, it was given short shift and these employees and their families will suffer. Mr Foster is reported in an article in the *Naracoorte Herald*. I have much respect for that rural paper. Some rural papers are just rural papers, but the *Naracoorte Herald* is highly respected.

The Hon. M.B. Cameron: What about the *South-Eastern Times*?

The Hon. T.G. ROBERTS: The *South-Eastern Times* has just had a change of editor and management. I hope that some of its content will pick up.

Members interjecting:

The PRESIDENT: Order!

The Hon. T.G. ROBERTS: I hope that the editorial content will pick up and give the Hon. Mr Cameron and myself a better go in the political contributions that are made. The article in the *Naracoorte Herald* states:

> Union secretary Mr Foster said the union accepted Elders might need to rationalise some of its smaller branches but objected to the 'high-handed, arrogant and cruel manner' it was going about it. He said the company had not only deprived its employees of notice of the changes but also the clients which the company served.

In some cases clients have over $500 000 worth of business and were completely ignored in the restructuring process.

The Hon. T. Crothers interjecting:

The PRESIDENT: Order!

The Hon. T.G. ROBERTS: I am not sure whether the Hon. Mr Crothers is trying to help or oppose me with that interjection. The press report continues:

> The association had called on Elders Pastoral to involve the United Farmers and Stockowners in any discussions but had met with no success.

The United Farmers and Stockowners was only trying to get information that it could supply back to its members to work out exactly what the restructuring process meant.

Members interjecting:

The PRESIDENT: Order! There is too much audible conversation in the Chamber. I ask members to come to order.

The Hon. T.G. ROBERTS: Thank you, Mr President, for protecting me from my colleagues! The problems that I have raised are in connection with my question, and relate to the difficulty that Mr Foster had in gleaning information in the commission from Elders Pastoral Company. In view of the social and industrial implications highlighted by the

rural press, did Elders Pastoral Company notify the Minister of Agriculture of its plans?

The Hon. BARBARA WIESE: I will refer the honourable member's very good question to my colleague in another place and bring back a reply.

STIRLING COUNCIL

The Hon. J.C. IRWIN: I seek leave to make an explanation before asking the Minister of Local Government a question about Stirling council.

Leave granted.

The Hon. J.C. IRWIN: The debenture document pertaining to the Stirling council's bushfire liability loan refers to a negotiated settlement between Stirling council and the South Australian Government. To most observers 'negotiate' means negotiation on the Government's terms or be sacked. The four months from November 1989 to March 1990, when the Minister's finance committee exercise was set up, is one good example of that: put this matter to a committee before the State election and have the report of that committee just after the Federal election, only weeks before the March deadline for Stirling's picking up the total debt and repayments. That certainly did not leave much time for any negotiating.

I know of one observer to those meetings who did not even know when the committee was meeting. How can anyone believe the strength or accuracy of the $7 million arrived at by the Minister's committee? It can only be seen in the absence of an independent expert as a clever negotiating position, softening up the people. What is the Government's $4 million offer based on? It bears little relationship to the $7 million that the expert committee came up with. Certainly, it is put there to look generous in comparison. The people of South Australia—

The Hon. Anne Levy: That's an opinion.

The Hon. J.C. IRWIN: We have just had questions with plenty of opinions! The people of South Australia should be astonished at the financial trickery being played with their own money. For some time the Opposition has been calling for an independent umpire to assess the claims made by the Government and the Stirling council. I am aware of a question asked on that topic last week. The Minister should not have allowed the present position to be reached without the Government's claims and the Stirling council's claims being independently assessed. People reading the press accounts of the Stirling saga must be groggy from the publicly unsubstantiated claims and counter claims of the Government and Stirling council.

The Local Government Association has played a part throughout this difficult situation, and I will not go into that now, since it is well known. I understand that the association is still ready to play a part in a negotiated settlement of this issue. Before the Minister makes a decision to send in an investigator of her choosing tomorrow, who may not be seen as independent, will she again consider seriously the call by the Opposition and Stirling council for an independent arbitrator and/or having discussions with the Local Government Association with a view to its helping resolve the council problem in a way that is fair and seen to be fair? Has the Minister had discussions with the Local Government Association in the past week about the Stirling bushfire settlement?

The Hon. ANNE LEVY: Numerous statements made by the Hon. Mr Irwin are, I regret to say, not accurate. The report indicating that Stirling council had the capacity to pay $7 million—was prepared on financial data provided by Stirling council. The figures have not been challenged. If the Hon. Mr Irwin does not have a copy of that report I would be happy to provide him with one so that he can see exactly how the figures have been arrived at. I am very happy to make a copy available if the Hon. Mr Irwin has not seen one.

The Hon. Mr Irwin then asked what the $4 million was based on. The Government has offered to excuse Stirling council of $10.5 million of its debt, leaving it with a liability of $4 million. That figure was based on calculations suggesting that, on the basis of very reasonable assumptions similar to those which Stirling council has been using in all its calculations, Stirling council would be able to service a debt of $4 million without increasing rates other than by CPI and without having to sell off any assets or inflicting on that council a debt servicing ratio which would be way out of line from that which is paid by other metropolitan councils. In fact, it would still leave it below the average for metropolitan councils in debt servicing ratios. That is what the $4 million is based on, that it was well within Stirling council's capacity to pay that without inflicting rate increases other than CPI and without having to sell off assets.

With regard to the question of an arbitrator which the Opposition first raised in this place last week and which has been repeated today, there is no point in having an arbitrator. It is the courts which have determined that Stirling council is liable in negligence for claims by bushfire residents. To enable the bushfire victims to receive their claims the Government lent Stirling council $14.5 million, or gave it the facility to draw on $14.5 million, so that it could pay the claimants to the fire. That loan was due to be repaid last Friday. Certainly, negotiations have been taking place with Stirling council. These negotiations have involved various matters which Stirling council apparently said at its public meeting would need settling when the Government, had already written to Stirling council agreeing that everything possible would be done to settle those questions and stating that Stirling council could rest assured that the Government would do all in its power, on those various matters which Stirling council had raised in negotiations.

We have had discussions with the Local Government Association, or with individuals from it. In fact, when the Premier and I met with Stirling council six days ago the Local Government Association was represented by a Vice-President and by its Secretary-General. Unfortunately the President of the LGA was not in Adelaide and was not able to attend. However, he was very ably represented by one of the Vice-Presidents of the LGA.

I may say that, following these discussions, the Vice-President of the LGA stated publicly that he felt the Government's offer was a very reasonable one and that he felt that Stirling council should accept the offer which the Government had made to it. It is interesting that Stirling council, for the first time this morning, is apparently talking about an arbitrator. It was due to settle its debt, according to the debenture document, on Friday of last week. On Thursday I received a letter from it asking whether its response to me could be delayed until today so that it would be able to have a special council meeting last night to finalise its response. Within minutes of receiving that request, I sent a letter to Stirling council acceding to its request that they could have until today.

The question of an arbitrator has never been raised with me by Stirling council during any of our negotiations or to this time. I understand that the Stirling council has raised it through the media this morning, but it certainly has not

raised it with me. It is surprising that when Stirling council had asked for an extension of time until today, it should leave any suggestion until today, having promised a response to me today, which response had been delayed from last Friday.

I should add that I have not yet received a response from Stirling council, or at least it had not arrived at my office 63 minutes ago. Whether or not it has arrived since then I do not know, but it has promised a response today, which I presume means any time until close of business hours.

WEST BEACH

The Hon. PETER DUNN: I have a question for the Government. Were—

An honourable member: To whom is it addressed?

The Hon. PETER DUNN: Just to the Government. They can work that out. Were bulldozers levelling the beach in front of Marineland, and was it to survey the area in readiness for partial beach closure to the public?

The Hon. Anne Levy: Who's the question directed to?

The Hon. PETER DUNN: You can work that one out yourself.

Members interjecting:

The PRESIDENT: Order!

The Hon. PETER DUNN: All right—to the Minister in charge of the beach in front of Marineland—

The PRESIDENT: Order! I take it that the honourable member addressed the question to the Government. I will accept that it is being directed to the Attorney-General, as Leader of the Government in the Council.

The Hon. PETER DUNN: If the beach is to be closed to the public, when will that take place?

The Hon. C.J. SUMNER: I assume that the answer is 'No' but, if it is any different, I will advise the honourable member.

BUILDING ACT

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Minister of Local Government a question about the Building Act.

Leave granted.

The Hon. J.F. STEFANI: I raise this matter in the context of some concern being expressed to me by a constituent who is involved as a consultant in the building industry. Building work is generally controlled through the current Building Act 1971, and the Building Regulations 1972, as amended, and as approved by local government councils. Plans, specifications and engineering reports are submitted for council approval before any building work can commence. When building work is commenced, plans, specifications and engineering reports may be substantially altered only in accordance with the Building Act and Regulations and must be resubmitted to council for approval in accordance with the procedure applicable to the original building application.

I have been advised that there have been instances where substantial structural alterations have been undertaken by builders without council's or the owner's approval. In those instances, builders have engaged consulting engineers to provide reports which certify the structural alterations carried out without the council's and owner's approval and after the work had commenced. Therefore, my question is: can the Minister advise who is responsible to ensure compliance with the Building Act and regulations when alterations to the original plan, specifications and engineering reports are undertaken after the building work has commenced?

The Hon. ANNE LEVY: I will have to seek a detailed report on this matter. I think I am correct in saying that currently it is council's responsibility, but proposals are being considered by the Building Advisory Committee relating to approvals being given by people (other than the building inspector of councils) who have certain qualifications and who will certify that the work complies with the required building standards and set appropriate liability in such situations.

The Building Advisory Committee has been revamped and given a different charter with the complete agreement, I may say, of all sections of the building industry. I am not quite sure what stage these discussions have reached on this matter. I think that it still rests with the councils, but I will seek a report and bring back a more detailed reply to the honourable member.

CURRICULUM GUARANTEE

The Hon. R.I. LUCAS: I seek leave to make a brief explanation before asking the Minister representing the Minister of Education a question about the curriculum guarantee.

Leave granted.

The Hon. R.I. LUCAS: Members will be aware that last year considerable concern was expressed in a number of schools by staff and parents about the Government's supposed curriculum guarantee. In particular, a lot of concern was raised about the question of what is known as negotiable salaries. Negotiable salaries cover a whole variety of extra programs that are provided in many of our South Australian schools, and many important curriculum initiatives are undertaken by the negotiable salaries provided to schools. For example, the Magill Junior Primary and Primary School conducted a very worthwhile program for gifted and talented students in the form of extension and enrichment programs. That program was supported not only by the students but also by staff and parents at that school.

As a result of their collective concern about the curriculum guarantee and the effect on their own programs at that school, prior to the State election last year they wrote to the Director-General of Education. The Principal, Mr Wally Armitage, who is also the Secretary of the South Australian Primary Principals Association (and he wrote in that capacity), stated:

Dear Ken,

I seek clarification for our membership regarding your guarantee as expressed publicly and in today's *Advertiser* regarding continuity of 1989 programs into 1990.

Does this guarantee apply to negotiable salaries, many of which are being used to provide special education, gifted, talented and other support services?

There appears to be some confusion in the areas over the correct interpretation of your guarantees.

As I said, that letter was written just prior to the State election and it was a matter of great moment. There was a very expeditious reply (which is a little unusual) when a letter was received the next day, 1 November, from Ken Boston, and it stated:

Dear Wally—

The Hon. T. Crothers: You're a Wally too, aren't you?

The Hon. R.I. LUCAS: No, we are all amicable here, Mr Crothers, and we do not want to descend into that sort of behaviour.

The PRESIDENT: Order! The honourable member has the floor.

The Hon. G. Weatherill: They're a very friendly mob, aren't they?

The Hon. R.I. LUCAS: We are very friendly. The letter states:

Dear Wally,

With reference to your facsimile message of 31 October 1989, I confirm that the curriculum guarantee applies to those programs which in the past have been staffed by negotiable salaries to support particular groups of students, provided of course that student numbers in the programs which attracted those salaries have not significantly diminished. Examples are special education and languages other than English (LOTE).

That was a very important commitment which was given to the primary principals by the Director-General on behalf of the Bannon Government just prior to the State election. That message was disseminated to many schools throughout South Australia, and the fears and concerns of many of those parents and staff were allayed when they received that particular commitment from the Bannon Government through the Director-General of Education.

The sad fact is that, as with many other promises, that commitment has been broken. I have been advised during the past week that that program at the Magill Junior Primary and Primary School has had to be discontinued because of the cut in the negotiable salary to that school. I cite that as only one instance of what is a widespread problem. My question to the Minister is: how does the Minister reconcile the fact that schools like Magill have had to cut programs, such as the program for gifted and talented students that I have instanced, with the commitment that was given on behalf of the Government through the Director-General of Education just prior to the State election?

The Hon. ANNE LEVY: I will refer that question to my colleague in another place and bring back a reply.

TELEVISION CAMERAS

The Hon. ANNE LEVY: I direct a question to you, Mr President, about television cameras. Under Standing Orders, I cannot put this matter on notice. However, the other evening (it was either last night or perhaps over the weekend) I noticed that at least one television news included close-up shots of individuals in this Chamber who were not on their feet speaking. I always understood that the rules under which television cameras were allowed into this Chamber were that shots were to be either of the whole Chamber or of an honourable member who was on his or her feet and actually speaking to the Council. The shots which were shown as part of the television news were shots of individuals who were seated.

The Hon. Diana Laidlaw: The Hon. Mr Griffin, seated?

The Hon. ANNE LEVY: Yes, the Hon. Mr Griffin and the Hon. Mr Gilfillan, who were seated and not on their feet speaking; they were not taking part in the debate. Mr President, have the rules for the television stations been changed? If not, will you again remind them of what the rules are regarding television cameras being in this Chamber?

The PRESIDENT: I am happy to do that. To my understanding the rules have not been changed. I did understand that there was a loose arrangement, whereby the member asking the question and the Minister answering it could be televised. However, my understanding could be wrong. I am happy to check that out and advise the Minister at a later date.

JAMES BROWN MEMORIAL TRUST INCORPORATION BILL

The Hon. CAROLYN PICKLES brought up the report of the select committee, together with minutes of proceedings and evidence.

Ordered that report be printed.

Bill recommitted and taken through its remaining stages.

CONTROLLED SUBSTANCES ACT AMENDMENT BILL (No. 2)

Adjourned debate on second reading.

(Continued from 28 March. Page 912.)

The Hon. K.T. GRIFFIN: The Opposition raises no objection to the second reading of this Bill which seeks to increase quite substantially certain drug penalties and to provide specifically for penalties where a drug of dependence or prohibited substance is supplied, sold or administered to a child, or where a person is in possession of a drug of dependence or prohibited substance for the purpose of the sale, supply or administration of the drug or substance to another person within 500 metres of the boundary of a primary or secondary school.

Where cannabis is sold, supplied or administered to a child or where a person is in possession of cannabis in a school zone, if the quantity is in excess of a prescribed amount—which the Bill does not fix—then the penalty is to be a fine not exceeding $1 million and imprisonment for a term not exceeding 30 years, or where the amount is less than the prescribed amount the fine is to be $100 000 or imprisonment for a term not exceeding 15 years.

Where the drug of dependence or a prohibited substance other than cannabis or cannabis resin is involved, the penalty, where the amount exceeds the prescribed amount—and again that is not specified in the Bill—will be a fine not exceeding $1 million and imprisonment for life; and, if less than the prescribed amount, the penalty will be $400 000 or imprisonment for not more than 30 years. For other offences not involving a child or a school zone, the penalty for amounts in excess of the prescribed amount (not specified in the Bill, although I think it should be) of cannabis or cannabis resin is to be $500 000 and imprisonment for not more than 25 years and, in any other case, $50 000 or 10 years.

Where the drug is not cannabis or cannabis resin and the quantity exceeds the amount prescribed—and again that is not included in the Bill, nor is any indication given in the second reading explanation as to what those quantities should be—then the fine is to be $500 000 and life imprisonment and, in any other case, $200 000 or 25 years. There is no doubt that these represent a substantial increase in penalties, and in conjunction with the private member's Bill, which was introduced in the House of Assembly by my colleague Mr Graham Ingerson and which is now before us and will be considered tomorrow, there is a package of very substantial increases in drug penalties—and that is the way it should be.

In respect of cannabis, we have already taken the decision in the House of Assembly to reduce the amounts of cannabis and cannabis resin beyond which tough penalties apply, and I will be looking at the way in which that Bill and this Bill can work together to ensure the objective which I believe is important and that is the increase in substantial drug penalties.

Regarding possession in a school zone or sale, supply or administration to a child, I suggest that there are a number of areas where questions have to be raised, particularly on the amounts which the Government proposes to prescribe. My view is that they should be included in the legislation if at all possible, particularly cannabis, cannabis resin and cannabis oil. During the course of the Committee stage I want to ensure that that is done.

The school zone definition raises a number of questions, particularly as to the way in which the 500 metres from the boundary of the school is to be measured. It is not at all clear how that is to be done and I suggest that where there is a school boundary with corners, as there obviously will be, rather than a school boundary which is circular, there will be problems of definition. The Minister of Health in another place when asked how the boundary was to be defined and how the 500 metres was to be calculated said that he thought that it would be 500 metres as the crow flies, not necessarily by the nearest direct route, and that the measurement would be taken at right angles to the school boundary.

Of course, it does not take into account that, when there is an angle in the school boundary, something has to be done between the point at which the boundary is 500 metres at right angles from the angle around the angle to join the next part of the boundary. So, some clarification is required, because there is not much point having this legislation if, in fact, there will be difficulties in definition. After all, the proposal was raised by the Government during the election campaign. The Opposition then said it was gimmicky and that it was likely to be very difficult to enforce. We now have to consider bringing it into legislation. I maintain my view that, whilst it is, in principle, setting a desirable objective, nevertheless it is gimmicky and open to technical questioning as to how the whole thing is going to operate.

We must remember, of course, that the penalties are tough and, as a general principle, where a person's liberty is at risk or substantial penalties are imposed, the citizen, even if a law breaker, should be able to know what the law is or is not. In the circumstances of this particular provision of the Bill, that will not be easy. There will also be difficulty in identifying the boundary. Will there be markers which will identify what may or may not be 500 metres from a school boundary, in order to identify to would-be law breakers that if they step into the zone they will be liable to a tougher penalty than if they are just outside it?

My colleagues in the House of Assembly identified a concern where a person supplying drugs to children or to adults was, maybe, 501 metres from the school boundary and was subject to a much lower penalty than the person who was 499 metres from the school boundary. There are inequities but I suppose one really has to adopt a broad brush approach.

The other question which must be raised is why the Government has focused only on primary and secondary schools. Some of my colleagues have been anxious to extend that to include any place where primary and secondary schoolchildren might gather or be involved in school-related activities and they drew my attention to school camps, excursions, conferences—a whole range of activities. However, the difficulty is that they would be even more of a problem to define than the boundaries of secondary and primary schools. I suggest that we extend the zone concept to preschools and kindergartens on the basis that there are children older than preschoolers who may be in the vicinity of such schools and kindergartens. Also, I suggest that we extend it to after school care centres where older children gather after school and that, because of the influence of drugs on the lives of young people, colleges such as TAFE colleges and tertiary institutions should also be included. I will seek to move an amendment to that effect when the Bill is in Committee.

Clause 5 of the Bill deals with section 44 of the principal Act in that it requires a court to take into consideration in determining a penalty whether the events occurred within a school zone—and in the context of what I have already said, that is appropriate—or 'at or near any prescribed place'. My reading of the clause suggests not that the penalty will be increased because the offence has occurred within, say, 500 metres of a prescribed place, which might be other than a school, but that the place where the offence occurred is relevant to the general sentencing considerations which the court takes into account in fixing a penalty. In other words, the reference to the court taking into account whether the offence occurred at or near any prescribed place does not affect the maximum penalty for that offence.

If I am wrong in that, I would like that to be clarified. Even if I am right, I have a concern that sentencing principles might be regulated by prescription or regulation. If it is intended that the courts take into account particular places where offences occurred in determining what penalties should be affixed, it is important that such consideration be included in the statutes rather than for it to be dealt with by regulation. So, in the absence of any indication from the Government as to the sorts of places that will be prescribed or any proposal to include them in this Bill, I will at the appropriate time seek to delete the reference to 'at or near any prescribed place' and the part which it plays in the sentencing process.

Several other matters need to be addressed in the context of the Bill. I indicated earlier that, under section 32, there are matters which are left to regulation. In 1984 I raised this matter when the principal Act was before us because what I sought to do then was to set the thresholds by reference to specific quantities of drugs and, of course, allow other drugs and quantities of other drugs to be prescribed in the future. I have a basic objection in principle to any legislation relying upon regulation to fix the threshold at which a particular penalty will apply, and more so in the current instance where some quite high penalties are being imposed but are dependent upon a particular quantity of drug being involved.

So, I am proposing that we insert a schedule in the Bill which deals with the quantities of drugs of dependence or prohibitive substances, the possession of which is deemed to be for the purposes of trafficking. We may provide that the quantities may be reduced by regulation and new drugs prescribed, and also a schedule which deals with the quantity of drugs involved in a particular drug-related offence at which a particular threshold penalty will be considered by the court.

The other matter to which I will draw attention is section 32 (6) of the principal Act which deals with the cultivation of cannabis plants for one's personal use. I want to include a quantity of five plants as the maximum which a person may cultivate and which will determine whether or not the cultivation for personal use is an appropriate offence and will thus attract a lower penalty. I suppose one can argue whether it ought to be five, 10 or one plant or some other number, but whilst my view is that five is a large quantity it is nevertheless not an unreasonable quantity compared to the quantity that has previously been prescribed.

The only other area which should attract some consideration is where the threshold—particularly in relation to cannabis and cannabis derivatives—should be set for the purpose of bringing into effect the tougher penalties for

offences in a school zone. Again, there is a difficulty in determining what the appropriate quantity should be, but nevertheless that ought to be included. Consultation suggests that 500 grams of cannabis—and less quantities according to proportions which were previously established in legislation for cannabis resin and cannabis oil—would be appropriate.

A number of matters should be attended to in relation to this Bill. There is a concern about definitions, about application and about the relative vagueness of some aspects of the propositions. Nevertheless, the Opposition is prepared to support the second reading of the Bill, and I will be arranging amendments for debate in the Committee stage.

Bill read a second time.

LIQUOR LICENSING ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 21 March. Page 654.)

The Hon. BARBARA WIESE (Minister of Tourism): I would like to thank members for the contributions that they have made to this debate, and I want to respond to the issues that were raised by members. I will begin with those issues that were raised by the Hon. Mr Griffin in his second reading speech. In particular, I refer to the clauses to which the honourable member drew attention. The first is clause 7, which clarifies section 22 of the principal Act to make clear that the Licensing Court may award costs against a person who exercises the right to object to an application where, in the court's opinion, such right was exercised frivolously and vexatiously. Proceedings can be construed in different ways and it could be argued that the court should read existing section 22 broadly to include a party to proceedings and therefore by definition to include an intervenor or an objector. In fact the court currently holds this interpretation. The amendment merely seeks to clarify the existing provision.

The honourable member's main concern is that this may discourage objectors, in particular concerned residents, from exercising the right to object to protect the amenity of their locality. The amendment, in addition to clarifying the existing situation, would protect applicants in those cases where frivolous or vexatious objections cause considerable costs. There is a fine balance between preserving an objector's rights and also ensuring that applicants are not exposed to unreasonable costs. I believe that the court would not award costs against residents objecting to protect their community on the ground that the objection was frivolous or vexatious. The Licensing Court is an appropriate body to maintain this balance, that is, to protect legitimate objectors and applicants.

The honourable member also sought clarification of the particular problems that have prompted clause 27. Section 79 of the principal Act prevents the licensing authority from granting an application for a licence or for the transfer or removal of a licence without the lessor's consent to the application. This raises the question of what constitutes 'lessor's consent to the application'. In practice the licensing authority has required the written consent of the lessor to an application. This has created problems where a lessor is an absentee landlord and there may be considerable difficulty and delay in obtaining written consent, resulting in the protracted settlement of a sale and purchase agreement. The proposed amendment makes clear that, where a lease or assignment of lease to the applicant specifies the purpose for which the subject premises are to be used and that purpose accords with the application, the licensing authority may infer that that landlord's consent has been obtained without the necessity to obtain further evidence.

Under clause 31 an objection may be varied at any time before the determination of proceedings. It runs in parallel to clause 17, which provides that the licensing authority may allow an applicant to vary the application at any time before the determination of proceedings. In practice, both the application and the objection would be varied during proceedings and both parties would be aware of any variations.

The honourable member also referred to clause 45. Section 118 (4) of the principal Act makes it an offence for a person acting at the request of a minor to purchase liquor on behalf of the minor on licensed premises. The amendment makes clear that the minor must be on licensed premises. While it is an offence for a minor to consume liquor on licensed premises or to consume or possess liquor in a public place (unless in the company of a parent or a guardian), it is not an offence for a minor to consume liquor in the family home. However, if a person, for example a parent or a guardian, were to purchase liquor at the request of a minor for consumption in the home, that person would be guilty of an offence. This amendment seeks to tie the offence of purchase of liquor at the request of a minor to the offence of consumption of liquor by a minor on licensed premises. However, the Government is prepared to concede to the Hon. Mr Griffin's view on this matter.

The honourable member sought clarification of clause 47 and what is proposed to be prescribed premises for the purpose of this provision. Prescribed premises are defined in the principal Act to mean:

(a) licensed premises;
(b) regulated premises;
(c) premises of a kind declared by regulation to be prescribed premises.

Regulated premises are then defined to mean unlicensed premises consisting of:

(a) a restaurant, cafe or shop;
(b) an amusement parlour or amusement arcade;
(c) a place of public entertainment (being a building or a roofed enclosure):
  (1) to which admission is gained by payment of an admission charge;
  (2) in which entertainment or refreshments are provided or are available, at a charge;
  (3) that is otherwise being used for the purpose of financial gain;
  or
  (4) premises of a prescribed kind.

No premises have been prescribed to date. The amendment to clause 38 clarifies the liability of directors. The honourable member proposes a general provision that would enable directors to show that they could not by the exercise of reasonable diligence have prevented the behaviour by the body corporate. The proposed amendment specifies that only a person who was a director of the body corporate or a body corporate that was a related body corporate at the time the amount became payable can be pursued. This in effect ensures that those persons who are approved as persons in a position of authority—that is, that they can influence the operation—can be held liable. Any further weakening of this position could result in directors who are approved as persons in a position of authority arguing that they are not liable and this process would negate the whole intent of the section.

The honourable member also questions the second provision of clause 38 as it relates to the jurisdiction of the local court. The honourable member has a valid point and the Government agrees that this clause should be amended, possibly by the simple removal of the word 'local' to reflect

the proposal, that is, that it should read 'in a court of competent jurisdiction'.

The honourable member opposes clause 60 on the ground that Government agencies should be in a position to bring proceedings within one year and that, if a Government agency cannot 'get its act together and issue proceedings within a year' then it deserves to 'miss out'. The Government agrees with this position under normal circumstances, but this amendment is designed to cover circumstances in which the actual offence can often not be detected within one year of the date on which it was committed. For example, it is often not until the returns that accompany but are not a part of the recording of liquor transactions are submitted that offences come to light. Breaches of section 106 of the Act, which deals with profit sharing, will often only be detected when annual returns of persons in a position of authority are submitted often concerning events occurring 15 to 18 months previously. The Government intends to pursue this amendment.

The final issue raised by the honourable member relates to the Lotteries Commission's Keno. The honourable member has indicated that he will move an amendment which will ban the availability of Keno in licensed premises to persons under the age of 18 years. This matter should be considered in the total context of the availability of Lotteries Commission 'games' to minors rather than an *ad hoc* prohibition. It would be wrong to prohibit such practices in licensed premises but to allow them in all other Lotteries Commission outlets. The Government does not support this proposal. Quite simply, it is nothing to do with the Liquor Licensing Act. Any such provision should be provided for in the appropriate legislation.

I refer also to the second reading speech of the Hon. J.C. Burdett, who supports the Bill, with the exception of those matters raised by the Hon. Mr Griffin. In particular, the honourable member supports the Governments initiatives in respect of the expansion of the grounds of intervention for a local council to include undue noise, disturbance, offence, annoyance or inconvenience to local residents. I note that the honourable member supports the fact that the balance of the principal Act should not be interfered with without good grounds following a comprehensive review.

The Hon. Ms Laidlaw supports this view and raises the question of how the police will seek evidence of age. Without trivialising the question, this amendment merely seeks to give the police such powers to assist in controlling underage drinking, which is of concern to this Government. This amendment should be supported. The Commissioner of Police will then determine how it is enforced. In fact, recent offence statistics show that the detection of under-age drinking offences has doubled during the last 12 months. This is pleasing in that it demonstrates that the combination of the provisions of the Liquor Licensing Act and the various police initiatives to combat and curb under-age drinking are having effect. The Government considers this amendment should proceed.

The Hon. Mr Davis has raised the subject of exclusion of minors from certain licensed premises, in particular, upmarket bed and breakfast and guesthouse facilities. The Government agrees with the honourable member that this matter should not be considered in isolation and I believe that it should be included in a future review of the Act. That covers the points that have been raised by members in the debate to date, and I again thank them for their contributions to it.

Bill read a second time.

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Interpretation.'

The Hon. K.T. GRIFFIN: I have received a somewhat belated submission from the Australian Hotels Association. I had some consultation with that association prior to speaking on the Bill, and it outlined just a few areas where it wanted to express a view. However, subsequently a more detailed submission was received, and I indicated that I would raise certain aspects of it during the Committee stage with a view to having matters clarified. Probably the best way to go about this is for me to read the comment that has been made and seek a response to it and, if there needs to be any further clarification, we can take it from there.

In relation to clause 3 the suggestion is made that the definition of 'live entertainment' needs further amendment. The submission reads as follows:

> Surely, where a hotel or restaurant employee simply turns on prerecorded background music, or feeds coins into a jukebox that does not constitute 'live entertainment'.
>
> Moreover, the definition as drafted would appear to make otherwise 'live entertainment' not be 'live entertainment' if it is provided by the licensee or by some person not employed to play the music. We can envisage arguments about whether someone is employed or is simply a contractor.

That point is raised in relation to the definition of 'live entertainment'. I wonder if the Minister has any observations on that point of view.

The Hon. BARBARA WIESE: It is the intention under this clause that the licensing authority would only grant a late night licence for live entertainment where prerecorded music was being used and where a person was employed to play the role of DJ, or whatever it might be, in the premises. It would not be the intention for this matter to be covered where a hotelier was simply playing background music in a dining room or something of that kind. It is to be used in circumstances where a person is being employed specifically to play music for the purposes of a disco or some other function of that kind.

The Hon. M.J. ELLIOTT: I was going to follow the same pathway through this Bill when I decided to speak during the second reading debate and to raise most of the concerns during the Committee stage. Indeed, I intended to raise one of the concerns that was raised by the Hon. Mr Griffin. Certainly, it is interesting that later we have a clause which is attempting to tighten up on sham meals, yet we seem to have here a clause which leaves a loophole to allow sham live entertainment. It does not seem to be terribly consistent. It seems a very real chance that the 'live entertainment' definition is so wide that we may be creating some difficulties in this area.

The Hon. K.T. GRIFFIN: I just make an observation on the Minister's response to my comment. I agree with what the Hon. Mr Elliott is saying, namely, that this does tend to give more flexibility. I acknowledge the context in which this amendment is intended to apply. I can just suggest that maybe it will give much more flexibility than presently intended, but I suppose that will only really be seen in practice. In those circumstances, I do not propose to do anything more about that matter at this stage.

Clause passed.

Progress reported; Committee to sit again.

CORONERS ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 27 March. Page 836.)

The Hon. R.J. RITSON: When I first commenced my remarks, I made it clear that the Opposition does not necessarily oppose this Bill but that we had a number of main

concerns, the first of which being the apparent ambiguity contained in subclause (5) which, on one interpretation, looked to me as though it might involve the reporting of a wide range of people other than the mentally disturbed or impaired, because they happened to be in a part of an institution in which some patients of this class were accommodated. The honourable Attorney paid me the courtesy of giving me a draft of his intended response to my remarks, and without wishing to pay him the discourtesy of pre-empting his actual response, on the question of the interpretation of the scope of application of the compulsory reporting in the case of institutions caring for the class of individuals referred to, I was even more concerned than previously that it had such a wide application.

The problem has arisen because the honourable Attorney has attempted to draft this subclause in terms of defining the institutions rather than defining the patients. Given the way that institutions mix up patients and board them out, it becomes nearly impossible to get a consistent result. The result desired is the compulsory reporting of deaths of patients that would not otherwise be reportable but that they are institutionalised with a psychiatric or other mental problem. This can be done by defining the class of patient accurately instead of trying to define the institution. I have had an amendment drafted accordingly to which I hope the Attorney will give fair consideration.

I furnished the Attorney with a copy of a letter that the Coroner sent to me just a few days ago. In that letter, he describes his intention, and that was to broaden the protection given to psychiatric patients who are institutionalised under compulsion to include those who are institutionalised not under compulsion. But as expressed in that letter it was never his intention that the deaths through natural causes of non-psychiatric patients be picked up just because they happened to be in a part of the hospital that accommodated psychiatric patients. When we reach the Committee stage, I will cite some examples of the complicated situations that would arise under the present drafting, and I hope to show the Attorney how the drafting of my amendment will avoid many of those complications.

The other point of great concern was the lack of consultation. The Attorney has indicated to me that it was not intended to consult at this stage because the Bill would require the setting up of a substantial infrastructure which would take some time, and he said that he wanted the Bill passed now and the people who have to work with the Bill could be educated in due course. Obviously, consultation was never intended. Neither the Government nor I know what the impact will be on the funeral industry and on delays to funerals with distressed next of kin, in relation to this class of death which, as I say, is a class of death due to natural causes, the medical causes of which are well documented.

I am also a little concerned about the fact that this class of death has traditionally been certified by the attending doctor. All doctors are used to the fact that notification to the Coroner is synonomous with not providing a death certificate. If one notifies the Coroner, the death certificate is not written. Conversely, if sufficient information is not available to write a death certificate, there is no burial until the Coroner either intervenes or issues a permit for burial.

If this Bill is passed in its present form, for the very first time the medical profession will be faced with a situation where it is expected to sign a death certificate where the cause of death is known and is due to natural causes. The Coroner expects this to happen and, in his letter to me (and I have provided a copy to the Attorney), he referred to the fact that a death certificate will still be written for these patients and burial will proceed in the normal way unless the Coroner chooses to intervene. I do not know how that will work. The undertaker will receive the death certificate and plan the funeral not knowing whether or not the Coroner will intervene. Should the undertaker advise the deceased's relatives of a definite and early funeral date? Should he advise the relatives of the possibility of the Coroner's intervention, even though a death certificate has been provided? If no-one tells the doctor to sign the death certificate, will he or she do so? Many doctors, having been used to the system whereby if there is no death certificate the Coroner is required or, when the Coroner is notified, there is no death certificate, may just walk away from these cases and leave the Coroner to determine all of them. I do not know what will happen. I do not know what educative programs the Government has in mind, but there will be some problems.

If the provision of after-hours facilities results in the reporting of many more deaths, it may very well be that, unless substantial after-hours staff are provided to receive telephone notifications at night and over weekends, the general rule might be that, if the doctors sign the certificates, the Coroner, more often than not, will actually look at the details of the deaths after the burial. That situation may become the rule rather than the exception. No-one in Government can inform me about this issue, because this Bill was instigated by one person, and there has been no further consultation.

During the second reading debate I made a couple of peripheral mistakes in my remarks. For example, I referred to the Division 6 penalty instead of the Division 6 fine. There were one or two other instances of mistakes which I am very happy to accept with good grace and a modicum of humility (I am very proud of my humility), but those matters are peripheral. The first concern about the interpretation and breadth of application of proposed section 31 (5) is still valid. I hope that the Attorney will look at my drafted amendment, which defines the class of patient rather than the institution and which I think accurately reflects the Coroner's intention as stated in the Coroner's letter to me as forwarded to the Attorney-General. I have not approached the Democrats about this matter, because I believe that both major Parties could join together on that point and improve the Bill.

I remain unhappy about the total lack of consultation, but I cannot do anything about that. An enormous amount of legislation is before us and no consultation has taken place. We are not in Government and we just have to do the best we can. I have no difficulty with the remainder of the Bill, because largely it confirms existing practice. In practice, the cooperation between the Coroner's office, the professions and the police is very good. In fact, a much wider range of deaths is reported than required by the Act, so we do not have much difficulty with the remainder of the Bill which, after all, simply ensures compulsory reporting of the death of those people who, for a variety of reasons, are incarcerated by the State, whether that be in prison or elsewhere. It makes sense that those people should be afforded the protection of the Coroner. Having said that, I will leave any further remarks until the Committee stage and hope that the Attorney will give me a little latitude to raise some other problems when we deal with clause 1. I support the second reading of this Bill, but I propose to move an amendment during the Committee stage.

The Hon. K.T. GRIFFIN: I support the second reading of this Bill. I appreciate the contribution made by my colleague, the Hon. Dr Ritson, who has discovered, as have

I, that there was not much consultation on this Bill and that the people who are most likely to be directly affected—those in institutions established for the care or treatment of persons suffering from mental illness, intellectual retardation or impairment, or persons who are dependent on drugs—were not consulted about the implications of this legislation. I refer to the Hon. Dr Ritson's practical knowledge of the way in which this legislation is likely to affect those people and institutions.

I have no difficulty at all with proposed section 31 in so far as it deals with deaths in custody and makes the reporting of such deaths mandatory, nor do I have any difficulty with the mandatory reporting of deaths by apparently violent or unusual causes. However, I have some concerns about the provision relating to deaths occurring in an institution. I envisaged that this provision would most likely apply to those institutions, more particularly to those parts of institutions, which in effect are designed to provide protective custody for people who fall within the category set out in proposed section 31 (5).

It obviously goes much broader than that and can extend to a range of institutions to which the Hon. Dr Ritson referred. There has never been any suggestion that deaths in those sorts of institutions ought to be dealt with other than on the basis with which they have previously been dealt. I will be interested to see the amendment proposed by Dr Ritson to deal with the problems contained in that proposed subsection (5).

I suppose a simpler solution is to delete proposed subsection (5), but then it would not effectively deal with the persons who might die while in *de facto* custody in those institutions or parts of institutions. I support the criticism of the lack of consultation. I support the concern that was expressed about the application of proposed subsection (5) and I indicate that I, too, am anxious to see the perhaps unintended consequences of that provision mitigated so that they become manageable for a group of persons who already have sufficient on their plate without added bureaucracy to worry about.

In addition to that there is the concern about the additional resources that will be needed in the Coroner's area. What I would like the Attorney-General to do, at the appropriate stage, is to indicate what consultations have taken place about the additional resources that might be needed and what those costs will be. Related to that, of course, is the question of when the Bill, if it passes, is likely to come into operation. Hopefully, the Attorney-General can provide information about that. Subject to those matters, I support the second reading.

The Hon. C.J. SUMNER (Attorney-General): I thank members for their contributions. I assume that they have an amendment which will be considered during the Committee stage. The Hon. Dr Ritson has raised a number of issues regarding the provisions in clause 5 of the Bill relating to mandatory reporting of deaths.

The Hon. Dr Ritson has queried the interpretation of the word 'institution' in section 12 (1) *(db)*. 'Institution' as used in the context of this provision refers to the premises of an organisation. The question whether the death of a person comes within the subsection depends, first, on whether the organisation was established for the purposes set out in the provision and, secondly, on whether the person was accommodated in the premises of the organisation at a relevant time. The organisation does not need to have been established solely for the purposes outlined in the subsection; it will be sufficient if the premises were established for purposes one of which is referred to in the subsection.

The Hon. Dr Ritson has also criticised the provision in the Bill relating to a penalty for breach of section 31. He refers to a draconian penalty of $4 000 or imprisonment for one year. However, the provision does not include a penalty of imprisonment. Section 18 of the Criminal Law (Sentencing) Act allows the court to add or substitute certain penalties. Paragraph *(d)* provides:

> . . . where the special Act prescribes a fine only for the offence, the court may instead impose a sentence of community service.

Therefore, imprisonment is not a penalty option for a breach of section 31. The Hon. Dr Ritson is also incorrect in his statement that police officers failing to notify the Coroner of a violent death will be liable to a penalty of $4 000 or one year's imprisonment.

The Hon. Dr Ritson also commented on the lack of defence to the offences in section 31 and stated:

> . . . there is no defence on the ground that the person had not ever heard of the law, was confused about the law or did not think that his or her institution was an institution under the Act.

It would indeed, be an unusual provision if such a defence was included.

The Hon. R.J. Ritson: That wasn't a literal thing; it was a figure of speech to say that I think that perhaps the strictness of liability is a bit too severe. There may be inadvertent non-blameworthy breaches at an administrative level which would not have access to the one defence that is provided. There is no provision for reasonable cause or—

The Hon. C.J. SUMNER: I do not think a provision such as the one the honourable member was paraphrasing—

The Hon. R.J. Ritson: I wasn't suggesting that.

The Hon. C.J. SUMNER: Well, that is what you did suggest.

The Hon. R.J. Ritson: I didn't suggest that. You are trying to trivialise the principle—

The PRESIDENT: Order!

The Hon. C.J. SUMNER: I am not trying to trivialise the principle at all. They are the words the honourable member used and I am merely quoting them to indicate that I do not think a defence, in those words or even in similar words, would be satisfactory. It may be that there might be other words—

The Hon. R.J. Ritson: I am saying that you could soften it a bit—but that is peripheral.

The Hon. C.J. SUMNER: All I am saying is that I think what the honourable member has suggested is not tenable. If he wants to put some other proposition we can consider it during Committee. In any event, according to the case law, there are qualifications on strict liability. However, if the honourable member wants to explore that more fully during Committee, I am sure we can do it. If the honourable member would like to discuss the matter with Parliamentary Counsel I am sure that they could advise him or, alternatively, if he still felt concerned about it he could consider an amendment.

The Hon. R.J. Ritson: I have done so and will not be moving an amendment. That was my little bit of humility that I was going to be proud of.

The Hon. C.J. SUMNER: You will not be moving an amendment?

The Hon. R.J. Ritson: Not to that. The principal concern is the way the institutions are defined. That is where my amendment lies.

The Hon. C.J. SUMNER: The honourable member says that he will not move an amendment on that point, namely, the question of a defence to a charge under proposed section—

The Hon. R.J. Ritson: I am going to rely on the good sense of the Coroner's office, which I think does contain a

lot of good sense. It will be dealing with the hospital administrators and senior public officials.

The Hon. C.J. SUMNER: I am sure that is right. The honourable member will rely on the good sense of the prosecuting authority, and I think that that is, to some extent, reasonable. But, if the honourable member wants to pursue further the question of strict liability, I am happy to examine it further during Committee. The Hon. Dr Ritson also criticised the lack of consultation with the Coroner on this matter and indicated—

The Hon. R.J. Ritson: Mostly with everyone.

The Hon. C.J. SUMNER: With everyone, but let us deal with the Coroner. The Hon. Dr Ritson indicated that the Coroner had not seen the Bill. This is not true. The Coroner had, in fact, provided comment on the Bill. I understand from the Hon. Dr Ritson that he may well have been misinformed by the Coroner, but I do not want to go into that. Nevertheless, in a letter to me in December 1989 the Coroner advised as follows:

> I refer to your correspondence in this matter and advise that I have now had a chance to discuss the proposals with Mr Gordon [the Deputy Coroner], who in fact was the instigator of certain suggestions earlier this year. My only comment in relation to the proposed new section 31 is that it is considered advisable to insert the word 'immediately' after 'must' in line 4 of subsection (1) of the draft Bill. The reason for this, as we see it, is to conform with subsections (3) and (4) where the word 'immediately' or a word of like effect is necessary.

So, it does seem as though the Coroner was aware of the Bill. I can only indicate that perhaps there was a breakdown in communication between him and Dr Ritson.

The Hon. Dr Ritson has also critised the lack of consultation with a number of groups (such as the Australia Medical Association, the Nurses Federation, the Private Hospitals Association, the Funeral Directors Association and the Nursing Homes Association). The Government has prepared the Bill following consultation with the Coroner, the Deputy Coroner and following receipt of advice from the Crown Solicitor on this matter.

If the Coroner is to have jurisdiction to investigate deaths under section 12 (1) *(da)* and *(db)*, he must have the mechanism for being advised of the death at an early opportunity. In may instances, this may only constitute a phone call from the person in charge of the institution or part of the institution. In the majority of cases no further action would be required. This should not be an unduly onerous task. As to industry knowledge of this provision, representative groups can be advised of the amendment once it has passed Parliament. The Bill will not come into operation until it is proclaimed. Therefore, there will be some lead time to enable groups to become aware of their responsibilities.

I hope that answers some of the concerns raised by members opposite. In Committee, I will deal with the question of resources that are anticipated, and I presume, because of the issues raised by the Hon. Mr Griffin and the Hon. Dr Ritson, that an amendment will be forthcoming on the question of the scope of the Bill concerning the definition of 'institution'. I will await receipt of that amendment.

Bill read a second time.

SUMMARY OFFENCES ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 29 March. Page 985.)

The Hon. I. GILFILLAN: I have had a chance to glance at the comments made by the Hon. Trevor Griffin, and I sought leave to conclude my remarks so that I could do that. I will make some brief comments about some matters that the honourable member raised more as an indication of where our thinking is at this stage rather than being definitive.

There are seven indicative amendments. There is a provision relating to the renewal of a roadblock. This should be authorised by a justice, not just a senior police officer. This provision finds favour with the Democrats. Regarding the reporting to Parliament of authorisations of roadblocks, the Hon. Mr Griffin indicated that the Opposition will be moving to bring that forward from an annual reporting to within seven days after the grounding of an authorisation. Once again, I find that an attractive proposal.

In the definition of 'dangerous area', as I recollect it the Opposition wants to change the word 'unsafe' to 'dangerous'. That appears to have some merit. The phrase 'because of conditions temporarily prevailing there' in new section 83b (1) still leaves it rather open ended and undefined. What does that mean? What sort of conditions would be embraced by that phrase in the Bill? Basically, the proposed alteration by the Liberals appears to be a good one. We recognise that the offering of a defence for entering into a dangerous area has some merit. It would give normal citizens a chance to protect their properties and lives and also provides for the media to have access to reporting the situation.

This proposed amendment would ask the commission to report within seven days to Parliament after a declaration of a dangerous area has been granted. We believe that that is a step in the right direction. Another provision is to move to vest power of authorisation for forced entry to a person's home with a justice, not a senior officer or commissioner. I am interested to hear debate in Committee on that amendment. If it were to be with the justice the option for it to be given orally includes over the telephone. I understand that there may be occasion when the urgency of the situation would justify an almost instantaneous authorisation being granted. It still leaves some concern in my mind whether this would be the exception or become the norm. I look forward to hearing debate on that in Committee before finally committing the Democrats to that.

The pressure on the Commissioner to report to Parliament within seven days finds favour. It seems to be an advantage, for these are extraordinary powers that we should not grant lightly. It is appropriate that there be a time as short as practicable between the exercise of the powers and the reporting of it to Parliament.

We support the Bill. The amendments generally appear to us to be improvements. I still express some concern from the civil libertarian point of view. There are quite substantial steps of increased police power and power to intervene with the normal freedom of civilians going about their lives and business, and any move in that area needs extreme caution. After we have the Attorney-General's response to the second reading and gone through Committee, we will be able to make a proper determination of the way in which this Bill should finally be passed into law. I indicate the Democrats' support for the second reading.

Bill read a second time.

LIQUOR LICENSING ACT AMENDMENT BILL

Adjourned debate in Committee (resumed on motion).

(Continued from page 1046.)

Clauses 4 to 6 passed.

Clause 7—'Power to award costs.'

The Hon. K.T. GRIFFIN: I oppose clause 7, which seeks to repeal the existing section 22 of the principal Act. Section 22 provides:

> Where, in the opinion of the court, proceedings have been brought frivolously or vexatiously, the court may award costs against the person by whom the proceedings were brought.

The amendment seeks to extend the power of the court to order costs against a person who has exercised the right to object to an application where that right has been exercised frivolously or vexatiously. That is probably a more difficult connotation than the present section 22.

If a person is given a right to object, then who is to make the judgment, and on what criteria, that that right has been exercised frivolously or vexatiously. I know that the Licensing Court makes the decision, but the right having been given it seems to me to be somewhat incongruous that the right can be prejudiced by some subjective assessment that it is frivolous or vexatious and the exercise of the right be deterred by the award of costs. Of course, that situation may apply to ordinary citizens in the vicinity of licenced premises wishing to object to the extension of the licence or the facilities themselves, and it can apply to an existing licensee who objects to the granting of a licence to some other person in the vicinity.

As I understand it, it does not apply to a council or to the Commissioner of Police but, if the power to award costs against an objector is to be included, one must then raise the question whether an intervenor is to face the same risks. There is a good argument for a council or the Commissioner of Police not to be at that risk. Also, there is a good argument that objectors should not be put in that situation of risk. As I have said, having been given the right to object and then to put that right at risk suggests to me that it is significantly compromised.

For those reasons I prefer the existing provision in section 22 rather than the new provision, which compromises the rights of ordinary citizens to exercise the right which the legislation specifically gives to them.

The Hon. BARBARA WIESE: As I indicated in my second reading response, I support this clause for the reasons that I outlined. However, I will just restate a couple of those points.

It is the view of the Government in assessing this matter that the court would read the existing section 22 broadly to include a party to proceedings and, therefore, by definition, an intervenor or objector. I believe it is reasonable for this provision to be included in this legislation, and the Licensing Court is the appropriate body to protect both applicants and objectors and their rights. I cannot envisage circumstances in which costs would be awarded in this way, but certainly the court is the appropriate body to be making judgments about these things. This is something which is done by courts in other jurisdictions, so it is certainly not a new matter being introduced here. Judges are experienced in making these assessments of whether something is vexatious or frivolous and would use that provision wisely.

I cannot envisage circumstances in which a judge would seek to deny the rights of individuals when putting a case before the court, and therefore jeopardise the right of the individual to so do. However, circumstances may occur in which a judge could decide that a complaint is vexatious and frivolous and ought to have the power to award costs should he make such a judgment. However, as I indicated, I cannot imagine the circumstance based on the experience so far of matters that have been raised in this area.

The Hon. K.T. GRIFFIN: On the basis of that response, I believe there is no real problem if clause 7 is defeated. The Minister is saying that the court ought to have the power, but it seems, on what she has indicated, that it is a theoretical power. In those circumstances, if no current injustice is sought to be corrected by this new provision, I would suggest that we leave well alone and that we maintain the present section 22. Obviously, on what the Minister is saying, there is no harm done by that section, so why rock the boat?

The Hon. M.J. ELLIOTT: The Democrats do not have any difficulty with the clause as it now stands.

The Committee divided on the clause:

Ayes (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, G. Weatherill, and Barbara Wiese (teller).

Noes (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.

Majority of 1 for the Ayes.

Clause thus passed.

Clause 8—'Hotel licence.'

The Hon. K.T. GRIFFIN: The Australian Hotels Association wanted me to raise comments on various clauses. In respect of this clause, it states:

> This amendment applies to hotel designated dining areas. It is difficult to oppose the logic behind the wording of the amendment. However, we suggest the wording needs some tidying up to deal with the situation of genuine dining occurring at a function where there are two or more adjoining or linked designated dining areas being used together as one area and with the liquor consumption perhaps occurring in one designated dining area but with the meal being consumed in another designated dining area of the premises (for example, pre-dinner drinks or post-dinner drinks in a genuine dining or restaurant type situation). The same comment applies to designated reception areas. The amendment proposed in clause 8 *(b)* should be supported.

The association raises issues about the drafting. I am not pushing that but raising it as a matter for clarification to ascertain whether that also is the view of the Minister and whether, in those circumstances, any change is necessary.

The Hon. BARBARA WIESE: I agree with the honourable member's first point that the drafting of this proposal is adequate. The problem that we are trying to deal with is the practice of sham meals. If we were to vary the drafting to incorporate the capacity for people to move from area to area within a hotel or other licensed premises, we would be moving back into the present unsatisfactory situation. I would not want to vary the drafting in a way which would cause any further confusion in this matter. I am surprised that the Australian Hotels Association has raised this issue at this stage, because these matters have, of course, been discussed previously. I met with representatives of the association within the past fortnight and discussed the draft Bill. I was told then that they were happy with the Bill and the issues that had at their request been incorporated in it. Although I presume that not all matters have been dealt with to their satisfaction, they certainly were not interested in raising any further issues with me, they were satisfied with the Bill; that was the message that I was left with. I am therefore surprised that issues of this kind are now being raised at the time of the debate on the legislation. However, I repeat that on this point I believe the drafting is adequate. It is a genuine and reasonable attempt to deal with the problem that has arisen with respect to sham meals, and it is important to try to define the area in which a meal can be consumed.

Clause passed.

Clauses 9 to 13 passed.

Clause 14—'Circumstances in which limited licence may be granted.'

The Hon. M.J. ELLIOTT: I, too, have been talking to the AHA, which raised a matter with me about this clause.

Perhaps I will do as the Hon. Mr Griffin has done and read what it had to say, and then seek a reaction from the Minister. The AHA claims in its letter, as follows:

> Clause 14 and particularly subclause *(b)* deals with limited licences, where a hotelier may apply to extend his trading hours on a specific occasion. This occurs for festivals and other special events. The amendment aims to end the practice whereby a licensee continually applies for temporary extensions to avoid the conditions and improvements necessary to get a permanent late night licence. The clause gives the licensing authority the power to decide not to grant a limited licence if it believes something else, such as a permanent licence extension, is more appropriate.
>
> There are fears, though, that this may make it harder for a genuine applicant for a limited licence. The AHA says a hotelier applying to vary the conditions of his licence for just one night could be ordered to publicly advertise the application and then be subject to objections, delays and expense. The present process requires 14 days notice before a quick decision.
>
> As they see it, the exception provided in the amendment for a condition imposed by the Act does not apply to an authorisation given by the Act. The association feels that if an application for variation of conditions was granted, the actual hotel licence may need to be endorsed each time. This is time consuming and a licensee could well end up without the licence ready and available to him for the actual period of the extension. Limited licences at present are promptly granted and posted to be kept on the premises for the function in question.

I seek the Minister's response to those comments.

The Hon. BARBARA WIESE: On the question of advertising, the fact is that at the moment, before a limited licence can be obtained, it may be required, at the discretion of the Liquor Licensing Authority, that advertising should take place now. This provision is seeking to overcome the abuses that have emerged in this area of the application of particular permits. There have been occasions when applications have been made for limited licences on a roll-over basis. The provision has been abused in that licensees have used the limited licence application provision where they ought to have been applying for a late night permit.

This provision seeks to tighten up the provisions in this area so that, if licensees want a late night permit, they must be open about that, apply appropriately and not use the limited licence provision as a backdoor method for achieving their purposes. The provisions are adequate and, in addition, the point that can be made is that if licensees want to apply for a late night permit they would still have to satisfy the court that they should be granted a late night permit.

Of course, if that fails the limited licence provision is always available for a licensee to use or apply for in respect of individual licensed functions, if that is an appropriate alternative. This provision is really seeking to tighten up the abuses that have emerged in some areas, whilst not interfering with the rights of licensees to apply for either limited licences or late night permits. It is seeking to make sure that people use the appropriate provisions and apply for the licence that they are essentially looking for.

Clause passed.

Clauses 15 and 16 passed.

Clause 17—'Form of application.'

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

> Page 4, after line 29—Insert new subsection as follows:
>
> (4) If a licensing authority allows an application to be varied pursuant to subsection (3), the authority must cause the other parties to the application to be given notice of the variation a reasonable time before the hearing of the application.

Clause 17 deals with a licensing authority allowing an applicant to vary an application at any time before the determination of the application. It seems to me that if that occurs one must ensure that proper notice, or reasonable notice, is given of the variation to other parties. All my amendment seeks to do is enshrine that principle. It will probably be done by rules of court, but I want to put it beyond doubt, and that is why I have moved this amendment.

The Hon. BARBARA WIESE: As I indicated in my second reading response, the Government will agree to this amendment. In fact, it gives effect to what happens in practice, anyway.

The Hon. M.J. ELLIOTT: We agree with the amendment.

Amendment carried; clause as amended passed.

Clause 18—'Certain applications to be advertised.'

The Hon. K.T. GRIFFIN: I should make it clear that the information which I have provided comes through the Australian Hotels Association and represents advice which it has been given by lawyers. As I understand it, it represents the views of the AHA or, if not, issues that it wanted to raise.

So, somewhere around the place there is a situation where someone has been talking to someone who has not been talking to someone else. However, I do not criticise anybody for that; all I want to do is try to get some clarification. I might say that this information came within the past two weeks, on 22 March—

The Hon. Barbara Wiese interjecting:

The Hon. K.T. GRIFFIN: It came after I had spoken on the second reading—my recollection is that I had spoken before the break. Anyway, it is within the time frame that the Minister also says that she met with the Australian Hotels Association in the past fortnight.

The Hon. Barbara Wiese: Is that an official submission you have received from the AHA?

The CHAIRMAN: Order! It's a bit hard to know who is having a conversation and what is going into *Hansard.*

The Hon. K.T. GRIFFIN: It was forwarded to me by the AHA with the indication that I could use it. Anyway, whatever the position, let us move on with the Bill.

In relation to clause 18, the suggestion has been made that there is no difficulty with the proposal to substitute subsection (2), which provides:

> An application of any other class must, if the licensing authority so requires, be advertised.

I presume that with the amendments which are proposed in the clause it is envisaged that the Licensing Court will be able to vary any of the requirements to ensure that the requirements for each case suit the circumstances of the case—for example, advertising. There is provision in section 58 to require a number of matters to be attended to when an application is made. But, could the Minister just confirm that, in a sense, everything is up for grabs and that the Licensing Court has the capacity to vary or dispense with any of these requirements to suit particular circumstances?

The Hon. BARBARA WIESE: This provision broadens the discretionary power of the court. I suppose that that discretionary power is quite broad, but the intent of the provision is to create as much flexibility as possible for the court in exercising its responsibilities in this area. It would be possible, for example, for the court to decide in the case of, say, a club applying for a licence, not only for advertisements to be placed in two newspapers, as currently provided in the Act, but also perhaps for all the adjoining residences to be notified of the application so that all those people who might be affected by the granting of the licence have adequate information to be able to express a point of view on the matter should they so wish.

There may be occasions also, where, for example, a matter is considered to be not at all controversial and where all the applications that can possibly be envisaged might have been made within, say, 26 days rather than the required 28 days. In those circumstances the court might decide that it

is not necessary to wait the full period but, rather, that the matter could proceed. Issues of that kind would be decided at the discretion of the court, having regard to the particular circumstances. I am sure that the honourable member would agree that the court is reasonable in these matters and would exercise that discretion wisely, based on the experience of the way it has acted in the past. This provision would considerably streamline the work of the court with respect to these matters.

Clause passed.

Clauses 19 to 29 passed.

Clause 30—'General right of objection.'

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

Page 6, line 33—Insert 'unduly' before 'lessened'.

This amendment is not on file, but it is a fairly simple one in response to a submission from the AHA and one which I felt was reasonable. Paragraph (i) refers to 'undue offence, annoyance, disturbance', etc., but paragraph (ii) simply refers to a lessening of the amenity. It appears reasonable to refer to 'unduly lessened'. As I understand it, that is really the interpretation that is currently applied when decisions are being made and that is likely to occur anyway. It could be argued that almost any change to an amenity is a lessening and it could be given an absolute meaning which I do not think is the intention. In the circumstances, it seems reasonable to insert the word 'unduly'.

The Hon. BARBARA WIESE: The current wording of this provision has stood since 1985 and has proved to be satisfactory, but I understand the point that the honourable member is making and I am prepared to support his amendment.

Amendment carried; clause as amended passed.

Clause 31—'Variation of objections.'

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

Page 6, after line 38—Insert new subsection as follows:

(2) If a licensing authority allows an objection to be varied pursuant to subsection (1), the authority must cause the parties to the proceedings to be given notice of the variation a reasonable time before the hearing of the proceedings.

This clause deals with variation of objections and my amendment provides that, if an objection is varied with the approval of the licensing authority, then the parties to proceedings must be given notice of the variation a reasonable time before the hearing of the proceedings. This amendment is consistent with the amendment to clause 17 that we have already approved, which deals with variations to applications.

The Hon. BARBARA WIESE: As the honourable member has indicated, this amendment relates to the amendment to clause 17, which I supported, and I support this amendment.

Amendment carried; clause as amended passed.

Clauses 32 to 37 passed.

Clause 38—'Order for payment of money.'

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

Page 8, line 37—Leave out 'local'.

This amendment seeks to delete the word 'local' where power is given to the Commissioner to issue a certificate as to an order of the Licensing Court and to cause that certificate to be registered in a local court of competent jurisdiction. This provision is for the purpose of achieving enforcement of any order for the payment of money. During the course of the second reading debate my point was that very large amounts of money may be involved, particularly outstanding licence fees where a licensee has been ordered by the court to make payment and the amount may be beyond the jurisdiction of the local court (which is presently $20 000) or even beyond the jurisdiction of the District Court (which is presently $100 000). I believe that any registration ought to be allowed in the court which presently has the jurisdiction to deal with the amount referred to in the certificate and my amendment will achieve that objective.

The Hon. BARBARA WIESE: The Government supports this amendment.

Amendment carried; clause as amended passed.

Clause 39—'Supervision and management of licensee's business.'

The Hon. BARBARA WIESE: I move:

Page 9—

After line 6—Insert new paragraph as follows:

(ba) by striking out from subsection (3) '14 days' and substituting '28 days'.

Line 10—Leave out '14' and insert '28'.

I move these amendments following submissions that were made to the Government after the drafting of the Bill. The submissions were made by prominent licensees and concern the provisions of the Act which relate to the need for licensees to apply for permission to appoint a manager during leave of absence from the premises, for example, when a licensee is taking annual leave.

It is the practice of such people normally to take at least 28 days leave rather than two weeks, and it was considered desirable therefore to change the period of time from 14 days to 28 days. I understand that the Australian Hotels Association supports this amendment.

The Hon. K.T. GRIFFIN: My advice is consistent with the advice that the Minister has; but I do not take my advice in the terms of being a servant of the Australian Hotels Association—merely a representative who puts a point of view. There is good sense in lengthening that period, and I do not have any difficulty in indicating my support for the amendment.

Amendments carried; clause as amended passed.

Clauses 40 to 44 passed.

Clause 45—'Sale or supply of liquor to minors.'

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

Page 10, line 41 and page 11, lines 1 to 4—Leave out paragraph *(c)*.

This whole clause deals with section 118, dealing with the sale or supply of liquor to minors. Subsection (4) in the principal Act provides:

Where a person, acting at the request of a minor, purchases liquor on behalf of the minor on licensed premises, that person and the minor are each guilty of an offence.

The Bill seeks to provide:

Where a person, acting at the request of a minor who is on licensed premises, purchases liquor on those premises on behalf of the minor, the person and the minor are each guilty of an offence.

It seems to me that that is limiting very much the scope of the present provision to a request made on licensed premises by a minor when the major area of concern, as I understand it, is not where minors make requests on licensed premises but where they may be outside licensed premises and ask someone to go in and purchase alcohol for them.

It seems to me that the present subsection (4) is more likely effectively to deal with that than what the Government has in the Bill which limits it very much to a request made on licensed premises. For that reason I prefer the *status quo* and have moved my amendment accordingly.

The Hon. BARBARA WIESE: I tend to agree with the honourable member and, for that reason, I support his amendments.

Amendments carried; clause as amended passed.

Clause 46 passed.

New clause 46a—'Offences relating to minors.'

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

Page 11, after clause 46—Insert new clause as follows:

46a. Section 121 of the principal Act is amended by inserting after subsection (3) the following subsections:

(4) A minor who participates in the game of chance known as 'keno' while on licensed premises is guilty of an offence.

(5) A licensee who permits a minor to participate in the game of chance known as 'keno' while the child is on the licensed premises is guilty of an offence.

Section 121 of the principal Act deals with the consumption of liquor by a minor on prescribed premises; the supply of liquor to a minor in prescribed premises is declared to be an offence; and other Acts relating to a minor are dealt with. My amendment seeks to provide that a minor who participates in the game of chance known as keno while on licensed premises is guilty of an offence and that a licensee who permits a minor to participate in that game on licensed premises is guilty of an offence.

It seems to me that, whilst the Minister in her second reading reply has argued that this question of under age access to the game of chance known as keno ought more properly to be dealt with in a broader context, nevertheless it is relevant in relation to licensed premises and I propose that we deal with it now in that context. As I indicated in my second reading speech, in the Casino, for example, those under 18 years of age are not even allowed admission. In a hotel persons under the age of 18 years are allowed admission with parents or adults but they are not permitted to be supplied with liquor or allowed to purchase it.

It seems to me that, in the context of maintaining that general environment in relation to minors, to allow minors, effectively 10, 11, 12 or 13 year olds, to play keno in licensed premises defeats the object of the Liquor Licensing Act in relation to the use of those premises by families and others. It is in that context that I move the amendment which would deal with keno on licensed premises and the access of young people to that game on those premises.

The Hon. BARBARA WIESE: This amendment has led me to make further inquiries about the position of Lotteries Commission games, and I discover that minors are not prohibited under the law from playing any Lotteries Commission games at the moment, whether they are on licensed premises or otherwise.

This may very well be an issue which the Government should address but I certainly do not believe that, if it is a matter that the Government should address, it should be dealt with under the Liquor Licensing Act. This is not the appropriate legislation and it would be inappropriate to deal with a question of this kind in an *ad hoc* way. As I understand it, minors can currently play X-Lotto or buy scratch tickets on licensed premises but the honourable member has not included those matters within his amendment. He has concentrated his amendment on the game of Keno.

This matter ought to be addressed by the Minister responsible for the Lotteries Commission legislation and an appropriate policy position adopted not only on this question whether minors ought to be allowed to play Keno on licensed premises but on the other issue that I raised as well. So, at this time I would oppose an amendment to the Liquor Licensing Act; I do not believe that this is the appropriate legislation under which such a matter should be considered in any case, whatever policy decision one wants to adopt on the issue. I oppose the Hon. Mr Griffin's amendment.

The Hon. M.J. ELLIOTT: I agree with the Minister that this is not the ideal vehicle to look at this question. The simple fact of the matter is that this Government is not willing to look at the whole question at all in Parliament. The question of the expansion of gambling in South Australia generally is one that I have raised from time to time with a Government which seems to be unable to differentiate between allowing gambling and controlling gambling in this State and positively encouraging gambling.

The Hon. R.J. Ritson: It's a tax.

The Hon. M.J. ELLIOTT: It is a tax and, in fact, the 1989-90 gambling revenue was expected to reach $111 million, which is not far short of the DCW budget of $140 million. The rates from 1985-86 show that while gambling revenue rose by 98 per cent the welfare budget rose by a mere 63 per cent, so the gap will be closed given another two years. We now have Keno in clubs, TAB in pubs and poker machines that are not poker machines coming into the Casino.

The Hon. K.T. Griffin: That is $112 million revenue and not turnover.

The Hon. M.J. ELLIOTT: That is right. Nothing is said about money going into the State Superannuation Fund and other areas and that is money for jam for them as well. I know this is a Bill about liquor licensing in general terms but this Government has not been willing to come into this Parliament and look at the issue of gambling in general and the sort of direction this State should be following. It is totally irresponsible and has skirted its responsibility completely.

Whilst I agree with the Minister that this Bill is not the ideal vehicle to look at this, there is no other vehicle and there probably will not be for some time unless perhaps the Opposition would like to consider a select committee on this matter and I would quite happily join them in that exercise. At this time we must recognise that Keno is played in licensed premises. It does not occur out in the streets and, while there are still some other anomalies that need to be addressed, this is at least tackling one of them and I support this amendment.

The Hon. BARBARA WIESE: I do not suppose there is any way in which I will change the honourable member's point of view, but I do stress that it is quite inappropriate for this matter to be dealt with under the Liquor Licensing Act. It has nothing whatsoever to do with liquor licensing, which this Act covers. The question whether or not minors should be allowed to participate in Lotteries Commission games is not a matter to be discussed under this legislation; it is a matter to be dealt with under the Lotteries Commission Act and the honourable member is really taking a fairly irresponsible approach to the making of legislation.

These matters should be looked at comprehensively and a policy position adopted across the board on these matters. Decisions on this issue should not be made in an *ad hoc* way with only some issues addressed by legislation and other issues ignored completely. It is totally inadequate and it is quite wrong that it should be done in this way. I want to clearly state my opposition to this method of *ad hoc* legislation making because it is just not good enough.

The Hon. K.T. GRIFFIN: Let us not get into a long debate about this. The fact is that the Bill is an appropriate vehicle. It is not just liquor licensing; we are dealing with licensed premises and what can happen on licensed premises.

The Hon. Barbara Wiese: Why don't you include X-Lotto and other things in your amendment?

The Hon. K.T. GRIFFIN: Because X-Lotto is not available.

Members interjecting:

The CHAIRMAN: Order!

The Hon. K.T. GRIFFIN: The Hon. Mr Elliott is correct: the Government has not really faced up to this, and the proposition that this provision be included in the Licensing Act is no worse than the Lotteries Commission acting in a concerted fashion to undermine the spirit and intention of the lottery and gaming laws by embarking upon what are effectively electronic poker machines in South Australia.

Members interjecting:

The CHAIRMAN: Order!

The Hon. K.T. GRIFFIN: I have no problems with this amendment. I do not think the majority of members would have any problem with it either but, if we are to get into a debate on what is proper or not in relation to lotteries, we will be here for a long time.

New clause inserted.

Clauses 47 to 59 passed.

Clause 60—'Summary offences.'

The Hon. K.T. GRIFFIN: I oppose this clause. Any extension of the time within which prosecutions may be launched is to be viewed with considerable caution. The traditional position is six months within which proceedings can be issued. All the road traffic offences, for example, and a number of other offences created by statute are within that time limit. There are, on occasions, specific provisions for extending that time. The Liquor Licensing Act presently has a period of one year and there are other provisions in other legislation which have a similar period.

An extension to two years is an encouragement to lethargy and sloppiness. I do not make any personal reflection upon officers because I do not believe that that is appropriate or reasonable but, on the other hand, I can see that it sets wider parameters within which action may be taken. In my view, it is important for the proper administration of justice that if an offence is detected it be dealt with promptly. It is just not good enough to give the investigators—the law enforcement agencies—a long period of time within which they can decide whether or not to issue proceedings and then to issue those proceedings, say, two years after the offence has occurred. As I said, it is an inducement to lethargy and sloppiness. I do not believe it is fair to citizens that there be that sort of threat for such a long period as two years. That is the reason for opposing clause 60.

The Hon. BARBARA WIESE: I strongly support the clause, because it is often difficult for wrongdoers to be identified within the 12-month period. Very often, it is impossible to obtain the sort of information that is required for prosecutions of this kind until the returns are made and proper investigations can be undertaken. The information that sometimes will lead to prosecution is simply not part of the recording of liquor transactions.

The Hon. K.T. Griffin: How many instances in the past 12 months were there when you had difficulty?

The Hon. BARBARA WIESE: I am advised that, in the majority of cases, the information required for prosecution does not become available until the returns are received. That means that it is likely to be a period beyond 12 months. Normally, it is likely to be between 15 and 18 months after the event that the information will come to the attention of the appropriate authorities to enable action to be taken. If we were to remove this clause, it would be very detrimental to the cause of policing this legislation and detrimental to the cause—which I am sure all members would want to puruse—of keeping out of South Australian business those people who are undesirable operators for licensed premises.

I would strongly recommend that the Committee support the clause because it would lead to many breaches of this legislation slipping through the net because of the time constraint that the honourable member wishes to impose.

The Hon. K.T. GRIFFIN: The Act has been in operation for five years. I asked a question by way of interjection which the Minister did not answer. How many instances occur where the Commissioner is concerned, where an offence has been identified but where a prosecution has been out of time?

The Hon. BARBARA WIESE: I do not have the statistical information to which the honourable member is referring. However, cases have occurred which can be identified. The issue was of sufficient concern to the Commissioner for him to recommend that an extension of time be included in the provisions of the Act because of the nature of cases that have emerged over time. There are problems in gaining access to the sort of information that is required to keep out undesirable elements from licensed premises. We are not talking about minor breaches here; we are talking about serious issues and the need to have sufficient time to be able to identify the required information and take action against undesirable practices and the introduction of undesirable characters into the hotel trade and other licensed premises.

So, I am sorry that I am unable to provide numbers of cases, but I think it is sufficient for the Commissioner to be concerned that there are enough examples, to make an extension of time desirable to allow for appropriate information to be collected.

The Hon. M.J. ELLIOTT: This is a matter about which I spoke at length with the Government's advisers outside of this Chamber. I was convinced that there was the possibility that prosecutions which should have occurred could not occur simply because of the timing of the arrival of information. That being the case, I do not think it is important whether or not prosecutions have been missed. If prosecutions should occur—and it may be a major matter—it would be unfortunate if the clause was worded in such a way that prosecutions were not allowed to occur. For that reason, the Democrats will be supporting the clause as it stands.

The Hon. K.T. GRIFFIN: I am conscious of the time, but I feel this is an important issue. I will not divide if I lose on the voices in the light of what the Hon. Mr Elliott has indicated. However, I am not convinced that just because the Commissioner makes a suggestion that is sufficient reason for proposing this extension.

I was going to propose the alternative that, if there is difficulty in relation to returns, the period of two years apply to prosecutions in relation to returns, but it is ludicrous to extend from one to two years the time within which a prosecution can be launched for supplying liquor to a minor. That is just outrageous.

The Hon. Barbara Wiese: They are not the issues.

The Hon. K.T. GRIFFIN: They are the issues because once you extend it generally, you extend it not just to deal with the specific cases to which you have referred, which are licensing fees matters; you extend it across the board. The fact is that the Government is extending the prosecution opportunities out to two years. That is what I am concerned about. I would be happy to accommodate that difficulty in relation to licence fees where returns are involved, but I suggest that there is a good reason for ensuring that the extension applies only to those sets of circumstances.

Clause passed.

Clause 61 and title passed.

Bill read a third time and passed.

[*Sitting suspended from 6.8 to 7.45 p.m.*]

WATER RESOURCES BILL

Adjourned debate on second reading.

(Continued from 29 March. Page 977.)

The Hon. ANNE LEVY (Minister of Local Government): In concluding this debate on the Water Resources Bill, I would like to thank members for their contributions to the debate. In view of the nature of the comments made, I have decided to give a comprehensive response. At the outset, it is important to put in proper context what the Bill is about. It deals with the management of our most precious resource—water. It is a resource which is vital to the community. As our State has developed and expanded, great pressures have been placed on that resource. The protection of both water quality and quantity has presented quite a challenge to water administrators. As we look to the 1990s and beyond, these pressures will intensify and present greater challenges in the management of our water resources.

The Government is not seeking greater powers just for the sake of having power. These powers are imperative for the future management of water resources. Evidence throughout the world is that water pollution is on the increase. The detection of pollution incidents and other misdemeanours is not easy.

Apart from the pollution issue, there is also the problem of water usage. We run the risk that, unless properly managed, the rates of use will exceed a sustainable long-term level. Experience clearly demonstrates that some control is needed. For instance, in America, there is a legacy of many aquifers which have been rendered unusable through uncontrolled community actions. The problem is widespread.

New South Wales has also introduced legislative reforms to give more powers to the Government there. In Victoria, the situation is such that even pollution caused inadvertently is actionable. I cite these examples to show that we are not unique in seeking greater legislative powers. The responsible landowners, to which the Hon. Peter Dunn has referred, have nothing to fear from this Bill. It is primarily directed at those who, through greed or sheer carelessness, are not playing their part in protecting the water resources.

It is unrealistic in this day and age to suggest that Ministers can get away with using legislative powers without equity, courtesy or compassion. Let us remember that we are dealing with an informed community which has access to the Ombudsman, members of Parliament and the press. In addition the Bill itself contains a number of provisions which require the Minister to act in a consultative manner. Clause 9 (1) *(d)* requires the Minister to 'encourage public commitment to achieving the objects of this Act'. Thus, the first step is not to take someone to court or to impose some requirement on a landowner but to adopt a collaborative approach. Again, at clause 9 (2), there is a requirement for the Minister to 'encourage the participation of members of the public in the formulation of plans of management of water resources'.

I believe that the whole thrust of this Bill is not as the Hon. Peter Dunn says: 'You will do it and you will like it and will have no option to argue.' Instead, it goes to great lengths to promote and ensure community consultation. There is also a widely representative group, the Water Resources Council, to advise on all aspects of policy and strategic matters. In addition, we have a number of water resources committees on which there are local, experienced people who make recommendations. Ultimately, there is an independent appeal mechanism if this is needed.

What I am saying in summary is that we must protect our water resources to ensure their ongoing availability into the future. To do that we are seeking wide powers but I believe that there are ample mechanisms to ensure these powers are not abused.

I now turn to the specific issues raised by the Hon. Peter Dunn. First, he queried the size of the advisory network. This concept, which was introduced in 1976 and copied by interstate authorities, has been widely applauded because:

(i) it allows persons with a wide diversity of background and experience to participate in the management of water resources; and

(ii) it ensures that before decisions are taken the issues are considered for the widest perspectives.

It would be a retrograde step to weaken in any way this valuable advisory network.

The honourable member is also concerned about controls over the taking of water. As I mentioned earlier, there are places in the State where water usage either is near to or exceeds a sustainable long-term level. The Northern Adelaide Plains aquifer is an example. Wells in this area, or watercourses, are proclaimed to give to the Minister the ability to control the taking of water from those sources. Proclamations only occur after thorough investigation which demonstrates not only that protection is needed but also that such action will provide benefits to the community at large. The Water Resources Council is involved in all decisions to proclaim a watercourse or wells in an area. A licensing system is then used to control the maximum amount of water which may be utilised on each property. This ensures the most equitable distribution of the available water.

At the time of proclamation, all persons who have been utilising water from the resource are identified so that their usage can be protected following proclamation by the issue of licences. This practice has been followed in the past and will be followed in the future. Should anyone be dissatisfied with his or her water allocation, there are appeal rights to the Water Resources Appeal Tribunal. I do not see any reason why this process should not continue to work as well in the future as it has up to the present. The honourable member has already noted that the licensing system is to apply to activities involving substantial water use. Activities involving domestic, stock water, holiday homes, etc., will be exempted from the licensing requirements.

On the question of maintenance of wells, the Minister of Water Resources gave a commitment that this issue would be further considered. The amendment to clause 63, standing in my name, gives a proper balance between allowing normal non-major maintenance to be carried out by the landowner himself, on the one hand, and the need to protect the better quality water by requiring the work to be carried out on the casing lining and screen by licensed well drillers.

I also draw attention to the second reading speech where I indicated that immediately the Bill becomes law it is intended to exempt, by proclamation, activities such as the digging of trenches, excavations or other construction works associated with building, public services, experimentation, etc., provided such excavations are not used as a source of underground water supply.

The honourable member has raised an interesting point about dams in watercourses, particularly, I understand, as it relates to the application of clause 61. Although it was never intended to regard those dams as 'obstructions', I am happy to accept an amendment excluding existing dams from the operation of this clause.

Clause 31 is intended to replace section 6 in the current Act and to preserve the super-eminent right of the Crown to the use and flow of water. In this State and, indeed, in many parts of the world this has been the situation for a long time. This clause provides a right to the water only and not to the infrastructure belonging to the landowner, unless rights are acquired in accordance with the Land Acquisition Act.

In relation to clause 58, the honourable member is concerned about the powers to protect watercourses. It would clarify the situation to indicate that it is intended in the regulations to exempt the following activities: first, any activities relating to the raising of crops and/or livestock which do not restrict or accelerate the flow of water in the watercourse; and, secondly, the destruction of noxious plants. I draw the honourable member's attention to clause 5 of the Bill, which clearly provides that the Crown is bound by this legislation.

Clause 40 gives the Minister the right to act in cases of inadequate supply or overuse of water. The idea that this aspect should be left entirely to the discretion of the landowner is ludicrous. However, I concede that there may be a case to allow an appeal right to a landowner who relies on the water from that watercourse, lake or well. This can be further considered in the Committee stage.

I now turn to the contribution by the Hon. Mr Griffin. Some of his concerns are similar to those of the Hon. Mr Dunn and I will not canvass these again. The Hon. Mr Griffin is concerned about the range of powers given to the Minister. Quite clearly, the Minister must have these powers to manage effectively. As I understand it, the concern is more about the power to enter private property, and the like. I am informed that the legal effect of clause 10 is to give to the Minister a range of powers, but it does not in itself give the power to enter or use private property without permission or without acquisition.

It is acknowledged that clause 11 provides a wide power of delegation. From practical experience this has been found to be necessary. The honourable member says that powers to prosecute or issue licences should not be delegated. Why not? Why should the Minister not delegate the power to recover debts to the recovery officer within clear guidelines? Similarly, why should the power to issue water recovery licences that are recommended by water resources committees and which are clearly within approved policy guidelines not be delegated to responsible officers?

I agree that care must be exercised if the Minister delegated powers to private persons. Indeed, it is not intended that this approach will be widely used; yet it could be useful in limited circumstances. For instance, currently a private person (albeit the Chairman of a Water Resources Advisory Committee) is delegated with the power to authorise the release of winery effluent into a watercourse. It is essential that a local person have that power so that the release coincides with the peak flow of the watercourse, in which the flow rises and falls rapidly following rain. Mistiming of such releases would cause unacceptably putrid conditions in the watercourse after the stream flow subsides. This system works well and needs to be continued.

It should be remembered that the Minister remains accountable for all actions under this Bill and will, therefore, have to exercise caution in deciding to whom powers are to be delegated. Any restriction in the power to delegate would be a retrograde step, building in delays in the system and, in some situations, unnecessarily cluttering up water resource management processes.

In relation to clause 22, I am prepared to amend the Bill to provide for appointments to the Water Resources Appeal Tribunal to be for fixed terms of three years. However, where casual vacancies occur, these are to be filled for the balance of the original appointment. I accept that the powers of authorised officers are wide. I believe this to be necessary. On the one hand, we are dealing with a situation where detection of transgression is very difficult indeed. On the other hand, we do not have a huge complement of authorised officers to monitor water issues through the State.

I do not accept the honourable member's contention that the use of these powers could be for any purpose other than in connection with the administration of the proposed Act. Quite clearly, if an authorised officer acted outside the ambit of the legislation, it would be a clear abuse of power which is actionable. Authorised officers are subject to direction by the Minister, who has a clear responsibility to see that her officers act with courtesy and equity. Part of that responsibility is to ensure that authorised officers are properly trained, in part to protect the public at large and in part to protect the authorised officer.

However, I am prepared to make an amendment to restrict certain rights to situations where there is reason to believe that an offence has occurred or is about to occur. I draw the attention of the Council to clause 29 (6) which makes it an offence for authorised officers and persons assisting authorised officers to 'unreasonably hinder or obstruct a landowner in the day-to-day running of his or her business'. Thus, the authorised officer must act reasonably or face a hefty Division 7 fine. I would urge the Council to give those wide powers to authorised officers on the basis that there are constraints on unreasonable actions on their part. I accept the concern expressed by the honourable member about publications in the *Government Gazette* only. I am happy to extend the provisions by requiring publication in a newspaper circulating in the area.

In relation to the degradation of water through an act of God, there is a defence provided at clause 48 that there was nothing the defendant could reasonably be expected to have done that would have prevented the pollution. Clause 45, which deals with storage of material underground, must be read in conjunction with clause 48 (3), which provides that it is a defence to show that the material was stored in a container and that no part of the material escaped from the container. The sort of cases mentioned by the honourable member are covered by this defence. In addition, there will be exemptions in the regulations to cover underground homes, materials used in the conduct of mining operations, materials stored in excavations during construction, in ground dams and waste transfer stations.

As a general rule, the aerial spraying of fertiliser and activities associated with agriculture are aimed at the material being spread on land. It is not to the economic benefit of the landowner to waste the material. Generally, pollution of watercourses is inadvertent. I am prepared to indicate that it is not intended to use this legislation to limit this form of activity. Should the need arise, some exemptions could be given by regulation to such activities which are not causing undue pollution of water resources.

The intent of clause 48 is that licences to release waste are to be covered primarily by the Water Resources Bill. It provides that other legislation cannot authorise the release of waste. For example, if a person gets approval under the Planning Act to establish a piggery in a watershed, this should not be taken to authorise the release of piggery effluent to the watercourse. Similarly, the drainage of surplus water under the Irrigation Act should not be inferred as a right to pollute.

There is no proposal at this time to declare any statutory body to be a public authority for the purposes of clause 56. This provision is there in case it might be needed in the future. For instance, discussions are taking place in relation to watercourses in the South-East and the potential involvement of the South-East Drainage Board. There may well be a need to declare that body to be a public authority, dependent, of course, on the outcome of current investigations. It should be recognised that, at present, watercourses (except proclaimed watercourses) within a local government area

are under the control of the council as far as obstructions, etc., are concerned and are, therefore, excluded from the operations of this part of the Bill.

In relation to clause 69, in the light of what I have already said, I accept that appeal rights should be extended. This can be further considered in Committee, but in principle I accept that renewal of licences should be included.

In relation to clauses 73 and 74, I draw the honourable member's attention to clause 76, which provides an adequate defence. This clause also does not extend to clauses 43 (2) and 44 (2) because there are special provisions covering this aspect at clause 48 (2).

The right to commence a prosecution is covered by clause 77 (2). It would be over-restrictive to limit this power to authorised officers only. For instance, why should the Minister not be able to authorise the Chief Executive Officer or other senior officer to commence action in some circumstances? While the concept of general citizen prosecution is not intended, flexibility should exist in the legislation in the case, for instance, where an aggrieved landowner may wish to pursue action against an authorised officer pursuant to clause 29 (6).

As far as clause 78 is concerned, it should be remembered that debts arising are liabilities of the landowner which, if paid by him, would have taken precedence over mortgage liabilities. In addition, the protection of water rights to the land and any other work has the effect of increasing the value of the property and hence the security held by the mortgagee. In any event, mortgages generally contain a clause requiring the mortgagor to comply with the law. I can find, therefore, little justification to depart from the well established practice of making those types of debts a first charge on the land.

In relation to the regulation-making power, it is important to recognise that this could extend to significant matters. For instance, if one looks at clause 46 one sees that there is already provision for a maximum division 5 fine of $8 000. The regulation could deal with significant measures such as the control of the safety of reservoirs and dams. Maximum penalties must be set sufficiently high to cover the worst situation that can arise. A maximum fine of $1 000 would be too low in these circumstances. I need hardly remind members that courts can be relied upon not to impose fines that are inequitable (immaterial of the maximum) having regard to the circumstances of the case.

I finally turn to the contribution of the Hon. Mr Elliott. He suggests that there should mandatorily be on the Water Resources Council a person experienced in health matters relating to water resources. The reason why this approach has not been taken is that an examination of the issues dealt with by the council over the past few years reveals that few have impacted on health matters. The council has access to officers of the South Australian Health Commission should any issue require that expertise. Furthermore, should a need arise there is the possibility to appoint a person with those skills as part of the optional four members who can be appointed under clause 12 (2) *(c)*. I am concerned about the size of the council now, that is, up to 15 members, and would be reluctant to increase that to 16 members.

In relation to clauses 17 and 19, the legal advice which has been given to me is that without amendment both the council and committees are at liberty to initiate action if they so wish. I do not see any point in amending those sections but would be prepared to hear further arguments in the Committee stages.

In considering Division III of the Bill, it must be kept in mind that clause 8 requires everyone involved in the administration of the legislation to act consistently with its objects. One of these objects clearly requires the establishment of a system for 'the maintenance of water quality'. The Government, on behalf of the community, is therefore responsible to set the standard of quality of water in the watercourse.

Nevertheless, the member makes a valid point that some common law rights may be abrogated by this Bill. For this reason I am prepared to accept his first proposal that the details of the application should be advertised to allow the community at large to make submission to the Minister provided the period of advertisement is not excessive, thereby introducing significant delays in dealing with applications. There would also need to be capacity in cases of emergency to bypass this system and issue short-term licences.

I do not accept that anyone, by reason only of having made a submission, should have a right of appeal to the Water Resources Appeal Tribunal. However, there may be valid reason to extend a right of appeal to a landowner who might, but for this legislation, have had a common law right of action.

It seems to have become fashionable to establish special funds for resource protection in the belief that this will guarantee 'some certainty of funds' for work to be done in relation to that resource. While this may be relevant in some legislation, I do not see any advantage in this Bill. When one looks at the traditional sources for money for the fund, it becomes a farce. Receipts from licences, apart from being minimal, do not even cover the costs of administering the function. Unless these are raised appreciably there is no scope to put aside any percentage. Receipts from fines have been historically negligible. Even allowing for substantial increases in maximum fines this is not seen as a significant revenue raiser.

I must emphasise that the major purpose of the Bill is to prevent pollution, not to fine people after pollution has occurred. Fines should not therefore be regarded as a source of income. As far as grants, gifts, etc., are concerned none have been made to date, and there is no valid reason to believe that this will be a source of funds in the future. In short, this measure is not likely to have much general revenue diverted to it other than through the normal budgetary processes. In the short term, the most likely effect, if the fund is to operate at all, is that licence fees will need to be increased to partly fund the scheme. I urge members to consider whether there is any real value in setting up such a fund in this Bill.

The idea of third party standing is one which requires careful consideration. Let me try to outline the possible consequences of this proposal. In effect, anyone in the community is given standing before the courts and the tribunal, for example, even if one has an interest only because that person occasionally swims in the watercourse. Let us imagine that this person becomes aware that a landowner is failing to comply with a condition of his licence. Even if that landowner has satisfied the Minister of the reason for the breach, that person could take action against both the Minister and the landowner. We are all aware of some extremist groups in our community. To give the legal standing to every person in this way is to give to those groups another avenue for attempting to impose their views on the community. Individual landowners may constantly have to defend their actions against aggrieved individuals or groups. The Government rejects this proposal and would urge members to do likewise.

Finally, the honourable member expressed concern about the use of the word 'detrimental' in clause 42. This section has been considered again by officers of the Parliamentary Counsel's Office who have assured me that this section is

legally sound and the circumstances of the case can be argued before a court of law. This clause is not dependent on regulations.

I am prepared to indicate that the Government is proposing to work in close consultation with the community to set water quality criteria for those watercourses of most concern. This will improve the administration of the legislation. In the interim, I am satisfied that clause 42 provides the protection of water resources.

I apologise for this lengthy response but it is important to place the issues in proper perspective to facilitate consideration in the Committee stages and to assure members that this Bill will go some way to ensuring the continued protection of our precious water resources.

Bill read a second time.

CHILDREN'S PROTECTION AND YOUNG OFFENDERS ACT AMENDMENT BILL

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

New Clauses

Page 6, after clause 15—Insert new clauses as follows:

No. 1

Insertion of s. 61a and headings

15a. The following headings and sections are inserted in Part IV of the principal Act after the heading to Division VI:

Subdivision 1—Escape from custody

61a. (1) A detained child—

(a) who escapes from a training centre or from any person who has the actual custody of the child pursuant to this Act;

or

(b) who is otherwise unlawfully at large,

is guilty of an offence.

Penalty: Six months detention in a training centre.

(2) A term of detention to which a child is sentenced for an offence against this section must be served immediately and any other detention or imprisonment to which the child is liable is suspended while that term is being served.

(3) If the child is in prison at the time at which a sentence imposed under this section is due to commence, the sentence must be served in prison.

(4) A detained child is not, while unlawfully at large, serving his or her sentence of detention.

(5) Section 51 does not apply in relation to an offence against this section.

(6) In this section—

'detained child' means a child—

(a) who is subject to detention in a training centre or other place (not being a prison) pursuant to an order of a court under this Part or Part IVA;

or

(b) who is in the custody of an escort pursuant to Division VIA of this Part.

Subdivision 2—Release

No. 2

Insertion of s. 63a

15b. The following section is inserted after section 63 of the principal Act:

Leave of absence

63a. (1) The Director-General may, by written order, grant a child detained in a training centre leave of absence from the training centre—

(a) for the medical or psychiatric examination, assessment or treatment of the child;

(b) for the attendance of the child at an educational or training course;

(c) for the participation of the child in any form of recreation, entertainment or community service;

(d) for such compassionate purpose as the Director-General thinks fit;

(e) for any purpose related to criminal investigation;

or

(f) for such other purpose as the Director-General thinks fit.

(2) Leave of absence under this section may be subject to such conditions as the Director-General thinks fit, including, where the Director-General thinks it is appropriate, a condition that the child will be in the custody of and supervised by one or more officers of the department authorised by the Minister for the purpose.

(3) The Director-General may, by written order, revoke any leave of absence granted under this section, or vary or revoke any of the conditions to which it is subject.

(4) Where a child is still at large after the revocation or expiry of leave of absence, the child may be apprehended without warrant by a member of the Police Force or an officer of the department authorised by the Minister for the purpose.

(5) A child who is still at large after the expiry of leave of absence will be taken to be unlawfully at large.

Amendment No. 1:

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

That the House of Assembly's amendment No. 1 be agreed to.

The first amendment deals with the question of a child escaping from custody. This has been raised in this Chamber by the Hon. Ms Laidlaw and also in the public arena. It is now clear that there was no offence relating to a child escaping from custody. When this matter became an issue, the Government indicated that in its view there ought to be such an offence and the amendment that has been made by the House of Assembly and inserted by the Minister in another place gives effect to that intention.

The Hon. DIANA LAIDLAW: I am pleased that the Government has moved swiftly to address a situation that was clearly a glaring omission. I will not go over the events of an unfortunate life of a boy who has spent a lot of his youth in training centres and whose exploits led to concerns raised earlier in this session in this place and during the Committee stage of this Bill some three or four weeks ago.

Motion carried.

Amendment No. 2:

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

That the House of Assembly's amendment No. 2 be agreed to.

This deals with orders that may be given by the Director-General of the Department for Community Welfare to grant leave to a child detained in a training centre and specifies the circumstances in which that leave may be granted. This is another area where there seems to be something of a hiatus in the present Act, and the provision that I am seeking to have inserted formalises the situation whereby leave can be granted in certain circumstances. Of course, if that leave is properly granted, the child leaving the training centre pursuant to that leave would not thereby be escaping from custody and committing an offence.

The Hon. K.T. GRIFFIN: I acknowledge that there is a hiatus in the legislation in relation to leave of absence but it concerns me that the provision which the Attorney-General is now moving that we accept is so wide. I agree with leave of absence for medical or psychiatric examination, assessment or treatment of the child. That is quite an obvious basis for a leave of absence. I would have thought that probably that prevails now where a child may be taken by an officer to a clinic or to a medical practitioner for the sort of assessment, examination or treatment as is indicated in paragraph *(a)* and that such leave would not necessarily be required. Of course, it would be required if the child was to go off by himself or herself for that treatment, assessment or examination.

I also acknowledge that a child could be granted leave of absence for the attendance of a child at an educational or training course, although one has to question the circumstances in which that might occur. One has to raise a question about participation of the child in any form of recreation, entertainment or community service. If that recreation is being part of a football team, cricket team, bas-

ketball team or something similar I can understand that that would be very useful in the rehabilitation process. I am not too keen on leave of absence for the purpose of going to the Magic Mountain or one of the entertainment areas which are frequently the focal point for young people, some of whom may not be appropriate for the young offender to be associated with. Community service speaks for itself. There is a catch-all provision for the Director-General to allow leave of absence for a compassionate purpose. That can be very wide ranging. It can be family bereavement or for some other purpose associated with the family or friends. In the case of any purpose relating to criminal investigation, one could expect the identification of a site where an offence is alleged to have occurred being appropriate, but then we have to consider 'such other purpose as the Director-General thinks fit'.

Here we are beginning to lose control of the situation. One does not really need paragraphs *(a)* to *(e)* if we have this last paragraph which states that the Director-General can release a child in a training centre on leave of absence for any purpose that the Director-General thinks fit. That is extraordinarily wide, and I urge the Attorney-General to delete that paragraph. That leaves the question whether there are other circumstances other than those in paragraphs *(a)* to *(e)* which might be relevant for leave of absence to be granted. However, I cannot think of any and I would suggest that maybe the Attorney-General cannot either if it has been drafted with five specific provisions but one catch-all provision.

It is better to limit the authority of the Director-General to specific instances which are fairly wide than to give this all-embracing power, which can create some concerns—as it did in the case which prompted the first amendment, which has just been approved.

The Attorney-General has moved that the amendment of the House of Assembly be agreed to; I would like to move a further amendment.

That the House of Assembly's amendment No. 2 be amended by striking out 'or

(f) for such other purpose as the Director-General thinks fit' and inserting before paragraph *(e)* 'or'.

I believe that amendment will limit the authority of the Director-General, but it will also keep it under control.

The Hon. C.J. SUMNER: I do not suppose there is any problem with the amendment. One just hopes that circumstances do not occur which are not covered by paragraphs *(a)* to *(e)* that would be appropriate to apply for the release of the child and then we find that the Director-General has no power of release for that purpose because it is not specified. I am not as concerned about the general provision 'for such other purpose as the Director-General thinks fit' as is the Hon. Mr Griffin, because I am sure that the Director-General would use it only in circumstances where there was a genuine reason. At present, I cannot think of anything that might not already be encompassed in the reasons that are in the Hon. Mr Griffin's proposal. However, I suppose there might be other reasons, and if there is not this general provision, which the Hon. Mr Griffin wants to delete, then it may be that injustice might occur in certain circumstances.

I note that our minders are not here this evening for some reason, despite the fact that they were given an extra electorate secretary and research staff; they still do not seem to be able to attend the Parliament and sit in their seat when required. However, I suppose there is not much that we can do about that; they choose to do what they like, despite the considerable added facilities given to them by the Government to assist in the progress of legislation through the Parliament. I suppose we could always withdraw it, or make it a condition of the future continuation of this funding that they actually attend and participate in the sittings of the Parliament when we are dealing with business. However, our minders—in the form of the Democrats—do not seem to have graced us with their presence this evening. So, I am not sure how to resolve this impasse because they have not heard the arguments put up by the Hon. Mr Griffin. I suppose that the only way I can resolve it is to say that I will not oppose his amendment at this stage, but we will reconsider it when the message goes back to the House of Assembly and, if the Government at that point finds Mr Griffin's amendment unacceptable, it can insist on the amendment as made by it.

Amendment carried; motion as amended carried.

LEGAL SERVICES COMMISSION ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 28 March. Page 908.)

The Hon. J.C. BURDETT: I support the second reading. The most important aspect of the Bill is to enable the commission to have a statutory charge registered in respect of real estate owned by applicants for legal aid. Properly administered, this provision would allow an extension of legal assistance to applicants who possess valuable assets but who do not have sufficient liquid assets to pay legal fees immediately, or the income to support borrowing against those assets. If anyone thinks that may be oppressive, people do not have to accept legal aid under those conditions. If they object to that, they do not have to accept legal aid offered under those conditions.

South Australia has the only legal aid body in Australia which does not have power to impose a charge in these circumstances. The Legal Services Commission has formulated preliminary guidelines. In many circumstances, payment would be expected out of an estate after death or on transfer. The Bill also provides for an increase in the Commonwealth representation on the commission from one to two in order to enhance communication between the commission and the Commonwealth. I believe this is a sensible provision.

The Bill also makes the conditions of staff employment more flexible, but I do have some problems in this area. As was pointed out in the second reading explanation, it is true at present that staff appointments are made by the Governor. I believe that is unduly heavy handed. It is almost unique in this kind of organisation, and seems to be unnecessary. However, I disagree with the method by which the Government proposes to rectify this. The Bill proposes that the staff of the commission should be appointed by the Minister on the recommendation of the Commissioner for Public Employment. That seems to be contrary to the spirit of the parent Act, which set up the commission, because it was the intention of Parliament—

The Hon. C.J. Sumner interjecting:

The Hon. J.C. BURDETT: No-one has been getting at me. I will come to that in a moment. Clearly, the intention of the Parliament in setting up the commission was that it was to be independent of government, and it has in many respects on many occasions carried out the role of being independent of government. I am sure that government is pleased that that it so.

The Hon. C.J. Sumner: It's not independent for its finances.

The Hon. J.C. BURDETT: The Attorney keeps interjecting in relation to its dependence on finances. It has a global budget. Therefore, it seems to me to be appropriate that the staff, apart from the Director himself or herself, who should continue under the Act to be appointed by the Governor (that applies), should be appointed by the commission. That seems to be in the spirit of the parent Act.

The Hon. C.J. Sumner: We agree with that.

The Hon. J.C. BURDETT: Right. There seems to be no problem. The Hon. Mr Griffin, as shadow Attorney-General, wrote to the Law Society of South Australia seeking its views on the Bill. He received a reply dated today, because there was not much time left. Incidentally, the reply states that the society supports the primary objective of the legislation, as I do and as I have said. The letter states:

> By way of comment, the society has some reservations regarding the proposed new section 15 (3), which relates to appointment and conditions of service of employees of the commission. Our concern is that this appears to be inconsistent with the concept of the independence of the commission and the notion that it should not be subject to State Government control.

That is exactly what I have been saying. Therefore, I have placed an amendment on file to provide for the appointment of staff to be made by the commission, apart from the Director. The primary objectives are very sound; they will help the commission give flexibility and enable people who are not able to get legal assistance at present to get it. I support the second reading of the Bill.

The Hon. C.J. SUMNER (Attorney-General): In reply, there is only one point of dispute, and that deals with the terms of employment of officers or employees of the commission. The present situation is that those employees are appointed by the Governor, and that is considered to be too bureaucratic an approach. For that reason, the Government felt that the commission should have the capacity to make its own appointments, However, the Government believes that, because the commission relies heavily on public funding—either Federal or State Government funding—there ought to be some means of ensuring that the commission followed some guidelines relating to the employment and the rates at which the employees would be engaged.

It is true that the Act provides that the Legal Services Commission is independent of government, and that must remain the case. However, there is already an exception to that fact in that the Director is appointed by the Governor and, up until the introduction of this amending Bill by the Government, the officers were appointed by the Governor in Council. So, although the Act provides that the commission is independent (and it is in its decision-making capacity), it was subject to appointments to it being made by the Governor, in effect by the Government. That was a matter of formality, but it still retains certain controls in the Government over the employment of staff, and that is not unreasonable, given that virtually the whole of the legal aid budget comes from public funds.

I quote this example to the honourable member: what if the commission decided to employ five QCs at $250 000 a year and used its budget in that way? That would not be in the public interest, and I do not believe that Parliament ought to remove itself completely from any responsibility for the employment practices of the commission. So, the compromise that has been arrived at (the compromise from the Government's point of view, at least), is that the Minister or the Government can approve the conditions on which the commission can take on its employees.

That will be the subject of negotiation between the commission and the Commissioner for Public Employment and the Minister. That is reasonable. Anything reasonable they put up would, I am sure, be agreed to by the Minister, but it would remove the possibility of the commission spending its money by engaging people at rates of pay that were completely out of kilter with the general market or with what was being offered to other equivalent people within Government service. That is the intention of the amendment. I believe that it is very sensible and, indeed, necessary.

Bill read a second time.

In Committee.

Clauses 1 to 5 passed.

Clause 6—'Employment of legal practitioners and other persons by the commission.'

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

> Page 2, lines 5 and 6—Leave out 'approved from time to time by the Minister on the recommendaation of the Commissioner for Public Employment' and substitute 'determined from time to time by the commission'.

I do not accept what the Attorney has said in his second reading reply that there is anything inconsistent with the Director's being appointed by the Government but other staff members being appointed either by the Minister on the recommendation of the Commissioner for Public Employment or by the commission itself. Obviously, the position of the Director is in a different situation, and it would hardly be appropriate for the commission to appoint its own Director. That is a senior position and it is entirely appropriate that the Director should continue, as provided for in the Act at present (which, after all, was introduced by the present Government), being appointed by the Governor. I suggest that it is entirely appropriate that the commission should have control of its own staff.

The Hon. C.J. Sumner: What if it appoints people at wage rates that are totally out of kilter and uses up the legal aid funds?

The CHAIRMAN: Order!

The Hon. J.C. BURDETT: I was about to address that subject. The scenario advanced by the Attorney is quite ridiculous, suggesting the appointment of five QCs at one time on one matter, as they would destroy its viability. It is ludicrous to assume that the commission would act in a totally irresponsible manner.

The control of the Government is in the global budget—in the amount of money which it allocates, in its budget, to the Legal Services Commission. It was intended at the outset that the commission be independent, and surely any independent body can be accepted as being responsible enough to exercise discretion in the appointment of their staff; that it does not appoint a ridiculous number of staff; and that it does not forget what its primary objective is, namely, to give legal assistance to persons who come to the commission for assistance.

It seems to me to be ridiculous to assume that a body which is set up to carry out a task is going to act irresponsibly and not carry out that task but spend its money on staff. It has a global budget, and the Government is in control of that budget. Of course, there are steps that can be taken if the commission does not act responsibly, at least in the long term.

I again refer to the excerpt which I quoted from the Law Society's letter where it raises exactly the same matters as I have raised. I might add that I had intended to raise those matters before I saw the letter, which was given to me only this evening or late this afternoon and was only dated today.

The Law Society raises exactly the same matter regarding the proposed new section 15 (3) which it says relates to appointment and conditions of service of employees of the commission. It states:

Our concern is that this appears to be inconsistent with the concept of the independence of the commission and the notion that it should not be subject to State Government control.

My purpose in moving the amendment is to maintain the independence of the commission, particularly in the matter of employment of its own staff, which seems to me to be only reasonable.

The Hon. C.J. SUMNER: The position being put by the Government, in terms of the commission's independence, is an improvement on what has existed for the past 10 years. During that time there has been a provision in the Act which says that the commission is independent, yet all the appointments, including those down to a C02 clerk, have been made by the Government. That has been in the Act for the past 10 years. That is what we are seeking to change, and we think that is reasonable. However, we do not think it is reasonable to give a body that is virtually totally publicly funded complete *carte blanche* to engage people at whatever levels of remuneration it thinks fit. I think it would be grossly irresponsible to abrogate our responsibilities in that respect.

The example I gave was an exaggerated one of employing five QCs at $250 000 a year. However, I made the point in that exaggerated way to emphasise that surely there ought to be some broad guidelines provided to a publicly funded commission such as this about the levels at which they should employ people. For instance, there are Government lawyers employed in the Attorney-General's Department, the Crown Solicitor's office, the Corporate Affairs Commission and other areas, and I think it would be quite irresponsible for the commission, for instance, to offer a package of salaries, a wage structure, that was 20 per cent or 30 per cent higher than was available in Government service.

I frankly think that, as I stated, it would be irresponsible for us not to retain broad control over the range of salaries that can be offered. Individual appointments will now be made by the commission. However, the Minister, who is responsible for the funding through the Government and Parliament, would be able to say, 'Your salary structure should be at this level.' I think that is entirely reasonable.

The Hon. J.C. BURDETT: The Bill does not provide for broad guidelines. It provides that the staff shall be appointed by the Minister on the recommendation of the Commissioner for Public Employment. I see no reason to suppose (and I do not see why the Minister should suppose) that if broad guidelines were presented to the commission the commission would not abide by them. Let me say this again: the Bill does not provide for broad guidelines.

The Hon. C.J. Sumner: It does.

The Hon. J.C. BURDETT: It doesn't. It provides that the staff shall be appointed by the Minister.

The Hon. C.J. Sumner: It does not. That's quite wrong.

The Hon. K.T. Griffin: 'On such terms and conditions.'

The Hon. J.C. BURDETT: Yes.

The Hon. C.J. Sumner: It provides that the commission will appoint the staff on such terms and conditions as are approved from time to time.

The Hon. J.C. BURDETT: Yes, but they are not broad guidelines.

The Hon. C.J. Sumner: They are broad guidelines.

The Hon. J.C. BURDETT: They completely tie the commission. The commission ought to have the power to appoint its own staff. The Attorney has correctly said that the Bill is an improvement on what was already there, but it does not go far enough.

The Hon. C.J. Sumner: It does.

The Hon. J.C. BURDETT: It doesn't go far enough. Obviously we disagree on that. I am saying that the—

The Hon. C.J. Sumner: They might employ you.

The Hon. J.C. BURDETT: And they might employ you, but I doubt it! I am saying that the Bill does not go far enough: that the commission ought to be able to appoint its staff. There is no reason to suppose that it would not accept broad guidelines that were presented to it.

The Hon. I. GILFILLAN: The Attorney having endeared himself to me in remarks on an earlier Bill, I make a very clear and obvious effort to be completely impartial in assessing this issue. I stand as a genuine swinging voter. No-one has made any submission to me at all on this matter. In fact, I did not even realise it was a bone of contention until it was raised a few minutes ago. I therefore have a couple of questions which perhaps both the Hon. J.C. Burdett and the Attorney-General may care to answer. Has the opinion of the Director of the commission been sought in this matter and, if so, what is it? Also, what precedent is there in similar commissions or bodies in South Australia with which we can compare this proposal?

The Hon. C.J. SUMNER: The answer to the second question is that I do not know what the situation is with respect to other legal aid commissions around Australia. However, there are precedents with respect to other statutory authorities within the State, that employment should be on guidelines and terms of conditions from time to time determined by the Government.

As to the first question, the Director of the commission and the commission support having *carte blanche* to employ on whatever terms they wish to employ. However, the Government clearly finds that unacceptable and, if it helps the honourable member (and I do not want to be difficult about it), that will be the Government's position right through until the end of the consideration of this particular Bill, because we think it is intolerable for a totally funded public body not to have to account in some respects for the manner in which it employs its employees. It would be absolutely unacceptable to the community and to the people who rely on legal aid to find that the commission was employing lawyers at rates that were beyond the market or even beyond what was available in the public sector.

The Hon. J.C. BURDETT: I will answer the Hon. Mr Gilfillan's first question first regarding whether the views of the commission have been sought. Indeed they have, through the Director. It is not my understanding that she wanted *carte blanche*, as the Attorney said, but she did want the commission to have the power to appoint its own staff.

The Hon. C.J. Sumner: It's got that power. They can appoint their own staff under the Bill.

The Hon. J.C. BURDETT: All right, but subject to terms and conditions which completely abrogate that.

The Hon. C.J. Sumner: They do not.

The Hon. J.C. BURDETT: In my submission, they do. She certainly did not approve of the terms of the Bill, but it is not true, either, to say that she wanted *carte blanche.* She realises that she has to operate within a budget and that, to be sensible, she is going to have to accept any broad guidelines (and they are the Attorney's own words) which are laid down. I think it is totally unrealistic to suggest that they would not be accepted by the commission.

The Hon. I. GILFILLAN: What would you do, Mr Chairman? If such a contentious issue is involved, I think that the wording of the clause is a little ambiguous.

The Hon. C.J. Sumner: It's not contentious; don't worry about it.

The Hon. I. GILFILLAN: It appears to be contentious on the floor of the Parliament. I will just read it so that all members can hear the wording of it. Subclause (3) provides:

Persons employed by the commission must be appointed on such terms and conditions as are approved from time to time by

the Minister on the recommendation of the Commissioner for Public Employment.

The grammar leaves me a little uncertain about the final phrase 'on the recommendation of the Commissioner for Public Employment', whether that person actually—

The Hon. K.T. Griffin: He makes the decisions.

The Hon. I. GILFILLAN: Yes, the interjection by the Hon. Trevor Griffin makes it plain that, in his opinion, the subclause means that the Commissioner for Public Employment will determine the terms and conditions upon which the persons will be employed by the commission. I believe that there is a very good argument to say that the Government, having appointed the Director of the commission and having faith in that person to do a job which is far wider than just the selection of individual staff and determining the particular details of their employment, has shown a remarkable lack of follow-on trust by denying that person the right to employ people under circumstances that seem to be appropriate for the Director of the commission.

I intend to support the Opposition's amendment, not because I am fully persuaded that the argument of the Attorney is entirely wrong but, rather, my reading of subclause (3) suggests that this provision could be very restrictive. It could determine the precise terms under which the commission can employ staff, and that might be quite prohibitive to the commission getting the people that it wants. So we intend to support the amendment. The Attorney may well then have an opportunity to look at the subclause and reword it so that it is acceptable.

The Hon. C.J. SUMNER: It does not need rewording. The Commissioner for Public Employment will make a recommendation to the Minister, who will determine the terms and conditions upon which people may be engaged in the Legal Services Commission. The Legal Services Commission will then make those appointments within that structure as determined by the Minister.

The Hon. K.T. Griffin: The Minister hasn't got any discretion. It says 'on the recommendations'.

The Hon. C.J. SUMNER: The Minister does not have to accept the recommendation.

The Hon. I. Gilfillan: The wording is quite specific.

The Hon. C.J. SUMNER: If the honourable member is prepared to accept what the Government wants to do, then I am happy and we will go ahead and do it. If it requires rewording (which I do not think it does), we will reword it. The Government will not see this Bill passed without some degree of control being maintained by the public, through its democratically elected representatives, in relation to a totally funded body, which the taxpayer puts its money into in large amounts every year. We will not stand by and see them employ whomever they like under whatever terms and conditions they like.

The Hon. J.C. BURDETT: The Attorney said before that there was no question of deciding exactly who was or was not employed. He said he was only talking about broad guidelines. If that is the case, let him say so. He is now saying that he will not let the commission employ anyone that it likes.

Amendment carried; clause as amended passed.

The CHAIRMAN: I point out that clause 7, being a money clause, is in erased type. Standing Order No. 298 provides that no question shall be put in Committee upon any such clause. The message transmitting the Bill to the House of Assembly is required to indicate that this clause is deemed necessary to the Bill.

Title passed.

Bill read a third time and passed.

STATUTE LAW REVISION BILL

Adjourned debate on second reading.

(Continued from 28 March. Page 908.)

The Hon. J.C. BURDETT: I support the second reading of this Bill, which is said to provide the following: first, a conversion of penalties into divisional penalties; secondly, conversion of all provisions into gender neutral language (which I support); thirdly, deletion of obsolete or spent material, for example, commencement provisions (and that makes sense); and, fourthly, so-called substitution of old legalese language (and this is what the second reading explanation states) with modern expressions.

The Bill does not make any substantive changes to the law. As I have counted them, there are roughly 800 changes but I have checked them and there is no change to the substantive law. I find some of the changes pedantic and it seems to me that some of them pose as many problems as they solve in regard to the person in the street. I believe that a clerical mistake has been made. The Bill seeks to strike out the definition of 'trading machinery' in the Bills of Sale Act and substitute 'trade machinery'; however, the present definition does already relate to 'trade machinery'. It seems to be a typographical mistake, which doubtless can be dealt with as such.

The amendments to the Bills of Sale Act have caused me the most concern. If the term 'lawyers' law' is ever appropriate, this is an example. Section 10a of the Bills of Sale Act is to be amended by striking out '*bona fide*' and substituting 'genuine'. The term '*bona fide*' as interpreted by the courts has been known for a long time. Its meaning is fairly widely known to the person in the street. Terms like '*bona fide* traveller' and other such terms have been around for a long time.

I do admit that one of the major dictionaries describes '*bona fide*' as meaning genuine, but I am not sure that the courts would not take some time to determine the meaning of the word 'genuine', whereas they know what '*bona fide*' means. I have placed an amendment on file to replace 'genuine' with 'in good faith', which is at least a translation from the Latin term '*bona fide*'. On the whole, there is no problem with the Bill. The principles are accepted. I hope that the Attorney will look at correcting what I think is a typographical or clerical mistake without any amendment being moved on that. I support the second reading of the Bill and foreshadow my amendment with respect to the words 'genuine', '*bona fide*' and 'in good faith'.

Bill read a second time.

In Committee.

Clauses 1 to 3 passed.

First and second schedules passed.

Third schedule.

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

Page 9—

Amendments relating to section 10—Leave out 'genuine purchaser or mortgagee' and insert 'person who, in good faith, purchases or takes a mortgage over'.

Amendments relating to section 10a—Leave out seventh amendment and insert—

Strike out 'a '*bona fide*' purchaser or mortgagee of' and substitute 'a person who, in good faith, purchases or takes a mortgage over'.

As I have said, the term *bona fide*, which I have translated to 'in good faith', has been understood by the courts for centuries in all sorts of situations. While I concede that one of the leading dictionaries defines '*bona fide*' as being genuine, I am not sure that the courts would accept that it means the same thing, whereas they will interpret a term

which they have known for a long time in a way that everybody knows.

The Hon. C.J. SUMNER: The Government opposes this amendment. The plain English drafting, which is now employed by Parliamentary Counsel, has consistently used the word 'genuine' in a number of other statute law revision Bills that have been passed by the Parliament up to this point in time. To revert now, with the Parliament impliedly, at least, having accepted the word 'genuine' as being an appropriate replacement for '*bona fide*' or 'in good faith', would be to go backwards. The plain English drafting which has been used and which has been inserted in legislation in place of the term '*bona fide*'—

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: Yes, we have done it.

The Hon. K.T. Griffin: We fought over it about three years ago and I thought we had left '*bona fide*' in on one occasion.

The Hon. C.J. SUMNER: As far as I understand it, the plain English style of Parliamentary Counsel now is to use 'genuine' instead of '*bona fide*'. We have done it on previous occasions and we ought to do it on this occasion.

The Hon. J.C. BURDETT: I wish that the Government would be consistent when it talks about plain English drafting. If we look at the next Bill on the Notice Paper, the Statutes Amendment (Victims of Crime) Bill, the term '*ex gratia* payment' is used in clause 4. If we are to use '*ex gratia*', why not use '*bona fide*'? If the Attorney wants to have plain English drafting and says that that is what Parliamentary Counsel is doing, why not do it consistently?

Amendment negatived.

The Hon. J.C. BURDETT: My next amendment is the same as the last one. Seeing that the last amendment was negatived I do not propose to move it.

Third schedule passed.

Remaining schedules (4 to 7) and title passed.

Bill read a third time and passed.

STATUTES AMENDMENT (VICTIMS OF CRIME) BILL

Adjourned debate on second reading.

(Continued from 28 March. Page 907.)

The Hon. K.T. GRIFFIN: The Opposition supports the Bill. It does a number of things designed to improve the position of victims of crime. In respect of financial matters, it also provides that where a court finds a defendant guilty of an offence and the circumstances are such as to suggest that a right to compensation has arisen, then if a court decides not to make an order for compensation it must give reasons for not making that decision and order. That is designed to focus on the need for the courts to pay greater heed to the rights of victims, and particularly to focus on compensation being paid by the defendant. The Opposition supports that proposal.

In respect of the monetary matters, the present limit for criminal injuries compensation of $20 000 is to be increased to $50 000, and that amount is payable from the Criminal Injuries Compensation Fund. That is a significant increase and again it is supported.

In respect of that, I would like the Attorney-General to indicate the estimated cost on a full-year basis to the Criminal Injuries Compensation Fund as a result of the significant increase. At the same time the Attorney-General might indicate how much is presently in the Criminal Injuries Compensation Fund and, in particular, the amount expected to be raised by way of levy in the current financial year and whether there is any projection for the 1990-91 financial year.

The increase from $20 000 to $50 000 maximum compensation will have a significant impact on the fund. Not only will it raise the top awards but also it will flow right through the system and, undoubtedly, will mean a much larger pay-out in total from that fund.

In the context of a criminal injuries compensation case, a court is to be prevented from awarding compensation where the injury arose out of the use of a motor vehicle except where damage to property occurs and is to be prevented from awarding compensation where the injury, loss or damage is compensable under the Workers Rehabilitation and Compensation Act. That is reasonable. If there is a claim in those two categories, it is appropriate that the primary claims be made against either the compulsory third party bodily insurance fund or the workers rehabilitation and compensation legislation.

A payment out of the Criminal Injuries Compensation Fund, one must remember, is in fact an *ex gratia* payment. It does not necessarily have to be recovered from the defendant, although that is desirable. Mostly, defendants have no money—if they can be found—and no assets, so that, rather than a victim suffering considerable loss as a result of an inability to recover from the defendant, the Criminal Injuries Compensation Fund provides an up-front payment mechanism.

The Bill also provides for a payment to be made for the cost of funeral expenses. It is paid out of the Criminal Injuries Compensation Fund, and that payment may be up to $3 000. In some circumstances, where other compensation—and I presume this is compensation under the Workers Rehabilitation and Compensation Act or under the compulsory third party bodily injury scheme—does not represent an adequate compensation for pain, suffering and other non-economic loss, the Attorney-General is to have a discretion to raise the payment out of the Criminal Injuries Compensation Fund of up to $10 000. Both the payment of funeral expenses and that top-up are supported.

The Bill allows the Attorney-General to make an *ex gratia* payment to victims of crime, even though an offence has not been or cannot be established but it is obvious that a person has suffered injury as a result of an offence but, for one reason or another, no person is convicted of the offence. I presume that is directed towards those circumstances in which a defendant cannot be found, where no prosecution is instituted, where there may not be sufficient witnesses to take the matter to court but, nevertheless, where there is sufficient evidence to identify that an offence has occurred. In those circumstances, the Attorney-General is permitted to make an *ex gratia* payment.

I concede the need for that: I think it is appropriate. One might raise questions about the Attorney-General of the day making that discretionary judgment, but I make the point that Attorneys-General (of whatever political persuasion) have had the power to exercise that discretion and, in fact, have had to do that since the criminal injuries compensation scheme was introduced, I think about 20 years ago. So, it is appropriate that the discretion be exercised, and someone must exercise it.

Because of the involvement of the Attorney-General in the criminal justice system, it is appropriate that the Attorney-General, who has traditionally exercised that responsibility, continue to do so. These increases in provisions for victims of crime are to be commended, and the Opposition is pleased to be associated with them and to support the second reading of this Bill.

The Hon. R.R. ROBERTS secured the adjournment of the debate.

The Hon. C.J. SUMNER: Mr President, I draw your attention to the state of the House.

A quorum having been formed:

INDUSTRIAL RELATIONS ADVISORY COUNCIL ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 29 March. Page 988.)

The Hon. J.F. STEFANI: The Opposition supports the Bill with the amendment to clause 6, as moved by the member for Bragg in another place following representation from employer associations. I am pleased to note that the Minister supported the Opposition's amendment.

The Bill seeks to increase the membership of the Industrial Relations Advisory Council from 10 to 14, and extends its operation from the present expiry date of 30 June 1990 to 30 June 1993. The Industrial Relations Advisory Council was established to provide tripartite consultation on industrial matters and in particular, on legislation affecting industrial relations. The proposed extension to its operating period has the support of the United Trades and Labor Council and the major employer organisations. The Opposition supports the Bill with, as I have indicated, the amendment to clause 6 as moved in another place.

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

STAMP DUTIES ACT AMENDMENT BILL (No. 3)

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

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

That this Bill be now read a second time.

As this Bill has been dealt with in another place, I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

It seeks to insert a new part in the Stamp Duties Act 1923 to counter a blatant tax avoidance scheme and thereby prevent stamp duty revenue from being lost as a result of certain transactions being arranged in a manner which minimised the liability to duty. Under the current provisions of the Stamp Duties Act instruments of transfer of company shares are charged at a substantially lower *ad valorem* rate of stamp duty than that charged on conveyances of land (60c per $100 as opposed to a progressive rate up to $4 per $100 respectively). For the scheme to operate land is placed in a company ownership. Prospective purchasers of the land are invited to take a transfer of the shares in the company rather than the land directly. By this means duty is not paid on the value of the land as occurs in respect of the overwhelming majority of land purchases but instead duty is only paid on the net value of the shares.

Recently, a number of instances have been identified whereby taxpayers have minimised their stamp duty liability by exploiting this rate differential in the manner indicated above. Three such instances investigated identified a revenue loss of approximately $1.3 million. An increasing use of such schemes is being made by landowning companies or unit trusts to facilitate the transfer of real property.

This scheme is neither fair or equitable to those taxpayers who buy or sell real property without being able to utilise a corporate vehicle. This Bill seeks to counter the abovementioned scheme by providing that certain transactions involving the transfer of real property by way of shares in an unlisted company or units in a non-listed unit trust be taxed at land conveyance rates in respect of the underlying land.

The provisions of the Bill are by necessity quite complex but the essential criteria which must be present before the proposed provisions would operate are as follows:

1. More than 50 per cent of the total equity in a non-listed land owning company or non-listed landowning unit trust must be acquired within a two year period.

2. The non-listed landowning company or non-listed landowning unit trust must own land which has an unencumbered value in excess of $1 million.

3. The value of the land must comprise more than 80 per cent of the value of the total assets of the company or the unit trust.

It can be seen from the above criteria that the amendment will not impact on the average property transaction. In addition, the Bill contains a significant number of exemptions to ensure that the provisions do not impact upon a wide range of well-established transactions. Subject to certain conditions being met, exemptions include:

Receiver or trustee in bankruptcy
Liquidations
Executor or administrator of deceased estates
Acquisitions as a result of certain court orders
Survivorship
Deceased estates
Dissolution of marriage
Situations where duty has already been paid on another instrument
Amalgamation of two or more bodies incorporated under an Act of the State
Transfers or undertakings under an Act of the State
Acquisitions by a beneficiary of a trust
Transfer of an interest from a trustee to a beneficiary.

The Bill does not apply to any acquisitions occurring before the commencement of the new provisions or any acquisitions arising out of an agreement entered into before the commencement of the new provisions. In addition, the Government is keen to ensure that the legislation does not impact on normal commercial financing arrangements and has made special provision to exclude acquisitions which have been effected for the purpose of securing financial accommodation.

The Bill is clearly aimed at those persons who artificially arrange their affairs to avoid or minimise the payment of stamp duty. All other Australian States and Territories have now enacted similar legislation to combat this avoidance technique. A copy of the Bill was released on a confidential basis to a committee representing the Taxation Institute of Australia (S.A. Branch), the Law Society, the Institute of Chartered Accountants and the Australian Society of Accountants. Extensive submissions were received which were evaluated and many were incorporated into the Bill. The Government is most appreciative of the contributions made.

Clause 1 is formal. Clause 2 provides for the commencement of the measure. Clause 3 has the effect of transferring three definitions used in section 71 of the principal Act to section 4 of the principal Act so that they can also be used for the purposes of new Part IV. Clause 4 will ensure that

section 60a of the principal Act does not apply to new Part IV. Clause 5 makes various consequential amendments to section 71 of the principal Act.

Clause 6 proposes an amendment to section 90e. A review of the application of the Act to share transfers has identified an amendment that should be made to section 90e on account of the operation of 71 (5) *(e)* of the Act. Section 71 (5) *(e)* (ii) (B) operates in relation to an instrument stamped with *ad valorem* duty. As the Act presently stands, if duty is paid on an instrument under section 90e, the instrument is deemed to have been duly stamped for the purposes of the Act, but no reference is made to *ad valorem* duty. The instrument cannot therefore receive the benefit of section 71 (5) *(e)* (ii) (B) in an appropriate case. The amendment will correct this situation.

Clause 7 proposes the enactment of new Part IV. Section 91 sets out the various definitions that are to be used in the new Part. The new Part will apply to various acquisitions in a private company or unit trust scheme, or to the acquisition of a land use entitlement, provided that certain criteria are satisfied. To ensure that the concept of acquisition encompasses various techniques that can be employed to create, change, vary or increase an interest in a private company or scheme, 'acquisition' is defined to include various matters. A 'private company' is defined as an incorporated company none of the shares of which are listed for quotation on a stock exchange. A private unit trust scheme is defined as a scheme that is not the subject of an approved deed under the Companies (South Australia) Code, or a scheme that, although subject to such a deed, does not have units that have been issued to the public, has less than 50 persons who are beneficially entitled to the scheme, or has less than 20 persons who are beneficially entitled to 75 per cent or more of the total issued units of the scheme. The concept of land use entitlement is defined as an interest in a private company or scheme which gives the person acquiring the interest an entitlement to the exclusive possession of real property in the State. The section also sets out various other matters related to the terms and operation of the provisions. Section 92 deals with various preliminary matters. An essential element to the operation of the provisions is the extent of a private company's or scheme's entitlement to property. Under section 92 (2), a private company or scheme will be taken to be entitled to property if the property is owned by the company or scheme, is owned by a private company or scheme that is a subsidiary of the company or scheme, or is held under a discretionary trust where the company or scheme (or a relevant subsidiary) is an object of the trust.

Section 93 sets out various acquisitions in relation to which the provisions will not apply. Section 94 imposes the requirement to lodge a statement under the provisions if a person acquires a relevant interest in a private company or scheme that is within the ambit of the legislation. The legislative scheme does not apply unless the person acquires a majority interest, or an interest that results in the person obtaining a majority interest. The interest of a related person (as defined) may also be taken into account. The scheme also requires that the private company or scheme be entitled to real property that represents at least 80 per cent of the total value of all of its property, and that the value of the real property must be at least $1 million. Section 95 provides for the imposition of duty on the statement. An allowance will be made for duty paid in respect of a prior acquisition, or on any other relevant interest. Section 96 imposes the requirement to lodge a statement if the person acquires a land use entitlement in a private company or scheme. Under section 97, duty will be assessed on the unencumbered value of the real property that is subject to the land use entitlement.

Section 98 makes a special allowance for certain transactions. Section 99 empowers the Commissioner to require a person who is obliged to lodge a statement to supply information or evidence as to the value of any relevant real property. Section 100 deems a statement to be an instrument executed by the person who is required to lodge the statement. Sections 101, 102, 103 and 104 allow the Commissioner to impose a charge on real property in respect of the assessment and payment of duty. Section 105 allows the Commissioner to reassess duty in certain cases. Section 105a requires a private company to notify the Commissioner when a person acquires a relevant interest or land use entitlement in the company. Section 105b provides that nothing in the new Part prevents a person who pays duty from recovering the amount from another person. Section 105c allows a private company or scheme to pay the duty charged against a person who acquires a relevant interest or land use entitlement in the company or scheme. Clause 8 makes a consequential amendment to the second schedule to the principal Act.

The Hon. R.I. LUCAS secured the adjournment of the debate.

LONG SERVICE LEAVE (BUILDING INDUSTRY) ACT AMENDMENT BILL

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

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

That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it, as this matter has been dealt with in another place.

Leave granted.

Explanation of Bill

This Bill, which amends the Long Service Leave (Building Industry) Act 1987 seeks to extend the portable long service leave scheme established in 1977 to include the electrical contracting and metal trades industries. It implements an undertaking given during the budget session of Parliament last year that a scheme to extend the present cover would be proposed during this session.

The portable long service leave scheme, established by the Long Service Leave (Building Industry) Act, commenced on 1 April 1977. The scheme allows building industry workers in certain occupational categories, and paid under the prescribed awards to become eligible for long service leave benefits on the basis of service to the industry rather than service to a particular employer. At present, while electrical contracting and metal trades workers may be regarded as building workers, because they are subject to the Metal Industry (Long Service Leave) Award 1984, they do not enjoy the same leave entitlements as other building industry workers. This Bill will correct this anomaly. It will provide the same long service leave benefits to all employees in the building industry. What is proposed is an expansion of the industry scope of the Act by defining work of a kind performed by workers employed within the building industry and electrical and metal trades industries.

The extension of the scheme to the electrical contracting and metal trades industries will result in changes to the present board. First, this Bill changes the title of the board

to Construction Industry Long Service Leave Board to reflect the broader coverage. Secondly, the board will be reconstituted and increased by an additional two members (that is, one union, one employer).

Under the Federal award, electrical contracting and metal trades workers are entitled to long service leave after 15 years (10 years *pro rata*). The recognition of service prior to the commencement date of 1 July 1990 will therefore be calculated on a proportional basis. Workers with more than seven years service with their current employer will be credited with two-thirds of their total service, or two-thirds of service since the date of a previous payment of entitlement. Workers with less than seven years service within the industry will be credited with two-thirds of their service.

Particular attention has been taken during the drafting of the Bill to ensure that existing employer contributors to the present scheme are not disadvantaged by the proposed extended coverage. To illustrate this, I refer to the need to create two funds: one for the construction industry, which will be a continuation of the present fund and one for the electrical and metal trades industries. This will ensure that there is separate accounting for payment into and out of the funds in respect to construction work and electrical and metal trades work.

There will be no up-front costs to new employers. However, contributions to the Electrical and Metal Trades Fund will be 2.5 per cent, 1 per cent above the current rate for the Construction Industry Fund. The two funds will remain in existence until such time as the new industries' liabilities have been met. The Bill proposes to delete reference to the occupational categories referred to in Schedule I of the present Act, listing the prescribed awards only. Currently, some workers paid under the prescribed awards cannot be registered as their occupations are not listed under Schedule I. This will be overcome by just applying the list of awards in conjunction with the application of the predominance rule. This approach is used in interstate schemes.

The other changes that are being introduced by this Bill are aimed at improving the operational effectiveness of the Act. These changes have been proposed by the board. The first change relates to the format of employer returns as prescribed under the regulations. The format is to be revised, thereby simplifying the process for employers. The number of forms used will be reduced. Worker service will be able to be updated on an ongoing basis and eliminate the need for annual returns.

The second change concerns the imposition of fines for late payment of contributions. Under the present Act, late payment fines cannot be assessed and imposed until the monthly return and associated contributions have been received. The board is therefore powerless to act until the employer chooses to meet his/her statutory responsibilities. The Bill proposes a fine of a prescribed amount which can be imposed immediately contributions become outstanding. A fine of $75 will be prescribed in the regulations.

Other provisions are to be consolidated and simplified. The Bill has been the subject of consultation with the relevant bodies including the Long Service Leave (Building Industry) Board, the building industry unions and employer groups of the Industry Working Party and the Industrial Relations Advisory Council. I am pleased to be able to report that they have indicated their support for the proposals in this Bill.

Clause 1 is formal. Clause 2 provides for the commencement of the measure. Clause 3 enacts a new short title for the principal Act, being the Construction Industry Long Service Leave Act 1987. Clause 4 provides for a general amendment to the principal Act that will remove references to 'building worker' and replace those references with 'construction worker'. Clause 5 relates to the definitions used in the principal Act. The board is to be renamed as the Construction Industry Long Service Leave Board. The construction industry will be defined as the building industry or the electrical and metal trades industry. The electrical and metal trades industry will be the industry of carrying out electrical or metal trades work. Electrical or metal trades work will be defined as electrical or metal trades work carried out on a building site, work involving the construction, erection, installation or dismantling of certain items or plant (on site), on site maintenance work, and other engineering projects involving electrical or metal work.

Clause 6 relates to the application of the Act. The 'predominance rule' that applies under the present provisions of the Act is to continue to apply. In addition, to qualify under the Act a person will be required to work under a contract of service in the construction industry in a case where an award set out in the first schedule prescribes a weekly base rate of pay for work of that kind. Clause 7 alters a heading. Clause 8 amends section 6 of the principal Act so that the Long Service Leave (Building Industry) Board will become the Construction Industry Long Service Leave Board.

Clause 9 relates to the membership of the board. It is proposed to amend section 7 of the principal Act so that the membership of the board will be increased from five members to seven members. Apart from the presiding officer of the board, three members will be appointed to represent the interests of employers and three members appointed to represent the interests of employees. Clause 10 amends section 8 of the principal Act so that the Governor will be able to remove a member of the board if the Governor is satisfied that the person has ceased to be a suitable person to act as a representative of a particular industry group. Clause 11 is a consequential amendment to section 10 of the Act to increase the quorum of the board from three members to four. Clause 12 is a consequential amendment to section 18 of the Act to change references to the 'building industry' to the 'construction industry'.

Clause 13 relates to the funds under the Act. The Act presently provides for the operation of the Long Service Leave (Building Industry) Fund. This fund is to be renamed as the Construction Industry Fund. This fund will continue to be used in all cases, except where payments are to be made to or from the Electrical and Metal Trades Fund. The Electrical and Metal Trades Fund is the Long Service Leave (Electrical Contracting and Metal Trades) Fund established by amendments to the principal Act in 1989. This fund will be used to pay for long service leave entitlements that are attributable to the extension of the Act to workers in the electrical and metal trades industry (being workers to whom the second schedule applies). Clauses 14, 15, 16 and 17 are all consequential on the creation of a second fund. Clause 18 amends the heading to Part V of the Act.

Clause 19 enacts a new section 26. Section 26 presently requires employers in the building industry to inform the board of certain events within a specified time. This system is to be replaced by a periodical return (see clause 20). New section 26 relates to the levy that each employer must pay in respect of the employment of workers in the construction industry. As is the case now, the levy rate will be prescribed by the regulations. However, the regulations will be able to prescribe a special rate in relation to employers who have been bound by the Metal Industry (Long Service Leave) Award 1984 (and are therefore liable to provide long service leave benefits to workers in the electrical contracting or metal trades industry) and who employ workers in work in

relation to which a weekly base rate of pay is fixed by an amount referred to in the third schedule. Clause 20 will amend section 27 of the Act in relation to the provision of returns to the board. Clause 21 is a consequential amendment to section 28 of the Act.

Clause 22 relates to section 29 of the Act. Section 29 allows the board to impose a fine, not exceeding twice the amount of an assessment, when an employer fails to pay a contribution required under the Act. The provision has not worked effectively because it requires the board to make an actual assessment before it can impose a fine. It is therefore proposed to amend the provision so that the board can fix a fine without making an assessment, but to specify that the amount of the fine must not exceed an amount prescribed by the regulations. Clauses 23, 24, 25, 26, 27 and 28 are all consequential amendments that are required as a result of changes effected by this measure to various terms in the Act. Clause 29 enacts a new first schedule. It is intended to dispense with the prescription of occupational categories in relation to the determination of the application of the Act and to rely instead on the specification of relevant awards.

Clause 30 enacts a new second schedule. This schedule will apply to any person who becomes a construction worker on the commencement of this measure by virtue of the extension of the scheme under the principal Act to the electrical and metal trades industry. The schedule sets out his or her entitlement under the principal Act in respect of service accrued in the industry before the commencement of this measure. Clause 31 enacts a new third schedule. This schedule is relevant to the special levy imposed on employers under new section 26. Clause 32 is a transitional provision.

The Hon. J.F. STEFANI secured the adjournment of the debate.

POLICE SUPERANNUATION BILL

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

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

That this Bill be now read a second time.

In the light of the fact that this Bill has been dealt with in another place, I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

This Bill seeks to close the existing police pension scheme to new entrants after the existing cadets graduate, restructure the police pension scheme, and establish a new police superannuation scheme.

The Agars committee report into public sector superannuation recommended in 1986 that the Government should give consideration to closing the police pensions scheme. The Government has accepted that recommendation principally because the pension scheme was very costly to the taxpayers of this State. For example, the cost to the Government of meeting the existing pensions and benefits is about 16 per cent of the police payroll, and the Public Actuary reported in his 1986 actuarial report that, unless the generous benefits in the scheme were reduced, the cost was expected to be 22 per cent of the police payroll in 10 years time, and 40 per cent of the police payroll in 40 years time. Quite clearly then, the Government had to act to bring the future costs of police superannuation back to acceptable levels.

The existing pension scheme is even more expensive on a cost per employee basis than the Public Service superannuation pension scheme which, of course, was closed to new entrants on 31 May 1986. The cost to the Government of the Public Service pension scheme was 17 per cent of a member's salary at the time it was closed, yet the current cost of the police pension scheme on a funding as you go basis is 21 per cent of a member's salary. Whilst the police pensions fund has itself shown small surpluses over the last two valuations, this has to be considered in the context that the fund has not been able to meet any of the cost of pension indexation provisions, even though the period has been one of high earning rates.

The Government has also taken the opportunity to restructure the pension scheme which will continue for existing members on a restructured basis. The restructuring was considered necessary for two basic reasons. First, the pension scheme as it exists today has little flexibility to enable members to choose the form in which they would like their retirement benefits. Secondly, unless there was restructuring of some of the benefits, the Government would have had no option but to increase members' contribution rates by between 60 per cent and 100 per cent so that members were meeting their fair share of the accruing benefits. As a result of agreement by the Police Association to the Government's restructuring proposals, the Government has agreed to allow members of the pension scheme to continue to pay their existing contribution rates. The proposals for the restructured pension scheme, and the new lump sum scheme have been developed by the superannuation task force.

The cost to the Government of the new lump sum police superannuation scheme, which is planned to come into operation on 1 July 1990, is about 12 per cent of members' salaries.

The overall attraction of the restructured pension scheme rests on the retirement benefit flexibility. There will be the opportunity for police officers to have a higher pension for life with no lump sum, or basically the same level of pension with a higher lump sum. However, apart from a special option within a transitional period of five years, all new retiring members will have their pensions based on the consumer price index rather than the present arrangement which indexes pensions at 133 per cent of CPI. The present cost of benefits provided under the Police Pensions Act is about 18 per cent higher than if the indexation and lump sum arrangements had been the same as those for the main State scheme. Whilst the Government has agreed to allow new retirees to retire under the existing provisions for a period of five years so that retirement expectations are not jeopardised, there are sufficient incentives for persons retiring over the next five years to opt for retirement under the new restructured provisions. The Government expects most people will opt for the new flexible provisions.

The basic benefit under the restructured pension scheme will be aligned to that provided under the closed State scheme. The benefit payable after at least 30 years membership, and on retirement at 60 years, will be two-thirds of superannuation salary. Pensioners will have a right to commute up to 50 per cent of the pension to a lump sum. Under the existing scheme, a fixed 25 per cent of the pension is payable as a lump sum of one and a half times salary, leaving a pension of 50 per cent of salary.

As the scheme proposes to adjust the salary to be used for superannuation purposes by 10 per cent in recognition of shift-work allowances over a career, the age 60 benefit will effectively be 73 per cent of basic salary. With the

recognition of shift-work and on a comparable contribution rate basis, the benefits under the scheme equate with those available in New South Wales. As police officers above the rank of senior sergeant, that is commissioned officers, have an all-inclusive salary which incorporates a built-in allowance for shift-work, special call-out and weekend work, they will not qualify for the 10 per cent build-up in superannuation salary.

The existing option to take a higher pension up to age 65 and then a lower pension after that date will be dispensed with under the restructured arrangements. This provision under the current scheme added about 3 per cent to the cost of age-retirement benefits.

Under the new pension arrangements, there has been a substantial improvement in the existing age 55 to age 59 pension benefits. The Bill proposes a basic pension benefit of 51.8 per cent of superannuation salary at age 55, which is effectively 57 per cent of basic salary.

The superannuation inquiry report recommended that police officers be able to also retire between the ages of 50 and 54. Having considered the recommendation, the task force supported the concept and recommended that the Government allow police officers to have this special retirement option because of the special nature of police work. All parties including the Police Association, agree however, that during a transitional period there should be a limit on the number of police officers who can retire between 50 and 54. The Bill introduces this special early retirement benefit, which under the pension scheme will be a lump sum only. On its introduction, and by agreement between the Police Association and the Police Commissioner, only 50 people will be able to retire under this provision in any one year. The maximum benefit payable at 50 after 30 years service will be equivalent to six times base salary.

Invalidity retirement provisions under the Bill have been substantially restructured. There has been a need to make major changes in this area because of concerns by the Public Actuary, the Agars committee of inquiry, the superannuation task force and the Government. Of major concern has been the fact that for several years there were substantially more police officers retiring due to physical or mental incapacity to perform police work, than police officers retiring on account of age. The relative young ages of many of the invalid applicants was also of major concern.

The Government proposes to structure both the pension scheme and the new lump sum scheme with two levels of disability benefits. Those officers who are considered to be permanently physically or mentally incapacitated for both police work and a range of other employment will be provided with benefits based on the level that would have been payable on normal retirement at 60 years of age. The significant change will be brought about by introducing a new category of benefit for those persons who are physically or mentally incapacitated for police work, but in the opinion of medical advisers and after due consideration by the Police Superannuation Board are capable of engaging in employment outside of the Police Force. This benefit will be referred to as the partial disablement benefit and in general terms will provide lump sum benefits based on service to the date of leaving the Police Force. Benefits for expected future service with some other employer will in future not be paid by the Government under the police superannuation scheme.

During a period of assessment for possible invalidity retirement, a temporary disability pension will be available. The attraction for invalidity retirement will also be dampened in future by restricting the size of the lump sum available before the age of 60 where a person retires on an invalidity pension. Lump sums will be restricted to 100 per cent of salary.

Spouse benefits under the restructured pension scheme will also be aligned with the benefits payable under the existing State scheme. The Bill proposes that a spouse be entitled to a pension based on two-thirds of the member's age 60 entitlement. Generally this means that a spouse would be entitled to a pension of four-ninths of the employee's superannuation salary. This is equivalent to about 49 per cent of base salary. Spouses in future will have the ability to have a higher pension rate than the current lower pension and compulsory lump sum. Commutation of up to 50 per cent of the pension will be allowed at the same commutation rates as apply under the State scheme.

The restructured pension scheme proposes a significant improvement in the benefit cover for single persons who die before retirement. Under the Bill, a modest vesting scale of employer benefits is payable to the estate of a deceased single police officer. The employer benefits will be restricted to three times salary. However, the Government has agreed with the Police Association's view that where a single police officer dies in the course of duty, there be a minimum level of benefit payable to the officer's estate. The Bill proposes that the minimum total benefit payable in such an instance be three times salary.

Children's pensions under the restructured pension scheme remain at substantially the same level. In line with the Government's policy that there should be no 'double-dipping' in employer benefits payable under superannuation and workers compensation, the Bill has provisions which will prevent any 'double-dipping' in benefits. The main State scheme introduced similar provisions in July 1988.

Neither the restructured pension scheme nor the new lump sum scheme will have a provision to enable members to vary their contribution rates as under the main State scheme. Whilst the Government believes that flexible contribution rates can be very helpful to an individual who needs to make adjustment to his or her cash outgoings because of a particular short-term financial situation, the Police Association strongly rejected the proposition. The association believes it is in the best interests of all its members to remain covered for the maximim benefits and a flexible contribution rate system could tend to erode the level of cover for some individuals. It was for this reason that the association rejected the flexible contribution rate concept being built into the police superannuation schemes.

Resignation benefits are being enhanced under the pension scheme. In future the earning rate of the fund will be paid on a member's contributions. The new police superannuation scheme which is being established under the Bill is basically a lump sum scheme. The basic benefits under the scheme are fully defined and not based on a split employee accumulation component and a defined employer component arrangement as under the State scheme. It is a fully defined arrangement at the request of the Police Association. Like the pension scheme which the new lump sum scheme is replacing, the new scheme will be compulsory.

Whilst the police cadets in training as at the commencement of the Police Superannuation Act 1990 will be considered members of the restructured pension scheme, cadets and new employees commencing employment with the Police Force after the commencement of the new Act will become members of the new scheme.

The new scheme will automatically provide death and invalidity cover for police cadets in training. Under the existing Police Pensions Act, cadets in training are not members of the scheme and therefore have no superannuation cover until they graduate as probationary police offi-

cers. This Bill therefore corrects an anomaly long overdue for attention.

The maximum age retirement benefit payable under the new scheme will be seven times superannuation salary. Allowing for the 10 per cent build-up in salary for those officers that do not have a shift-work allowance built into an all-inclusive salary, the benefit equates to 7.7 times base salary at 60.

The special age 50-54 benefit which is being introduced under the pension scheme will also be available to new scheme members. The maximum benefit to be available at age 50 will be six times salary after 30 years membership. On the death of a member, a spouse will be entitled to a lump sum of two-thirds of the age 60 retirement benefit. Eligible children will receive pensions.

The principles of the invalidity provisions to become part of the pension scheme will also be part of the new scheme. Benefits on invalidity retirement under the new scheme will however not be a permanent pension entitlement but a lump sum.

As with the new State scheme, members of the existing Police Pensions Fund will not be able to transfer to the new lump sum scheme. The reason for this is to prevent members near retirement taking 100 per cent of the pension as a lump sum when commutation under the pension scheme will be restricted to 50 per cent of the pension.

It is the Government's intention to allow existing pensioners to convert a greater proportion of their pension to a lump sum. These offers will be phased-in as under the State scheme, and the timing of the offers will be dependent upon the availability of funds in the budget.

The special commutation offers will be attractive to pensioners who generally have a desire for lump sums, and the offers will be attractive to the Government because of the terms. For example, after a pensioner takes a lump sum, future pension will be indexed at 100 per cent of the CPI and not the current 133 per cent of CPI.

The Bill also significantly restructures the administrative arrangements. Under the existing Police Pensions Act, there is no board of administrators and administrative decisions are made solely by the Public Actuary. This has not been a satisfactory arrangement. The Bill establishes a Police Superannuation Board which will be responsible for administering the Act and the Police Association will nominate two police officers to be members of the board. The remainder of the board will consist of two Government representatives and an independent chairperson.

Over recent times there have been some legal difficulties with the wording under the invalidity provisions of the Police Pensions Act. This has resulted in a former police officer, retired from the Police Force on account of ill-health, not receiving a benefit. On the basis of medical evidence and the Crown Solicitor's advice, the Government agreed that the officer be provided with an *ex gratia* pension until the Act was amended. The provision under clause 5 of the transitional provisions seeks to reinstate the former officer under the invalidity provisions of the Act on the same basis as though he had retired and received benefits on his retirement in July 1989.

An important new provision is being introduced under the Bill. In future all police officers resigning from the Police Force before the age of 55 years will be able to preserve their accrued superannuation benefits. Existing pension scheme members are meeting the cost of this benefit by using 1 per cent of salary from the '3 per cent productivity superannuation benefit'. Transitional provisions clause 4 proposes that the preservation option be effective from 20 November 1989 which is the date the Government and the Police Association agreed on the package of changes to police superannuation.

The Bill before the Council not only introduces a new superannuation scheme within acceptable cost parameters for future police officers of this State, but in a very responsible way also restructures the existing but very expensive pension scheme. The restructured scheme will over time bring down the costs of the scheme to the Government. The restructuring will be introduced while at the same time providing benefits for police officers on a par with those available interstate. Accordingly I commend the Bill to the Council.

Clauses 1 and 2 are formal.

Clause 3 repeals the Police Pensions Act 1971.

Clause 4 provides for definitions of terms and for other matters of interpretation.

Clauses 5 to 9 provide for the establishment, procedures and staff of the Police Superannuation Board.

Clauses 10 to 12 provide for the establishment of the Police Superannuation Fund and for the investment and accounts of the fund.

Clause 13 provides for the establishment of contribution accounts in the names of all contributors.

Clause 14 provides for the payment of benefits from the Consolidated Account. The prescribed proportion of benefits paid from the Consolidated Account can be charged against the fund and used to reimburse the Consolidated Account.

Clause 15 provides for annual reports from the board and the South Australian Superannuation Investment Trust to the Minister.

Clause 16 provides that all members of the Police Force must contribute to the scheme.

Clause 17 provides for the fixing of contributions and provides for circumstances in which contributions are not payable.

Clause 18 provides for the accrual and extrapolation of contribution points and other related matters.

Clause 19 will enable the Minister to attribute contribution points and months to a contributor in appropriate cases.

Clause 20 provides for the application of the new scheme. Persons who become cadets after the commencement of the Act will be members of the new scheme but will not contribute until they become members of the Police Force.

Clause 21 sets out benefits under the new scheme on retirement.

Clause 22 provides for benefits on resignation. The clause allows a contributor to preserve his benefits or to carry them over to a new fund.

Clause 23 provides for benefits or preservation on retrenchment.

Clause 24 provides for a disability pension under the new scheme. The pension can be paid for a period not exceeding 12 months (except in special circumstances) and is designed to allow a period for assessment before a contributor is paid benefits on invalidity.

Clause 25 provides for benefits on invalidity. Clause 26 provides for benefits on death. Clause 27 provides for application of Part V. Persons who are cadets at the commencement of the new Act are included.

Clause 28 provides for a pension payable on retirement.

Clause 29 provides for a pension payable on retrenchment.

Clause 30 provides for a disability pension.

Clause 31 provides for an invalidity pension.

Clause 32 provides for a pension payable on the death of a contributor.

Clause 33 provides for payment to the estate of a contributor who dies before termination of employment and is not survived by a spouse or eligible child.

Clause 34 provides for resignation and preservation of benefits.

Clause 35 provides for commutation of pensions based on commutation factors prescribed by regulation.

Clause 36 allows for medical examination of invalid pensioners at the instigation and expense of the board.

Clause 37 enables the Minister to require an invalid or retrenchment pensioner to accept appropriate employment. If the employment is not accepted the pension can be suspended.

Clause 38 provides for the date of commencement of a pension.

Clause 39 provides for a review of the board's decisions by the Supreme Court.

Clause 40 provides for the effect of workers compensation on pensions. A pension whether paid to a former contributor, his or her spouse or a child will be reduced by the amount of workers compensation. A pension paid to a former contributor will also be reduced by any wages or salary earnt by the pensioner. These provisions only apply to a pensioner who is below the age of 60 years.

Clause 41 provides that benefits payable to a spouse under the Act must, if the deceased contributor is survived by a lawful and a putative spouse, be divided equally between both spouses.

Clause 42 provides for the indexing of pensions.

Clause 43 provides for the application of money standing to the credit of a contributor's account after all benefits have been paid under the Act.

Clause 44 provides for the payment of money under the Act where the person entitled is a child or is dead.

Clause 45 prevents assignment of pensions.

Clause 46 enables a liability of a contributor under the Act to be set off against a benefit payable to the contributor under the Act.

Clause 47 enables the board to provide annuities. Clause 48 gives the board access to information.

Clause 49 provides for confidentiality of information as to entitlements and benefits under the Bill.

Clause 50 recognises the complexity of the subject matter of this Bill and gives the board some latitude in applying its provisions to the varied circumstances that are likely to arise in its administration.

Clause 51 is a standard provision.

Clause 52 provides for the making of regulations.

Schedule 1 provides for transitional matters. Clause 2 ensures that existing pensions will continue under the new Act. Clause 3 makes provision for crediting old scheme contributors with contribution points. Clause 4 gives effect to the new resignation and preservation provisions from 28 November 1989.

Schedule 2 provides for contribution rates.

Schedule 3 sets out the value of K used in the retirement formula under the pension scheme (see clause 28).

Schedule 4 makes consequential amendments to the Police Act 1952.

The Hon. R.I. LUCAS secured the adjournment of the debate.

CORRECTIONAL SERVICES ACT AMENDMENT BILL

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

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

That this Bill be now read a second time.

In the light of the fact that this Bill has been dealt with in another place, I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

Prisoner Allowances

The prisoner allowance system, which was the subject of a recent Supreme Court challenge before Justice Olsson by prisoners at Yatala Labour Prison, was first implemented about one year prior to the proclamation of the Correctional Services Act 1982, on 19 August 1985. That original system had a base rate of 10c per day, which provided prison managers with an important management tool where prisoners were persistently uncooperative, disruptive or threatening. This base rate was rarely used and even when it was such prisoners were still supplied free of charge with basic and personal requirements such as toiletries, paper, pens, stamps, and the like.

Until August 1986, remand prisoners, those unemployed, sick, disabled or unable to be employed through no fault of their own, did not qualify for any additional allowance. At that time an *ex gratia* payment was approved for this group of special category prisoners to enable them to buy personal items such as tobacco and confectionery, and to make phone calls.

Having regard to the need for hygiene and self-discipline, the crediting of these *ex gratia* payments was made subject to such prisoners keeping themselves and their cells and adjacent recreation areas clean and tidy. Before Justice Olsson's judgment these prisoners were paid $2.50 per week day if they met these obligations. It was a very rare occasion when it was found necessary to drop a prisoner's personal allowance to the basic 10c per day.

To understand the need for the pay system, which was criticised by Justice Olsson, it is also necessary to be familiar with the events which led up to his order of 5 January 1990 and his subsequent judgment. Commencing in mid-September 1989, prisoners at Yatala Labour Prison had carried out group acts of sabotage in the workshops, which included fires, damage to fire fighting equipment, damage to expensive machinery and materials, and the 'hot wiring' of machinery and other electrical equipment, with the obvious intention of killing correctional industry officers or other prisoners. During this period, each time a workshop was forcibly closed the prisoners were paid 10c for that day, but a lenient and non-provoking interpretation of the allowance scheme was applied, and for each day thereafter that the workshop remained closed for repairs, the prisoners continued to receive the $2.50 per day personal allowance.

The prisoners were given numerous opportunities to return to work in a responsible way, but the sabotage continued and the Department of Correctional Services had no alternative but to reinforce the principle of the original pay system of 1984, where the clear intention was to reward those prisoners who made a reasonable effort in the workplace, while those who continued to demonstrate disruptive and dangerous behaviour would receive a minimal allowance.

The justification for applying such a rule was further demonstrated when the Department of Labour imposed an 'improvement notice' on the Yatala workshops declaring them 'an unsafe work environment'. This notice was only subsequently lifted when the rules were tightened to prevent the payment of the personal allowance to disruptive and

destructive prisoners. Most people would agree that this was not unjust treatment to people who at this stage had 'cost' taxpayers many thousands of dollars in the repair and modification of machinery, together with lost production and the exposure of officers to life-threatening danger.

Justice Olsson's order of 5 January 1990 forced the Department of Correctional Services to pay the personal allowance to the 'B' Division prisoners who had carried out the damage and were then taking part in a costly and disruptive sit-in. The department then sought and gained the approval of the Minister of Correctional Services and the Treasury to make some adjustments to the prisoner allowance system designed to remove any ambiguity that existed and to more accurately carry out what was believed to be the intention of the Act. The amended system retained a basic rate (10c per day), as section 31 (1) of the Act demanded. In order that the majority of prisoners were not disadvantaged, *ex gratia* payments were approved as incentive payments for productivity in the work place and personal allowances for those genuinely unemployed through no fault of their own and those making a genuine effort at rehabilitation through education.

Justice Olsson declared the *ex gratia* payments to be unlawful. The consequences were:

(a) prisoners not working were only entitled to the section 31 (1) allowance, that is, 10c per day, Monday to Friday inclusive; and

(b) those working were only entitled to the 'further allowance' under section 31 (2), that is, a skill payment averaging a total of about $3.25 per week.

The average weekly allowance credited to prisoners who worked was previously some $24.

Currently, remand, sick, unfit or segregated prisoners are receiving the 10c allowance under section 31 (1), but in order that these people are not disadvantaged as a result of Justice Olsson's judgment, they are now receiving in addition to the normal issues of items such as toothpaste, toothbrushes, razors, shaving cream, paper, pens, stamps, etc., additional goods up to the value of $10.50 per week.

The Government believes that the Supreme Court judgment has deprived both the department of an essential management tool and prisoners of the incentive to perform a satisfactory day's work. I do not believe that either of these positions is what Parliament envisaged when the current section 31 was enacted.

The insertion of the provision empowering the Minister to establish a system of bonus payments will enable the Department of Correctional Services to provide a real financial incentive for prisoners, whether they are able to work or not, to display a positive attitude and/or apply themselves to whatever tasks they are directed to carry out.

That financial incentive will be complemented by the provision of other amenities and privileges which will only be made available to those prisoners who earn the right to be eligible for the aforementioned bonus payments.

Prisoners' Access to Money Other Than Prison Allowances

It would be futile, of course, if those prisoners whose deliberate choice it was not to work and who therefore were credited with a minimal weekly allowance, were able to escape the financial consequences of their decision by drawing upon moneys deposited for them by persons from outside the institutions. Accordingly, an amendment is sought to section 89 of the Act which would enable the making of a regulation under the Act designed to effect some proper and reasonable limit on the amount of money which may be drawn by prisoners from moneys held to their credit, and thereafter applied to the purchase of items from the prisoners' canteen.

Resettlement

There is a significant history behind the deduction from prisoners' earnings of amounts to be put aside to assist them upon their release from prison. Whilst the department has for many years effected such a deduction, it has not previously sought to have inserted into the Act a provision concerning same.

Very few offenders have ever arrived to serve a sentence of imprisonment with a substantial amount of money to be placed in their trust account. The majority of prisoners are, and have been in the past, poor financial managers. This is a contributory factor in the constellation of factors which places those offenders and their families in a cycle of poverty and crime.

The statutory and voluntary social welfare network provides a level of financial support to the families of offenders whilst the offender is in prison. Anecdotal evidence frequently arises indicating that for some families, this is a rare period of financial stability. Evidence also arises showing that some prisoners do save from their earnings and contribute to their family finances whilst in custody.

Many prisoners however, do not save any of their earnings. This became an issue politically in the 1970s, when several specific cases were cited. The cases concern prisoners who had served significant sentences; that is, periods of imprisonment of several years, who when released had walked out of the gate of the institution with no money or possessions. In some cases the only clothes they possessed were one set of second-hand garments which they were wearing, obtained from a voluntary welfare agency. The department was severely criticised for permitting such a state of affairs, and with governmental support developed the administrative procedure of the resettlement allowance. The resettlement allowance was seen as a form of compulsory saving.

Since that time, the procedure has ensured the prisoners, and particularly longer sentenced prisoners had access to funds during their pre-release phase and at the point of release. The department does not provide any form of assistance to released prisoners in terms of money and goods, other than travel warrants where appropriate. The assistance provided is in terms of professional counselling support, and welfare brokerage on behalf of the prisoner with welfare agencies. Such support becomes inappropriate if the released prisoner cannot obtain the basic necessities of clothing, food and shelter.

Volunteer agencies provide a network of care into which prisoners can access. However, their resources are limited and in a small number of cases released prisoners have been blacklisted by the agencies for understandable reasons.

Immediately upon release, an eligible prisoner can collect two weeks benefit from the Department of Social Security. However, the prisoner then has to wait a further two weeks and receive one weeks entitlement, wait another two weeks and receive two weeks entitlement. In addition, emergency housing assistance can be sought for those eligible and again additional assistance can be sought from the volunteer sector.

However, two weeks entitlement will not provide for all the basic needs of a released prisoner. If a prisoner is to participate in a pre-release program there may well be a requirement for civilian clothing to be obtained, and some form of equipment or tools of trade appropriate to the specific program obtained as well. The prisoner will need funds for that. If released into the community on parole, home detention or to straight freedom, the immediate cir-

cumstances are a crucial factor in the setting of attitude of the prisoner to return to the community. The first few days, and certainly the first three months are the most difficult and crucial period. It has been established by research that successful reintegration in the first three months significantly reduces the rate of recidivism. An empty pocket at the prison gate removes much hope and feelings of self-worth in any released prisoner.

The Department of Correctional Services believes that it has a duty of care for all offenders who come within its control. That duty includes exercising some level of coercion to precipitate chances for individual change. With probation and parole orders this is done every day by enforcing adherence to conditions requiring probationers and parolees to participate in, or refrain from, a range of activities determined by the criminal justice system to be in the best interests of the offender and the community. A significant segment of political and public opinion supports a universal, compulsory superannuation scheme for all workers as a protection against that period of need when the worker retires from the workforce. The Department of Correctional Services considers as part of its duty of care the moral responsibility to ensure that prisoners are released in the most favourable circumstances back to the community. Compulsory saving via the resettlement allowance is a critical factor in creating such favourable circumstances.

Parole Provisions

The amendment sought to section 74 of the Act proposes a tightening of the section to protect the board from inadvertently ordering a term of imprisonment for breach of conditions which would exceed the terms of imprisonment the defaulting parolee was sentenced to serve.

The insertion of a new subsection into section 74 seeks to increase the flexibility of the board in dealing with breaches of conditions of parole (other than designated conditions). At present, the board has only two choices in dealing with a breach of condition, namely to warn the parolee, or direct the parolee to serve a period of imprisonment up to six months. Breaches often warrant more positive action than a warning, but not a return to custody. The proposed new subsection provides a third alternative via ordering a limited period of community service.

The amendment proposed to section 75 clarifies the situation where a parolee offends during parole and is given a sentence of imprisonment which is suspended upon condition that he enter into a bond, and who subsequently breaches that bond, and has the supervision revoked, and is thus gaoled. Such revocation will effect a cancellation of the prisoner's parole, and the offender will have to serve in prison the period of parole unexpired as at the date of the offence for which the offender was given the suspended sentence.

Clause 1 is formal.

Clause 2 provides for commencement of the Act by proclamation.

Clause 3 is an amendment that is consequential upon clause 7 of the Bill.

Clause 4 provides that the Minister may establish a system of bonus payments as an incentive to prisoners for putting effort into work or other duties and for displaying a positive attitude. These payments will be at the discretion of the manager of the prison and will be extra to the bare allowances payable under subsections (1) and (2). Provision is also made for the establishment of separate accounts for the resettlement of prisoners on discharge from prison. Up to one-third of a prisoner's total income from weekly prison allowances can be credited to a resettlement account. The funds in a resettlement account cannot be drawn upon during the prison term unless the prison manager thinks special reason exists for doing so.

Clause 5 provides that the Parole Board's powers to issue a summons, etc., are exercisable for the purposes of its functions under this Act or any other Act (for example, the Criminal Law (Sentencing) Act).

Clause 6 recasts this provision to make it quite clear that the power of the Parole Board to return a parolee to prison for breach of a non-designated parole condition can only be for the balance of the parole period (between the date of the breach and the date of the expiry of the parole), or six months, whichever is the lesser.

Clause 7 inserts a new provision that gives the Parole Board the power to impose a further parole condition requiring a parolee who has breached a non-designated condition to perform up to 200 hours of community service, as an option to returning him or her to prison pursuant to the previous section. The usual provisions relating to community service apply. If the parolee is imprisoned for any reason during the community service period, the community service condition is automatically revoked.

Clause 8 amends the section dealing with the automatic cancellation of parole if a parolee is sentenced to imprisonment for an offence committed while on parole. It is made clear by these amendments that, if the sentence of imprisonment is suspended but that suspension is subsequently revoked by the court, the parolee is then liable to serve the balance of the earlier sentence.

Clause 9 is a consequential amendment.

Clause 10 provides that the regulations may restrict the amount that may be drawn by a prisoner from his or her prison account at any one time or over a specified period.

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

MARINE ENVIRONMENT PROTECTION BILL

In Committee.

Clause 1—'Short title.'

The Hon. M.B. CAMERON: In my second reading speech I asked whether a number of dockets could be produced before the passage of the Bill. Access to the dockets has been refused previously. We now have some of them, but some have not been produced. I ask the Minister whether she has a list of those dockets and whether they will be produced in this Chamber so that members can examine them prior to the passage of the Bill. The docket numbers are: Nos 1949/82, 260/88, 1046/82 and one of the others was 73/87. All the dockets were detailed in the second reading speech and I have no doubt that the Minister will have read all the second reading speeches and will have made a decision on whether or not the dockets are to be produced.

The Hon. ANNE LEVY: The advisers inform me that they have no such dockets with them.

The Hon. M.B. CAMERON: It makes a joke of the whole debate if, prior to the passage of the Bill, we cannot obtain full information on what is involved, especially as amendments are to be moved in respect of these areas. It is important that the Committee be properly informed. In view of the Government's commitment to freedom of information, I ask whether the Minister is prepared to ensure that those dockets are produced before the Bill is passed.

The Hon. ANNE LEVY: I am advised that these are not Environment and Planning Department dockets—they are E&WS Department dockets.

The Hon. M.J. Elliott: Same Minister!

The Hon. ANNE LEVY: Same Minister, but a different department. The Department of Environment and Planning, which is responsible for this piece of legislation, does not have access to those dockets. I suggest that, if the Hon. Mr Cameron has questions relating to matters on specific clauses, he raise those matters then. If the information is not available at the time, we can certainly undertake to get it for him.

The Hon. M.B. CAMERON: I am not particularly interested in which department has the dockets or who has control of them. The Bill is broad ranging, regardless of who the Government has designated it to. To a large extent it affects the E&WS Department, because that department is a major polluter in this State. In order to have information about what is going on in relation to in this State, the Council has to be properly informed.

In order to know what questions to put to the Minister on this matter, we must have these dockets. I have discovered, as a result of obtaining—illegally, I suppose—a couple of these documents that there has been some surprising information in them. Therefore, I want to know more about the information that the Government has had on pollution from the E&WS Department. Surely, the Department of Environment and Planning would have sought this information at some stage if it had any interest in pollution.

Will the Minister immediately request—I say tonight, because I do not think that the Bill should pass until we have this information before us—the same Minister whether she is prepared to produce the information to the House? This is not the first time that I have asked for these dockets; this will be the third time. I asked once and the Minister refused, I asked a second time during the second reading debate, and this is the third time. It is about time that we had some frankness from the E&WS Department about the subject of pollution of the environment. It is an important area. Will the Minister guarantee that these dockets will be produced—I do not care by whom—before the Bill is passed tonight, tomorrow or whenever?

The Hon. ANNE LEVY: I am informed that the E&WS Department has supplied briefing notes and comments on the matters raised by the Hon. Mr Cameron in the second reading debate and that these are available and can be provided to him when we reach the appropriate clauses. That is what is intended. There are full briefing notes here from the E&WS Department relating to the different matters that the honourable member has raised. The E&WS Department has provided that information at the request of the Minister to enable the clauses to be considered.

The Hon. M.J. ELLIOTT: I was among several thousand people who last night had the opportunity to listen to Dr Suzuki. He did not say anything that was particularly new to me, but I left that place thinking that I had had enough of the nonsense that we cop in this place over very important matters. The environment is important and so is this legislation. The documents and information being asked for by the Hon. Mr Cameron are extremely relevant to the debate, because they outline the problems that we have in South Australia. They also probably tell us something about how those problems have been handled up to now.

The Hon. Diana Laidlaw: Or not handled.

The Hon. M.J. ELLIOTT: Or not handled. They tell us whether or not we should or should not place faith and trust in certain people. That has been asked for in this legislation, and that is one reason why I shall be moving amendments to make as clear as possible what is and what is not required of many people. It is no longer tolerable for the people of South Australia, not just the parliamentarians who are debating the Bill tonight, constantly to be denied information which is rightfully theirs.

For God's sake, who said that the department owns the information about what is happening in our waters? That is not the property of the E&WS Department or the Department of Environment and Planning or anybody else; it is the property of the people of South Australia, not the public servants. It belongs to the public. I do not think that we need to get into a long discussion about this today, but it is intolerable that this nonsense goes on over and over again, not just here, but in Question Time when we ask questions and when members of the public seek information and it is constantly denied. It is about time that this stopped. A little game is being played here again tonight, and it must cease.

The Hon. M.B. CAMERON: I thank the Hon. Mr Elliott for his support in what I regard as a very important matter. It is not enough for the Council to be provided with briefing notes by the department. Briefing notes potentially hide a multitude of sins. Ministers can give us that part of the briefing notes which suits them, and they are culled before they get to us. They go through the normal processes. I put one simple question to the Minister: is she prepared, before the passage of the Bill, to obtain the dockets that I have outlined and provide them to the Council? This is an important subject, because it is a Bill before the Council. We are faced with a Government which says that it is committed to freedom of information, and this is a real test as to whether the Government is committed to freedom of information.

Will the Minister say whether the Government is prepared to provide this place with the information that is required in order for us to assess the impact of this legislation and why nothing has been done in the past? One document that we were refused—the Port Adelaide Sewerage Treatment Works Asset Management Plan—would have to be one of the most innocuous documents in government. This is not something new. This has happened every time I have requested information that would assist in assessing this legislation. It has been refused by someone—I assume the Minister.

When one looks through these documents, one realises that there is something to hide. There are problems that deal with history, with a failure to act on behalf of the Government. I do not think that the Government should be too uptight about that. The important thing is that, when this legislation passes, everything is covered, that we do not leave anything to chance any longer. Therefore, I put a very simple question to the Minister again: is she prepared to provide those dockets to the Committee, dockets that will be available under freedom of information, before this legislation is passed? It is a simple 'Yes' or 'No' answer. I do not want any nonsense about briefing notes, etc. I want to know, 'Yes' or 'No', whether the dockets will be provided. I will keep going on with this until I get an answer, 'Yes' or 'No'.

The Hon. ANNE LEVY: I am not quite sure what the honourable member expects me to say. I do not have the power to release dockets or not to release dockets which are in the custody of another Minister. I can certainly speak to the Minister, but in no way can I guarantee what the Minister may say. I am sure the honourable member appreciates that completely. To pretend otherwise would be ridiculous.

The Hon. M.B. CAMERON: Now we have got to the point where the Minister is not responsible for this; that is fine. Before the passage of this Bill, is the Minister prepared to go to the other Minister and get an answer for me, 'Yes' or 'No', on whether these dockets will be provided? That

will satisfy me. All I want is for someone to say, 'Yes' or 'No'.

The Hon. ANNE LEVY: I wish the honourable member would listen when I speak. I have already said that I will approach the Minister and make a request of her. I cannot say what her reply will be. Do I need to say it a third time, a fourth time and a fifth time, or can we get on with this Bill?

The Hon. M.B. CAMERON: We will get on with it eventually, so the Minister should not get too excited because there is a lot of evening to go yet and there is a lot more information to be extracted from the Government. Will the Minister also indicate that she will not insist on the passage of this Bill until she puts that request to the Minister and we receive a reply? In other words, I do not want any insistence on this Bill passing tonight or at any other stage until we have that reply.

The Hon. ANNE LEVY: I cannot direct another Minister. We have already been given an assurance by members opposite that this Bill will pass by tomorrow. That is the assurance that we have been given. If members of the Opposition are now reneging on that guarantee, I would be very interested to hear from the Leader of the Opposition whether the Hon. Mr Cameron is speaking on behalf of the whole Opposition or whether that agreement still stands.

The Hon. M.B. CAMERON: We have gone around the circle and we have come back the other side. What I want is an answer from the Minister. Is she prepared to get an answer from the Minister in another place before she insists on the passage of this legislation and bring that reply back to the Committee? That is the only answer I want. I do not want any of the other nonsense.

The Hon. ANNE LEVY: For yet a fifth time—I have said that I will speak to the other Minister and put that request to her. I can only report back what she says. I cannot say—

The Hon. M.B. Cameron: Before the passage of the Bill?

The Hon. ANNE LEVY: I will report back before the passage of the Bill if she gives me a reply before the passage of the Bill. I cannot say when she will give an answer or what it will be. I will put the question to her. I cannot say more than that. I repeat: I would like an indication from the Leader of the Opposition whether the agreement that this Bill will pass this Council by tomorrow is now in jeopardy.

The Hon. R.I. Lucas: Bring back a reply from the Minister tomorrow.

The Hon. ANNE LEVY: If she will give it to me. She may say that she wants to think about it.

The Hon. R.I. Lucas: That is all he has asked.

The Hon. ANNE LEVY: I have said five times, and I will say it now for the sixth time, that I will approach the Minister and put the question to her. When she replies to me, I will bring that reply back to the Committee. I cannot say when she will reply and nor can I say what she will reply. I think I have made that fact perfectly clear and I would now like to ask, for the third or fourth time, whether the Opposition is reneging on the agreement that this Bill will pass this place by tomorrow.

The Hon. R.I. Lucas: We will discuss it with you. Don't get into a brawl on the floor of the Chamber.

The CHAIRMAN: Order! If there are no further discussions on the clause—

Members interjecting:

The CHAIRMAN: Order! The Hon. Mr Roberts.

The Hon. R.R. ROBERTS: I am interested to know whether we will proceed with the Committee stage of this Bill now, or are we to be delayed until we receive a report back from the appropriate Minister? I want to establish that now.

The CHAIRMAN: There has been no indication to the Chair that the Bill will not be proceeded with.

The Hon. R.I. LUCAS: I hope that we can proceed. The Hon. Mr Cameron has indicated, as I understand it, that he is satisfied with the current state. The Minister in this place has given an indication that she will take this matter to the Minister in the other place and bring back a reply—

The Hon. Anne Levy: When she gives it to me, and I don't know when that will be.

The Hon. R.I. LUCAS: As you are the Minister in charge of this matter in this place, it is normal in these circumstances that, before the Bill goes through the Chamber, we ask whether the Minister will say 'Yes' or 'No'. As I understand the Hon. Mr Cameron's request, all he wants is a 'Yes' or 'No' answer. If the Minister wants to say 'No', that is fine; she can do so. Obviously, the Hon. Mr Cameron would not be happy if that were the answer and nor, indeed, would we on this side of the Chamber be happy about that situation. However, as I understand it, the Hon. Mr Cameron has said that all he wants is a reply 'Yes' or 'No'. As I understand his request, he is not saying that those dockets must be produced by tomorrow. That is his wish but, as I understand it, he wants a reply 'Yes' or 'No' tomorrow.

On many occasions in this Chamber the Opposition and the Democrats seek an undertaking from the Minister in charge of the Bill in this place in relation to answers to certain questions. On many occasions a satisfactory response has been provided. However, speaking from personal experience, on many occasions a satisfactory response has not been provided. We then make our judgments accordingly in relation to how we speak on the Bill and how we might vote on certain provisions in the Bill or, indeed, the whole Bill. However, I think that a sensible question has been asked. All the Minister has to do at this stage—and, as I understand it, she has given an undertaking to put the request to the Minister—is approach the Minister and then come back tomorrow with some sort of response, and we will take it from there.

The Minister is trying to inject another element into the debate in relation to how we handle the passage of Bills in this Chamber. I think that she is trying to inject an unnecessary note in relation to understandings that we have had between the Whips when trying to get important Bills through the Chamber. I hope that she does not continue with that course and that we can get on with the passage of the Bill. The Minister opposite has given an undertaking, so let us get on with this Bill and she can bring back a response tomorrow.

We will not get through the whole Committee stage tonight. We will conclude the debate at midnight, so we will not have completed the whole Bill. Therefore, this whole matter can wait until tomorrow and I am sure that commonsense on the part of the Minister and the E&WS will ensure that some sort of response is provided, which the Minister opposite can deliver to this Chamber. Let us leave it at that and get on with the matter.

The Hon. ANNE LEVY: I must respond to what the honourable Leader of the Opposition has said. I raised this question because I understood the Hon. Mr Cameron to have said that this Bill was not going to be allowed to pass this Chamber until he had those dockets, not just whether he had a reply, but—

Members interjecting:

The CHAIRMAN: Order! The honourable Minister has the floor.

The Hon. ANNE LEVY: At one stage I understood him to say that he was not prepared to let this Bill pass this Chamber until he had seen those dockets. I will be interested to look at *Hansard* tomorrow to see whether or not that is what he said. When the honourable Leader of the Opposition indicates that he wants a response from the Minister, not necessarily the production of the dockets—

The Hon. R.I. Lucas: That is not what I said. I said, 'I understand that is the last statement the Hon. Mr Cameron made', and the *Hansard* proof will verify that.

The Hon. ANNE LEVY: It will be interesting to look at *Hansard* tomorrow.

The Hon. R.I. Lucas: Mr Cameron agrees with it. He's the one who made the statement—he should know.

The CHAIRMAN: Order!

The Hon. ANNE LEVY: I think he has changed his tune considerably since the beginning of this discussion.

Clause passed.

Clause 2 passed.

Clause 3—'Interpretation.'

The Hon. R.I. LUCAS: To expedite proceedings and get them back on track, I indicate that a number of members in this Chamber raised a series of questions, and the Minister said that she would not respond in the second reading debate but would respond on behalf of the Minister at the appropriate stage in Committee. Is it the Minister's wish that we repeat the questions for each clause—and I refer to questions asked by the Hon. Mr Cameron, the Hon. Di Laidlaw, the Hon. Mike Elliott and me—or will the Minister, of her volition and with her briefing notes provided by the appropriate departments, provide the considered responses from the departments and the Minister as we go through each clause?

The Hon. ANNE LEVY: I have here comments relating to queries raised by the Hon. Mr Lucas to clauses 16 and 19, and the transitional arrangements in the first schedule. Further, I have comments relating to queries from the Hon. Mr Lucas and the Hon. Mr Elliott with respect to clause 16 (1) *(c)*. They appear to be the only ones detailed by clause in the material with which I have been provided.

The Hon. R.I. LUCAS: I thank the Minister for that. In relation to the responses that the Minister has, and with respect to clause 16, for example, I raised a number of suggestions relating also to clause 3, the definition clause. I refer to questions I raised in relation to clause 16 (1) *(c)*, and a whole series of questions, which I will not go over now, as to what the Minister understands by the term 'standards and criteria'. Does the Minister agree with my line of thinking, whether or not we should include in the definition clause a definition of 'standards and criteria'? As there are no amendments on file from the Minister, I presume that perhaps she does not agree that the term 'standards and criteria' should be defined as it is in the White Paper.

From that viewpoint, I should be interested to hear her response perhaps to my questions on clause 16. In relation to clause 3, I also ask whether a definition of 'prohibited matter' ought to be included. I understand that the Minister will not agree to having that in the definition clause or in clause 16. From my viewpoint, if the Minister would be prepared to indicate the responses to my questions on clause 16, it will help Committee proceedings in relation to the definition clause 3.

The Hon. ANNE LEVY: The point about any criteria is that it is something which the Government agency can recognise and define but over which it has little control. It depends, in part, on levels of matter occurring naturally in waters. For example, if an industry wanted to discharge effluent containing cadmium to apparently pristine waters, an officer would sample those waters and analyse for cadmium. If the analysis showed that the naturally occurring cadmium levels were, as median values over six months, two micrograms per litre, the officer would consult the list of criteria and see that, for waters off South Australia, those waters (at least in the case of cadmium) could be expected to allow for all high quality beneficial uses, that is, they would be suitable to harvest fish for human consumption and all kinds of human contact.

The officer would not expect that the growth or behaviour of any organism that would normally occur in those waters would be affected detrimentally. The numbers attached to the criteria are derived from a wide range of observations including toxicology, where the lethal concentration or the concentration at which some behavioural effect appears has been determined in the laboratory, and some arbitrary application factor, often 100, has been allowed for.

Toxicology does not provide all the answers, because the conditions in a laboratory beaker are not the same as those in the open sea, and the susceptibility of different species varies. The concentration that kills, say, diatoms may itself be 100 of the concentration that kills, say, prawns. There is also fairly voluminous literature from field observations of places where there may be high natural levels of cadmium or high levels from external contamination. These observations often modify conclusions reached from laboratory studies. They may show what species are likely to be highly susceptible because those species do not appear at the field site when they could be expected to; or they may show that natural conditions reduce the effect of a contaminant.

In the case of cadmium, toxicity usually is reduced as salinity in seawater increases. So, the toxicity does not only depend on the concentration but also on other factors. Consideration must be given to actual uptake into seafoods. There are areas in Western Australia where cadmium is taken up more readily by shellfish because of the effects of other minerals that are present in the sediments there.

In South Australia the natural background level of cadmium appears to be about .3 micrograms per litre. This represents the minimum level that could be set as a criterion. There are places around the world where there are high natural levels of elements; for example, there is a hot spot for mercury off northern New South Wales, apparently from mineral deposits in the volcanic rocks of the coastal ranges. The marine life of waters off Port Pirie, with dissolved cadmium levels consistently less than 5 micrograms per litre, does not show significant effects which could be attributed to the dissolved cadmium, but closer inshore higher levels of cadmium were recorded with other metals.

It is virtually impossible to separate the effects of zinc, cadmium, copper and lead at high concentrations—nor does it matter. The criteria in such cases are determined by the most toxic component. So, a criterion level is derived from a wide range of information. For elements that are essential to life (such as zinc) the criterion level is at least above that which provides the minimum daily intake for normal metabolic processes.

A criterion can be based on different effects: high bacterial levels may make water unfit for humans to swim in; shellfish in that same water may feed very well on the bacteria but humans, in turn, may not feed as well on the shellfish. So, any criterion level is a guide to the uses the body of water would support. It is a matter for observation.

In the hypothetical case, the officer of the environment management authority, having analysed the waters and consulted the criteria, then has to make some recommendation on what is an acceptable extra load from the applicant for

a licence. In doing this, the officer would consider how well the discharge might mix with the natural waters, what extra loads might be expected in the area in future and what alternatives there might be for disposing of the cadmium.

Objectives probably would be more significant to existing discharges under the transitional arrangements than to wholly new operations. While there may be a period for total compliance of eight years, a discharger may be required to achieve a real reduction of levels in the discharge to, say, half the initial level within three years. If the current level were 200 micrograms per litre for a daily discharge of 50 kilolitres of some matter and the criterion were 10, the final objective, the standard for the discharge might be 30 micrograms per litre, which would allow further mixing and dilution for a discharge of 50 kilolitres a day after eight years, with intermediate objectives of 100 micrograms after three years and 50 micrograms after six years.

For purposes of enforcement, these could be declared as standards on the licence. If the total discharge were 500 kilolitres a day, the final standard might be reduced to 15 micrograms per litre, because the total load would be higher. The reduction need not be linear, because processes within a mixing zone are not necessarily linear in their effect. The Government has had representations that it is sufficient to declare some standards (concentrations that cannot be exceeded in a discharge), and that would offer ample protection for the marine environment.

That may be, but if these standards were specified in concentration limits only, many operators would have to do no more than mix their discharge with sufficient sea water and they would comply. They just dilute it but still put the same amount in total into the sea. In practice it would be far preferable to take the approach that the Government has taken which allows the option of setting licence conditions that may not even mention a standard but encourage a particular technology. This could have further advantages such as flattening peak loads, since any concentration would have to be expressed in terms of statistical sampling, or it could promote recycling or similar benefit. Many licences would be issued with standards endorsed on them but standards should not be the only means of controlling discharges.

In negotiating the terms of a licence the authority may want to set objectives that establish a time period in which the operator would be expected to reach a final average discharge concentration or load. This could have the advantage of allowing the applicant to incorporate new technology that may not be proven at the time the licence was first taken up.

The terms 'criteria', 'standards' and 'objectives' generally have the meanings amongst water chemists that are given in the White Paper. Mr Elliott has confused 'criteria' and 'standards' within these definitions. While the definitions are not sacrosanct, they have been included in the White Paper for consultation. There were no objections to the definitions or to the concepts. It had been the Government's intention to incorporate the terms and definitions in regulations as is commonly the practice in other States. It should be understood that criteria can be set and recognised but they cannot be applied rigidly by law any more than the law can set down what the maximum temperature will be in Adelaide on any given day where, by way of an analogy, the temperature of 30 degrees celsius defines what is considered to be hot but quite acceptable, even encouraging for the beneficial use of swimming. Other States and the proposed national water quality guidelines treat them as just guidelines. Their actual specification may change for many reasons including changes in analytical methods which reveal more about the biological availability of the element.

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

Page 1, after line 17—Insert definition as follows:

'applicable water quality standard', in relation to an activity or proposed activity, means a standard set under the regulations in respect of the quality of waters in the area in which the activity is or is proposed to be carried on.

The discussion that took place a little earlier about the request for particular documents held by the department and whether or not they would be available really helps to amplify the sorts of fears people have about the piece of legislation which is similar to a blank cheque. A blank cheque is quite a promising thing if received because we can fill in the numbers but when someone else fills in the numbers we are not quite sure what we will end up with. Given the way in which the Bill has been drafted, even following amendments in the Lower House, there is no certainty as to how it will be implemented. There is a great deal of distrust in the community about the way in which the Bill will be handled. People only need to look at the history of this legislation; for 12 years, I think, the Government has promised to introduce a Bill. It has had a chequered past and has arrived in a very weak form. In the interim bad practices in relation to marine pollution have been allowed to continue. According to some documents that I have sighted, these practices are likely to continue for some time to come. That does not inspire a great deal of faith from the people of South Australia in what will happen with this Bill.

It is important that as far as possible this Bill spell out exactly what will happen rather than the Government making vague promises that we will see something later in regulations. Once the issue gets to that point, we can disallow regulations but we cannot force anything into the regulations. As far as possible, it is important to provide guidelines in the legislation.

There has been some discussion in this place about whether the definition of 'applicable water quality standard' should be a little wider to include criteria, standards, and objects. When we report progress on this debate we will have the chance to thrash out a few points such as this, presuming that my amendment may be supported.

In other States—and I have copies of documents from Western Australia and other States—marine environments have been zoned and water quality criteria have been set for each of those zones. They have provided for marine estuarine zones and zones categorised by use, whether they be for fishing, recreation or other uses. I believe we must set an absolute standard that must not be exceeded for any patch of water. Determining the size of these zones is not a job that I would like to undertake. In a later amendment I will propose the establishment of a marine environment protection advisory committee, which will be essentially the same as the committee proposed by the Liberal Party. One of its roles would be to look at zones and recommend to the Minister suitable water quality standards, and in a further amendment I will propose that the Minister promulgate that by way of regulation. Once again, this would still be within Parliament's purview.

We have heard arguments about what should happen at point source and whether or not we should require particular companies to recycle. I do not think that the Minister's options are closed off in that regard, but one thing that will be achieved by setting a water quality standard is that we will know that a particular body of water will not contain contaminants above a certain level.

Under the amendments I propose that the Minister will not be able to grant a licence which would lead to the

exceeding of the level. Whatever the Minister chooses to do—whether she decides to tackle the problem by setting a standard in terms of effluent or whether she decides to require recycling of a particular substance—is her prerogative, but she should not have the prerogative to exceed a limit once a water quality standard has been set. I think that is a fairly reasonable request. There would be one absolute in place.

I believe that the sort of standard that would be set by the proposed committee would be a responsible one. As I said, this is the same as the proposition of the Liberal Party. It would comprise members with experience in fisheries, conservation, industry (via the Chamber of Commerce and Industry) and health. I think we have covered all the relevant areas. A committee would set reasonable standards and the Minister could choose not to take the committee's advice, but Parliament would have the final say.

If members are serious about tackling the problem of marine pollution, the first thing we must do is set standards for our marine environment which must be adhered to. Such standards would vary from place to place depending on whether or not the area was used for swimming or fishing or whether it was designated a conservation zone in which an extremely low level of contamination would apply. I ask members to support my amendment and the consequential amendments.

The Hon. ANNE LEVY: This amendment is not acceptable to the Government. It is suggested that the wording used by the Hon. Mr Elliott is not consistent with the common use of these terms. This refers also to 'criteria' and 'standards', which I discussed earlier. I gather that the criteria apply to the general body of water—the sea.

The Hon. R.I. Lucas: The receival waters.

The Hon. ANNE LEVY: Yes, the receival waters, whereas the standards apply to the discharges that will end up in the ocean. There is a difference between these, and the wording proposed by the Hon. Mr Elliott is not consistent with the use of these words elsewhere in the legislation and as they are generally understood. Furthermore—

The Hon. M.J. Elliott interjecting:

The Hon. ANNE LEVY: Mr Acting Chairman, I did not interrupt while the Hon. Mr Elliott was talking. I ask that he contain himself while I am on my feet.

The ACTING CHAIRMAN (Hon. R.R. Roberts): I do not think that is an unreasonable request.

The Hon. ANNE LEVY: Thank you, Sir. I point out also that the Minister has promised on a numerous occasions that the regulations arising from this legislation will be made public and available for comment and consultation before they are gazetted. It is not a question of hoping that the regulations will achieve what one might wish. The regulations will be widely canvassed and there will be consultation on them before they are gazetted. Another comment made by the Hon. Mr Elliott is incorrect. I have had presented to me the 'Water Quality Criteria for Marine and Estuarian Waters of Western Australia'. There is no question of zoning in this official document from the Western Australian Government.

The Hon. M.J. Elliott interjecting:

The Hon. ANNE LEVY: I think you said that it applied in other States, including Western Australia.

The Hon. M.J. Elliott: I did say 'other States'.

The Hon. ANNE LEVY: I am pointing here to a case involving another State where they do not have zoning, where it is taken that the criteria being established are broad criteria that apply to all the waters and that it is undesirable to have specified zones. That approach has been taken in our legislation and certainly in the Western Australian legislation—or the criteria that I have here. I would be happy to show this to the Hon. Mr Elliott if he would care to see it.

The Hon. DIANA LAIDLAW: The Opposition appreciates the Hon. Mr Elliott's motivation in introducing this amendment. In fact, I commend him for doing so, because his amendment quite clearly highlights what I see as a major deficiency in the Bill. However, there are weaknesses in the amendment and that has placed the Opposition in a bit of a dilemma in respect of this amendment. There is no question, for instance, that if a pulp mill is sited on the coast of the gulf in South Australia that should have different standards or conditions set for the level of pollutants compared to a pulp mill sited on the coast in the South-East, bordering or facing the open seas. There are different instances along coastal areas—the pure fact of whether those waters are enclosed or open, let alone all the other matters that the Minister mentioned in summing up the debate.

I appreciate that the Minister provided the information to the Committee about what the Government actually means by many aspects of the Bill. That has been one of the dilemmas: in respect of clause 16 (1) *(c)* the Bill talks about 'policies, standards and criteria', but it is not clear from the Bill what is meant by those concepts. One must refer to the White Paper, which of course does not accompany this Bill, and one cannot assume that everyone has a copy of that White Paper.

One cannot assume, either, that what the Government meant at the time in respect of that White Paper is what it means now in respect of these references to 'policies, standards and criteria'. Therefore, I agree with the Hon. Mr Elliott that this matter must be resolved. The Hon. Mr Elliott has offered one way of doing it, and I would like to ask the Minister whether the Government would consider defining and incorporating definitions in the interpretation clauses of what it means by 'policies, standards and criteria'.

The Hon. ANNE LEVY: The response to the Hon. Ms Laidlaw is that the Government would be happy to incorporate a definition of 'policies, criteria and standards', but it would mean that one amendment foreshadowed by the Hon. Mr Elliott would be quite unacceptable because of its use of those words. We would be happy to incorporate that as long as the Hon. Mr Elliott's amendment was not accepted because of the way that the words in the amendment would then be interpreted.

The Hon. DIANA LAIDLAW: Along with my colleagues, I would be pleased to see definitions of those terms. It would be an important initiative in respect of the Bill and might help clarify some of the confusions and genuine concerns expressed by the Hon. Mr Elliott and to me about standards and about how the Government intends to address the important provisions of the Bill in respect of its powers on licensing, the renewing of licences and the like.

I do recognise the Government's reference to the confusion that would then arise because of the Democrats' amendment. That confusion essentially exists now through the use of the term 'standard' when we have references to 'standards' used by the Government in clause 16 (1) *(c)*.

While I have responsibility for the Liberal Party's position in this place, it is not my area of expertise. I was wondering whether, in the circumstances, we might pass the Democrat amendment as a safeguard to ensure that the amendments referred to by the Minister are seen by us some time tomorrow morning before debate is resumed on the Bill, and then this clause could be recommitted for further discussion of this important area. I believe that we must get the references to standards right if we are to address the subject of marine pollution. I am inclined to believe that the Opposition

should support the Democrat amendment at this stage until we see what the Government brings forward in relation to those definitions. I hope that those definitions will address the concerns that I have expressed and the confusions that the Hon. Mr Elliott is legitimately addressing.

The Hon. M.J. ELLIOTT: As one would expect, the first comment made by the Government about my amendment was a nit-picking one. In my first comments, I said that there may be a need to reword a section of it, in particular the mention of standards and the fact that we need to widen it because the Government has chosen to use three terms, whilst interstate (at least in the case of Western Australia) the term 'criteria' only is used. That is neither here nor there; that can be rectified easily. It is not an argument against the general principle: are we or are we not going to set some sort of standard for the receival waters? It is only by having an absolute minimum standard, something which will not be exceeded, that we can be assured that those waters can be used for whatever purpose we intend them to be used: conservation, recreation, fishing or whatever.

The Government may choose to set emission standards; it may choose to put all sorts of rules and obligations upon people who are acting as point sources of pollution. Nevertheless, licensing, or whatever else, cannot occur if these standards are allowed to be exceeded. It gives us a guarantee, but simply defining standards, criteria and objects will not tackle that essential problem.

The Minister commented on zoning. I do not have the other States' details here; I have only Western Australia's. It is true that the Western Australians have not drawn maps *per se*: they have not drawn zones, but they have a series of schedules within their document, 'Water Quality Criteria for Marine and Estuarine Waters of Western Australia.' First, it mentions beneficial use. For instance, beneficial use No. 1 is direct contact recreation, and they set criteria. They have a beneficial use of the harvesting of aquatic life excluding mollusc for food, and they set a series of criteria. So it goes on. It depends on the use to which the water is put.

I believe that without specifying zones beforehand that is arbitrary, but they have gone to the trouble of looking at water quality according to use, and that is a direction that we should be following. I believe it would be far more precise and there would be more certainty if the zones were drawn up beforehand and not determined when deciding which conditions to impose on the grant of a licence. The beneficial use could be changed at the time of the grant of the licence rather than setting the beneficial use first and then determining the standards. It is obviously the wrong way around.

I am heartened that the Liberal Party, at least at this stage, will support the amendment. I hope that it will persist with it, because simply defining the terms 'standards', 'criteria', and so on, does not solve the essential problem of setting standards that we know will not be exceeded.

The Hon. ANNE LEVY: I can only repeat that the Government is happy to bring forward definitions of these words, 'criteria' and 'standards', but not if the amendment proposed by the Hon. Mr Elliott to clause 15 is accepted, because the use of those words would become a nonsense in the light of the definitions that the Government would propose. The Western Australian documents provide as follows:

'Criteria' means the scientific yardsticks upon which a decision or judgment may be made concerning the ability of water of a given quality to support a designated beneficial use.

'Objectives' represent the desirable, possibly long-term aims or goals of a water quality management program. Such objectives are often derived after consideration of water quality criteria in the light of economic, social or political factors.

'Standards' are current legally enforceable levels established by an authority. Standards are not necessarily based upon sound scientific knowledge or ideal environmental requirements, but may in fact be established quite arbitrarily in the absence of technical data, and often with a marginal factor of safety.

I imagine that Parliamentary Counsel would have fun with that. As I say, the Government is happy to provide definitions but not if it means that certain other amendments are carried which would then make the whole thing unworkable in the light of those definitions.

The Hon. DIANA LAIDLAW: I accept the Minister's offer and I appreciate the conditions that she sets. If we accepted definitions for standards and the like, it would not be compatible to do so and to keep the wording of the Democrats' amendment as it now stands. The issue of great concern to the Democrats and the issue to which the Minister made reference as a condition for the definitions relates to clause 16, not clause 15. There is an error in the Democrat amendments on file, and that should be changed. Because clause 16 is the major concern for the Australian Democrats, debate should be confined to that clause.

The Western Australian references to criteria, objectives and standards are different from those in the White Paper, and I seek clarification whether the Government will use the Western Australian terms as the basis of its definitions. If so, it could lead to even more confusion.

The Hon. ANNE LEVY: Any definitions brought forward will be consistent with the use of the words in the White Paper. That is what the consultations have been about, and there have been no objections from any source regarding the use of those words in the White Paper.

The Hon. R.I. LUCAS: I support what the Hon. Diana Laidlaw has said, particularly her last comment that we are at this stage merely trying to agree on a position of the definition of the terms. The Hon. Diana Laidlaw has indicated that the Opposition will support the Hon. Mr Elliott's definition at this stage, subject to recommittal and the definitions of standards and criteria that the Government will provide when we next debate the Bill.

As the Hon. Diana Laidlaw mentioned, the substance of the amendments will be debated when we get to clause 16. One of the aspects not clear to me is that, in the written response the Minister delivered earlier, when she talked about hot spots for mercury off the north coast or wherever it was, she seemed to indicate that there would be a higher background level, or whatever the appropriate scientific or technical term is, for mercury in those waters, whereas South Australia does not have a hot spot for mercury, so it would be different. As a result of what she said, I thought that she was heading down the same path as the Hon. Mr Elliott, that is, zones, and looking at things differently. I thought that different water quality criteria, to use the Government's term, would be used, for example, in an area with a hot spot for mercury (because that occurs naturally) and an area here where there is no hot spot for mercury.

Later, based on advice, the Minister said that there would be just one set of water quality criteria for all receival waters in South Australia in accordance with the Government's understanding of 'criteria' in clause 16. That paradox is not clear to me. The Minister seemed to indicate earlier that she was looking at different water quality criteria for different areas in relation to the sorts of technical arguments she developed, but she did go on to say that she was looking at one set of water quality criteria for all receival waters. This statement is most important when we get to the BHAS argument. During the second reading debate I read into *Hansard* the understanding of BHAS in its EEIP.

The Hon. ANNE LEVY: I suppose that, if there is a hot spot for mercury, as occurs in northern New South Wales,

or if there is some high level of a pollutant that occurs naturally, that does not alter the criteria, but it could alter the beneficial use to which that area could be put. One could say that it is so polluted naturally—it is not due to discharges—that people should not swim there. The same criteria are still being used—people do not swim there if the level is more than a certain amount—but the use can change. One could say that the criterion is a certain level and if the level is higher than that and it occurs naturally, one could still say that it is above the criteria for, say, fishing, but it is not above the criteria for swimming, so it could be safe to swim there but not to fish.

The Hon. R.I. LUCAS: Rather than referring to something which occurs naturally like the hot spot for mercury, I will refer to the argument developed by BHAS in relation to the fact that, for 60 or 70 years, it has been dumping heavy metals into the gulf and, therefore, a large amount of heavy metal pollution exists in the gulf, as opposed to a situation where BHAS might have another plant somewhere else next to a pristine mountain lake.

I wonder whether the Minister and her advisers can respond in that context. We are not talking about a naturally occurring level of mercury but an industry that is polluted. Therefore, I presume we have very high concentrations in micrograms per litre or whatever of cadmium and a whole range of other heavy metals, and in another area we do not. How does the Government's argument (that it will have one criteria for cadmium or whatever the other heavy metal might be) relate to that sort of example?

The Hon. ANNE LEVY: The White Paper at page 6 states:

> At present most of the marine waters of South Australia would support beneficial uses. So levels of metals and other chemicals measured in open water off our coast would be close to criterion levels for high water quality. Exceptions are that waters around Port Pirie may not be suitable for fish farming while some estuaries and inlets, particularly in metropolitan Adelaide, are no longer suitable for contact recreation such as swimming or, in the case of the Patawalonga, for fish.

The Hon. R.I. LUCAS: I am afraid I am still none the wiser. It is still not clear to me. I refer to the argument of the Hon. Mr Elliott—and forgetting his definition aspect—and the aspect of whether or not zoning exists in other areas. Is the Minister saying that the Government, under its understanding of the criteria, will set one criterion level for cadmium for all receival waters in South Australia, irrespective of whether it is the gulf or a mountain lake?

The Hon. ANNE LEVY: The answer is 'Yes' for the most sensitive use. Water can be used for different purposes. The criterion which would be set is that for the most sensitive use.

The Hon. R.I. LUCAS: And it would likely be the water quality criteria derived from general publications and reports in the appendix of the White Paper?

The Hon. ANNE LEVY: Yes.

The Hon. M.B. CAMERON: In relation to the criteria for receival waters, the Minister said that the Patawalonga might be suitable for fishing but not swimming. When are we actually setting the standards for receival water—is it a historical or present-day setting? In other words, if the Patawalonga has signs up stating that one cannot do this, that or the other, is that acceptable or do we set a standard back in history when the water was cleaner and purer so that we start to move back to a better marine environment?

The Hon. ANNE LEVY: The criteria set the yardsticks which tell us what the waters are capable of supporting. The objectives are the goals that we are aiming for, and quite obviously for an area such as the Patawalonga the objective would be to clean it up.

The Hon. R.I. LUCAS: I do not think the other clauses will take this length of time, but this does set the basis for the rest of the legislation and it will really make for easier understanding as we go through Committee. In response to the earlier question I asked, the Minister indicated that there would be one criterion level for, say, cadmium for all receiver waters, irrespective of whether it is the gulf or a pure mountain lake. In the water quality criteria derived from the general publications report in the appendix of the White Paper, cadmium is listed, in concentration micrograms per litre, as being five micrograms per litre, its measurement is done by median value over six months of sampling, and the authority is IDACOMP.

The Minister indicated that that was the rough guide, that this was the sort of criterion level under the Act that we would be looking at for cadmium in all receiver waters in South Australia, being five micrograms per litre (and when we get to clause 16 that is where we will be talking about it). In the gulf at the moment, would the receiver waters be within that limit of five micrograms? My understanding originally was that we would set a standard or criterion and that we would want to keep the gulf waters beneath that level all the time. We would tell BHAS that we will not end up with five micrograms per litre of cadmium in the gulf measured over a six-month period.

I think that that was the angle the Hon. Mr Elliott was driving at with his applicable water quality standard in relation to his zonal concept in that, for example, we might have a higher level in the gulf and a different level in the lake. The Government is saying that that is not the case, that we will have one criterion. So let us look at what the Government wants. In that gulf, will that five micrograms be the level above which we will not go and will BHAS and any other polluter in the gulf, when they have standards put on their licences, have to keep the criterion level for cadmium beneath five micrograms per litre, or is that something we can go above or below?

The Hon. ANNE LEVY: I understand that the criterion would be the same everywhere and, in general, South Australian waters currently meet that although there are some exceptions such as BHAS where the objective will be to reduce the level to that which applies elsewhere or to reduce the level—

The Hon. R.I. Lucas: Is the cadmium level above—

The Hon. ANNE LEVY: Not generally as I understand it.

The Hon. R.I. Lucas: Outside BHAS, is it above that at the moment?

The Hon. ANNE LEVY: No, it is not. The objective will certainly be to reduce the level outside BHAS in stages over a period.

The Hon. R.I. LUCAS: What the Minister is saying is that it will not be a level above which industries in an area cannot go. When we get to the further examples in the Hon. Mr Elliott's amendments to clause 16, what he says, with his 'applicable water quality standard' or criterion from our understanding, is that the Minister will not issue a licence if we go above a certain criterion level (or 'standard' in the Hon. Mr Elliott's terms) and the Minister indicated her objection to that. The Government response says that one must take into account criteria, but that it is not a level above which one does not go.

From the Minister's answer to that question, she is saying that, whilst generally in all marine waters for cadmium we are below five micrograms per litre, on occasions in some areas we might be above it and it will not be a requirement of this legislation that in all circumstances and in all cases, for all industries and in all waters we must remain below

five micrograms per litre as an absolute maximum upper limit.

The Hon. ANNE LEVY: It is a question of the transitional period. During that transitional period, obviously there will be some areas where the level is above five micrograms per litre, since it has been higher than that and it takes time to lower it. At the end of the transitional period it will be below that level. That will be the upper limit throughout required for licences.

However, one cannot bring that in immediately because of the high concentrations existing in some places. It is a question of a transitional period during which levels will be made to fall until one achieves the objective at the end of that transitional time.

The Hon. M.J. ELLIOTT: As the Hon. Mr Lucas has noted, we need to range far and wide, since so many of these amendments intertwine. I draw to his attention the current clause 16 in the Bill.

The Hon. Anne Levy: It might be better to deal with clause 3 and leave clause 16 until we get to it.

The CHAIRMAN: Unfortunately, when we started, clause 16 became linked to clause 3, and I think that, since we started that line of argument initially, we will have to ride with it.

The Hon. M.J. ELLIOTT: They do intertwine. I draw the Hon. Mr Lucas's attention to clause 16 in the current Bill and ask him to note, in particular, clause 16 (1) *(c)* which provides:

> ... such policies, standards and criteria as the Minister may from time to time promulgate by notice published in the *Gazette*...

The Minister takes those into consideration when determining whether to grant a licence. There is nothing absolute anywhere within that clause. Many of the undertakings being given by the Minister are not inherent within the wording of the Bill itself. These are suggestions as to what will happen after the Bill leaves this place.

Importantly, while we can talk about standard criteria around the State, there is no requirement to comply in any way. There is nothing here to tell us how the particular criteria will be set, etc. The purpose of my amendment to clause 3 is to make clear that there will be water quality standards and I do not mind if at the same time we have water quality standards, criteria, etc, and that we have short-term and long-term goals that are prescribed by regulation; which is what I propose, because then we have a great deal of certainty.

The certainty should be attractive to everyone in South Australia. It is attractive to both conservation groups, because they know the standard. It is also attractive to industry. There is nothing worse for industry than changes of Governments or Ministers, with changes to the interpretations under Acts from day to day, week to week, month to month. The big problem with legislation is not always whether or not it sets a high or a low standard but that it sets no standard at all and no-one knows where they stand. That is precisely what I am attempting to do by way of my amendments. There is nothing in my amendment to say what the final standards, criteria, etc., will be: it simply puts mechanisms in place. If one looks at clause 16, one sees the problems. Many of the undertakings given by the Minister today really do not have a great deal of value, because there are no guarantees in this Bill that any of that will occur. These criteria that are being set will be arbitrary and whether or not they will be complied with will be arbitrary. There are no guarantees whatsoever.

The Hon. ANNE LEVY: Any licence will have stated in it the long-term objectives which must be achieved by the end of the transitional period.

The Hon. M.J. Elliott: Who sets them? That is not in here.

The Hon. ANNE LEVY: The criteria which are used are those adopted nationally. They do not differ from one part of Australia to another. As the Bill now stands any changes to criteria must be approved by the Environmental Protection Council, which is a body totally independent of the Minister. So there is no question of ministerial whim in these matters at all.

The Hon. M.B. CAMERON: I assure the Minister that I am not trying and I am sure other members are not trying to hold up the Bill. It is important that we have this important clause clarified. The Hon. Mr Lucas raised the question of present levels of heavy metals and he gave cadmium as one example. A document tabled by the Government last year indicated levels of heavy metals in sea water. For example, it states that in world oceans the mean of cadmium is .11; for St Vincent Gulf offshore the cadmium level is .34, and for St Vincent Gulf inshore it is .23. There are some examples of the levels that now exist. Five might well be a reasonable level; I do not know, I am not an expert on the long term effect of heavy metals. However, we are not talking about a Bill for today or tomorrow; it is a Bill that, hopefully, will affect sea waters in the State for 100 years or more, well after we have finished with it.

Some of the levels that are set cause me concern. I was particularly concerned when I read a document titled 'A Compilation of Sewage and Effluent and Digester Sludge Data for South Australian Sewage Treatment Works 1984 to 1988' in relation to one substance that has been pumped out by the E&WS Department, namely, cadmium. At the moment the average cadmium level in that substance is 61.8. That level of cadmium has been going into the sea off Port Adelaide and I assume it is fairly similar for Glenelg. The maximum level of mercury has been 4.59, with an average of 1.81. The level should be 3; one of the criteria is 'no reading to exceed the value of 3', but that level has been exceeded. So there is real concern about what has happened in the past and at least one Government department has not met these levels in the past. I become a little concerned when I read in 'The Strategy for Mitigation of Marine Pollution in South Australia' the words:

> The assimilatory capacity of seawater can be used as a method of treatment, especially for transient pollutants such as faecal bacteria, but this is less satisfactory for persistent pollutants such as heavy metals ... which can accumulate in biota.

Most people would be aware that the long-term effect of heavy metals is very serious. For this reason, the questions of water quality standards, the level of pollutants that go into the sea and pollutants in receival waters constitute the most important part of this Bill. If we do not get this right, the Bill inevitably will fall down.

I am also concerned—and I will raise this matter later—that the Crown is totally in charge of the Act because it has been one of the most serious polluters over a long period and, even in the face of warnings, has done absolutely nothing about the situation. So, I have a fairly severe lack of trust in the Crown in terms of marine pollution.

The Hon. ANNE LEVY: It has been suggested that the Hon. Mr Cameron is confusing the criteria for the receival waters with the standards for the discharge. There is a difference between the level of cadmium found in the discharge compared with the criterion for cadmium in the receival waters. Such confusion must not be allowed.

I am informed also that the Australian Marine Sciences Association, which represents about 1 200 practising marine scientists of all disciplines in Australia, has reviewed the proposed criteria in the White Paper and responded very positively to them. The Australian values, which are expected

to be adopted by the Environmental Council later this year by agreement between the Ministers for the environment from all States, will set the nationally used figures. From people who are knowledgeable in these matters, there has been wide recognition and acceptance of the statements in the White Paper.

Amendment carried.

The Hon. DIANA LAIDLAW: I move:

Page 1, lines 29 to 31—Leave out the definition of 'prescribed matter' and insert definition as follows:

'pollutant' means—

(a) any waste matter (whether solid, liquid or gaseous) resulting from any industrial, commercial or governmental activity;

(b) any leachate from stored products or wastes;

(c) any sewage or effluent (whether treated or untreated);

(d) any dust or particles produced, spilled or wind-blown in the course of transport, cargo handling or any industrial operations;

(e) any rubbish, debris or abandoned or unwanted materials of any kind;

or

(f) any matter (whether solid, liquid or gaseous) that, if present in waters, will, or can be reasonably expected to, result in some harmful or detrimental effect on—

(i) persons or their property;

(ii) aquatic or benthic flora or fauna (including mangroves);

or

(iii) any beneficial use made of the waters.

I move this amendment for two reasons. The Liberal Party has received considerable representations from organisations and individuals who maintain that the Minister's powers incorporated in this Bill are too wide and that there is a need in general to limit her discretionary powers. It is considered that if reference to 'prescribed matters' is deleted from the definition provisions of the Bill, one of the Minister's discretionary powers will be curbed. The Opposition supports this sentiment.

The Liberal Party also believes that, if this Bill is to act both as a positive educative tool as well as a benchmark or framework to deal with licensing and defences, it is important that the Parliament outline what we believe to be a pollutant as far as source marine pollution is concerned. Surely, if we believe that offences under this Act warrant a maximum fine of $1 million—and that matter will be debated shortly—at the very least, the Parliament should be stating what it means by pollutant.

As I mentioned in my second reading speech, there was considerable confusion in the other place—on the part of not only the Minister but also a number of members—in coming to terms with the fact that this Bill is meant to be confined to point source pollution. Of course, there are many other pollutants and sources of pollutants that enter the marine environment, including stormwater drainage. However, the Minister made it clear—at least at times—in her second reading speech that stormwater will not be covered by this measure, at least until point source pollutants have been addressed, until a working party has concluded its findings and after considerable negotiation with local government on this issue. I believe that the confusion about stormwater—whether or not it is included in the Bill—further reinforces the fact that there should be some definition or guideline as to what we mean by pollutant.

The Hon. ANNE LEVY: The Government opposes this amendment. It is impossible for a definition of pollutant to cover all possible pollutants that can ever occur. It must be a limiting definition, and things may be let through which one does not wish to let through. Also, in any particular case that came to court, one would not wish to have to establish before the court that something was in fact a pollutant. By having it as prescribed matter, one only has to prove that it is there; one does not have to prove that it is in fact polluting.

The Hon. Diana Laidlaw: You should have to prove it.

The Hon. ANNE LEVY: If it is prescribed matter and it is agreed that one is not to have that matter in the water, the fact that it is there means that an offence has been committed.

An analogy is the Environment Protection (Sea Dumping) Act, which is concerned with waste or other matter that may be dumped. The offence under section 8 is to load the described matter with a view to dumping. It is not prescribed as a pollutant: it is just a load of prescribed matter with a view to dumping it that is prohibited. The matter is prescribed as being prohibited: the definition refers to the matter that may not be dumped. One does not have to prove that dumping it causes pollution—it is just an offence to dump the matter—

The Hon. Diana Laidlaw interjecting:

The Hon. ANNE LEVY: This is a different case: the Environment Protection (Sea Dumping) Act.

The Hon. Diana Laidlaw: But you are using the same sort of example.

The Hon. ANNE LEVY: Yes, as an analogy.

The Hon. M.J. ELLIOTT: I received representations on this matter from several bodies and considered preparing an amendment similar to this one, because I saw the same problem that was seen by those who made representations and the Liberal Party, namely, that 'prescribed matter' was something that would come later, and that there was a need to try to get increased certainty into the legislation. The Liberal Party's amendment tries to inject some certainty into what is a prescribed matter. It has used the term 'pollutant' instead and then included the things that it believed would be pollutants.

I appreciate the arguments that the Government is advancing, but there is some uncertainty now about what clauses may or may not survive in the wash. At this stage I will support the amendment. We need not protract the argument now because we will obviously get another chance later. In supporting the amendment, I indicate that I followed a different pathway to try tackle the same problem, without, I hope, creating loopholes.I am not sure that this amendment will do that. Alone, it will not close the loopholes that I attempted to close by other means.

Amendment carried.

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

Page 2, after line 6—Insert definition as follows:

'the Tribunal' means the Marine Environment Protection Review Tribunal established under Part V:.

The amendment defines 'tribunal' which occurs in several of my later amendments that are on file. Soon we will be debating the water resources legislation dealing with the pollution of groundwaters and waters on land. The matters handled in that Bill by a tribunal are handled under this legislation by a judge.

Admittedly, other things are handled as well but, nevertheless, I would argue that these are parallel Bills. It seems inconsistent that we would support a tribunal on water resources, which has existed for a long time, and in this new Bill the Government is proposing that we use only a District Court judge to make a number of determinations.

Some lawyers may be affronted by this, but judges have difficulties in handling matters outside their area of expertise, which is the law itself. Some of the matters which might end up before a District Court judge, particularly under some of the amendments that I am proposing, may at times be technical. For that reason, it is important that we look at a tribunal which has not only a judge, who would

act as the Chairperson of that tribunal and bring all of his or her legal expertise to bear, but two other persons with appropriate other knowledge which would be absolutely invaluable to the determinations which have to be made. The legal fraternity generally would frown on that, because tribunals function in a slightly different fashion from the courts, and one does not necessarily need to be represented by lawyers. There are a number of reasons why they have their own axes to grind against this sort of thing.

I am aware that the Liberal Party is concerned about the proliferation of tribunals, but I would argue that that is a separate matter. I think that in the longer term we may have to consider setting up a land and environment court or a land and environment tribunal which can handle water resources matters, marine pollution, and so on. The tribunal would have a mixture of expertise and the relevant experts would be brought in, depending on the particular case. That course can be followed to solve the problem of the proliferation of tribunals.

In the meantime, we have this Bill before us. I hope that the Liberal Party will support some of the amendments that I am proposing. Even if it does not, if matters involve prescribed substances and micrograms per litre, and so on, I think it is foolish to ask a judge alone to make decisions on such matters. I hope that the House will support an amendment to set up a tribunal which would allow other expertise to be available to make determinations.

The Hon. ANNE LEVY: The Government opposes this amendment. The entire concept of a tribunal is unacceptable. Reviews can be handled by the courts. The real purpose of the tribunal proposed by the Hon. Mr Elliott appears to be to expand third party standing so that, for example, third parties can insist before the tribunal that the law be complied with. That distorts the entire purpose and process of a review. There are ample checks and balances in the system to ensure that the law is complied with, including extensive public disclosure and the influence of the Environmental Protection Council. The Bill already allows people who are aggrieved to seek reviews through the courts.

The Hon. DIANA LAIDLAW: This amendment has caused considerable debate amongst my colleagues, and I concede the point made by the Hon. Mr Elliott in his contribution in respect of the debate on the Water Resources Bill and other Bills that have provided for such quasi-judicial tribunals. Notwithstanding those matters, the view of the majority of members on this side of the Chamber has been not to support the establishment of a tribunal in this instance. Opposition members believe that the matters that are under the spotlight in respect of this legislation and the matters that it is envisaged would be referred to a tribunal would be better dealt with under the system that is proposed in the Bill, that is, by a District Court judge.

The Hon. M.J. ELLIOTT: The Minister has misrepresented the purpose of the amendment. It was not structured for the purpose of allowing third party appeals. Third party appeal rights can stand under a court, so it is a total nonsense. I could easily have moved an amendment to take it to court, so to suggest that the tribunal was set up for that purpose does not hold water.

A number of people may still want to exercise their rights under the Bill in one way or another, particularly if, as I suggest, we try to set some sort of standards or criteria that require compliance. Interested parties, such as industries that have been granted licences with or without conditions and which may or may not be charged with certain matters, and other people with direct financial interest, such as fishermen, may want to test the measure. All those people will want a hearing. The question is whether or not that hearing is before a court or a tribunal. I argue again that judges do not have the necessary expertise to make determinations in this area. They are experts in the law, not in matters involving micrograms per litre, etc.

Judges would tend to err on the side of caution, and it is just a matter of which side a person happens to be on in any particular case. That will be difficult to tell. It is a real mistake not to give an opportunity for proper consideration with relevant expertise and it appears, at this stage, that that will be denied. It is unfortunate that such inconsistency will be evident in this place within 24 hours on two pieces of essentially similar legislation. It makes no sense, and it appears that both the Government and the Opposition have no problems with that level of inconsistency.

The Hon. DIANA LAIDLAW: I do not want to be disagreeable at this hour but, when the Liberal Party is, and I as its spokesperson am, accused by the Democrats of making a decision that does not make sense, I must object. I can easily justify the decision by saying that the tribunal structure in the Water Resources Act has been provided for in that legislation for many years.

The Hon. M.J. Elliott: It has never been opposed.

The Hon. DIANA LAIDLAW: No, and it has been in the Act for many, many years. What has been proposed here is a new tribunal. As I indicated in my second reading speech, the Liberal Party would support and encourage a review of the proliferation of tribunals rather than setting up another very expensive tribunal system, appointing people, etc.

The Hon. M.J. Elliott interjecting:

The Hon. DIANA LAIDLAW: The court system is well established. The honourable member advocates setting up a completely new structure in relation to this Bill. The Liberal Party believes that that is unwarranted and would strongly support moves by the Government to look at streamlining the proliferation of tribunal systems in South Australia. The Opposition does not have an objection to the tribunal system. However, it objects to the setting up of yet another tribunal.

The Hon. M.J. ELLIOTT: If the Hon. Diana Laidlaw spoke to people who have had dealings with the Water Resources Tribunal, she would discover that there has been general satisfaction—in fact, a lot more than that—with that tribunal, which has worked extremely well. If the Liberal Party were consistent and were concerned about the proliferation of tribunals, it could have removed the Water Resources Tribunal, but it did not. This legislation is a complete rewriting of the Act, so the Opposition has had an opportunity to remove the tribunal, but it did not do so. In relation to two pieces of legislation, the Liberal Party supports the concept of a tribunal in one but not in the other, even though they both attempt to tackle similar problems.

The CHAIRMAN: I take it that this clause is to be regarded as a test clause for most of the Hon. Mr Elliott's amendment relating to clause 26?

The Hon. M.J. ELLIOTT: Yes, Sir.

Amendment negatived.

The Hon. DIANA LAIDLAW: I move:

Page 2, lines 30 and 31—Leave out subclause (5).

This provision allows the Minister and the Government unchecked powers in relation to whether or not 'matter' is 'matter' to which the legislation applies and what matter can and cannot be discharged into the marine environment. We believe that this provision is unacceptable and should be removed.

The Hon. ANNE LEVY: The Government opposes this amendment, which would delete powers to declare matter

to which the Act does not apply. It has previously been mentioned that there has been confusion on the part of some people as to the difference between a point source and diffuse matter. This particular provision would be used to postpone consideration of diffuse sources until after all the point sources were licensed and until there had been further consultation with local government and further planning for metropolitan stormwater management.

The second reading debate, in *Hansard* suggested that the honourable member intended to insert some compensating provisions, but they are not in her proposed amendments.

The Hon. Diana Laidlaw: That was not my intention.

The Hon. ANNE LEVY: It was thought you suggested that in your second reading contribution. If there is no alternative, this subclause is necessary so that the point source can be dealt with before the diffuse source is tackled. If something is published in the *Gazette*, there can be another publication later to remove that, so it does apply. It is intended to be used to delay dealing with diffuse source matter until there has been further consultation with local government and until all the point sources have been licensed.

The Hon. DIANA LAIDLAW: With all due respect to the Minister, most of those arguments have already been addressed in relation to my amendment which has been passed to delete reference to 'prescribed matter' and insert a definition of 'pollutant'. With that amendment's passing this Chamber but 15 minutes ago, the reasons that the Minister now gives for clause 3 (5) being included in the Bill are no longer necessary because point source pollution has already been defined by the passage of the amendment addressing the definition of 'pollutant'.

The Hon. M.J. ELLIOTT: I find subclause (5) to be of concern. It is very vague. We simply publish in the *Gazette* a notice declaring 'specified matter to be matter to which this Act does not apply.' That could be used on anything at all. While the indication is that it is intended to tackle diffuse sources—

The Hon. Anne Levy: Postpone.

The Hon. M.J. ELLIOTT: Yes, Postpone. However, the application can be fairly wide and nothing in the Bill indicates that that is the only thing for which it may or may not be used. I would like to see the Minister come up with a better clause than that, if that is the intention. At this stage, I will support the deletion of that subclause.

The CHAIRMAN: I point out that Parliamentary Counsel has indicated that this amendment could be relevant to an amendment that was passed some two amendments back.

The Hon. DIANA LAIDLAW: Is that not what I indicated in my earlier remarks, the fact that a majority of members in this Chamber had agreed to delete 'prescribed matter' and include in its place the definition of 'pollutant'? That means that the Minister's argument against deleting clause 3 (5), is with all due respect to the Minister, irrelevant.

Amendment carried; clause as amended passed.

Clause 4—'Act binds Crown.'

The Hon. DIANA LAIDLAW: The Liberal Party strongly supports the Government's intention that the Act bind the Crown. This is an important provision in light of the amendments that have been moved by both the Hon. Mr Elliott and my colleague the Hon. Mr Cameron. This provision should be of great interest to all members. How does the Minister envisage that the Crown will be forced to comply with the important provisions in this legislation? What, if any, penalties will be applied to the Crown if it does offend? Who will apply those penalties?

The Hon. ANNE LEVY: If the Act did not bind the Crown, it would seem to me that the situation would be very much worse.

The Hon. Diana Laidlaw interjecting:

The Hon. ANNE LEVY: You had your turn; now its my turn. The alternative to the Act binding the Crown is for the Act not to bind the Crown, that would seem to me to be a worse situation from every point of view. I also point out that the watchdog for this piece of legislation is the Environmental Protection Council. That council can undertake investigations, can go to the Governor to be awarded the powers of a royal commission, can generate enormous publicity and is the watchdog to ensure that the Crown abides by the Act. The council is an independent body with many powers. If the honourable member does not like the Crown's being bound by this legislation, does she suggest removing this provision?

The Hon. DIANA LAIDLAW: I did indicate that the Liberal Party supported this provision. However, one wonders about its value if the only way the Government can be kept honest is by having a body that is virtually toothless, or, if it is not toothless, has failed on many occasions to use the powers at its command to address a whole range of pollution matters in this State.

Certainly, it does not give one any confidence that this provision binding the Crown would be as effective as one would hope. Also, I think that the Minister's argument reinforces amendments I will be moving shortly to ensure that the watchdog in this respect is not the Environmental Protection Council but a new body, the Marine Environment Protection Committee.

The Hon. M.B. CAMERON: It appears to me that the whole concept of binding the Crown is a toothless tiger. It sounds good but achieves little since there really is no discipline on the Crown. Certain items in this Bill concern me. If we do not put in certain disciplines in matters where the Crown is the polluter, then we have a real problem. What are we to do if the Crown disobeys the rules laid down under the licence issued to the Crown by the Minister—who is the representative of the Crown? Will it stop the disposal of effluent into the sea? The effluent will back up the sewerage system and the citizens of Adelaide will be in a terrible mess.

The Hon. M.J. Elliott interjecting:

The Hon. M.B. CAMERON: That is right: that is one comforting thought—that we will not know about it because we will not be told. We will be unable to get this information because, under this new concept of FOI, the Government will explain what is contained but we will not be able to obtain the original material, so we will not know.

I am deeply concerned that the Government is getting away with much past bad performance and might get away with future bad performance, first, because the information is not available and, secondly, because the Crown is bound by this provision—which means absolutely nothing. It is a little childish of the Minister to say 'What are you going to do—take it out?' Of course not: it is about the best we can achieve. However, on the performance of this Government I should say that we have very little hope.

The Hon. Diana Laidlaw: Unless we accept the amendments to make the findings of the advisory committee more open to the public.

The Hon. M.B. CAMERON: That is fine—I agree with that. I was trying, although it was very difficult, to put an FOI Bill into the middle of this Bill so we could actually achieve something. Parliamentary Counsel seemed to throw their collective hands in the air at that! Perhaps in future if we do not obtain decent FOI we will have to do that. All

information should be made public. I agree with the Hon. Miss Laidlaw: we must force the Government to be more open so that, in this Chamber at least and in the other place, we can question what the Government is doing and what it is not doing, and what rules it is following that are supposedly laid down by others. I am becoming a little concerned that the Bill concentrates too much on private polluters when the Government is the worst polluter, in my view.

The Hon. M.J. ELLIOTT: Of course, that is the very reason why I will seek later to amend the Bill by providing third party standing. It is the very reason why Governments are particularly advised by their bureaucrats not to support third party standing, because then we would have the public telling the Government that it should obey its own laws. And would that not be a terrible thing to happen to any Government—to have the people of its State tell it that it must comply with its laws!

Governments interpret laws as they wish, bend the rules as they will, and the public cannot do a thing about it. If Governments were honest, they would amend Acts that were no good, but they do not need to do that because, the way things are constructed, first, the public does not find out that anything is wrong and, secondly, if they do, there is nothing they can do about it anyway. That is precisely the way things work in South Australia and it is a disgrace in a place that calls itself a democracy.

Clause passed.

Clause 5—'Application of Act.'

The Hon. R.I. LUCAS: I raised a question in the second reading debate in relation to Lake Bonney and Apcel. I suppose this is as good a clause under which to seek the Minister's response. As I understand the procedure, the Minister drains off Lake Bonney into the marine environment once a year or perhaps a couple of times a year. Under the terms of the Act it could be construed as pollution. How does the Minister intend to continue with that process and under what provisions? Will the Minister exempt herself or the Government under clause 19 or does she intend issuing a licence to herself under the licensing provision to allow her to drain off polluted waters from Lake Bonney into the sea?

The Hon. ANNE LEVY: This legislation does not override the indentures; there is negotiation with Apcel to achieve a voluntary agreement regarding discharge and Lake Bonney. The provisions of the indentures and the Bill before us override the Act.

The Hon. R.I. LUCAS: I think the Minister might have misunderstood my question. I accept her answer because that is what the clause provides and we are not suggesting anything to the contrary. The Hon. Terry Roberts may be able to explain the procedure better than I can. There was some graphic film on local television in the South-East midway through last year, I think, showing red waters, the overflow from Lake Bonney, being emptied into the sea. I understand that the Minister takes a decision, as I said, at least once a year or a couple of times a year to drain off some of the water from Lake Bonney so that it does not flood the surrounding farming areas.

The Hon. M.J. Elliott: It is not always necessary.

The Hon. R.I. LUCAS: Let us not get into the argument whether or not it is necessary. We have three experts here, including the Hon. Mr Elliott, so I am floundering a bit. Polluted waters are drained from Lake Bonney so that it does not flood neighbouring farming land, and these waters are dumped into the sea. I am not talking about the indenture and what Apcel can do in Lake Bonney; that is a separate question. My understanding is that a polluter, the Minister in this case, takes a decision to dump polluted waters into the sea. How does the Minister intend continuing with that practice? Does she envisage being able to continue that practice by perhaps issuing herself an exemption under clause 19 or does she intend enabling herself to continue that particular procedure by issuing a licence?

If the Minister goes down that path, my further question will be: will she be subject to the sorts of conditions on licences and long-term objectives which we talked about earlier and will she be subject to the criteria that set goals—if I can use that word—to reduce the amount of pollution that goes into the marine environment?

The Hon. ANNE LEVY: I point out to the honourable member that the indenture, that is, the Pulp and Paper Mills Agreement Act, refers not only to the discharge into Lake Bonney but also to the discharge from Lake Bonney into the sea. That is covered by the indenture Act, so no licence is required because the indenture overrides the provisions of the Act. This does not mean that the Government by negotiation is not trying very hard to improve both the environment within Lake Bonney and any discharge from Lake Bonney into the sea, but that will be done not under the provisions of this Act but by negotiation with the company.

The Hon. R.I. LUCAS: Is the Minister saying that the Government's advice is that the indenture allows Apcel to dump its discharge not only into Lake Bonney but, if it chooses, anywhere into the sea; therefore, under this legislation, that will not change so that the company has the option of dumping discharge into Lake Bonney or the sea, whichever it chooses.

The Hon. ANNE LEVY: The relevant section of the indenture Act provides that the company or any other person or authority shall not be liable in any way for discharging effluent from the mill into a drain in accordance with the indenture or for the flow of such effluent from any one drain directly or indirectly into any other drain or into Lake Bonney or the sea or for any consequences of such discharge or flow or for discharging smoke, dust or gas from the mill into the atmosphere or for creating noise or odours or for any alleged consequences of such discharge, flow or creation, if such discharge, flow or creation or such consequences is or are reasonably necessary for the efficient operation of the works of the company and not due to negligence on the part of the company, its servants or agents.

The Hon. R.I. LUCAS: I thank the Minister for that response.

The Hon. M.J. ELLIOTT: As I understand it, clause 5 (3) is unnecessary. In fact, that is the essence of what the Minister has just said. One wonders why that provision has been included, rather than the Minister's reiterating the fact that a very deliberate attempt has been made to exempt this Bill, but there has been no attempt, legally at least, to try to contain the effluent discharged from this mill and that everything that will be done will be done by negotiation only and by the goodwill of the company itself. That is an unsatisfactory position. What has happened in relation to this paper mill is an example of the sorts of worries people have about the future. The Government relies upon testing being done by the company itself in relation to what is discharged into Lake Bonney.

It is well known in the South-East that the company that does its own monitoring chooses when to do that monitoring and decides when things are going into the drain and when they are not. The State Government itself had virtually no idea of what was in the lake. It did some work back in the mid-1970s. When, about 12 months ago, I asked some questions about organochlorins, concerning whether

or not the Government had done any testing and what it had found, there was no answer, simply because, as I understand it, the Government had done no testing and, therefore, had not found anything.

If that is the way this Bill works—that we do not have any independent Government testing, or only a nominal amount, and we rely upon self-testing by companies themselves—this Bill, with all the strength that we try to put into it, will still be a useless piece of paper. In any event, in the final act, a little after 12 o'clock before we go home, I am moving that clause 5 (3) be struck out, as it is unnecessary because of what exists in the indenture for the company itself. That matter needs to be addressed at another time. However, I would hope that other members might consider supporting the striking out of this subclause.

The Hon. ANNE LEVY: The Government opposes this amendment. Neither this Government nor any other Government has been in the business of abrogating indentures. Whether or not they like the provisions contained in them, no Government has abrogated indentures, and this Government is not in the business of starting to do so.

The Hon. DIANA LAIDLAW: The Liberal Party will not support the amendment for the same reasons that the Minister outlined.

Amendment negatived; clause passed.

The Hon. DIANA LAIDLAW: Before proceeding, will the Minister indicate whether or not it is her intention to report progress, because, as I understand it, the Australian Democrats have a tradition that they leave the Chamber at 12 midnight? It is important with respect to the following amendments that the Australian Democrats' views are expressed and that they are available to vote on them.

The Hon. ANNE LEVY: I, too, am rather fond of being horizontal in my own bed. However, so far, we have spent two hours and 40 minutes and have dealt with five clauses. There are another 35 clauses to be done. We have an understanding that this Bill will be finished tomorrow. There is the Clean Air Act Amendment Bill on which we have an understanding that it will be finished tomorrow. There is also the water resources legislation on which we have an understanding that it will be finished tomorrow, and there is private members' business, during which I strongly suspect a lot of people will make long speeches on a number of matters. So, we will not be starting Government business until 7.45 p.m. tomorrow night, at which stage there will still be 35 more clauses on this Bill, the whole of the Water Resources Act Amendment Bill and the whole of the Clean Air Act Amendment Bill.

Members interjecting:

The Hon. ANNE LEVY: It is going to conference, anyway. I do not see why we cannot get a move on so that it can get to conference. We could knock over a clause a minute.

The CHAIRMAN: Order! I understand that without the Democrats, who have many amendments on file, there will be a lot of resubmitted amendments.

The Hon. ANNE LEVY: It would mean resubmitting only the Democrats' amendments.

The CHAIRMAN: That is the bulk of them.

The Hon. R.I. LUCAS: We talked earlier about agreements and understandings. We had an understanding about further sittings later this week in respect of morning sittings and Thursday evening sittings on the understanding from the Attorney-General and the Whip that the Government would not sit after midnight. That was our understanding. As to the handling procedures in the Council, we waited nearly two hours after 7.45 p.m. to start this Bill when the Government, through its own choice, chose to deal with four or five other Bills. We were ready, willing and able to start this Bill. That was the Government's choice. We do not want to prolong the debate, or to argue—I am merely saying that there are arguments on both sides. I suggest we report progress, go home and come back in good humour tomorrow.

The Hon. ANNE LEVY: I merely say that in two hours and 40 minutes we have done five clauses, so there are five more to go. On that basis we have about 35 hours more to go on this Bill.

The CHAIRMAN: The Minister is in charge of the Bill, so whatever happens will be her choice.

The Hon. R.I. Lucas: Can we report progress?

The CHAIRMAN: Any member can do that.

The Hon. ANNE LEVY: I appreciate that there was an understanding that we would not sit later than this, if this is called an early night, but there is also an understanding that this Bill, the Water Resources Bill and the Clean Air Bill would be finished by tomorrow. We will not be starting them until after dinner. Before moving that progress be reported, I indicate that I do not wish to sit on Saturday or Sunday, which will be necessary if this legislation does not pass tomorrow, as indicated.

An honourable member interjecting:

The Hon. ANNE LEVY: Well, if you are not here we will get through very quickly.

An honourable member: You won't have a quorum.

The Hon. ANNE LEVY: Oh yes, we will. Our side can provide a quorum.

Progress reported; Committee to sit again.

ADJOURNMENT

At 12.15 a.m. the Council adjourned until Wednesday 4 April at 2.15 p.m.