LEGISLATIVE COUNCIL

Thursday 5 April 1990

The PRESIDENT (Hon. G.L. Bruce) took the Chair at 11 a.m. and read prayers.

PAPERS TABLED

The following papers were laid on the table:

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

Animal and Plant Control Commission—Report, 1989.

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

Senior Secondary Assessment Board of South Australia—Report, 1989.

MINISTERIAL STATEMENT: NATIONAL CRIME AUTHORITY

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

Leave granted.

The Hon. C.J. SUMNER: The Government, through the presentation of this statement, honours its commitment for a report or audit to be placed before the Parliament concerning the functions and operations of the National Crime Authority (NCA) in South Australia over the last 12 months.

This statement is presented on the basis that it is proper for the Parliament and the public to be apprised of as much operational detail as is possible concerning the Government's anti-corruption strategy, the work of the National Crime Authority in South Australia, and the functions and operations of the Anti-Corruption Branch of the South Australian police. The statement should be read in conjunction with a statement given by the South Australian member of the NCA, Mr Gerald Dempsey, at a public sitting on 22 March 1990, which I now seek leave to table and a number of parliamentary questions asked since Parliament opened on 8 February 1990.

Leave granted.

The Hon. C.J. SUMNER: Members should also be aware of the National Crime Authority's annual report. The 1988-89 report was tabled here on 8 February 1990. It is worth reminding members of the background to the establishment of the NCA office in South Australia.

On 30 May 1986 a reference was approved by the intergovernmental committee (IGO) for references to be issued by the Commonwealth, Victoria, New South Wales and South Australia in relation to a certain matter. This is South Australian reference No. 1. Pursuant to this reference the NCA has had a presence in South Australia since 30 May 1986. This led to the apprehension and conviction of former head of the South Australian Drug Squad, Moyse, and the unsuccessful charging of certain other persons.

The NCA prepared an interim report on this reference for the South Australian Government on 28 July 1988. That report indicated that the investigation under this reference was continuing, although matters canvassed in the interim report and, in particular, allegations concerning South Australian police, had concluded.

Chapter 12 containing the conclusions and recommendations of this interim report was tabled in Parliament on 16 August 1988. It is worth noting the following recommendations:

12.3 The authority however does not recommend an independent inquiry into the South Australian police such as or similar to a Royal Commission.

12.8 The authority is of the view that an anti-corruption unit should be established in all police forces and, notwithstanding the matters canvassed in the proposal referred to at para 12.6 above, it remains of the view there is strong case for the establishment of such a unit in South Australia.

The Government and the Police Commissioner accepted this advice and an Anti-Corruption Branch (ACB) has been established (see *Hansard*, 21 February 1989) with an independent auditor, Hon. W.A.N. Wells, QC, a retired Supreme Court Judge. While considering the structure of an Anti-Corruption Branch the question of whether it should be given coercive powers arose. There had previously been calls for the establishment of an NCA office in South Australia, including from Liberal Senator Robert Hill, who was a member of the Federal Joint Parliamentary Committee overseeing the operations of the NCA.

The NCA has coercive powers and can act nationally. Rather than consider granting another body such as the ACB coercive powers, it was decided to invite the NCA to establish an office in South Australia and to grant a specific reference to it to deal with outstanding South Australian matters and other matters relating to corruption raised during 1988. This reference was approved by the IGC and granted by Dr Hopgood, Minister of Emergency Services, on 24 November 1988.

The South Australian Government has been guided by the NCA in the development of its anti-corruption strategy and structures. The NCA has been in South Australia since May 1986 and, in its report (prepared under the chairmanship of Justice Stewart) of July 1988, did not recommend the establishment of a royal commission.

More recently, the present authority through its Adelaide member, Mr Gerald Dempsey, had this to say (in an interview with Keith Conlon on ABC Radio on 23 March 1990). Mr Dempsey said:

Yes. Well, we had to take an initial assessment of course of the Police Force. I mean, was it a Queensland situation? Did it seem to be a Queensland situation . . . Our initial assessment was it was not a Queensland situation, that what you had was an honest, hard working and dedicated Police Force with either individuals corrupt in it or perhaps pockets of corruption.

These comments were reinforced by comments of the Police Complaints Authority Chairman (Mr Andrew Cunningham) in an interview with Keith Conlon on ABC Radio on 30 March 1990, when he stated the following:

I happen to think, based on very extensive experience, that the South Australian Police Force is an uncommonly good Police Force. I know it considers itself the best Police Force in the world, and I can only say if there is a better one I have yet to encounter it.

The NCA's consistent advice (both from the Stewart and Faris authorities) to the South Australian Government has been that we do not have a Queensland situation in South Australia as far as the South Australian police is concerned which would justify the establishment of a Fitzgerald style inquiry. This is not to say that there are not areas of concern or that South Australia is free from links with organised crime. However, the NCA has the requisite powers to investigate these matters. Should other advice be given by the NCA to the South Australian Government we would obviously consider it.

If and when the NCA concludes its inquiries in South Australia pursuant to the SA reference No. 2, consideration will have to be given to future anti-corruption strategies and structures to deal with it. To some extent the structures adopted will depend on the NCA's overall assessment of the position. For the moment however the NCA (which is independent of the South Australian police) and the South

Australian Anti-Corruption Branch are conducting investigations and should be permitted to pursue them.

The resources currently devoted to these endeavours are as follows: the NCA has a staff of 41 persons (including seconded police), with a budget of $3.88 million for 1989-90: the budget for SA police seconded to the NCA is $630 000, giving a total of $4.51 million for the NCA office. The Internal Investigations Branch of the Police Force has a staff of 15 persons and an annual budget of $959 150. The Anti-Corruption Branch has a staff of 13 persons, and an annual budget of $604 630. In addition to the police, the Police Complaints Authority has a staff of seven and an operating budget of $347 000.

While there will be public and media debate about the operations of the NCA while these investigations are proceeding, it is important to ensure that the debate is well informed and accurate. Nothing would play into the hands of criminal elements more than to have a situation where the standing of the NCA or indeed the South Australian police was unjustifiably undermined by continual criticism which is found to have little basis.

In this respect it is disappointing that Senator Robert Hill, someone who called for the establishment of the NCA in South Australia and who is on the Joint Parliamentary Committee and therefore privy to confidential information, has seen fit recently to attack the NCA. Recently on the ABC (Conlon program of 29 March 1990) Senator Hill said 'as far as the NCA's concerned it's become an embarrassment . . .'

Senator Hill made this statement on the basis of media reports emanating from the ABC News Reporter, Chris Nichols, that certain matters had been withdrawn, apparently without checking with the NCA or in apparent ignorance of the fact that a few days before the ABC Report Mr Dempsey, at the public sitting on 22 March 1990, had specifically dealt with this issue and denied that any matters had been withdrawn, abandoned or axed.

The Hon. R.I. Lucas interjecting:

The PRESIDENT: Order! The honourable Attorney-General.

The Hon. C.J. SUMNER: South Australian reference No. 2 approved by the IGC and issued by Dr Hopgood on 24 November 1988 empowers the NCA to investigate 'bribery or corruption of or by police officers and other officers in South Australia, illegal gambling, extortion and prostitution, the cultivation, manufacture, preparation or supply of drugs of addiction, prohibited drugs, or other narcotic substances, and murder and attempted murder' in so far as these matters relate to, or are connected with, a list of nominated persons. The reference had a list of 56 names appended to it.

The press release dated 24 November 1988 of the Deputy Premier (Dr Hopgood) stated:

> The S.A. reference approved today by the IGC will enable investigation of allegations of serious criminal conduct and corruption by public officials, including police. The reference will enable investigations of, among other things, outstanding matters arising from the National Crime Authority's Interim Report (received 29 July 1988) and allegations arising from the Masters Report, the Mr X transcripts, and allegations in Parliament.

Following the appointment of Mr Le Grand on 1 January 1989, to the position of member, the NCA office commenced its operations on a practical level in February 1989. The NCA held a public sitting in February in Adelaide on Thursday 16 February 1989—and the then Chairman of the NCA (Mr Justice Stewart) stated:

> When a reference is issued, the authority is required to investigate the matters specified, with the purpose of assembling admissible evidence to enable the prosecution of persons who have been engaged in criminal activity. It will not be a Royal Commission type inquiry, such as that currently being conducted by Mr Fitzgerald in Queensland.
>
> Mr Fitzgerald has been working to reveal the patterns and structures of corruption in Queensland and to bring to the attention of the public in that State the fact that those patterns and structures are in existence and to make recommendations as to what can be done about these things. Our task here in South Australia is a rather different one and should, if sufficient evidence exists, result in the arrest or charging of persons with criminal offences and/or reports to Government which exonerate persons or provide reasons why charges have not been preferred against them.

Mr Le Grand at the same public sitting stated:

> The authority, as I see it, has a twofold function in respect of the allegations which have been made in Parliament and in the media. The first is to clear the names and reputations of innocent persons and, if possible, to lay the ghosts to rest once and for all. Secondly, if sufficient admissible evidence is available, to place persons involved in criminal conduct before the courts by the submission of a brief or briefs of evidence to the prosecuting authorities to be dealt with according to law.

On 15 February 1989, I wrote to the authority drawing to the attention of the NCA various allegations that had been raised in 1988. That letter was tabled in Parliament on 15 February 1990. My letter of 15 February 1989 made it clear that the NCA should examine all matters of corruption raised publicly by the media and in Parliament during 1988. Included in this were all the allegations in the *Page One* Masters program including those which claimed public officials (politicians, lawyers and policemen) are reluctant to tackle the issue of public corruption because they are being blackmailed. The gist of the allegations was that the blackmailers are brothel keepers involved in the drug trade who have videotaped the public officials in the brothels: the power to blackmail enables the brothels to remain open and the brothel owners to deal drugs with impunity. I also referred to the NCA allegations which related to me, including that I had visited brothels.

As I stated to the Council on 22 February 1989 on the occasion of the second reading debate of the Independent Commission Against Corruption (ICAC) Bill (which was introduced by the Hon. Mr Gilfillan), it has been and remains the Government's policy at all times to put before Parliament and the people all information which can properly be made available in relation to the corruption investigations in South Australia, whether by the NCA or by the police. However, in providing such information, the Government must exercise caution to avoid compromising current investigations, prejudicing the fair trial of persons, or prejudicing the safety or anonymity of informants. It is, however, essential for public confidence to be maintained in South Australian law enforcement agencies and their operations, and that information be given to the Parliament and the public of the steps being taken to check and eradicate corruption and criminality.

I now turn to briefings and reports by the NCA. As I have previously informed members, Mr Le Grand (the former NCA Adelaide member), furnished a preliminary progress report to me dated 30 May 1989, giving summaries of the then eight operations being conducted by the authority pursuant to the South Australian reference No. 2. After 30 June 1989, when three new members of the authority took office (the Chairman, Mr Peter Faris QC; Mr Greg Cusack QC; and Mr Julian Leckie), the newly constituted authority reviewed the priority of matters currently before it. As Mr Dempsey made clear at the public sitting on 22 March 1990, the NCA decided that one matter should take particular priority in the authority's investigations in South Australia. Mr Dempsey indicated then that no matters were axed or abandoned by the NCA—but matters were reprioritised, and resources allocated accordingly.

I should make it perfectly plain that the new direction taken by the NCA was discussed at the meeting held in Adelaide on 1 August 1989, attended by Mr Faris QC (the then Chairman of the NCA), Mr Tobin of the NCA, the Premier, the Solicitor-General and the Chief Executive Officer of the Attorney-General's Department and me. At that meeting the Premier agreed with the proposal of Mr Faris that, as a matter of priority, the NCA would investigate the allegations contained in the Chris Masters' *Page One* TV program (televised on 6 October 1988) relating to the alleged video-taping and blackmailing of senior public officials and politicians. As has been repeatedly stated, to the extent that those allegations might involve me, it was agreed that the authority would report to the Premier, and that the Premier would nominate a contact officer for liaison purposes (Mr Guerin) for that matter only. I should inform members at this juncture that the NCA (as now constituted) under the Acting Chairman (Mr Leckie) has advised the Premier that those arangements remain satisfactory to the authority.

On 30 November 1989 I wrote to Mr Faris QC at the time of the announcement of Mr Le Grand's appointment to the Official Misconduct Division of the Criminal Justice Commission in Queensland, seeking detailed reports as to all investigations undertaken by Mr Le Grand since the last report from him dated 30 May 1989. At the request of the South Australian Government, the then Chairman of the National Crime Authority (Mr Peter Faris QC) provided a report to the Commonwealth Attorney-General, pursuant to section 59 (1) of the NCA Act, containing information concerning the operations of the NCA's South Australian office.

That report has been provided by the Commonwealth Attorney-General to the State Government and, with the approval of the NCA, a schedule containing a general outline of the matters in the report has been prepared. It deals with 15 operations. I seek leave to table that schedule entitled 'Operations of the South Australian Office of the NCA'.

Leave granted.

The Hon. C.J. SUMNER: I inform the Council that, additionally, the NCA has also provided reports to the South Australian Government (pursuant to section 59 (5) of the NCA Act) in relation to three of the above operations. By reason of section 59 (5) the authority is prohibited from furnishing any matter to the IGC which, if disclosed to the public, could prejudice the safety or reputation of persons, or the operations of law enforcement agencies. In the circumstances, the authority is obliged to prepare a separate report, for transmission to the relevant Minister. Accordingly, special care must be taken with respect to their publication. In this respect two of the matters are still current. I am, however, able to provide the following information.

Media attention has already been focused on two of these matters. As to the first (Operation F in the schedule), I refer members to the following statement made by Mr Gerald Dempsey, the Adelaide NCA member at the public sitting held in Adelaide on 22 March 1990. Mr Dempsey stated:

> The (second) example concerns a system of corruption within another Government department which was disclosed to the authority. The authority has thoroughly investigated the matter. One person who is central to the corruption has already been dealt with by the courts. Much of the corruption occurred several years ago. However, the authority found that the system which had allowed the corruption to flourish was still in place in the Government department, and the authority is currently preparing a report to the South Australian Government, the main thrust of which will be directed to recommendations for reform of the administrative system in such a way that this type of corruption cannot take place without almost immediate detection.

The State Government has not yet received that report.

The second report (Operation E in the schedule), received by the South Australian Government from the NCA pursuant to section 59 (5) of the NCA Act, deals with an investigation that three persons named on the list of names accompanying SA Reference No. 2 were engaged in the cultivation of cannabis and in the bribery of police officers who were also named on the list of names. Some charges have already been laid, but the investigation has not yet been completed, and there are further matters for investigation. In those circumstances, it is not possible for any further information to be released.

The third matter reported under section 59 (5) related to Operation N and is described in the schedule. As a result of investigations, one Raymond John McKenzie (also known as Dave Power) was charged with possession of cannabis for sale contrary to section 32 (1) *(e)* of the Controlled Substances Act 1984 (SA) was committed for trial to the Central District Criminal Court on 29 May 1989, and was fined $800 on 26 February 1990.

I now turn to further details relating to the South Australian office. On 1 March 1990, I wrote to Mr Dempsey of the Adelaide NCA office seeking detailed information and statistical material relevant to the operations of the NCA office over the past 12 months. I seek leave to table that letter.

Leave granted.

The Hon. C.J. SUMNER: Mr Dempsey, by letter dated 26 March 1990, has provided the detailed information as requested. I seek leave to table Mr Dempsey's letter and report.

Leave granted.

The Hon. C.J. SUMNER: The information provided by Mr Dempsey is, in effect, equivalent to the reports provided by the NCA in reporting to the IGC, and covers the following matters:

(i) Summary of charges
(ii) Statistical report on investigations
(iii) Adelaide office structure
(iv) Funding and budgetary arrangements
(v) Broad details of operational methods.

As members will see from a perusal of the document, the major features of the summary of charges are:

There have been 29 persons charged under SA reference No. 2, with 90 charged with offences of the following nature: 32 drugs; eight firearms; one perjury; four larceny; 44 fraud; and one receiving.

Sixteen of the charges are complete; there are 69 charges pending; and charges have been withdrawn or dropped in relation to five persons.

As to the list of names of persons appended to SA reference No. 2, the NCA has advised that, of the 56 names, 19 persons have been involved in investigations by the Adelaide office of the NCA, and nine persons have been involved in investigations by the Sydney office (that is, a total of 28 persons (or 50 per cent)) on the list have been the subject of investigations.

I now turn to the Anti-Corruption Branch (ACB). As members are aware, the Anti-Corruption Branch was established on 19 March 1989 under the Police Regulation Act through directions by the Governor to the Commissioner of Police. The Anti-Corruption Branch, which is oversighted by an independent auditor (the Hon. W.A.N. Wells QC, a former Supreme Court judge) has the responsibility for dealing with all allegations of corruption, whether against the police or other public officials. The role of the Anti-Corruption Branch is defined as:

(a) undertake investigations into corruption or police misconduct or allegations of such corruption or

misconduct at the direction of the Officer-in-Charge with the approval of or acting under instructions from the Commissioner;

(b) undertake further investigations or re-investigations into matters referred to it by the audit unit with the approval of the Officer-in-Charge.

(c) monitoring the performance of the Police Force to ensure an acceptable level of compliance with general orders, established procedures and departmental policies.

(d) reviewing the operation of general orders, regulations and established procedures and departmental policies and recommending changes where such orders, regulations, procedures and policies lead to police corruption or misconduct and create a climate where police corruption or misconduct may occur.

(e) conducting periodic and random audits of specific investigations with a view to identifying any procedural or other inadequacy.

(f) conducting audits of specific investigations at the direction of the Commissioner.

(g) recommending changes to investigative procedures.

(h) with the approval of the officer in charge, referring matters to the Investigation Unit for further investigation or reinvestigation.

(i) assisting other persons or bodies with responsibility in respect of the conduct of public officials in developing practices and procedures designed to prevent or detect corruption.

As will be clear from the details of the operations given earlier in this statement, the Anti-Corruption Branch has played a significant role in working with the NCA (since the establishment of the NCA office in February 1989) in a coordinated approach to the investigations and joint operations.

The liaison arrangements between the NCA and the Anti-Corruption Branch (ACB) of the South Australian Police Department were referred to several times in the course of the public sitting on 22 March 1990. In his letter (already tabled) to me dated 26 March 1990, Mr Dempsey, the Adelaide member, stated:

I would note that, during the course of South Australian reference No. 2, the National Crime Authority has enjoyed close cooperation and assistance from the ACB. Regular liaison meetings have been conducted, which have been attended by the member of the authority in South Australia, senior investigative and legal staff of the authority, and senior SAPD officers. The purpose of these meetings is to ensure the efficient coordination and utilisation of the resources at the disposal of the two bodies. Further exchanges of personnel between the two bodies has occurred on an 'as needs' basis. For example, the surveillance group attached to the Adelaide office of the NCA has been used by the ACB in connection with investigations undertaken by that branch where the surveillance group was not immediately required for an authority investigation.

As has also been made clear, the NCA has referred material back to the ACB where such material related to matters outside the scope of South Australian reference No. 2 or 'relevant criminal activity'.

Pursuant to section 14 (1) of the directions establishing the unit, the Commissioner of Police is required at least once every six months to present a report to the Minister for Emergency Services on the operations of the branch for the period of six months immediately preceding. A report covering the period from March 1989 has been furnished to the Minister for Emergency Services.

Operational details (as furnished by Commander Bruce Gamble, the head of ACB) for the Anti-Corruption Branch are as follows: as at 19 February 1990 a total of 215 cases were registered at the Anti-Corruption Branch. Of these, 115 cases were registered at the Policy Audit Section, which was absorbed into the Anti-Corruption Branch on 29 March 1989. Since that date, a further 100 cases have been registered for investigation. The following table lists the status of all cases as at 19 February 1990. I seek leave to have inserted in *Hansard* a table which is of a statistical nature.

Leave granted.

STATUS OF CASES REGISTERED AT THE ANTI-CORRUPTION BRANCH AS ON 19.2.90

	As at 29.3.89	As at 18.10.89	As at 19.2.90
Historical	48	48	48
Terminated	36	48	62
On hold	23	43	58
Active	35	29	37
To be allocated	29	29	10
	171	197	215

The Hon. C.J. SUMNER: As indicated elsewhere in this statement, the ACB liaise closely with the Adelaide office of the National Crime Authority at regular meetings, and on an 'as needs' basis. Many of the matters listed in the report on Anti-Corruption Branch activities and their details are therefore prohibited from circulation due to the secrecy provisions applicable to the disbursement of National Crime Authority information.

As the above table makes clear, 62 matters held by the ACB have been 'terminated'. 'Terminated matters' refer to investigations which have been assessed and finalised as far as possible, in view of the nature of the allegations. All terminated matters are approved by the Commissioner and sighted by the National Crime Authority. In addition, all such matters including all the records of the ACB receive the scrutiny from the independent auditor of the ACB, the Hon. Mr W.A.N. Wells, QC.

I now turn to the Ark report. This matter has been dealt with at length in answers to parliamentary questions this year. In particular, I refer to my answer to a question asked by the Hon. Mr Lucas on 22 February 1990, in which I outlined the difficulties with the release of the report.

For completeness sake, I seek leave to table a copy of the South Australian reference No. 2 first report (the Ark report) received from the NCA on 21 December 1989 and a copy of the recommendations of the document prepared in relation to Operation Ark by the authority when chaired by Mr Justice Stewart.

Leave granted.

The Hon. C.J. SUMNER: They have already been released to the public, but I feel that they should be formally tabled in Parliament as well.

The issue of the two reports was also dealt with by Mr Dempsey in his statement at the public sitting of the authority which I have already tabled. The Government does not believe that the Stewart document can be tabled for the following reasons:

1. The status of the document is at this stage unclear.

2. The present authority does not accept many of the conclusions of the report and considers that it is unfair to individuals named in it.

3. If the document were to be released, heavy editing would be required to remove references to informants and suspects, and to ensure that there was no prejudice to the reputations of persons named in the report.

4. In the final analysis, although the Stewart document is highly critical of South Australian Police practices in relation to Operation Noah, there were no findings of corruption or illegality.

In addition to noting the less critical view of the South Australian Police taken by the NCA, chaired by Mr Faris,

QC, it is worth noting the recent remarks of the Chairman of the Police Complaints Authority, Mr Andrew Cunningham, on ABC radio (Keith Conlon, 30 March 1990). When commenting on two police named by the ABC *7.30 Report* as being subject to criticism in the Stewart document, Mr Cunningham said:

> Well, they may be on the public record as far as the ABC is concerned, Mr Conlon, but I'd like to make a comment here because I think one of my jobs is to cure injustice when I see it. The two officers who have been mentioned, including Sergeant Phillips, who was named on an ABC program, who works for the ACB—

in fact, he works for the IIB—

> are in my opinion effective investigators. I have rung both of them and said I'm prepared at any time to give them on a Police Complaints Authority letterhead and on a 'to whom it may concern' basis, a testimonial to their probity and to their investigative competence. And I believe that that is based on far more experience of their work than anybody else has had.

I now turn to the adequacy of the South Australian reference. Questions have been raised in Parliament and in the media as to the adequacy of the terms of the South Australian reference No. 2 in order to deal with allegations referred for investigation to the NCA. The text of the South Australian reference No. 2 was prepared by officers of the NCA for consideration by the South Australian Government, prior to the approval of the reference by the IGC in 1988. The reference was prepared by those officers having regard to the NCA interim report on the South Australian Reference No. 1, and having regard to the matters specified by the South Australian Government as requiring investigation, including:

- allegations touched upon, but not dealt with finally, in the interim report of the NCA to the South Australian Government;
- Chris Masters' *Page One* program broadcast on 6 October 1988;
- allegations by Mr Ian Gilfillan, Democrat member in the South Australian Legislative Council; and
- allegations by Mr 'X' (an informant in the Moyse drug trial) which were recently serialised in the *Advertiser* over a week.

The question of the adequacy of the reference to deal with the above allegations was specifically raised by Dr Hopgood with the former Chairman of the NCA, Mr Justice Stewart, at a meeting in Brisbane on 24 November 1988, prior to the IGC meeting at which the reference was approved. The Chairman agreed that there would be no difficulty in the authority's undertaking investigations in respect of the above matters specified as matters for investigation.

Dr Hopgood's public statement (made with the full concurrence of the NCA and the IGC) on 24 November 1988 (quoted earlier in this statement) clearly states that the South Australian reference would enable the investigation of the above stated matters. The State Government, from beginning to end, has not swerved from its firm commitment to have all the allegations properly investigated and resolved.

During Mr Le Grand's time in Adelaide as the NCA member, the NCA raised (on 30 May 1989) with the State Government the question of the amendment of the reference. Three possibilities were raised by the NCA as being available:

1. Amend the reference so as to delete the need to refer to an underpinning list of names;

2. Expand the reference from time to time when further names come to light during the course of investigations; or

3. Investigate matters within the categories of offences covered by the reference which are not linked to the persons named on the underpinning list as general investigations only, using ordinary police task force methods without resort to the authority's compulsive powers.

The South Australian Government had agreed to the first option, and had prepared a request that the matter be put before the IGC. However, the South Australian Government was then advised that Mr Faris (then the Chairman designate) wished for the matter to be held in abeyance, pending his taking up duty on 1 July 1989.

Following that request by the NCA, no further approach has been made to the Government relating to the reference. However, the State Government has raised the question of an expanded or amended reference three times, in correspondence, with the NCA since that time—in letters dated 26 July 1989, 30 November 1989 and 19 March 1990. In my letter to Mr Faris QC of 26 July 1989 I stated:

> The question of an expanded reference was, in the event, considered by Mr Le Grand and raised by him at a meeting with me on 30 May 1989. The Government agreed to the proposal of an expanded reference in order to ensure that full investigations be facilitated. The expanded reference was approved by the (former) members of the authority, but was deferred pending the appointment of the new members to the authority.
>
> As I have indicated I am happy to meet with you on Tuesday 1 August 1989 to discuss in some detail a program of work that you wish to have scheduled for the future in relation to the South Australian reference.

In my letter to Mr Faris QC of 30 November 1989 I stated (in relation to the discussions of 1 August 1989):

> It was also agreed that new matters would be dealt with on a case by case basis, as a matter of negotiation between the South Australian Government and the authority, and that, if appropriate, a new reference might be granted.

It is not possible to table either of the letters of 26 July 1989 or 30 November 1989 as they contain operational details. However, I seek leave to table my letter to Mr Leckie, the Acting Chairman of the authority, dated 19 March 1990, concerning the willingness of the South Australian Government to have the South Australian reference No. 2 expanded or amended to ensure that all the allegations which led to the granting of the reference can be appropriately and properly investigated.

Leave granted.

The Hon. C.J. SUMNER: The request to table this letter was made by the Hon. Ms Laidlaw in a question asked on 29 March 1990. I trust that that is sufficient response to the question.

The Hon. Diana Laidlaw: I am very pleased.

The Hon. C.J. SUMNER: Members will see from the tabled letter that the Government has been at all times concerned to ensure that proper terms of reference exist so that the NCA can investigate all allegations which led to the reference. I undertake to keep the Parliament informed of the discussions between the South Australian Government and the NCA as to any changes to the reference that might be recommended.

To conclude, the South Australian Government has set up mechanisms to deal with allegations of corruption by way of an Anti-Corruption Branch in the South Australian Police (with an independent Auditor, Mr W.A.N. Wells QC) and a regional office of the NCA (with coercive powers). Considerable resources have been devoted to this task. While many allegations have been made the consistent advice to the South Australian Government has been, in so far as the South Australian Police are concerned, that there is not a Queensland situation in South Australia.

The NCA and the ACB should now be free to get on with their task. By its very nature the NCA will tackle the difficult issues where ordinary police methods have failed. This may require lengthy and detailed research and investigation into allegations, which may in the end be found to be

groundless. However, I reaffirm the Government's strong commitment to continuing efforts to investigate and prosecute offenders involved in corruption and organised crime. This statement must, by its nature, be an interim one because investigations are continuing. Further statements will be provided by the Government and the NCA as and when required, and a further summary report given in 12 months time covering this year's activities.

SITTINGS AND BUSINESS

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

That Standing Orders be so far suspended as to enable Question Time to be postponed to a later time of the day and to be taken on motion.

Motion carried.

PARLIAMENTARY REMUNERATION BILL

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

MARINE ENVIRONMENT PROTECTION BILL

In Committee.

(Continued from 4 April. Page 1172.)

New clause 27a—'Information to be furnished at request of members of Parliament.'

The Hon. ANNE LEVY: The Government does not accept this new clause. The Government has promised to produce freedom of information legislation, which will cover all Government departments and many statutory authorities. It is inappropriate that the matter should be dealt with in each Bill that comes before us. I advise the Hon. Mr Cameron that I am well aware of the contents of his freedom of information legislation. My comment yesterday evening did not refer to his legislation at all but to the fact that when he requested dockets from the Government he did not suggest any exemption for Cabinet submissions which might be included in those dockets. That was the tenor of my remarks. I am only making this comment because of certain comments that he made yesterday evening.

The Hon. M.B. CAMERON: I regard that as a statement of pedantic nonsense. I do not believe that the Minister has in any way covered the situation that I described, that certain dockets have been used for the production of a report. The dockets are nothing out of the ordinary. Certainly, there are not going to be any Cabinet submissions in the documents that I have requested. When we have the FOI legislation, they will have to be made available, whether the Government wants to or not.

The Hon. Diana Laidlaw interjecting:

The Hon. M.B. CAMERON: Yes. If the Government was genuinely committed to FOI, it would produce these documents. I suspect that perhaps the dockets have something in them that may be a problem for the Government. If the Minister or her colleague had provided these dockets, they would not be faced with this amendment. The Minister has had five years to know what is in my FOI Bill. I insist on the amendment being passed, and I trust that it will be supported by the Committee.

The Hon. M.J. ELLIOTT: We have an excellent demonstration of some of the problems that we face where information is constantly denied both to the public and members of Parliament. The Government talks of bringing in FOI legislation, but that is still to be seen. We do not know how strong it is going to be or in what form it will be. Quite clearly, such information should be available. In an act of great faith I am going to trust the Government for one week and wait to see what its legislation contains. I will not support the amendment now but, if the Government's promised legislation in any way denies access to information that should rightfully be made available, I will not take this approach again.

New clause negatived.

Clauses 28 and 29 passed.

Clause 30—'Confidentiality.'

The Hon. M.J. ELLIOTT: I oppose the clause. Since my amendments were drafted, which were in response to the original Bill introduced in the other place, there has been a minor change to the confidentiality clause. I still have some concern. The protection now being offered in terms of not divulging information relates to trade processes. I can give the Committee an example of the sorts of things that can be tried.

I had a meeting with the Kimberly-Clark management, the owners of the Apcel mill between Millicent and Mount Gambier, the mill which is responsible for the pollution of Lake Bonney. In that meeting the management admitted that organochlorins were going into the lake. They said they had known for some time that the organochlorins were going into the lake and that they did not want to worry people and were doing further testing. I asked what the level of organochlorins was and they said, 'We cannot tell you: that is commercially confidential information. If our competitors knew how much was going in, they would know the level of our manufacture.'

That is the construction of the argument put to me and, if that construction is put in arguments advanced by other mills, they would say that the process they use will be known and that their output can be calculated. They will then argue that all sorts of information which I believe should be rightfully available to the public will be denied because of the claim that the information relates to trade processes. I do not believe there is a need for confidentiality of the sorts of information that will be gained rightfully under this Bill, and for those reasons this clause is unnecessary. The clause is a method by which information which should be divulged to the public will not be, when such information should be divulged and it should be struck out from the Bill.

The Hon. ANNE LEVY: The Government supports the clause. It is desirable to have a clause protecting the confidentiality of trade processes. There is a similar provision in the Clean Air Act. There are virtually identical clauses in the New South Wales Clean Water Resources Act. It is not an unusual clause. It is intended only to cover confidential trade matters.

The Hon. DIANA LAIDLAW: The Liberal Party also opposes the Democrats' proposition. I note that both the Government and the Opposition in another place had amendments on file to clarify the situation in respect of this provision relating to trade practices only.

The Hon. M.J. ELLIOTT: I would be pleased if either the Minister or the Opposition could explain how broadly or narrowly the definition of 'trade processes' will be defined and in what circumstances the provision will or will not be used.

The Hon. ANNE LEVY: I shall be quite happy to ask the Minister for Environment and Planning to supply that information later, without holding up the Committee now.

The Hon. M.J. Elliott: We're voting on it now.

The Hon. ANNE LEVY: I know that we are voting on it now, but the outcome of the vote has been determined.

I am happy to try to get the information for the honourable member if he would like it.

The Hon. M.J. ELLIOTT: That is something of an arrogant approach, to say, 'The vote has been determined, and I will not talk about it any more.' I am not saying that there may not be some cause for confidentiality. The interpretation could be fairly broad.

In fact, a lot of information that should be available will be denied. In this place members are being asked to support this Bill, yet certainly the Minister so far has not given an interpretation as to precisely what that will end up meaning. I wonder whether perhaps the Opposition, which is also supporting this Bill, can give an interpretation to clarify the matter so that we know what we are voting for.

The Hon. DIANA LAIDLAW: I am not the shadow Minister responsible for this Bill. My colleague, as is the Minister, is a member of the other place. The Liberal Party and Labor Party moved similar amendments in the other place. The Government's amendment was passed. The debate was held in the other place and I am happy at this stage to see the clarification that this provision does relate to trade processes. That is realistic and I would argue that it is not seen as a means to deny, at whim, information to the public. As the Australian Democrats would know, there are so many other efforts we have made in amendments throughout this Bill to ensure the public is informed about a whole range of processes and practices.

Even within the committee meetings minutes are to be made available so the public can be kept informed. I would think the public awareness efforts, which have been made through amendments to this Bill, would ensure that the confidentiality provisions which I believe are a must in this Bill, will be narrow in terms of their application.

The Hon. M.J. ELLIOTT: I was not questioning the motivation of the clause. What I was questioning was whether or not the purpose and the effect will be one and the same. Certainly, the arguments have not convinced me that they will be.

The Hon. DIANA LAIDLAW: I do not want to continue this argument. It is easy to look at that clause in isolation. I suggest the honourable member look at the clause in the context of the whole Bill and particularly the Bill as has been amended in this place.

Clause passed.

Clauses 31 and 32 passed.

Clause 33—'Evidentiary provisions.'

The Hon. DIANA LAIDLAW: I move:

Page 15—

Line 26—Leave out paragraph *(d)*.

Line 38—Leave out 'prescribed matter' and insert 'a pollutant'.

These are consequential.

Amendments carried; clause as amended passed.

Clauses 34 to 36 passed.

Clause 37—'Proceedings for offences.'

The Hon. DIANA LAIDLAW: I move:

Page 16, line 34—Leave out '$100 000' and insert '$150 000'.

This is consequential.

Amendment carried; clause as amended passed.

Clause 38—'Orders for ameliorative action, compensation, etc.'

The Hon. DIANA LAIDLAW: I move:

Page 17—

Line 18—Leave our '$100 000 or division 4 imprisonment, or both' and insert '$150 000 or division 3 imprisonment, or both'.

Line 19—Leave out '$500 000' and insert '$1 000 000'.

These, too, are consequential.

Amendments carried; clause as amended passed.

Clause 39—'General defence.'

The Hon. DIANA LAIDLAW: I move:

Page 17, lines 22 and 23—Leave out paragraph *(a)* and insert—

(a) that that alleged offence—

(i) did not result from any deliberate or negligent act or omission on the part of the defendant; or

(ii) was reasonably justified by the need to protect life or property in a situation of emergency that did not result from any deliberate or negligent act or omission on the part of the defendant;.

The Liberal Party believes that this is an important amendment to the general defence provisions of this Bill. There has been some confusion and a lot of discussion in relation to the success of our amendment last night to delete the exemption provision of this Bill. It was thought that the exemption provision was not needed because of the general defence provisions of the Bill. However, we believe that the defence provisions are narrow and should be expanded to allow for a case that can be reasonably justified by the need to protect life or property in a situation of emergency, and not simply as is provided in clause 39 (1) *(a)* where it could be argued that an offence can be defended on the grounds that reasonable care was taken to avoid the commission of the offence.

There are instances, for example, such as a ship at sea where a deliberate decision—not one that could have been avoided—is taken to pollute and this would be an offence under the clause as it now stands. In such an instance, where there is a deliberate decision to pollute, while that would be undesirable, of course it may also be deemed necessary to protect life or property in a situation of an emergency. We believe that this addition to the amendment is an important one under the general defence provisions of this Bill.

The Hon. ANNE LEVY: The Government opposes this amendment. It is tied up with the clause which was removed from the Bill last night relating to the Minister's powers for one-off exemptions. The Government has all along taken the view that it is better to be proactive rather than reactive. If there is an emergency situation we would rather be notified of it beforehand than have it occur and then have a defence available through the courts afterwards. It is better to be proactive than reactive in this way.

I reiterate that the exemption clause, which was removed, was designed for these one-off situations. The Opposition has not anticipated a future situation where a person has yet to discharge in the one-off situation and, in such circumstances it is surely desirable that the Government be informed and know of the event before it happens rather than rely on industries justifying their actions through the courts afterwards.

The Hon. Diana Laidlaw: I couldn't agree more.

The Hon. ANNE LEVY: That was the purpose of the exemption clause, which was removed by the Opposition last night, and making this addition to clause 39 very much takes the view that we do not want to know beforehand, but one can have an excuse afterwards when one is taken to court. That does not seem the correct approach. It is certainly not designed for cooperation between Government and industry; rather, it will get people's backs up.

The Hon. R.I. Lucas: What if the Government were told that someone wanted deliberately to dump something because of an emergency situation?

The Hon. ANNE LEVY: They would get a one-off licence.

The Hon. R.I. Lucas: Yes, the Minister would issue a licence, so you would have discussions with industry.

The Hon. ANNE LEVY: Yes, but your system, which starts by deleting the exemption clause so that that is not possible and then inserting this provision later, results in no consultation beforehand; the industry will just do it, and then, if it is taken to court afterwards, it can use the defence that it was reasonably justified. That is reactive rather than proactive; it will not lead to good relationships. It would be much better for the Government to know ahead rather than having t take industry to the courts afterwards where it can plead this defence.

The Hon. DIANA LAIDLAW: I would not question one aspect of the statement just made by the Minister and I support everything she said. I did not explain sufficiently clearly last night why we were removing the exemption clause, so I accept responsibility for that. However, again I highlight one aspect of that exemption clause in the light of what the Minister has just said. Clause 19 (2) provides:

> The Minister must, in determining an application for an exemption, take into consideration any matters that would be required to be taken into consideration if the application were one for a licence . . .

What we argue is that if, for the purposes of an exemption, the Minister was required to consider all matters that would have to be considered if the application were one for a licence, a licence rather than an exemption from a licence should be issued, because both processes have to consider all matters that must be considered for the purposes of issuing a licence. Therefore, I do not think we have any quarrel in the fact that it is better to be proactive in respect of the example that the Minister gave of a pollutant that is yet to be discharged. I would argue that, as the Government has defined the exemption provisions, the circumstances regarding a pollutant yet to be discharged should require a licence. Therefore, I do not believe it would even need the general defence provisions before the court.

The Hon. M.J. ELLIOTT: I support this amendment. If one looks at the conditions under which the Government proposes that an exemption be granted, there is a requirement to go through applications, matters and forms determined by the Minister and to use a prescribed fee. Exactly the same thing will happen in relation to a licence. What the Opposition and the Democrats attempt to do in this whole Bill is to remove, as far as possible, doubts about how this legislation will apply and when people will and will not be allowed to cause pollution.

If a person is caught in an emergency situation, they have two choices. One is to apply for a licence. If they do not have time and have to make a decision on the run, then I think this amendment establishes the reasonable grounds for causing contamination. I do not any longer see the need for an exemption clause—I am not sure it was ever necessary—but, as we have attempted to tighten up the procedures for licences, I do not think that the exemption clause as it stood could possibly have remained.

The Hon. ANNE LEVY: I do not wish to prolong this discussion, but I point out the Opposition's suggestion that, in an emergency situation, a licence must be obtained.

The Hon. Diana Laidlaw: I was arguing in relation to when you said 'a deliberate discharge'. You said 'matter yet to be discharged'—that was your example.

The Hon. ANNE LEVY: That is, that an emergency situation is arising and that there will be a discharge that cannot be prevented. The honourable member believes that in those circumstances a licence should be applied for. We are talking about emergency situations, as is this amendment to clause 39. If the honourable member feels that a licence is required or desirable in those emergency situations, the Marine Protection Council (which the Opposition has inserted in the Bill) is the body to determine the conditions of licences. It will be an unwieldy situation regarding an emergency.

The Hon. DIANA LAIDLAW: I will not prolong this debate, but the Minister is confused about the issue. Generally, she is quick to catch on but she has not done so this time. I will not prolong the debate.

Amendment carried.

The Hon. DIANA LAIDLAW: I move:

Page 17, line 25—Before 'offence' insert 'alleged'.

This is consequential.

Amendment carried.

The Hon. DIANA LAIDLAW: I move:

Page 17, line 26—Leave out 'prescribed matter' and insert 'any pollutant'.

This is consequential.

Amendment carried; clause as amended passed.

New clause 39a—'Standing before courts, etc., in relation to matters under this Act.'

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

Page 17, after line 32—Insert new clause as follows:

> 39a. Notwithstanding any other Act or law, no court, body or person with powers to adjudicate upon, review or investigate matters relating to the administration of this Act may decline to hear or entertain any application or complaint with respect to any such matter on the ground that the applicant or complainant lacks any financial or special interest in, or is not directly affected by, the matter, but the court, body or person may decline to hear or entertain the application or complaint if satisfied that it is vexatious, officious or trifling.

This new clause is similar to clauses that I have moved previously where I have attempted to grant fairly wide standing in the courts in relation to matters covered in this Bill. What I am seeking now is third party standing before the courts and allowing standing to people generally. For instance, matters might appear before the Ombudsman, and at present certain people would be denied the opportunity to go to the Ombudsman.

The Hon. Diana Laidlaw interjecting:

The Hon. M.J. ELLIOTT: Certainly some of these things are being tested in the courts at present. I keep pursuing this matter generally because I think it is inevitable that it will come to South Australia. It has progressively been introduced in the United States; it exists in Federal law and in a number of States. It was introduced in New South Wales originally by a Labor Government, but has been further expanded by Liberal Governments. In relation to this Bill, it has been noted over and over that clause 4 binds the Crown. On many occasions the question has been asked, 'How can we ensure that it will bind the Crown? Who will make the Crown fulfil its obligations?' I have enough concern—

The Hon. Peter Dunn interjecting:

The Hon. M.J. ELLIOTT: That is exactly what I am talking about. The point I am making at this stage is that only certain people will be able to test it in a court of law—that only certain people may be granted standing. That is the very issue that I am addressing right now.

Let us imagine that we had banned a particular release of effluents into an area, a release occurred, and the Minister decided not to prosecute. What would happen if the body which released that banned substance was the E&WS Department itself? Who could initiate a prosecution? If professional fishermen were active in the area they might be able to do so. If it happened to be an area of high natural importance, say, a breeding area for a particular fish or something, who would have standing in that instance? Who could force the E&WS to clean up? There may be no-one at all in a position to test it.

All I am asking is that the citizens of South Australia be given the power to ensure that an Act of Parliament is

complied with. People say that all sorts of meddlers will become involved, but I have made quite clear on a number of occasions (and it is in this amendment) that a person can be denied standing should it be found that they are being vexatious, officious or trifling. But, if a person has a legitimate complaint and is simply trying to have the law of the land complied with, particularly if the Government is being taken on, we should grant him that standing.

I find it very hard to understand why so far, when this matter has been raised in the past, there has been resistance to it. Certainly, it is new in South Australia. However, I point out that the Attorney-General himself set up a committee which reported several years ago now and which recommended the need for laws on standing and—surprise, surprise—nothing has happened. It is a bit like FOI and other matters. I think it is about time that this Parliament took it upon itself, on an Act by Act basis, to grant standing. In fact, it might be an easier way to go.

The Hon. M.B. Cameron interjecting:

The Hon. M.J. ELLIOTT: Well, at least theoretically something is coming in a few days. So, even if people are not willing to accept that there is a need for general standing across all Acts of Parliament, perhaps they can look at it on an Act by Act basis and say, for instance, in the case of the marine pollution legislation, that this may be a place where we cannot see major problems and the public should be granted what I believe is their democratic right—to insist that the laws of the land are complied with.

The Hon. ANNE LEVY: The Government opposes this amendment on the basis that as the Bill currently stands, or as the situation currently exists, a review of decisions is not restricted to persons who apply for a licence, etc. Third party appeals are recognised if the applicant can establish standing before the court. The precedent has been established clearly in the Wilpena development case, where a person or a group that had established a continuing interest in an area was entitled to standing.

An honourable member: It hasn't been decided yet.

The Hon. ANNE LEVY: It is a court decision. It is still under appeal. However, the lower court has ruled—

The Hon. R.I. Lucas: Did they rule today that it had standing?

The Hon. ANNE LEVY: No, this was some time ago.

The Hon. R.I. Lucas: This morning a decision came down.

The Hon. ANNE LEVY: That it had standing?

The Hon. R.I. Lucas: They lost their case. I am just updating your information; that is all.

The Hon. ANNE LEVY: A third party can establish a continuing interest in an area and thus have standing. In consequence, the amendment moved by the Hon. Mr Elliott is not necessary.

The Hon. DIANA LAIDLAW: The Liberal Party will not accept this amendment. I do not deny the Hon. Mr Elliott's statement that it is inevitable. It will come. My colleagues appreciate the situation in New South Wales. There is a diversity of opinion in the Liberal Party on this question—I freely acknowledge that. We also appreciate that the Law Reform Commission and an earlier Government report both recommended such changes. At this stage the Liberal Party believes—as we have argued for the whole issue of tribunals and the proliferation of Acts on environmental matters to be looked at, and we urge the Government to undertake that action—that there should be an overall review of this issue of standing.

New clause negatived.

Clause 40—'Regulations.'

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

Page 17, after line 36—Insert paragraph as follows:

(aa) set standards in respect of the quality of waters in relation to specified areas;.

This amendment is consequential on an amendment moved and passed on Tuesday to clause 3. So, I do not think I need speak to it further.

The Hon. DIANA LAIDLAW: The passage of clause 3 and the definition of 'applied water quality standards' means that this amendment is consequential. However, I believe the Minister has further amendments to clause 3, and that clause will be reconsidered. So, I suspect that this clause will have to be reconsidered as a consequence.

The Hon. ANNE LEVY: There is obviously some confusion. We have on file a further amendment to clause 3 relating to criteria and standards which would make more sense of the amendment moved by the Hon. Mr Elliott. I am not sure whether it would be necessary.

The Hon. M.J. ELLIOTT: I suggest to the Minister that, as this amendment is consequential on one that has already been passed, it probably makes sense for consistency at this stage to pass the amendment. When we get to the end of the Bill we intend to resubmit a number of clauses and then, as we go through clause 3, there may be some other consequential changes again. However, we must make sure that we have the cart and the horse in the right order.

I also suggest that perhaps when we get to the end of the Committee stage, first time through, it would be worth while to report progress and go on with the Water Resources Bill, which is also urgent. That would give us a chance to sort out some of the inconsistencies. It would mean that we would send something far more coherent back to the Lower House, rather than doing it on the run.

The Hon. ANNE LEVY: I am sorry for the confusion, but I oppose this amendment, although we will propose a further amendment to clause 3. However, the Hon. Mr Elliott's amendment is a duplication of what is already in the clause. If the honourable member looks at clause 40 (3) *(b)*, he will see that it provides:

(3) A regulation under this Act—

(b) may incorporate or operate by reference to any code, standard or other document prepared or approved by a body or authority referred to in the regulation and as varied from time to time by that body or authority or the regulations.

Once we have put in definitions of 'criteria' and 'standards', regulations relating to those can be established under the powers of clause 40 (3) *(b)*. It is quite unnecessary also to have the amendment proposed by the Hon. Mr Elliott.

The Hon. Diana Laidlaw: Except that his definition of 'standards' is different from your own, and that is why he wants this, because it relates right back to his applicable water quality standards; that is where all the confusion started in the first place.

The Hon. ANNE LEVY: As I said, we oppose it because we are proposing definitions of 'criteria' and 'standards'. Clause 40 (3) *(b)* will adequately cover the situation of prescribing figures by regulation. We do not need to say more than once that there is the power to do that.

Amendment carried.

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

Page 18, after line 4—Insert paragraph as follows:

(ab) leave a matter in respect of which regulations may be made to be determined according to the discretion of the Minister;.

This again is consequential on other amendments that have already been carried.

The Hon. ANNE LEVY: What is it consequential on? My advisers are having problems in understanding what it means.

The Hon. M.J. ELLIOTT: Several clauses which have tried to set absolute standards, criteria or whatever have already been inserted into this Bill by way of amendment. We need to recognise that within the regulations there may still be a need to have some matters at the Minister's discretion. I am advised that if we are to start setting absolute standards, etc., and we want some discretion still to be allowed in certain areas, such an amendment will become necessary. That is legal advice that I have received. I know what I wanted, and I am advised that that is the effect of it.

The Hon. ANNE LEVY: As I understand it, the amendment proposes that, if there is some question about which regulations can be made, a regulation could be made giving discretion to the Minister—

The Hon. M.J. Elliott: In certain areas.

The Hon. ANNE LEVY: —in some areas. One could have a regulation which gave discretion to the Minister. Such a regulation, of course, would have to be acceptable to the Parliament because any such regulation could be disallowed. However, if Parliament wished, it could, by means of such a regulation, give discretionary powers to the Minister on a particular matter, because obviously it will relate to a particular matter. If that is what the honourable member is intending, we would be happy to accept it. There will always be parliamentary scrutiny of that regulation, anyway.

The Hon. M.J. Elliott: Parliamentary scrutiny of the discretion which is granted?

The Hon. ANNE LEVY: Yes.

The Hon. R.I. LUCAS: Obviously, the Democrats and the Government together have the numbers on this amendment, so I speak from a position of some weakness. I acknowledge that and therefore I will not prolong my remarks. I have some concerns about what is being done here. Whilst I concede that eventually the Parliament has some overview on regulations, regulations have the force of law from the time of enactment. Let us say that the regulation that the Hon. Mr Elliott wants here to provide discretion to the Minister in relation to a standard, as he says, is introduced, say, soon after the Easter weekend and it gives the Minister discretion in relation to a particular standard as he argues it. The Parliament might not be sitting. Theoretically, we do have an oversight and Parliament can overturn a regulation within a certain period. However, Parliament sits only at the whim of the Government. In this case it is unlikely that it will be sitting until August of this year.

So, from April through to August the regulation through which the Hon. Mr Elliott wants to give power to the Government in relation to giving the Minister a discretion on a standard would, on my understanding, have the force of law from April right through until August and, indeed, up until such stage as the Parliament took a contrary view. I am not on the Subordinate Legislation Committee, but my understanding is that, for example, the Parliament knocked off regulations and bylaws concerning the South Australian College of Advanced Education—a matter with which the Hon. Mr Elliott and I were familiar—whereupon the college proceeded to bang on similar regulations in quick succession, and we were back in Parliament trying to fight that case.

In earlier days, I recall discussions in relation to parking bylaws and such things, where the Parliament expressed a view and regulations were banged on again by the Minister and the Government, again in very short order. So, whilst I concede that the Parliament does have an overview on regulations and can express a view, I am surprised at the attitude of the Australian Democrats—in particular, the Hon. Mr Elliott—in relation to this matter, as I see this as potentially opening up a significant loophole for the Government in this area. I am not sure whether all members in this Chamber are aware of the full ramifications of this little addition to clause 40 of this Bill. As I said, the Hon. Mr Elliott has already indicated the Democrats' position, and the Government, rather gleefully, I thought, is supporting the position.

The Hon. Mr Elliott may like to reconsider—whether it be now or perhaps later this afternoon—the full import of this change before we, as a Parliament, lock ourselves into giving the Minister such discretion. I urge the Hon. Mr Elliott perhaps to have another think about this change before we commit ourselves to it.

The Hon. M.J. ELLIOTT: I believe that on this matter, which would have very wide public interest, any Government which tried to play the game of constantly reintroducing the same regulations which were constantly knocked off in the Parliament would look extremely foolish. The Government has got away with it in relation to exotic fish on a couple of occasions because not a large number of South Australians were aware of what was happening. I think that in relation to this sort of serious matter, if the Government wanted to get up to mischief on this, it could end up with egg on its face very quickly. I think the fear of constantly reintroducing something each time regulations have been disallowed is not valid.

The other question is what might happen in the one-off situation. I do not see that standards generally would be a matter for the Minister's discretion. However, there may be aspects of water quality, for instance, which cannot be easily measured. It is one thing to talk about the levels of cadmium, which can be measured in micrograms per litre, but there may be other water standards one might want to consider. It may be odour that one wants to talk about, or various other things such as that, upon which one wants some sort of discretion. Odour cannot be measured, for example. Quite clearly, I do not see the Parliament granting discretion on standards generally. Perhaps, if there is an interim period as we are introducing standards we may want to, while the study is being carried out, allow discretion for six months or something, so long as the regulation makes clear the bounds of the discretion. As long as the Parliament knows the bounds of that discretion it will not be a problem. It is when the discretion is completely open that there is a problem.

The Hon. J.C. BURDETT: I take the same stand as the Hon. Mr Lucas. I am opposed to this amendment. I believe it is unnecessary and improper to give wider discretion to the Minister than is already in the Bill. I believe the principal danger is the lapse in time between when the regulation is made and when it is tabled in Parliament. It could—as the Hon. Mr Lucas pointed out—be considerable in either the winter or summer recess.

So, in my view, it is not necessary to grant more discretion to the Minister. It is strange for the Hon. Mr Elliott in particular, and for Parliament in general, to seek to give more power to a Minister. Generally, we are trying to retain power for the Parliament. I am opposed to the amendment.

Amendment carried; clause as amended passed.

Schedule 1.

The Hon. R.I. LUCAS: In the second reading stage, I raised some questions in relation to the transitional provisions. Can the Minister and her advisers provide some information in relation to the question I raised? They did refer to parts of it during the Committee stage last evening. Is there any further response?

The Hon. ANNE LEVY: Regarding transitional arrangements, I have to point out that the colloquial expression normally used is to 'grandfather in previous operators'. This term supposedly comes from restricted licensing of Mississippi riverboat captains who, in order to qualify, had to show that their father and grandfather had also been captains. (*Hansard* records the Hon. Mr Lucas as using the word 'godfather' which has slightly different connotations.)

We believe the actual requirement is clear. All industries which had been discharging up to the commencement of the Act would be entitled to a licence. They will be allowed eight years to bring levels of matter in their discharge down to what would accord with the criteria for local waters. This would not be a virtual exemption from reasonable controls for seven years and 11 months. Industries would be expected to show progress toward the objectives well before the eight years had expired. They would be expected to go down in that way.

As was outlined in the White Paper, we would not expect the fall to be linear. In most cases levels would fall in steps as new process technology or waste treatment was introduced. Exceptions would be sewerage outfalls, some of which would go from full discharge of sludge to no discharge over a matter of days, once the alternative treatment was ready. Surveys of discharges around the coast of South Australia have not identified any which discharge materials listed in the annex to the London Convention, the so-called black list at such concentrations or under such conditions that they could not be brought to an acceptable level within a period of eight years.

The final compliance time originally proposed at 15 years but now eight years, would have to relate to the most difficult case. We note that many conservation groups have referred to what most industries could comply with to justify their chosen compliance time. The effect of legislation is that all industries have to comply by the time chosen. These understandings are for transitional arrangements. The White Paper also made it clear that wholly new operations after commencement of the Act would be expected to comply with acceptable levels, that is, unlikely to produce any impact on the marine environment from the very first day of discharge after perhaps a commissioning period.

The White Paper also recognised that a new business could consider setting up on the same site as, and including itself in, the corporate shell of an existing business which had a licence issued under transitional arrangements. At no time would an operation be allowed a long term increase in contaminant levels, but there could still be a *de facto* trade in pollution entitlements. Unfortunately, there is no simple practical way of preventing this. At least it would not add to the load, although it would not decrease it quite as rapidly as one might have hoped.

The Hon. DIANA LAIDLAW: I move:

Page 19—Leave out from subclause (2) 'eight years' and insert 'seven years'.

The Liberal Party moved a similar amendment in another place. At that time the transitional provisions provided for a 15-year period from the commencement of the Act. Our understanding, in the interval between when the Bill was in another place and its arrival here, is that seven years is an appropriate time and acceptable to major industries in this State. The Australian Democrats have recommended five years.

That was one proposition put to us, that most of the major industries in South Australia could meet the requirements envisaged in this Bill. However, we appreciate that the E&WS Department would have some difficulties with five years and, therefore, we will not be supporting the Democrats' amendment. In respect of seven years or eight years, as the Hon. Mr Cameron and others have said in this debate, we believe that there is some merit in placing some pressure on the department and the Government's commitment to the whole issue of the marine environment by bringing back the period from eight years to seven years.

The Hon. ANNE LEVY: The amendment is not acceptable to the Government, quite categorically. Enormous capital costs are involved—up to $30 million—to implement what is desirable, plus additional recurrent costs. The Government is committed to providing those resources in the next eight years, but it would be impossible for the Government to do it in seven years without raising charges in some other area or making some section of the community do without a service which it currently has and which it has every right to expect.

It is just not financially possible to do it within seven years, but the Government has agreed that it will do it in eight years, where originally it had wanted 15 years. In good faith the Government came back to eight years, but it is not feasible to go beyond that.

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

Page 19—Leave out from subclause (2) 'eight years' and insert 'five years'.

My amendment cuts the transition period to five years. I am reminded of the time three years ago when I first moved a Bill in this place to ban the use of chlorofluorocarbons for certain purposes. Representatives of the Aerosol Manufacturers Association were on the next flight from Sydney claiming that this was outrageous. They said, 'You are going to close all our factories down and we will not be able to compete. You will throw thousands of people out of work. We simply cannot do it.'

Consumer resistance built up such that before this Government had even legislated, they had stopped using CFCs entirely. They had asked for 10 years but it ended up happening in less than two years. I have heard no reports of thousands of people being thrown out of work or of many factories closing down. These companies will always state a case to drag out these changes as long as possible. That is perfectly understandable. That is the way that the profit motive works. I believe that five years is ample. When one looks at the guilty parties in respect of marine pollution, I believe that they are capable of responding quickly, because in most cases they have known of the problems. BHAS has known since 1982, and probably through the 70s, of the severity of the problems created.

It really has not done anything because no-one ever required it to do anything. That is plain in quite a few reports that I have in my possession. It is really waiting for legislation. To then start considering giving very long periods of transition becomes absolute nonsense. Change can happen quickly as long as it is not unreasonably quickly and I do not believe five years is an unreasonable period of time. I urge support of members for that amendment.

The Hon. Mr Elliott's amendment negatived.

The Hon. Miss Laidlaw's amendment carried.

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

Page 19—Leave out subclause (3) and insert new subclauses as follow:

(2a) A licence granted by virtue of subclause (1) may be renewed by the Minister during the period for which the conditions referred to in subclause (2) apply in relation to the licence notwithstanding that the activity for which the licence renewal is sought is of a kind for which a licence renewal would not be granted apart from this subclause.

(3) Where the Minister grants or renews a licence by virtue of this clause, no person, other than the licensee, is entitled to make an application for review of the decision to grant or renew the licence or the conditions imposed on the licence pursuant to this clause.

As a consequence of some of the amendments that have been passed there is some need for tidying up in the transitional provisions. We have already said under what conditions the Minister can and cannot grant a licence, and what these amendments are setting about doing is to take account of what was originally attempted to be achieved within the transitional provisions and not to create a conflict between the provisions themselves and the Bill. What the amendments are doing is allowing to occur what the Government intended, allowing for the fact that there had been amendments within the body of the Bill itself.

The Hon. ANNE LEVY: The Government supports this amendment. I am not completely sure why; I think it is tied up with lawyers' law. Apparently, legal advice is that it will make sense of what otherwise might not have been, even if the transitional arrangement itself does not make much sense to most of its non-legal readers. However, I will happily support it on that basis.

Amendment carried.

The Hon. DIANA LAIDLAW: I move:

Page 19—Leave out from subclause (4) 'prescribed matter' and insert 'any pollutant'.

This is consequential.

Amendment carried; schedule as amended passed.

Schedule 2 and title passed.

Bill recommitted.

Clause 3—'Interpretation'—reconsidered.

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

Page 1, after line 17—To strike out the definition of 'applicable water quality standard'.

Subsequent amendments have now made this earlier amendment unnecessary. It was a very good one until the Liberal Party decided it could do it differently and better. I am not too hard to get on with, so I am now moving this definition be struck out. It has lost its meaning because of other changes that have occurred elsewhere.

Amendment carried.

The Hon. ANNE LEVY: I move:

Page 1, after line 24—Insert definition as follows:

'criteria' means limits or tolerances relating to the effect of prescribed matter and water quality characteristics on uses of water:

Page 2, after line 6—Insert definition as follows:

'standards' means limits or tolerances relating to the quantity, quality or rate of discharges, emissions or deposits of prescribed matter:.

I am certainly not going to go into a long debate about this. The Government is happy to move for these definitions in response to discussions that took place both in the second reading and Committee stages.

The Hon. DIANA LAIDLAW: In general terms, the Liberal Party is very pleased to see the Government take the initiative to introduce these two definitions. However, as a consequential amendment, I move:

In the definitions of 'criteria' and 'standards' to strike out 'prescribed matter' and insert 'pollutant'.

The Hon. ANNE LEVY: I am happy to support that amendment in an attempt to be consistent at this stage. Obviously, if 'prescribed matter' is going to be removed everywhere in the Bill and 'pollutant' inserted this must be in conformity. If at some stage a decision is made not to do that then this will have to change back along with all the others. On that basis I am happy to support it.

The Hon. Anne Levy's amendment carried.

The Hon. Diana Laidlaw's amendment carried.

Clause as amended passed.

Clause 40—'Regulations'—reconsidered.

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

Page 17, after line 36—To strike out paragraph *(aa)*.

This is consequential on what we did a little earlier.

Amendment carried; clause as amended passed.

Bill read a third time and passed.

[*Sitting suspended from 1.2 to 2.15 p.m.*]

QUESTIONS

NATIONAL CRIME AUTHORITY

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

Leave granted.

The Hon. K.T. GRIFFIN: The documents tabled today by the Attorney-General identify the South Australian Housing Trust as having been the subject of investigation under Operation B. Operation F involved another Government department which has not been named. According to the NCA, much of the corruption involved occurred several years ago. However, it has also found that the system which had allowed this corruption to flourish was still in place in the unnamed department. My questions to the Attorney-General are:

1. What is the State Government department in which corruption was identified through Operation F of the National Crime Authority? If the Attorney-General will not name the department, can he indicate why he will not do so?

2. What was the nature of the corruption identified?

3. What steps have been taken to ensure that it does not occur again?

The Hon. C.J. SUMNER: There is nothing particularly new about that matter, which was dealt with by Mr Dempsey at his public sitting on 22 March 1990. My ministerial statement this morning in fact quoted directly Mr Dempsey. It will be seen from the statement that that matter is still before the NCA. It is also indicated that one person who was central to the corruption has already been dealt with by the courts. The NCA has indicated that it is preparing a report for the Government, which we will be able to consider and, presumably, from what Mr Dempsey has said, that report will contain recommendations relating to reform of the administrative system.

Furthermore, I am not sure whether the investigative side of this matter has been finally concluded. I could check that—it may have been—but, in any event, whether or not the investigation has actually been concluded, as far as the NCA is concerned, it is still before it. It will produce a report and I anticipate that, as it is a report dealing with structures, et cetera, it will be possible to table at least parts of that report when it is received. However, I do not think I should at this stage pre-empt the receipt of that report, particularly as matters may still be before the authority that are current in relation to the matter.

The Hon. K.T. Griffin: I asked you about the Housing Trust.

The Hon. C.J. SUMNER: Just a minute. In relation to Operation F, the schedule of operations indicates (and that schedule of operations was provided I think at the end of January, so that was two months ago) that the NCA's involvement in the matter is therefore continuing. I note it says that a final report in the matter is expected within two months.

Then, the more updated statement is from Mr Dempsey at his public sitting on 22 March where he indicates that a report is being received. So, I think the best way to deal

with this matter is to let the NCA conclude the investigation to its satisfaction, let the Government have its report, and we will then make a statement about it at that time.

The Hon. K.T. GRIFFIN: As a supplementary question, first, do I take it from what the Attorney-General has said that no action has been taken to change the procedures or system which, according to the NCA, were in place when the corruption (which is referred to in the NCA report) was flourishing? Secondly, can the Attorney-General indicate why it is appropriate to name the Housing Trust (from memory, five persons have been charged, three of whom are still under investigation), but not name the unnamed department in respect of which I have raised the question?

The Hon. C.J. SUMNER: It may be appropriate to name the department. Certainly, there is no question that it will be named at the time the report is received. I think that the naming of the department was done by Mr Dempsey in his public hearing. That is how we have got the names of the department in relation to a certain operation. In fact, Mr Dempsey did not name the Housing Trust either, so I can only assume that, in relation to the Housing Trust, two and two have been put together, because it is public knowledge—

The Hon. K.T. Griffin: It was named in your statement today.

The Hon. C.J. SUMNER: Two and two have been put together with respect to that matter.

The Hon. K.T. Griffin: I only named it because it was named in the statement today.

The Hon. C.J. SUMNER: That is fine; I am not worried about it. Frankly, I do not think it is of any great moment, because it is known that people, who were working for the Housing Trust, have been charged in relation to certain offences. That has been on the public record. In relation to the other department, there was a charge also that has received publicity, so I do not see any problem in naming the department eventually. My only caution is that it has not been named to date—and I would not want it named if that might prejudice any further attention that the NCA might want to give to it. However, I indicate to the honourable member and the Council that, when the final report is received, the department will be named.

MINISTERIAL STATEMENT: BEVERAGE CONTAINER REGULATIONS

The Hon. ANNE LEVY (Minister of Local Government): I seek leave to make a statement.

Leave granted.

The Hon. ANNE LEVY: I wish to make a statement about South Australia's Beverage Container Act, which is recognised nationally as both an extremely successful piece of anti-litter legislation and a very successful recycling incentive for the State.

Members will recall the High Court challenge to the Act by the Bond Brewing Company. The High Court found that the 15c deposit for non-refillable and 4c deposit for refillable bottles meant that interstate trade by the Bond companies suffered commercial disadvantage.

As a result of the High Court decision, the Government moved to review the sections dealing with the value of refunds on beer and wine cooler containers and the mechanisms by which these containers are returned for refilling or recycling. Today, the Minister in another place has tabled a new, consolidated set of regulations attached to the Act which ensure the retention of the intent of the legislation, namely, to discourage littering and encourage recycling.

A 5c deposit will now apply to all beer cans and all beer and wine cooler bottles which are returnable via container collection depots, commonly known as marine store dealers. Alternatively, manufacturers of glass, beer and wine cooler containers can decide that the refund for their containers will be given at point of sale, where a 10c deposit will apply.

The reason for the difference is that consumers traditionally are less likely to return containers to a point of sale and a 10c deposit will encourage them to do so. The most obvious change to the regulations is that there is no longer a difference between the refunds for refillable versus non-refillable glass bottles.

In 1990, this is not a major issue. Energy audits and recent statistics indicate that there is little difference between the energy used to wash and refill glass bottles and the energy used to crush the bottles and make new ones. The regulations that the Miniser has tabled today follow extensive consultation with numerous organisations including the South Australian Brewing Company, Coopers Brewing, marine store dealers, ACI Glass Manufacturing Division, Carlton and United Brewing, Bond Brewing and the Wine and Brandy Producers Association.

The new deposit values of 5c refunded at collection depots and 10c at point of sale now apply, irrespective of the labelling on the containers. All beer and wine coolers for sale must carry the new deposit markings after 30 June this year. Notices explaining the refunds will be displayed by retailers during the transition period.

The transition arrangements avoid confusing consumers and container collection depots with a range of deposit levels. The day after the High Court decision on 7 February, the Government moved quickly to support the deposit legislation and took the emergency measure of tabling a regulation which specified a 4c deposit on all beer and wine cooler containers.

Consumers now returning these containers will receive 5c. It is expected that manufacturers will cover this 1c difference from their reserves of unredeemed deposits. It is the view of the Government that the beer and wine cooler industry deserves a period of stability, and the Minister looks forward to the continued support and cooperation of the beverage industry and the general public for the new arrangements, which hopefully provide the most fair and equitable possible solution.

NATIONAL CRIME AUTHORITY

The Hon. C.J. SUMNER: I seek leave to give a supplementary answer to a question asked by the Hon. Mr Griffin.

Leave granted.

The Hon. C.J. SUMNER: The honourable member is correct that, in the schedule provided by the National Crime Authority to the Government, there is a reference in Operation B to the South Australian Housing Trust. In other words, the NCA itself has included in a document, which it agreed we could table, the name of that particular authority, which is why it is mentioned. The problem with the other department is that at this stage the NCA itself, either Mr Dempsey at his public hearing or in the letter dealing with the operations, has not mentioned the name of the department, and that is the only reason really for my reluctance to name the department at this moment.

There is a report coming, and I would not want, without the NCA's approval at this stage, to name the department just in case there are still further matters that may be being looked at with respect to that particular investigation. I hope that has clarified the matter, but I indicate that

obviously when the report is received the name of the department will be made public.

The Hon. R.I. LUCAS: I seek leave to make an explanation before asking the Attorney-General a question about the National Crime Authority investigations.

Leave granted.

The Hon. R.I. LUCAS: The material tabled earlier today by the Attorney-General shows that allegations of improper or illegal behaviour by police officers have been made in five of the 15 operations conducted by the NCA. In Operation E, involving the growing of marijuana, there is an allegation of protection being given to this activity by four police officers.

To date, 10 persons have been charged with offences relating to the growing of marijuana in this case, but the aspect of the operation concerning the police officers is currently suspended. Operation K involved allegations that police officers at certain nominated police stations in South Australia were involved in the dealing in or smoking of cannabis. The documents tabled by the Attorney-General reveal that the NCA has disseminated allegations and information to the South Australian police but no outcome of any further investigation is reported.

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: To the ACB—the South Australian police?

The Hon. C.J. Sumner: The Anti-Corruption Branch.

The Hon. R.I. LUCAS: That is the South Australian police. My questions are:

1. What has been the outcome of Operation K?

2. What is the current status of the four police officers referred to in Operation E? In particular, have they been transferred to other duties pending completion of this investigation?

The Hon. C.J. SUMNER: I will take those questions on notice and bring back a reply.

THIRD PARTY INSURANCE

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 third party insurance.

Leave granted.

The Hon. DIANA LAIDLAW: Since 1 July 1976 the SGIC has been the only insurer in South Australia providing third party insurance for damages for health or bodily injury caused by motorists' negligence. Section 101 of the Motor Vehicles Act provides that insurers may apply to the Minister for approval to provide third party insurance. Such applications must be made on or before 1 April in each year, or in any year, with the approval, if granted, effective from 1 July that year.

This year I understand that five insurers, in addition to the SGIC, have, for the first time since 1976, applied to the Minister by 1 April to re-enter the third party insurance market. I note that in the past few years in both Queensland and New South Wales private insurers have been granted approval to provide third party insurance cover, and that last year in South Australia there was an application by Mutual Community to re-enter the third party insurance market, although that may have been prompted by the trends interstate.

Last year the Minister did not approve Mutual Community's application. In fact, I understand that he did not even respond to it. However, this year with five applications received to provide third party insurance in competition with SGIC, it is considered that the Minister will not find it so easy to ignore the issue. My questions are:

1. Will the Minister confirm that five applications were received by 1 April this year from private insurers in South Australia to write third party insurance in this State?

2. As the possible re-entry of five insurers into the third party insurance field in South Australia would have major repercussions for both consumers and the monopoly rights now held by SGIC, does the Minister intend to implement a public inquiry prior to determining whether he will grant or refuse the applications by 1 July this year?

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

ENTERPRISE INVESTMENTS (S.A.) LIMITED

The Hon. I. GILFILLAN: I seek leave to make an explanation before asking the Attorney-General a question about Enterprise Investments (S.A.) Limited.

Leave granted.

The Hon. I. GILFILLAN: Honourable members will have received recently the Auditor-General's supplementary report for the year ended 30 June 1989. Although a thin document, it does deserve some attention. I was heartened to see that in the first item relating to the Health Commission the Auditor-General had made recommendations for certain changes which could result in a saving of $500 000 to $1 million per year. The Auditor-General claims quite clearly here that the commission responded positively to the auditor's findings and suggestions, and he obviously anticipates financial advantage to the State and an efficient response from the Health Commission.

So much for the good news in it! On page 3 of the same document there is an item entitled, 'Enterprise Investments Group'. I have looked through the data provided by the Auditor-General, and there appears to be potential for the sort of financial minefield that caught previous Governments in relation to Western Australia Inc. and previous problems in Victoria.

There is now a holding company, Enterprise Investments (S.A.) Limited, which has a term of reference to provide funds for business ventures establishing in South Australia. The net assets of this group have fallen from approximately $15 million to around $9.7 million. It has an operating loss of $2.595 million, with a retained loss of $3.123 million. It is very disturbing to find that Enterprise Investments (S.A.) Limited is now wholly owned by the South Australian Government Financing Authority.

SAFA, having paid $12.4 million, now finds itself with a company of assets of only $9.7 million, a drop of $2.7 million in just 12 months. In the process there was a buying out by SAFA of a share option holding in subsidiary companies held by two senior employees of Enterprise Investments Limited. This was done at a cost of $1.1 million for the share options held by those two senior employees, and $101 000 for the associated goodwill. Incidentally, both these two senior employees have continued in their respective positions as principal managers of the new structure of Enterprise Investments (S.A.) Limited.

It is evident from the report that SAFA has acquired what could be termed a lemon by way of Enterprise Investments Limited. Also, I quote from page 3 of the Auditor-General's Report, as follows:

> A new SAFA wholly owned company, Enterprise Investments Limited, has been formed to act as a corporate trustee of a new trust fund, the Enterprise Investments Trust. The trust has been established with capital funds from SAFA totalling $28 million.

It is extraordinary that, having lost nearly $6 million on its purchase, SAFA is now entrusting $28 million of taxpayers' money to virtually the same venture with the same management group.

The Government's involvement through SAFA is, before the takeover, an investment of $5.3 million and a takeover investment of $12.4 million. That $17.7 million has now dropped in value to $14.2 million, and since June 1989 SAFA has contributed or made available a further $21 million. I consider that many members will share my concern at that timely revelation by the Auditor-General in this report of what has been a dramatic vehicle for losing money, namely, Enterprise Investments (S.A.) Limited, into which now the South Australian Government has moved substantially through SAFA. It is generally regarded as a problem, when a Government becomes associated so closely with a funding body, that it will be treated with scant regard by the public as being the Government and, therefore, losses will not concern it, its being a virtually inexhaustible source of funds. I ask the Minister:

1. What confidence does the State Government have that the $28 million of taxpayers' money, now with Enterprise Investments Limited, will not go down the drain at the same rate as the losses for the past 12 months?

2. Does the Government share a concern that SAFA's close and generous relations with Enterprise Investments (S.A.) Limited will lead to a 'she'll be all right; the Government will pay' attitude in future decisions?

3. With the track record of Enterprise Investments Limited in previous years, is it appropriate that senior management benefited by more than $1.2 million in the sale of what was virtually a gift to it in the options of shares for which they have paid no money?

4. Will similar opportunities for windfall rewards continue under the new structure? If so, does the Government think this is appropriate?

The Hon. C.J. SUMNER: As all honourable members will be aware, SAFA has been a very successful financing authority and has been of great benefit to South Australia. I will refer the specific questions to the appropriate Minister and bring back a reply.

INDUSTRIAL DISPUTES

The Hon. T. CROTHERS: Has the Attorney-General a reply to my question of 28 February 1990 about industrial disputes?

The Hon. C.J. SUMNER: The Minister of Labour has provided me with the following response to the honourable member's questions:

1. I agree with Mr Huxter about the soundness of relations between employer organisations and unions in South Australia. This is reflected in the number of working days lost per thousand employees in South Australia, which consistently shows that our record is the best of the mainland States.

2. To foster the understanding that exists between South Australian unions and employers, successive Labor Governments have established bodies such as the Industrial Relations Advisory Council, the WorkCover Board, the South Australian Occupational Health and Safety Commission, the Long Service Leave Building Industry Board, the Industrial and Commercial Training Commission and the Manufacturing Advisory Council to ensure tripartite consultation in the State on matters of industrial relevance.

3. The understanding that exists between South Australian unions and employers has helped to attract new industries to this State. This is reflected in the number of major projects either currently in progress or proposed to be commenced during 1989-90, including such developments as:

- the $570 million Myer-Remm development in Rundle Mall;
- Mitsubishi Motors Adelaide plant's expenditure for the second general Magna and continued upgrading by General Motors-Holden's Automotive Limited at its Elizabeth plant;
- a $130 million News Limited newspaper production facility at Mile End;
- a $110 million plant expansion at Adelaide Brighton Cement's Birkenhead plant;
- three large city office projects in the area bounded by Grenfell/Chesser/Wyatt Streets;
- extensive upgrading of Adelaide Airport, including refurbishment by both Ansett and Australian Airlines of domestic terminal facilities, considerable infrastructure upgrading by the Federal Airports Corporation as well as the Export Park warehouse/office/hotel development, in total representing $200 million over the next six years;
- the $82 million Pier Hotel redevelopment at Glenelg;
- the Eden Hotel, a $50 million four star hotel in Hindley Street;
- the $50 million Flinders Range Wilpena Pound Resort; and
- the $40 million Entertainment Centre at Hindmarsh.

This list of projects is a compliment to the South Australian Government's success in fostering sound industrial relations in this State.

ACU-TREAT

The Hon. R.J. RITSON: I seek leave to make a brief explanation before asking the Minister of Consumer Affairs a question about Acu-treat.

Leave granted.

The Hon. R.J. RITSON: The *Sunday Mail* of last weekend carried an advertisement, a copy of which I will provide to the Minister. I will read a little from that advertisement to the Council. It states:

> Acu-treat . . .
> The latest breakthrough using new technology . . . The new stronger and more compact no-needles acupuncture.

That, of course, is a contradiction in terms. However, it continues:

> Designed for easy self treatment?
> Battery operated, pocket size, drug free, take it anywhere, simple and safe, quick, for clinic and home use.
> Unique features include: Twin silver probes for safety and accuracy. Multi-pulsing AC impulses to match body frequencies. Locates correct points and treats in seconds. Simple treatment booklet with diagrams.

Members interjecting:

The PRESIDENT: Order! The Hon. Dr Ritson has the floor.

The Hon. R.J. RITSON: Everyone knows that scientific medicine has its limitations and there are some conditions with which conventional medicine cannot deal. So, there is always this vacuum and people searching, if one likes, for any relief or treatment. There is always fertile soil amongst people who are perhaps seeking magic, and there are always some individuals who will exploit that situation for financial gain. It has a tear-off bit, with a dotted line around it, saying:

> Please supply . . . ACU-TREAT/S at $245 each.

I ask the Attorney-General if he would discover, perhaps with help from the Health Commission, what is the frequency and voltage of this multi-pulsing AC which matches the body frequencies.

The Hon. C.J. Sumner: DC, is it?

The Hon. R.J. RITSON: No, it is just AC, no DC at all. Could the device cause interference with electronic medical devices such as cardiac pacemakers, cochlear implants, etc., if used in the right place? Will the Minister obtain the advertised simple treatment book and assess the value of any treatment that may be detailed therein? Could he have assessed as to how complicated and how expensive it is to manufacture this device, with a view to having a guesstimate at its profits margin? If the medical value of the device is found to be minimal, then in view of its price would the Department of Public and Consumer Affairs consider issuing a public caution to people contemplating purchase of Acu-treat as, indeed, the department so very usefully does from time to time on other matters. I can even provide the Minister now with the question, because I realise it is difficult to take a complicated question—if he is prepared to accept ugly doctors' handwriting.

The Hon. BARBARA WIESE: This device certainly sounds very exciting indeed. I am sure that officers of the Department of Public and Consumer Affairs will very much enjoy investigating this product and providing us with a full and frank report. I also undertake to ensure that the Health Commission is made aware of the device and will be able to provide that information that is appropriately provided by it.

VOLUNTEERS

The Hon. T.G. ROBERTS: I seek leave to made a brief explanation before asking the Minister for the Arts a question about volunteers.

Leave granted.

The Hon. T.G. ROBERTS: As members on both sides of the House would know, this is National Volunteer Week for 1990. I ask the Minister: to what degree are volunteers involved in the operations of the State's cultural institutions? What measures have been taken to acknowledge and assist their efforts?

The Hon. ANNE LEVY: I freely acknowledge that I was given forewarning of this question. However, I think it not inappropriate that in this Parliament we give recognition to the tremendous work which is done by a large and very dedicated band of volunteers. I am glad to have the opportunity to briefly do so.

During National Volunteer Week, considerable reference has been made to volunteers, particularly in the welfare and health areas and of the contribution they make to life in our society. It is not often realised that volunteers also provide considerable assistance in the area of the arts. In fact, nearly 400 people in this State regularly provide services to our major cultural institutions, to the great benefit of everyone who makes use of those services.

The institutions themselves are taking the opportunity to pay special tribute to the volunteers who give them such dedicated service. For instance, at the State Conservation Centre, about 10 volunteers help in the various laboratories, and during this week they will have the opportunity to show their friends and families through the centre. This will be followed by a reception and presentation by the management of the conservation centre.

The Art Gallery of South Australia has about 40 different people who act as guides and help in the library on a completely voluntary basis. To thank them, the Art Gallery is organising a special evening so that the volunteers and their families can view the two special exhibitions from the Festival which are still on display at the Art Gallery, which will be followed by refreshments and general conviviality.

The Museum has about 60 volunteers who regularly provide invaluable assistance. It has recognised its volunteers prior to National Volunteer Week. It provided a luncheon for them on International Volunteer Day, which was held on 5 December last year. However, they certainly plan to make this an annual event, and are very cognisant of the great contribution made by these volunteers. At Carrick Hill, there are about 85 volunteers who act as guides, do flower arrangements, and assist in the shop and the garden.

Throughout this year there will be some art history lectures held in-house which will assist the guides in their work. There is a budget allocation for addition to the special guides library which Carrick Hill has. The shop volunteers have been involved in the redesign of the shop and, if they wish, they will benefit from a series of workshops on merchandising which will help them with their work. Again, Carrick Hill goes to considerable effort to service its volunteers in recognition of the valuable work that they do. Finally, the History Trust of South Australia has over 200 volunteers throughout the State, who help with its numerous activities.

The Hon. M.B. Cameron: I like these spontaneous questions.

The Hon. ANNE LEVY: I have already said that it was not spontaneous. Is the Hon. Mr Cameron not listening?

The Hon. M.B. Cameron: I'm trying not to.

The Hon. Diana Laidlaw: Volunteers are very important.

The Hon. ANNE LEVY: Volunteering is very important and I am glad that the shadow Minister for the Arts appreciates that, even if the honourable member behind her does not. The various museums of the History Trust are arranging different activities and recognition of their volunteers. The Maritime Museum is instituting a system of volunteer service awards. Gold, silver and bronze badges will be awarded to volunteers and the other History Trust museums are also considering introducing this volunteer service award.

At Birdwood the volunteers are completing the restoration of a 1927 car and are also providing support for the Adelaide Motor Show, where the Birdwood Mill has an exhibition this week. The History Trust regularly organises barbecues for the volunteers who contribute so much to the work of its museums, particularly around Adelaide. I am very pleased to record the enormous contribution made to our cultural institutions by these volunteers, and I deprecate the trivialising remarks made by one member of the Opposition.

KANGAROO ISLAND ROADS

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking the Minister of Tourism a question about Kangaroo Island roads.

Leave granted.

The Hon. L.H. DAVIS: The Minister of Tourism is well aware of the growing popularity of Kangaroo Island as a visitor destination. Certainly, access to the island has been improved by the excellent and reliable service provided by *Philander III* vehicular ferry. There has been a dramatic increase in the number of visitors to attractions such as Seal Bay, Kelly Hill caves and Flinders Chase. For example, the number of visitors to Seal Bay surged by 28 per cent in

January 1989 compared with January 1990, increasing from 8 235 to 10 906 visitors.

Visitor numbers to Kelly Hill caves for 1989-90 are likely to exceed 30 000 visitors, up 20 per cent on the 1988-89 figure. At the western end of Kangaroo Island more than 50 000 visitors are expected in Flinders Chase. All of these attractions are administered by the National Parks and Wildlife Service. However, to visit these attractions visitors have to travel along the South Coast road, 70 km of unsealed and badly corrugated road. This road is maintained by the Kingscote District Council. Once inside Flinders Chase, the roads are even worse. The National Parks and Wildlife Service has responsibility for roads inside the chase. Peak visitor tourist traffic on these routes is between December and February, at a time when the lack of rain means that the open surface roads are at their worst.

For two days last week I enjoyed the warm hospitality and superb scenery of Kangaroo Island. I found the friendliness and helpfulness of the National Parks and Wildlife staff outstanding. However, I did not enjoy the bumping, jolting and grinding experience which drivers and passengers alike must endure along the South Coast road—

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Davis has the floor.

The Hon. L.H. DAVIS: Thank you, Mr President, I need all the protection that I can get—and particularly in Flinders Chase, for example, on the road to Cape du Couedic. Not surprisingly, the damage to cars and the level of accidents and injuries is high. Kangaroo Island has a resident population of about 4 000 but I understand that in the past six months there have been 69 motor vehicle accidents involving 42 local people and 38 visitors. The majority of accidents have occurred at the western end of the island, where road conditions are atrocious. There were 28 injuries from these accidents and several rollovers. Many visitors and locals just slide off the road into the scrub for a close encounter with nature of a most unwelcome kind.

The damage to cars is high. I understand that it is not uncommon for cars to suffer suspension problems, broken engine mountings and cracks in the chassis. I am aware that the Minister has sought a grant from the Federal Government to upgrade the South Coast road, and I recognise that Kingscote District Council has done an excellent job with the roads under its jurisdiction, given its limited financial resources.

However, what is of particular concern is that the National Parks and Wildlife Service, which does such a good job in Flinders Chase, receives only $109 000 with which it has to maintain roads, fire access roads, weed spraying, security, toilet maintenance, and so on. Just $109 000 is provided for the chase which attracts more than 50 000 people a year. The sad fact is that the National Parks and Wildlife budget in Flinders Chase has for some years been increasing at only 4 per cent per annum, which is just about half the rate of inflation—4 per cent increase in 1989-90 notwithstanding the dramatic increase in the number of visitors to the chase. Given that 60 000 visitors are forecast for 1990-91 with this increasing pressure on Flinders Chase and the atrocious roads, something has to happen.

It is happening in the form of bad accidents and many injuries. It is quite unacceptable that the National Parks and Wildlife Service receives such a niggardly amount. I am aware of the Minister's concern about this matter, but she may not be aware of the problems that the National Parks and Wildlife Service has within Flinders Chase and the small amount of money that is available for roads. Therefore, I ask the Minister whether she will use her good offices to bring pressure on the Minister responsible for funding in this area to redress the situation at the earliest opportunity.

The Hon. BARBARA WIESE: My interest in Kangaroo Island as a tourist attraction and in addressing some of the infrastructure problems on the island in order that the tourism potential can be realised is now well known not only to members in this Parliament but also by people on Kangaroo Island, and by others who take an interest in the tourist industry. In response to a question asked in this place recently by the Hon. Ms Laidlaw, I indicated that the Premier had agreed to my request to put a specific proposal to the Federal Government for a one-off grant to seal the South Coast road.

The detailed submission that we are putting together for the Federal Government is almost prepared and, now that we know who the Federal Minister of Transport and Communications will be, we will be in a position to begin our representations to the Federal Government to provide funding for the sealing of that road, which will require a considerable amount of money.

In fact, I believe that the road will take about $10 million to seal from the area just outside Kingscote, where the sealing currently ceases, to the western end of the island. In demonstrating its commitment to the matter, over the years, Tourism South Australia has already allocated considerable funding to Kangaroo Island roads.

For example, the Seal Bay road has been sealed using Tourism South Australia tourist road grants moneys. This year $300 000 of the $408 000 that will be allocated to tourist road grants will be going towards sealing another portion of the South Coast road. We are doing our bit. The councils, to the extent that it is possible for them to find funding for projects as large as this, are also putting resources towards it.

We made very strong representations to the Minister of Transport to see whether there was some way of redirecting some State roads moneys to the sealing of the South Coast road. As I said, the submission is going to the Federal Government for a one-off grant for this matter to be progressed as quickly as possible.

As to the Flinders Chase National Park, I think the Minister for Environment and Planning is very well aware of the funding shortages that the park suffers. In fact, for that reason the Government, some time ago, endorsed a proposal for a small-scale development to be undertaken within the Flinders Chase National Park. Since then, and because of public opposition and other reasons, the proponents of that development have decided not to proceed with it. The Minister for Environment and Planning has also changed the policy with respect to development within national parks.

The point that led to such a proposition coming forward in the first place was that not only was there a demand for such a facility in places such as the Flinders Chase National Park but the revenue that could be raised through such ventures would be able to be directed into maintenance programs of the kind the Hon. Mr Davis is now drawing attention to. However, it will now not be possible for such revenue to be raised through that measure. Only a couple of months ago the National Parks and Wildlife Service began charging an entrance fee to the Flinders Chase National Park and the money raised through that revenue measure will now be directed towards some of the maintenance programs that until now have not been able to be funded by the Government.

In future, there will be some substantial improvement in the capacity of the National Parks and Wildlife Service to provide some of the facilities within the park that previously

it could not, such as upgraded roads and other things. I am sure that the Minister for Environment and Planning is well aware of the need for further resources to be directed in this way. She has put that case very strongly to Cabinet on numerous occasions. We will have to wait and see the budget outcome for this year, but the Minister for Environment and Planning and I are aware of the needs, and whether or not the Government will be able to put more resources towards this work is something that will come from the budget process itself.

COUNTRY RAIL SERVICES

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister of Local Government, representing the Minister of Transport, a question about country rail services.

Leave granted.

The Hon. M.J. ELLIOTT: There is growing concern in several areas of this State, particularly down the South-East, about the possibility of a number of country passenger services being wound down and eventually closed altogether. I was given a copy of the *Australian National News* back in 1986 that talked about a great success story of the Adelaide to Mount Gambier service and its big turn-around. It states:

> Australian National's revised passenger services between Adelaide and Mount Gambier are a major success story. In just six months since their introduction, AN has arrested the downward trend in passenger figures and increased patronage by 15 per cent, compared to the corresponding period in 1984-85.

A little further down it states that the turn-around was achieved by a number of initiatives, including a promotional fare of $21 instead of the normal $30, providing a faster service and implementing promotional publicity activities. It also noted that the figures indicated that travellers prefer quality to quantity.

More recently, the trend has reversed. There has been a 20 per cent downturn in patronage on the service between Mount Gambier and Adelaide and AN is now saying that, because of this downward trend, it does not warrant railcar upgrading or replacement. The railcars are 40 years old and they have minimum maintenance.

Four reasons are given for the downward trend by people with whom I have spoken. The first is that there are not enough railcars left in usable condition. The number of railcars has been reduced and therefore fewer people can travel. While in previous years the number of railcars that ran on the train depended on bookings, it now depends if a railcar is available. Figures are not kept on how many people are turned away. It is quite common that a single railcar is booked and that between 20 and 40 people are turned away. The train is also frequently running late, often due to breakdowns (and when we consider that the trains are 40 years old, that is not surprising), and those delays can be between one or two hours.

The third reason given is that every Monday a bus runs instead of the train because of track maintenance. Apparently, Monday used to be the busiest day of the week for passenger traffic and people chose to use the train. Now they are being told to get on a bus. The fourth reason given is that six months ago there was a fare increase and now there has been a further 20 per cent increase in fares. At one time rail was cheaper than bus, but the opposite is now true. Almost everything that was achieved back in 1985 and the sorts of reasons given for improvements are now being undone.

Finally, only two weeks ago the refreshment service was removed from the train. Now, people have to carry their own cut lunch for the seven to nine hour trip between Adelaide and Mount Gambier. I believe the Iron Triangle service, which also had a similar boost at one stage, is also threatened because of the age of those cars. I recognise that this matter is now controlled by Australian National because the State Government sold the railways to the Federal Government but, since these services affect mainly South Australians and are internal routes, I would hope the Minister of Transport in South Australia had some opinion. I ask two questions:

1. Is the Minister concerned by the loss of these services and is he willing to protest to the Federal Government as to what is likely to happen in terms of the winding back and eventual loss of the passenger services?

2. Would the Minister give any consideration to the State Government itself running its own railcars on the AN maintained lines, given that AN will continue to maintain the lines because of the freight business?

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

PAPER TABLED

The following paper was laid on the table:

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

Beverage Container Act 1975—Regulations.

CUMMINS HOSPITAL

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

Leave granted.

The Hon. PETER DUNN: Within the past fortnight the Cummins Hospital board has been told that the Executive Officer, Mr Ryan, who was transferring to Port Pirie, will not be replaced. The Health Commission said that it would not fund the appointment of a new Executive Officer for the hospital. It suggested also that perhaps the hospital be run from Port Lincoln or Tumby Bay. In the meantime, interest has been registered by two people who would like to perform the job and who apparently are qualified.

There is a little history to this matter in that the Cummins Hospital has been without a doctor for several months. However, a replacement is there now, and he intends to stay there—in fact, I understand that he has attracted a second doctor, who will commence practice at the end of this year or in early 1991. Because there has been no doctor, I suppose that the acute care patients have not continued as inpatients in the hospital, so it has not had the number of inpatients that previously it had.

However, the Cummins community is relatively young. I assume a fairly high birth rate will be a factor and, therefore, a doctor is needed. If we look at the history of what has happened to country hospitals in South Australia, the Health Commission tried to close hospitals in Blyth, Laura and Tailem Bend. I distinctly recall the Hon. Martin Cameron forewarning this Chamber that this drive to close country hospitals would continue, but it was forestalled because of the pressure put on by, first, the country hospitals and, secondly, people particularly on this side of the Chamber.

The fact is that the closest hospitals to the Cummins Hospital are 180 kilometres to the north, or approximately 100 kilometres to the west, so Cummins Hospital has provided hospital care for a huge area. The hospital has a recurrent budget of about $770 000. I would have thought that a private business with a budget of that size might have had two Executive Officers or secretaries. My questions therefore are:

1. Is the reduction in the number of Executive Officers in country hospitals to continue?

2. What criteria are used when withdrawing Executive Officers?

3. What is the cost of savings to the Cummins Hospital and to the Health Commission?

4. What other hospitals in South Australia will have their Executive Officers withdrawn when the present incumbent retires?

5. Is the Health Commission strangling country hospitals so that it can close them in the future?

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

REPLIES TO QUESTIONS

The Hon. ANNE LEVY: In view of the imminent demise of Question Time, I seek leave to have the following answers inserted in *Hansard.*

Leave granted.

TRAIN FUMES

In reply to the **Hon. J.F. STEFANI** (1 March).

The Hon. ANNE LEVY: My colleague, the Minister for Environment and Planning, has advised me that, in response to the questions raised by the honourable member, Department of Environment and Planning officers have visited the area. When investigating the train emissions, Department of Environment and Planning officers observed distinct 'diesel smoke' odour on the western plaza near the Riverside office complex, coinciding with the arrival of some trains, particularly at platforms 1 to 3 which are closest to the Exhibition Building.

During the investigation it was also noted that the Riverside office air-conditioning intake appears to run from the mezzanine level to the top floor in a recessed section of the building facing the station. It is highly probable that the air intakes draw in odiferous air, the intensity of odour depending on the arrival of trains, particularly at platforms 1 to 3, and the engine type and exhaust. The station exhaust system itself appeared to contribute little to the odour detected at the office complex entrance.

The Minister for Environment and Planning has been advised that the South Australian Health Commission has been contacted by the office tenants and reported on its investigations. Although the levels of the tested contaminants listed above were determined during the building exhaust design assessment as below levels of concern for public health, the characterisic 'diesel smoke' odour may still be experienced, due to the sensitivity of the human nose. Should this be considered a justified complaint in terms of occupational exposure, modifications may be necessary to redirect building air intake from only the higher part of the building.

COUNCIL DRAINS

In reply to the **Hon. J.F. STEFANI** (22 February).

The Hon. ANNE LEVY: Inquiries made with the St Peters council indicate that the council has given thorough consideration to the drainage problems existing in Third Avenue, St Peters and in particular, to a stormwater drain that flows onto the street water table adjacent to 67 Third Avenue, St Peters. The drainage problems relate to a lack of gradient in Third Avenue, and in 1989 council estimated it would cost some $160 000 to remedy the problem. Council considered expenditure of this magnitude was unwarranted in view of other demands from ratepayers for services. Council acknowledges that minor ponding occurs in front of 67 Third Avenue and action has been taken in an attempt to alleviate the problem.

In 1987, in response to a petition, tree roots were removed and the kerb was rearranged with more placement of filling to improve the gradients. The entire council made an inspection of the site in 1988. Clearing of the drain is carried out prior to each winter and at other times as required. Council's Health Inspector has visited the site whenever a complaint has been received concerning discharge from the drain, and to date no health risks have been identified. As I pointed out in my interim response on 22 February, individual councils are responsible for determining the priorities to be given to requests from ratepayers for services, and this matter is one for the St Peters council to resolve. I have no power to direct the council on such matters.

The Hon. C.J. SUMNER: I seek leave to have the following answers to questions inserted in *Hansard* without my reading them.

Leave granted.

BOND GROUP OF COMPANIES

In reply to the **Hon. K.T. GRIFFIN** (22 February).

The Hon. C.J. SUMNER: The Commissioner for Corporate Affairs has provided me with the following response to the honourable member's questions.

1. The issue relating to the appointment of a special investigator or civil action in regard to the Bond Group is not a matter for my preference. The Ministerial Council resolved to direct that the National Companies and Securities Commission arrange for a special investigation into Bond Corporation Holdings Ltd and related companies. The terms of reference for this special investigation indicate that priority should be given to whether a cause of action exists for the institution of civil proceedings and whether any cause of action exists for proceedings seeking the appointment of a receiver, orders prohibiting the transfer or disposition of the property of any of the companies to be investigated or the winding up of any of those companies. Therefore the special investigator will have as a high priority the question of whether a cause of action exists for the institution of civil action.

2. The special investigator's terms of reference are quite general and broad. Essentially, the affairs of Bond Corporation Holdings Ltd and its related companies including dealings of and within that group of companies from 1 July 1986 are to be investigated. However, the investigator has been pointed to four areas which should be targeted. These are:

- whether a cause of action exists for civil proceedings by the commission pursuant to the Companies Code and

whether action should be taken in respect of any of the companies seeking the appointment of a Receiver, prohibiting the transfer or disposition of any property of any of the companies, or the winding up of any of the companies.

- whether an offence has been committed by any person or corporation by reason of contravention of or failure to comply with the provisions of the Companies Code or involving fraud or dishonesty or concerning the management of the affairs of any company. In particular, offences in relation to transactions between the companies and the group or between other persons and any of the companies involving the transfer of funds to companies within the group will need to be examined.
- whether any of the companies' accounts comply with the requirements of the Companies Code and whether any auditor of those companies properly fulfilled the duties imposed upon the auditor by the Companies Code or at law.
- whether any major creditors of any of the companies received a repayment by any of the companies since 1 January 1988 which the creditor knew or ought to have known was not sourced from the funds of the relevant company and constituted an unlawful or improper appropriation of those funds.

Therefore, whilst the special investigator has quite broad and general terms of reference enabling him to examine the affairs of all and any of the companies within the Bond group, the terms of reference point to particular areas which should be targeted in the special investigation.

3. With regard to the cost of the investigation it is proposed that it be conducted in two stages. The first stage is that period up to 30 June 1990 by which date the special investigator has been requested to provide an interim report to the Ministerial Council for its review. The second stage is the investigation beyond that point for approximately a total period of investigation of 12 months. The total cost of the investigation is likely to be in the order of $1.5 million. The cost of the first half of the investigation including the preparation of the interim report is expected to amount to $700 000. That $700 000 is to be funded out of moneys received by the NCSC from a settlement in relaton to Ariadne Australia Ltd and which has been held in trust by the NCSC for the Ministerial Council for funding of special investigations.

4. The special investigator to examine this matter will be free to employ resources as seen fit. It is envisaged that discussions will take place with the NCSC in relation to material that the commission has gathered in relation to the Bond group of companies and will be formulating, on information received from the commission, a plan for investigation. The resources of the South Australian Corporate Affairs Commission will be available as far as possible for use by the special investigator in conducting the investigation. However, it is likely that the special investigator will need to conduct much of the investigation in both Melbourne and Perth. As such, involvement of the South Australian Corporate Affairs Commission is unlikely to be at a high level.

5. The Ministerial Council resolved on 2 March 1990 that a special investigator be appointed. The Ministerial Council was of the view that Mr John Sulan, a prominent Adelaide barrister, be appointed to conduct the investigation. I understand that the preliminaries in relation to the special investigator's appointment are already being discussed with Mr Sulan.

UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

In reply to the **Hon. K.T. GRIFFIN** (28 March).

The Hon. C.J. SUMNER: The Commonwealth has consulted with the State and Territory Governments throughout the drafting stages of the United Nations Convention on the Rights of the Child (which took 10 years) and State Government representatives participated in the Australian delegations to the UN Working Group which drafted the convention.

Since the convention's adoption (unanimously) by the United Nations, the Commonwealth has been consulting with State and Territory Governments as to the extent of their laws' compliance with the terms and obligations embodied with the convention. In South Australia advice has been obtained from all departments whose laws, Acts and practices may fall within the ambit of the convention. South Australian law substantially complies with the terms of the convention and no major changes to our laws will need to be made to enable Australia to ratify the convention.

Two areas where South Australian law does not comply with the terms of the convention have been identified. The first is the requirement of article 37 *(c)* that children be separated from adults in the course of criminal detention. Section 44a of the Children's Protection and Young Offenders Act 1979 requires such steps as are reasonably practicable to keep a child detainee from coming into contact with an adult detained in the same place. In some remote police lock-ups this is not possible. Australia entered a reservation to a similar article in the International Covenance on Civil and Political Rights and further consultation will be taking place with the Commonwealth as to the appropriate action, as it is with the other area of law identified as not complying with the obligations of the convention. Article 32 prohibits employment of children whereas section 78 of the Education Act 1972 allows employment which does not render the child unfit to attend school or to obtain the proper benefit of schooling. This article is also to be the subject of further consultation with the Commonwealth.

I wish to emphasis that the convention does not usurp the traditional role of parents. The central role of parents and the family are specifically and firmly reasserted in the convention. The rights of children set out in the convention are subject to those overriding provisions. Preambular paragraphs (5) and (6) provide:

> (5) Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.
>
> (6) Recognising that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.

These preambular paragraphs, which are to be used as guides by parties interpreting the convention, assert the central role in the development of children if the family environment which is acknowledged to be the fundamental group of society which should be given necessary support and protection to enable it to assume fully its role.

Moreover, article 5 of the convention confirms the overriding role of parents in the development of their children and their right and responsibility to provide direction and guidance to their children in the exercise of the rights set out in the convention. Article 5 provides:

> State parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal

guardians or other persons legally responsible for the child, to provide in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present convention.

This means that parents can direct or guide their children, in a manner appropriate to their age and maturity, as to how the child exercises the rights contained in the Convention. All those rights should be taken to be subject to article 5 and the preambular paragraphs.

AGED AND INFIRM PERSONS PROPERTY ACT AMENDMENT BILL

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

Consideration in Committee.

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

That the Council do not insist upon its amendments.

The Government is still of the view that the matter, which deals with whether others other than Public Trustee can be appointed as administrator, should be addressed in the context of implementation of recommendations of the Review of the Guardianship Board and Mental Health. The review examined the issue of appointment of administrators. It indicated that concern had been expressed that the Guardianship Board must appoint the Public Trustee as administrator unless there are special reasons not to do so.

There are criteria for determining special reasons, and there are some informal guidelines, but there is inconsistency in the way they are being applied. There was also concern that some administrators may abuse their authority if appointed. It was also noted that there was a lack of information, support and advice to private administrators. The review indicated that, where there is a small estate and a personal commitment to the protected person, support should be given to enable a person to function effectively as administrator. In situations of large and complex estates, corporate trustee companies could be considered.

The amendment, by merely deleting subsection (3) of section 28, does not address many of the issues raised in the review. Section 28, as amended, would provide no guidance to the Guardianship Board as to the matters it should consider when determining who should be appointed as administrator. The amendment may have the effect of increasing inconsistency in the board's appointment of administrators. It may be preferable to offer some guidance in the legislation, for example, require the board to consider whether the person appointed as administrator would act in the best interests of the person, not be in position of conflict, be a suitable person, and have sufficient expertise with assistance to administer the estate.

It may be that the legislation should also go further by acknowledging the desirability of preserving family involvement in small estates. The review has stressed the need for support structures to assist private administrators to undertake their role. The amendment may provide only limited assistance to private individuals wanting to be administrators if there are no support structures in place to assist them with difficulties.

The amendment may also increase the interest of private trustee companies in this area. Greater consideration may need to be given regarding guidelines for the regulation and payments to such companies. In short, the amendment may appear to facilitate the appointment of private administrators, but it does not adequately address other related issues—issues which are currently being examined by the Government. It is the Government's current intention to introduce legislation in the budget session to deal with amendments to the Mental Health Act, and to deal with the review of the Guardianship Board and the Mental Health Review, which have been made public.

At that time, this particular issue will be decided upon by the Government, and the Council can then adjudicate whether, in light of what the Government's position is, it wants to reconsider this amendment at that time.

I am not unsympathetic to the amendment, but I would prefer that the matter be dealt with as part of the overall consideration of what was a fairly wide-ranging review which we will be considering, assuming that current intentions are adhered to, in the budget session. On that basis I would ask that the matter be left for the moment. The issues I have raised can be examined by the Government, and the matter can then be re-examined in this Council when the Government brings in its concluded view on it.

The Hon. J.C. BURDETT: I ask the Council to insist on its amendment. The Attorney said that there will be a review and that a Bill will be introduced in the budget session. I am quite sure that he is sincere about that. I have never doubted his sincerity. However, in the past I have found that when there have been promised Bills for the next session they are not always introduced. I presume that the budget session begins in August and could go on until April next year. So, we could be looking at a year before we get a Bill and in the meantime, as I have said before when I have spoken to this Bill, many concerns have been raised.

The main concerns—and these have been referred to in the review—have been that at the present time and in the present legislation the administrator must be Public Trustee, unless there are special reasons. While 'special reasons' has been differently interpreted, it is obvious that they must be something out of the ordinary. As I have said before, in many small estates, especially in regard to elderly people, the spouse of the protected person feels very hurt and angry about being cut out when an order is made under the Mental Health Act and Public Trustee is appointed as administrator. This occurs because, for some time, they have been looking after the affairs of the person either under a power of attorney or *de facto*.

That does happen. I have known many cases where constituents have come to me, and they really feel that they are not given information. They do not know what happens at all about their spouse's affairs. I believe that if the amendment stands the Guardianship Board can make its guidelines as to how it should be administered. As I said before, I acknowledge that there may be many cases where the spouse is not the suitable administrator, but the discretion is then left with the Guardianship Board to determine whether or not it is. I am afraid that I do not have confidence that the matter will come up, or will come up in a suitable way, before the Parliament meets again in the budget session, or whenever. I believe that we have before us now a viable amendment that will work. Therefore, I ask the Council to insist on its amendment.

The Hon. M.J. ELLIOTT: I have made it clear that I agree with the sentiments of the Hon. Mr Burdett. I supported the amendment last time and expressed then virtually the same fears that he is expressing now. The Attorney has talked about a Bill coming some time in the budget session. Will he put any deadline as to when we will see that?

The Hon. C.J. SUMNER: It is not my legislation but, as I understand it, the matter is being worked on with rapidity, speed and enthusiasm by the departments concerned. They do not want this matter to drift on. The Health Commission

has the carriage of this matter, and I am advised that, in the words of *Yes, Minister*, the matter is under active consideration. I can genuinely say that they are working on it. I know of consultations with judges, the Crown Law Office, and so on.

I know that the Health Commission wants to get the matter resolved as quickly as possible. I suppose the only undertaking I can give the Council is that I will use my best endeavours and, indeed, I will undertake to write to the Minister of Health explaining what has happened in, and the views expressed by the members of, this Council on this matter so that those views are put before the people preparing it. I can indicate that the Council expects the matter to be introduced and redebated as soon as possible in the budget session. That is about as far as I can take my undertaking, I think.

The Hon. M.J. ELLIOTT: It is a matter that probably can be treated somewhat in isolation from some of the other legislation, I would suggest. Would the Attorney be willing to suggest in his letter that the Council would like this matter considered with some urgency if the detail of the larger Bill is taking a long time?

The Hon. C.J. SUMNER: I am prepared to include that in my letter to the Minister of Health. I am prepared also to make a copy of the letter available to both the Hon. Mr Elliott and the Hon. Mr Burdett if that will help to mollify the opposition to my motion.

The Hon. J.C. BURDETT: The weaknesses in what the Attorney said before are already appearing. He said that there would be a Bill to amend the Mental Health Act in the budget session. Now it appears that he will not have the carriage of it; it will be done through the Health Commission and the Minister of Health. The Attorney has offered to write and say as a matter of urgency that we want these matters dealt with, and to jolly them along. But, it will be out of his control. In my view, as I said before, there is a strong case, when we have what I believe to be a viable amendment, to pass it now.

I sense, from what the Hon. Mr Elliott has said, that he will not support my suggestion that we insist on our amendment. I believe that we should. I certainly have grave reservations now that I find that it involves another Minister, and the Attorney cannot really insist on what he said would happen, namely, that a Bill will be introduced in the next session of Parliament. If I am correct in assessing the Hon. Mr Elliott as saying that he will not support me, I indicate that I will not divide.

Motion carried.

CORONERS ACT AMENDMENT BILL

In Committee.

Clause 1—'Short title.'

The Hon. R.J. RITSON: The Attorney-General has responded to my second reading speech and he was indeed perfectly correct in indicating that I had made a mistake as to the penalty. I looked up the Division VI penalties, and saw the imprisonment there. I had not realised, until I looked again at the Act, that it was a matter of a fine only. That is, of course, very peripheral.

Regarding the Coroner's involvement, the truth does, in fact, lie somewhere between my earlier stated position and the Minister's reply, and that is again peripheral, except that my concern continues that there has been minimal consultation in relation to this Bill. The Bill was instigated by a deputy coroner, who wrote to Crown Law, and that was the beginning and end of consultation. We are now told that the Government does not want input from all the professionals who will have to work with this legislation. It does not want input from them before the Bill becomes law. It will merely force them into a mould after it becomes law.

I think that is unwise of the Government. There will be some teething problems which could have been forestalled had the Government informed representatives of the professions and of industries that these practices would be affected by this Bill.

Nevertheless, the Government has determined that it shall pass it in this session, notwithstanding that it will not be proclaimed until infrastructure is determined. We must accept that and make the best fist of it that we can. However, as I said in my second reading remarks, my principal concern is the scope and the range of people to which this Act will apply. Further detail of that argument is more applicable to the clause 5 amendment, so I will not discuss that matter at this stage.

This matter is being dealt with against a background or possible wide ranging legislation which will overtake this Bill. The Attorney-General will recall that, about two years ago, he referred to a select committee the question of several issues relating to the disposal of human remains. My colleague, the Hon. Mr Lucas, and Mr Sumner's colleague the Hon. Ms Levy, served on that committee and, amongst other agendas that were dealt with, was a submission from the medical side of forensic science which proposed a universal abolition of the present form of certification of death so that, under this submission, it was proposed that the attending doctor would merely sign a certificate of 'life extinct'. Then these circumstances would all go to the newly created office of medical examiner (where the medical equivalent of the TV character Quincy would sit in this new organisation), go through the certificates and decide which cases to autopsy. The death certificate would then be issued from the office of medical examiner, and those that the medical examiner thought should go to the Coroner would then indeed pass on to the Coroner.

The select committee rejected this as a whole new layer of bureaucracy that would be likely to do no good to the living, cause great difficulties in rural areas and increase Government expenditure considerably. That agreement was universal, and Mr Sumner's Labor Party's colleagues on that committee rejected that submission as enthusiastically as any other member. However, ambitions do not die easily, and I have heard that there may be preparation of legislation to bring in the system that was rejected by the select committee. Of course, if that happens it overtakes and wipes out the whole effect of this Bill and the new system will prevail. Having said that, I just wanted to remind the Minister of the background against which we are enacting this legislation.

The Hon. C.J. SUMNER: As I say, the jurisdiction to look at death in mental institutions has always existed for the Coroner. The only thing this Bill does is place an onus to notify death on a wider range of people. I think that all that is required, as far as consultation is concerned, is a sufficient lead time to notify people in the institutions concerned of those additional responsibilities, and we will undertake to do that. With respect to the question of disposal of human remains, I indicate to the honourable member that a Bill has been drafted.

The Hon. R.J. RITSON: Does it provide for creation of office of medical examiner?

The Hon. C.J. SUMNER: I will say, 'No, it does not create the office of medical examiner.' If it was designed to implement the recommendations of the select committee,

that was not a recommendation from the select committee, so I assume the Bill does not include a medical examiner. However, if the situation is any different, I will let the honourable member know. I am advised that if it was not in the select committee report it would not be in the draft Bill. I have just had that confirmed by Parliamentary Counsel. I had hoped that this Bill could be introduced on Tuesday or Wednesday of next week, that it could lie on the table for the recess to enable comment, and be redebated next session.

The other option is to refer the Bill back to a reconstituted select committee, and that is something that could be considered if major public concerns are expressed about the Bill which can only be examined by a select committee. However, I think the instructions were to implement the recommendations of the select committee. If the Bill does that, I think some public debate will occur about it because some controversial issues are potentially involved in it, such as the reuse of grave sites and so on. However, there will be an opportunity for public debate on it. I cannot guarantee that the Bill will be introduced by Tuesday or Wednesday of next week, but I will be pressing for that to occur.

The Hon. R.J. RITSON: Before I move my amendment, I would just like to ask a few questions of the Attorney-General. Does he know how many patients of this class are in various institutions in South Australia, what the death rate is, and what the likely increase in notifications to the Coroner will be?

The Hon. C.J. SUMNER: No, I cannot give any figures, but discussions that my officer has had with the Coroner and Deputy Coroner indicate that they do not believe there will be a dramatic increase in the notifications.

The Hon. R.J. RITSON: Given that we do not know, but we think that it will not be a dramatic increase and, nevertheless, because of the use of the word 'immediately', I would assume that the Coroner's office will have to increase its after-hours services, can the Minister indicate any likely increase in overtime payments as a result of that?

The Hon. C.J. SUMNER: We do not anticipate any increase in that respect. The Coroner does now maintain a 24-hour service and it is not envisaged that there will be any need to increase that or the staff who are involved. Obviously, that would depend on the extent of the increase in notifications, but as has been said, it is not anticipated that that will be great. If it turns out to be in practice, the resources will just have to be found.

The Hon. R.J. RITSON: Can the Minister indicate the expected increase in the autopsy rate and whether an additional pathologist, or pathologists, will have to be employed?

The Hon. C.J. SUMNER: No, they do not anticipate that there will be an increase. I should add that I have just been advised that there is a review going on of the staffing in the Coroner's office at the present time and, obviously, an increase which might be necessary as a result of this Bill can be taken into account while that review is going on.

The Hon. R.J. RITSON: This is the first time in the experience of all practising medical practitioners that there has been an occasion where a death certificate can and would be expected to be written parallel to a Coroner's notification. In all of the cases previously notified it was a case of death certificate or Coroner's notification. If the doctor believed that he had not got enough information and declined to furnish a death certificate, the undertaker then took the remains to the forensic office and dealt with the Coroner.

If the doctor supplied a death certificate, it went through a different administrative stream to Births, Deaths and Marriages and a different set of forms to the cemetery or crematorium. Indeed, the Coroner expects, and he said this in a letter to me, that death certificates will be written in the normal way, but it leaves an option for the Coroner to intervene. When a medical officer attends a death he is usually able to say on the spot whether a death certificate is likely to be forthcoming or not, either to the next of kin, if they are there, or to whoever is in charge of the hospital ward.

If he says that a death certificate will be forthcoming, then when the undertaker is contacted by the institution the arrangement will already have been made, for example, to call at the doctor's surgery at 9 o'clock in the morning to pick up the death certificate, or that there will be no death certificate forthcoming and that the undertaker should deal with the Coroner. The decision as to which stream this process of disposal is to go into is known virtually from the time that the medical officer attends.

Thus there is the ability with some degree of certainty to plan the funeral for a specific day. It just seems a little strange to me if a death certificate is provided and if a funeral day is decided, but it is not known whether the Coroner will intervene. There is that element of uncertainty at all times. For instance, there is no obligation to avoid a hasty funeral. This is an unknown thing; this is new ground. If the Coroner intervenes or wishes to intervene, indeed the body may already have been disposed of. The Coroner may decide whether or not to intervene on the basis of medical information provided to him by the notifying authority. In the case of a small institution, the Coroner may very well phone the doctor and ask him a few questions about the circumstances of the death.

In the case of larger institutions, such as general hospitals, the person in charge of the institution, for the purposes of the Act, would probably be the medical director, and he would probably delegate. Although it is his responsibility in the Act, and there may be some dozens or hundreds of medical officers all with instructions to notify the medical director in those circumstances. In those circumstances the quality of medical information conveyed to the Coroner would be good, but there would be an extra delay of up to a day in the system of the administration of an organisation like that.

It would be quite possible that, perhaps by the time the Coroner decided that he wanted an autopsy, he may also have to get an exhumation. I am not saying this to knock the legislation. I am saying that working in this field there will be teething troubles and that some of them would be sorted out more easily had the Government decided to consult with people at the coalface from the beginning.

The other problem, where a small institution is involved, is that the person in charge may be a lay executive officer without great professional training, and I am referring to, say, a small 25-bed nursing home. The person notifying is then not the person best able to interpret clinical notes or in any way be of assistance to the Coroner, compared with the Coroner's receiving advice from the medical officer. I imagine that in the first instance that notification would go into the Coroner's office.

The Coroner's sergeant would then have to get back to the institution and be told who the attending medical officer was. In a situation like this, if one ends up making three phone calls instead of one, that increases the workload, and the Government might get a surprise to see how this grows in terms of having to take on additional clerical and professional staff in the Coroner's office and in the Forensic Science Centre.

The Hon. C.J. SUMNER: In response to the honourable member's remarks, I understand the points that he is mak-

ing and I will ensure that those points are drawn to the Coroner's attention.

Clause passed.

Clause 2 passed.

New clause 2a—'Jurisdiction.'

The Hon. R.J. RITSON: I move:

Page 1, after line 13—Insert new clause as follows:

2a. Section 12 of the principal Act is amended by striking out paragraph (db) of subsection (1) and substituting the following paragraph:

(db) the death of any person where there is reason to believe that the death occurred, or the cause of death, or possible cause of death, arose, or may have arisen, while the deceased was accommodated in an institution and that the deceased was suffering from mental illness, intellectual retardation or impairment (other than mental impairment consequent on the immediate cause of death), or was dependent on the non-therapeutic use of drugs;.

I will use this amendment as test case. I seek to produce consistency in the delineation of the jurisdiction in the principal Act with my amendments. In moving these amendments, I have decided not to fight the Coroner's desire to have his way here, but to help. The Bill before us is trying to do several different things at once with areas of overlap. First, it is trying to place a compulsion on a series of situations which were always within the jurisdiction, which were nearly always, as a matter of practice, notified but which, according to things that people have said about the inquiry into deaths in custody, ought to be more formalised. Indeed, that is the category of violent or unnatural deaths and deaths of people incarcerated by act of the State. That is one principle.

The present wording of the jurisdiction in the principal Act, which took effect in 1981, has not ever really been tested because, in practice, where the deaths occur in a public mental hospital as an administrative practice the Coroner is notified. In the case of private mental hospitals, the number of deaths from natural causes is so low that probably hardly ever does a death occur in those hospitals, because of the type of patients they are, that would not be notified anyway under other areas of operation of the Act, for example, suicide.

What the Coroner wants to do is extend the protection—if posthumous reporting can be called protection—to a range of people who are dependent on others by virtue of their being in an institution, whether compulsorily or not, and who are less able to fend for themselves because of intellectual disability. As I say, this amendment is not trying to deny the Coroner legislation to enact that.

However, I think that the original wording was well meant and correct in the minds of people who have not walked around a lot of nursing homes and do not know how practices in hospitals work. The first wording was to define the patient in terms of the institution that he is in. In fact, in a response to my earlier remarks, the Attorney said that it matters not whether a part of the institution or the institution is entirely devoted to the care of these people but that it suffices that if some work of this type is carried out in the institution or part of the institution, then the requirement applies to everyone accommodated in that institution.

I believe that as a consequence there would be a huge increase in reporting of patients other than mentally disabled or affected patients. Let us imagine one type of institution, for example, a large nursing home with a dementia section; then one could say it just applies to the dementia section. The moment you put a demented patient in one of the other wards it applies at least to everyone else in the other ward who is not demented, but nevertheless their death must be reported. The moment you put someone who is not mentally affected in a bed in the dementia section it affects them.

Institutions, such as the Royal Adelaide Hospital, were not established to care for everything else except people who are mentally impaired. They are generally available, and have been available ever since I have had any connection with them, to serve psychotic, neurotic and depressed people. The fact that they have a psychiatric ward does not mean that impaired people are never elsewhere. For example, a Downes syndrome child might be admitted to a ward for tongue reduction—an operative procedure. A brain damaged person who was as a consequence of that damage organically demented to some degree, may have a series of readmissions to a plastic surgical ward or an orthopaedic ward to continue stages of reconstructive operations on some other part of his body.

The more I reflect on it, the more I think that the way it was would have meant that every death, from whatever cause, in every hospital or nursing home in the State would have become reportable. It would have been that all-embracing because of the way in which patients are scattered throughout such general purpose institutions. As an intern at the Royal Adelaide Hospital I can remember treating a number of people in general wards with delirium tremens which is, of course, an alcoholically induced mental disorder.

In an attempt to be helpful, with the very skilful, generous and patience assistence of the Parliamentary Counsel, who have been tremendous in this matter, I have attempted to amend both the principal Act and the amending Bill by classifying the patient rather than the institution. It provides that in any institution whatsoever if a person dies and comes within that class of patient, then the Coroner must be notified. For example, some of the patients I know and treat are people with intellectual impairments who are imprisoned. They are released from prison. They may then have to be hospitalised to treat an illness, discharged from hospital to a halfway house, or discharged. They find a bed at a men's hostel down the road. That patient, if he or she dies in any institution, would be notifiable under my amendments. In other words, my amendment provides a whole cohort of defined patients and it does not attach the general surgical ward or the man who dies from pneumonia in the general medical ward, unless he is demented or in some other way comes within the Act.

I have no objection to the problem of institutions extending well beyond medical institutions. I think the Coroner wants to know if an ex-prisoner of sub-intelligence, dies in a men's hostel, or if a drug dependent person who was discharged from Osmond House dies in a private boarding house. This will require a great deal of re-education of the medical profession, which ever way one does it. However, I believe that my amendment improves the Bill and gives the Coroner may be not what he asked for, but what I believe he wants and needs. I ask the Government to consider supporting my amendments very seriously.

The Hon. C.J. SUMNER: The Government is prepared to accept the Hon. Mr Ritson's amendment. It accepts the change in emphasis which is contained in the amendment, which will have the effect of empowering the Coroner to hold an inquest where the deceased suffered from a nominated condition and was accommodated in an institution. The current provision in the Act places a greater emphasis on determining the purpose for the establishment of the institution in which the deceased was accommodated.

The Government does have some reservations regarding the lack of definition of the term 'institution' in the amendment. This reservation is shared by the Coroner. As indi-

cated in my second reading response, the Government considers that 'institution' as used in this context would refer to the premises of an organisation. Therefore, the Hon. Mr Ritson's amendment would have the effect of empowering the Coroner to hold an inquest into the death of a person suffering from one of the nominated conditions in, for example, a Salvation Army hostel. It may also cover deaths in certain women's shelters, or the like. It is likely to be somewhat wider than the present position.

However, the Government is not overly concerned about this with respect to the Coroner's jurisdiction. It may, however, have some unforseen consequences regarding the requirement for mandatory reporting dealt with in the Hon. Mr Ritson's next amendment. The Government is prepared to accept the amendment, and any unforeseen difficulties that arise because of the lack of definition of the term 'institution' can be dealt with in future in the light of experience with the amendment and the new legislation.

The Hon. R.J. RITSON: I thank the Government for accepting the amendment. It demonstrates Parliament's functioning in one of its better moments. However, I neglected to point out—but I must do so—that the Bill that we are discussing is not the final draft. It differs by one word. The amendment on file contains a comma instead of an 'or'. It was a grammatical polishing up of one sentence where the words 'mental illness' had been separated from 'intellectual retardation' only by a comma, whereas the copy at the table contains the word 'or'. I seek leave to amend the amendment accordingly, and for the table staff to make the necessary correction.

Leave granted.

The Hon. R.J. RITSON: Finally, I want to explain why the phrase 'other than mental impairment consequences on the immediate cause of death' has been included and what it means. Most people dying of a medical cause go through a process of organic mental impairment prior to death caused by, for instance, the liver failure of which they are going to die or the stroke that they had half an hour ago, and they decline and die.

The present practice of recording causes of death based on medical records and various official forms is to put a sequence of causation in which there is an immediate cause of death, such as cerebral haemorrhage, blood loss, etc., and then, as an antecedent cause to the cerebral haemorrhage, it would be atherosclerosis caused by hypertension. The last-up-the-chain cause that gives rise to the mode of dying amounts, almost in every case, to a mental impairment which was not present in the earlier cause of the illness. That is included to exclude the universal deterioration during the process of actually dying. I am sure that it will be seen that way by the medical practitioners who read this legislation. They will understand it and work with it.

Again, if there are any disputes—and I suppose we cannot get it perfect—it may have to come back for polishing but I think it will work in its present form. I believe it gives the Coroner what he wanted, but there will be more to the infrastructure and to the education of all the people who have to work with this than is presently realised.

New clause inserted.

Clauses 3 and 4 passed.

Clause 5—'Offence to fail to notify death.'

The Hon. R.J. RITSON: I move:

Page 2, lines 18 to 25—Leave out subsection (5) and substitute the following subsection:

(5) Where there is reason to believe that a death occurred, or a cause of death, or a possible cause of death, arose, or may have arisen, while the deceased was accommodated in an institution and that the deceased was suffering from mental illness, intellectual retardation or impairment (other than mental impairment consequent on the immediate cause of death), or was dependent on the non-therapeutic use of drugs, the person in charge of the institution, or the part of the institution in which the deceased was accommodated, must immediately report the death, or cause the death to be reported, to a coroner.

Penalty: Division 6 fine.

Amendment carried; clause as amended passed.

Schedule and title passed.

Bill read a third time and passed.

SUMMARY OFFENCES ACT AMENDMENT BILL

In Committee.

Clause 1—'Short title.'

The Hon. C.J. SUMNER: It might be useful if I make some remarks on clause 1 to respond to some of the comments made by members opposite. The Hon. Mr Griffin and the Hon. Mr Gilfillan have raised a number of issues relating to this Bill. The Bill, as it relates to roadblocks, seeks to give the police power to set up physical barriers on roads to stop traffic. There is no such specific power at the moment. On those occasions when police have set up physical roadblocks, it has been on the basis of an inferred authority under current police powers to stop vehicles, or by virtue of what would have to be admitted is somewhat unclear common law.

On a national basis, this issue was discussed at the 1985 Australasian Crime Conference, where it was recommended that individual Police Forces should bring to the attention of their respective Governments the need for legislation to enable police to lawfully establish and operate roadblocks. The Hon. Mr Griffin has sought more information relating to the need for legislation dealing with roadblocks and dangerous areas. He has requested details of the occasions in the past 12 months where these powers were required.

There are no detailed records relating to all the cases where a power to set up a roadblock could have been used. However, in the 1989 fiscal year the Star Force attended no less than 53 incidents involving a siege or an armed robbery where a roadblock was established to contain the area and/or protect the public. I am advised that there would be a number of others also, and the rough estimate from the police is that roadblocks could be used on up to 100 occasions at present.

The Hon. K.T. Griffin: Roadblocks or declarations of dangerous areas? You have 53 incidents.

The Hon. C.J. SUMNER: I understand that the 53 incidents of the Star Force relate to roadblocks but, if one takes all the roadblocks/dangerous areas, I am advised that there would be about 100 such incidents. There is also a number of examples where roadblocks were actually set up to stop a specific vehicle, and I will provide some examples. Earlier this year, two persons stole a school bus and drove it along the South-Eastern Freeway towards Murray Bridge and Tailem Bend. Police attempted to stop the bus. The offenders ignored police requests and created danger by throwing the seats of the bus through the rear window and on to the road in front of oncoming traffic and police. The only way the bus was able to be stopped quickly was to erect a physical road barrier. Having travelled 70 kilometres with futile attempts to stop the bus, the senior police officer ordered a roadblock to be established.

In October 1989 a person fired shots at Ceduna police. He then drove off. Police attempted to apprehend the person but could not. In the end, a roadblock was established and the person was apprehended. In December 1989 a person was involved in a high speed chase with Penong police. The person would not stop his vehicle, and the

person was eventually apprehended when a roadblock was established. A large amount of stolen property was recovered.

A more general example relates to gaol escapes. Motor vehicles are invariably used to facilitate escapes and, in order for quick apprehension to occur, police must be able to 'seal off' the area and stop and search all vehicles leaving from it. The important aspect of such a roadblock is that all vehicles must be stopped and searched. This would usually involve a cursory inspection of the interior and boot compartments after which the vehicle could proceed.

The vital issue for police is the need for police to have the legislative authority to erect the physical roadblock. The legality of a roadblock would be microscopically examined if a person was injured by driving into the roadblock. In extreme situations (and these are the only ones provided for in the Bill) offenders more often than not do not conveniently comply with verbal or signalled requests by police to stop. They keep going—to the potential danger of all other persons in the vicinity. A physical barrier is usually the only way to stop them.

As can be seen, police have set up roadblocks in the past and will certainly have to again in the future. Serious crime (often facilitated by vehicles or 'get-away cars') must be stopped by all reasonable available means. While this Bill may not directly help to prevent crime, the police believe that it will assist in the earlier apprehension of criminals and reduce risk to the public at large.

In summary, the Commissioner of Police has requested the roadblock legislation because of the following changes: first, an increased need to establish roadblocks; secondly, identification of the uncertain legality of previous actions by police in setting up physical roadblocks; and, thirdly, the recognition of the inadequacy of legislation.

Again, there are no statistics recorded of where a dangerous area may have been declared, but situations likely to attract the invocation of the proposed amendment may be categorised into the following sections: natural disasters—those which fall short of a State disaster and can be termed local disasters—mini cyclones, earthquakes, outback flooding, bushfire, and tidal/creek floods; and man-made disasters, such as accident sites, chemical spillages, environment accidents, and hostages, siege or attempted suicide situations.

The Hon. Mr Griffin has indicated that, in his view, any renewal of a roadblock should be by a justice not a senior police officer. The Government does not agree with this approach. A senior police officer will be much better apprised of the situation and the prospects of apprehending the person for whom the roadblock was established. A justice for these purposes would be a justice of the peace. I suggest that there would be no greater protection for anyone getting the authorisation of a justice of the peace. It is surely better left to the senior police officer to make the determination and, if the determination is wrong, obviously the police officer would have to account for that in a court.

The United Kingdom Royal Commission on Criminal Procedure considered whether a magistrate should be required to authorise a road check. The majority took the view that for operational matters such as this a magistrate can do little other than endorse a police request, so that would provide no real safeguard. In their view, it was preferable for the police to take responsibility for such decision and to accept the consequence of an improper decision.

The Hon. Mr Griffin has also raised the issue of whether police should be able to take possession of any evidence of an offence found in a vehicle. The Government does not agree that the police should be able to use the roadblock as a means of obtaining evidence of the commission of an offence by other than the person for whose apprehension the roadblock was established. The roadblock is established to locate a specific person, so the search should be limited to that end. An amendment on file limits the power to searching the vehicle for the purpose of ascertaining whether the vehicle is carrying the person for whose apprehension the roadblock is established.

The Hon. Mr Griffin has indicated that the reporting mechanism should be to the Minister within seven days. The Government does not accept that such regular reporting is required. The roadblock is established in the public arena. The only areas where such regular reporting would usually be required by law is where the use of police power represents an invasion of personal privacy which, if the Commissioner was not required to report, would only be known to police, for example, listening devices, and telephone interception.

The Hon. Mr Griffin has also raised concern regarding the declaration of a dangerous area. The examples cited by the Hon. Mr Griffin could all fall within a declaration of a dangerous area. He is concerned about the potential for conflict between the State Disaster Act and the Country Fires Act. This legislation is not intended to impinge on either of these pieces of legislation. I have on file an amendment to remove any potential for conflict with the State Disaster Act and the State Emergency Services Act.

The Hon. Mr Griffin has also raised the issue of the media and the right of persons whose property or family may be at risk. The Government has examined this matter closely. The Government is sympathetic to the matters raised by the Hon. Mr Griffin, but is mindful of not diluting the section to the point where virtually anyone would be allowed access to a 'dangerous area'.

The underlying purpose of this section must not be lost to keep people away from areas, entry to which could very probably result in death or bodily injury. Having said that, one can readily sympathise with the owner of a house during a bushfire on being stopped by police. However, the inescapable facts of such a situation are that the owner of the premises may be in a highly agitated and emotional state and may be unable to assess the danger in a rational manner. Their one aim (understandably so) is to save, rescue, or salvage property, regardless of actual present dangers. The police officer at the scene can provide an element of stability and objectivity.

Nor is it the intention of the Government or police to hamper the media. In many situations the media are using helicopters and are not a problem. The Police Media Liaison Unit will facilitate media access, which will not impede police operations and will enable responsible journalistic coverage. Accordingly, I have filed an amendment which will allow a person to gain authorisation to enter a dangerous area.

The Hon. Mr Griffin has also indicated that he will require the authorisation of a justice to gain access to premises for the purpose of identification of a person who last resided there. The Commissioner of Police is authorised by section 67 of the Summary Offences Act to issue a general search warrant to such members of the Police Force as he thinks fit. The Government does not consider there is reason to treat the powers to be exercised under the new section 83c any differently.

The Hon. Mr Gilfillan has queried the need for the roadblock for a period of 12 hours. I advise that the period is a maximum period. The actual period of the roadblock will be determined by the senior police officer taking into account all the circumstances.

The Hon. Mr Gilfillan queries whether the police would be able to hold people and vehicles on an unassociated offence as a result of the search. The Bill specifically limits the power to take possession of an object which constitutes evidence of an offence by the person for whose apprehension the roadblock is established. The police could only hold a person for an unassociated offence, if that clearly falls within the police authority from other legislation.

The Hon. Mr Gilfillan has also queried whether the provisions would be used to keep the general public and the media away from a specific area for a long period. This is not the intention of the legislation. The senior police officer must believe on reasonable grounds that a road block will significantly improve the prospects of apprehending a person who has committed a major offence or escaped from lawful custody. Holding innocent people for lengthy periods would be counterproductive, as it would only increase congestion and confusion at the roadblock.

The Hon. Mr Gilfillan has queried whether a potentially violent confrontation between protesters and police, or a police manhunt, could be a basis for declaring an area to be dangerous. Potentially, such situations could be declared a dangerous area, if the senior police officer believed on reasonable grounds it would be unsafe for members of the public to enter the area.

For example, if a demonstration turned into a riot as occurred in London last weekend in 'the poll tax' riot, the police may consider it necessary to try to keep unsuspecting citizens out of the dangerous area. The Hon. Mr Gilfillan has queried whether the amendment deals with removal of persons from a dangerous area. It does not specifically address this issue as it deals with restriction on entry to a dangerous area. The Hon. Mr Gilfillan has also queried the ability of a police officer to make a decision in the heat of the moment—he indicates that a member of the judiciary may be preferable to make such a decision. However, I reiterate that the decision must be taken by a senior police officer, that is, an officer above the rank of inspector. The Government considers that this will ensure that a person of experience and responsibility makes the decision. In any event, any decision taken by the justice would be based on information from the senior police officer. I suggest that, in any event, in that area it would be really a matter of confusing the proper line between Executive Government and the independent judiciary.

The Hon. Mr Gilfillan has also raised a query regarding the term 'other assistance' in relation to entering a home. The term 'other assistance' was inserted to acknowledge the fact that police are occasionally called to provide other than medical assistance. Examples have been given where homeowners go away and leave gas, water or heaters on and neighbours call police to break in and minimise property damage to the home.

The Hon. Mr Gilfillan has queried whether the power could be used to enter a home during a domestic argument. In strict terms, it is arguable that such a situation could fall within the term 'other assistance'. However, this is not a situation envisaged by police for use of this section.

Clause passed.

Clauses 2 and 3 passed.

Clause 4—'Roadblocks.'

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

Page 2, lines 5 to 7—Delete paragraph *(b)* and substitute the following paragraph:

(b) may be renewed from time to time by a justice for a further period (not exceeding 12 hours).

I appreciate the responses that the Attorney-General has made to the various matters which I raised during the course of the second reading debate. As we deal with each amendment and clause, I may need to make some observations about his statements.

The first area of concern is clause 4, which deals with roadblocks. A number of issues are involved. The first is the period for which a roadblock may be authorised and who may authorise the renewal. It is interesting that something like 100 roadblocks and dangerous areas have been estimated by the Attorney-General to have been effected in the past 12 months. It is interesting also that it does not seem that any of those have resulted in any technical points of law being taken by those who have been stopped or involved in such roadblocks. So, it does not suggest that there is a great urgency for this provision in the Bill.

On the other hand, I can recognise that police commissioners in particular would desire to put beyond doubt their authority to arrange roadblocks, and for police officers to be protected from perhaps the one-off and remote instance where action is taken against them for acting in, what some might regard as being, an illegal way. As I indicated in my second reading contribution, the Opposition supports the general principle of codifying the law relating to roadblocks.

However, it is the Opposition's view that, while a senior police officer of or above the rank of inspector should be able to authorise the roadblock in the first instance, any continuation of that roadblock beyond 12 hours and for subsequent periods of up to 12 hours ought to be approved outside the influence of the police.

That is why we are proposing that a justice exercises the right of renewal. This would then bring that outside influence to bear on that decision. It seems to us that it will not create any unnecessary or unreasonable delay, hardship or bureaucracy, but it does introduce just an element of independence which we believe to be important in the context of the formalisation of the law relating to roadblocks.

The Hon. C.J. SUMNER: This amendment is opposed by the Government for the reasons I outlined on clause 1. A 'justice' is a justice of the peace and, quite frankly, I do not see that the honourable member's amendment achieves anything in terms of the protection of the liberty of the subject or anything else. I think a senior police officer is a more appropriate person to make those decisions. I am not quite sure what a justice would do and how they would be sufficiently informed in any event of the purposes of the roadblock. If they are only a JP, they are only a JP. Many would not have the skills to do it in any event.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: No, I do not think a magistrate is appropriate, either. As I said in my earlier remarks, I think that this is a matter where the police have to take the operational decisions. It is not as if we are dealing with a situation of secrecy. It is a public act. If in the final analysis the police find that a mistake is made they will have to account for it in the courts.

The Hon. I. GILFILLAN: I accept that there may be some question about the competence of a justice of the peace. That ought not, I think, to reflect on the office or on the individual who may be involved. I support the intent of the amendment. I recognise that there may be occasions when an extension from 12 hours is well and truly justified in the circumstances.

I do not see that it would be particularly onerous for a senior police officer to have consulted with someone outside the Police Force—in terms of this particular amendment a Justice of the Peace. Probably, superficially it may be better if it were someone with a bit more experience than a magistrate, but the amendment specifies a justice, and I indicate the Democrats' support for it.

Amendment carried.

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

Page 2, line 21—After 'vehicle' insert 'for the purpose of ascertaining whether the person for whose apprehension the roadblock was established is in or on the vehicle'.

This amendment clarifies the power of police to search a vehicle at a roadblock. The amendment provides that a member of the Police Force may search the vehicle for the purpose of ascertaining whether the vehicle is carrying the person for whose apprehension the roadblock is established.

The provision will allow police to search the main compartment of the car, the boot and underneath the vehicle. It would not authorise a thorough search of the vehicle, for example the glove box. This is consistent with the rationale for establishing the roadblock—it allows a cursory examination of the vehicle for the purposes of ascertaining whether the offender is in the vehicle. Such an amendment will limit any potential for abuse.

The Hon. K.T. GRIFFIN: I support that amendment and agree with it. It seems to me that it clarifies the power of search and if the roadblock legislation is directed towards the apprehension of individuals then it is quite a proper restriction to put on this particular power.

Amendment carried.

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

Page 2, lines 25 to 26—Delete 'by the person for whose apprehension the roadblock was established'.

A difficulty I explored during my second reading speech, which matter the Attorney-General has not addressed in his response, is that paragraph *(e)* of subsection (5), the provision to which my amendment is directed, provides that a member of the Police Force, at a roadblock and in the context of the powers which are granted for searching:

> may take possession of any object found in the course of such a search that the member suspects on reasonable grounds to constitute evidence of an offence—

there is no difficulty with that—

> by the person for whose apprehension the roadblock was established.

It is that last qualification that concerns me. The deletion of it does not broaden the power to stop and search and does not suggest a more detailed search but what the words suggest is that there is a limitation on the power of the police. I suggested (even along the line of the Attorney-General's amendment, which has been approved) that if we have the police looking in the car, checking heads, looking in the boot to ensure that there is no-one there, or a covered truck, for example, and they find something that looks like heroin or maybe a sugar bag of what looks like cannabis, or a cache of firearms, this suggests that those goods cannot be seized by the police. I have a concern about that.

It would seem to me to be perfectly reasonable that if there is a roadblock and a vehicle is being searched for the purpose of ascertaining whether the person for whose apprehension the roadblock was established is in or on the vehicle and if there happens to be evidence of some other offence it should be able to be seized. As I say, the Attorney-General did not cover this in his comments. I would like him to explore the reasons why those words are there in the first place and what disadvantage he sees in removing those, particularly because of the limitations which are already in the section in undertaking the search. It would be appropriate to move my amendment recognising that the Attorney-General has another amendment which, of course, is equally of importance in dealing with accomplices.

The Hon. I. GILFILLAN: I would like to have heard the Attorney-General's comments. I will be interested to hear his argument. There may be reasons to look afresh at this. I am in sympathy with the amendment. It seems to me that police officers do stop vehicles from time to time on the suspicion of roadworthiness, and so on, and if they find material which is the substance for further charges, as far as I know they take action on that. I do not see any reason why, during the course of a lawful roadblock, if other evidence gives 'reasonable grounds to constitute evidence of an offence' the police cannot retain that material and act on what they find. The amendment seems to me to be constructive and useful.

The Hon. C.J. SUMNER: The Government was initially of the view that the police should not be able to use a roadblock as a means of obtaining evidence of the commission of an offence by other than the person for whose apprehension the roadblock was established. The roadblock is established for the specific purpose of apprehending a specific person. On the other hand, I can understand, and one can always think of the odd example of the search that reveals several kilograms of heroin in the boot. It would be strange if the police could not then make arrests or take possession of that material. The argument is that the police would have other powers to do that, and that may be fair enough. It has powers to seize—

The Hon. I. Gilfillan interjecting:

The Hon. C.J. SUMNER: The problem that might occur is that, as a result of this new section, it could be argued, I suppose, that the new section would oust the jurisdiction of the police that they might have under other general law. Paragraph *(e)* provides:

> may take possession of any object found in the course of such a search that the member suspects on reasonable grounds to constitute evidence of an offence by the person for whose apprehension the roadblock was established.

If that remains, it could be construed that they would not take possession of any object that might be evidence in relation to any other person. The Government's position was that the roadblock should be limited in its purpose.

On the other hand, I think the extreme circumstance of the packet of heroin in the boot of a car would create difficulties if this clause was interpreted as excluding the capacity of the police to confiscate that obviously illegal material because of the wording of the roadblock legislation.

Presumably, the police would then have to send the car on its way, get in a patrol car, chase them again, and rearrest or apprehend them subsequent to the roadblock. I can see that that is a problem. I am prepared to accede to the amendment at this stage, although we still have some problems with it. If it needs to be considered further, we will do so before the matter returns to this Chamber. In any event, it would not appear as though this Bill is heading for conference, so perhaps the matter can be dealt with there.

Amendment carried.

The Hon. K.T. GRIFFIN: One of the other areas of concern was the question of reporting, and more so that the power to establish roadblocks is being formalised in this legislation. The Opposition is concerned that, if there is just a blanket reporting at the end of each financial year, the significance of the reporting will be diminished in relation to individual roadblocks. Again, the Opposition does not want to create unnecessary concern for police, but it seems to us to be relatively straightforward and, in a sense, a formal requirement to require the Minister to be notified of a roadblock when it occurs.

I have indicated that that should be within seven days, although during the second reading, I suggested that there should be some flexibility—whether it is seven, 14 or 28 days, I am not too fussed. We think it should be more proximate to the event than the annual report of the Commissioner to the Minister and then the tabling of that to the Parliament, remembering that the reporting under the Bill is for virtually a financial year, the report within two

months of the end of that financial year, and then the Minister tabling that report in both Houses as soon as practicable after the receipt of the report.

In essence, I propose to make the reporting more proximate to the event and requiring that to be made to the Minister within seven days of the event and then for the Minister to lay it on the table of Parliament within seven sitting days. However, as I have indicated, I have an open mind about the actual period. Accordingly, I will move:

Page 3, lines 9 to 18—Delete subsections (9) and (10) and substitute the following subsections:

(9) The Commissioner must, within seven days after the granting of an authorisation under this section, submit a report to the Minister stating—

(a) the place at which the establishment of a roadblock was authorised;

(b) the period or periods for which the authorisation was granted or renewed;

(c) the grounds on which the authorisation was granted or renewed;

(d) whether, and to what extent the road block established pursuant to the authorisation contributed to the apprehension of an offender or the detection of an offence;

(e) any other matters the Commissioner considers relevant.

(10) The Minister must cause copies of a report under subsection (9) to be laid before both Houses of Parliament within seven sitting days after receipt of the report if Parliament is in session, or if Parliament is not then in session, within seven sitting days after the commencement of the next session of Parliament.

The Hon. C.J. SUMNER: The Government opposes this amendment. The Bill provides for an annual report to the Minister; that is adequate. It is unusual for the Police Commissioner to have to make regular reports to the Minister relating to the exercise of police powers. As I said earlier, the only areas where regular reporting is required are where the use of police power represents an invasion of personal privacy which, if the Commissioner was not required to report, would be known only to the police. Reporting mechanisms have usually been used in those areas where the police would go out and exercise a power, a listening device or telephone interception, and, unless there was a report, they would be the only people who would know about the exercise of that power.

That is why a reasonably strict reporting procedure is imposed with respect to those matters, because using a listening device or a telephone interception is something that would be known only to the police. Obviously, it could lead to a massive abuse if there was not some reporting. However, given that a roadblock is established in the public arena, given that I have indicated that there are some 50-odd Star Force roadblocks and given that there are some 100-odd incidents in a year—on my advice from the Police Department—in my view it would be an unnecessary and bureaucratic to have to adopt that procedure. I would have thought that the annual report was adequate.

The Hon. I. GILFILLAN: I sympathise with the intention of the amendment, which is to get a more rapid awareness of roadblock procedures. I think that the time constraint of seven days is unrealistic. I understood from the Hon. Trevor Griffin's comments that maybe that is an area in his amendment which he believes could be open to further discussion.

Bearing in mind that the Attorney seems to be resigned to a conference, if there were to be a report every three months (and I do not think it is reasonable to leave it for 12 months, and it may well be over that because there is a two-month extension past the 12 months) if there is any point in the reporting at all, and if we are to be interested at all in the exercise of what is a quite extraordinary power of the police, then I think it is reasonable and acceptable that Parliament know of it much closer to the incident than what could be in 12, 13 or 14 months time.

The Hon. C.J. Sumner: If there is a fuss about it, you will know about it anyway.

The Hon. I. GILFILLAN: That is not the point. I think there needs to be some reporting on what is a quite extraordinary power. As I believe that the actual discussion on the time frame can take place elsewhere, possibly at a conference, I indicate my support for the amendment. However, we would not be looking for the seven day time restriction, and I believe that I could accept something which required a quarterly report from the commission.

Amendment carried; clause as amended passed.

Progress reported; Committee to sit again.

CENTRE HALL DOORS

The House of Assembly intimated that it had passed a resolution that it is of the view that the centre hall doors should be opened as soon as practicable in order that visiting members of the public can come in through the major entrance planned as part of the original design of the building and that the centre hall should be jointly staffed for security purposes by staff rostered from both Houses.

The Hon. C.J. SUMNER: On a point of order, Mr President, this is a message but there is nothing formally before the Council. Had the motion from the Assembly included the words 'and seeks the concurrence of the Legislative Council thereto', we would have made it an Order of the Day. At present, there is no mechanism, unless I suspend Standing Orders, to deal with this matter. If it is to be dealt with, someone will have to move for the suspension of Standing Orders to ensure that the matter is on the Notice Paper, or someone will have to move the motion in the normal way next week so that it can be debated.

The PRESIDENT: That is true; I agree with the Attorney's interpretation.

CHILDREN'S PROTECTION AND YOUNG OFFENDERS ACT AMENDMENT BILL

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

MARINE ENVIRONMENT PROTECTION BILL

The House of Assembly intimated that it had disagreed to the Legislative Council's amendments and suggested amendment.

Consideration in Committee.

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

That the Council do not insist on its amendments.

The Hon. DIANA LAIDLAW: As far as the Liberal Party is concerned, these amendments were argued in this place and were accepted by the majority of members. So far as the amendments moved by the Liberal Party are concerned, we maintain that they should be supported.

The Hon. M.J. ELLIOTT: These amendments reflect the position that the Democrats have taken on this Bill since last year when the first White Paper emerged. Our position has not changed in all that time. As they reflect our viewpoint, we believe that we should insist on the amendments.

Motion negatived.

SUMMARY OFFENCES ACT AMENDMENT BILL

Adjourned debate in Committee (resumed on motion)
(Continued from page 1252.)

In Committee.

Clause 5—'Insertion of sections 83b and 83c.'

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

Page 3, line 23—Delete 'unsafe' and substitute 'dangerous'.

I was concerned about new section 83b (1) because, although it indicated that if a senior police officer believed that it would be unsafe for members of the public to enter a particular area because of conditions temporarily prevailing there it could be declared dangerous, it did not really focus with sufficient clarity on the issue. In my view it was not a declaration that it was unsafe because if it is unsafe it does not necessarily mean that it is dangerous. The focus of the provision ought to be on the conditions which are regarded by the senior police officer on reasonable grounds as being dangerous. So, I want to provide that the word 'unsafe' is deleted and that the senior police officer must believe on reasonable grounds that it would be dangerous for members of the public to enter a particular area and then he or she can declare the area to be dangerous. That more appropriately follows than the opinion that it is unsafe, and then declaring that it is dangerous. There needs to be consistency and it needs to be clear. In my view it is the element of danger which is the more important criterion. I have therefore moved my first amendment.

The Hon. C.J. SUMNER: The Government opposes the amendment. I understand the definition of 'dangerous' is 'unsafe'. So, I do not think we are advancing the issue very much further at all. The definition of 'dangerous' in the *Concise Oxford Dictionary* is 'causing danger; unsafe'.

The Hon. K.T. Griffin: What is the definition of 'unsafe'?

The Hon. C.J. SUMNER: See 'safe'. 'Safe' has a lot of meanings: 'affording security or not involving danger; cautious and unenterprising; consistently moderate (that could be the Hon. Mr Griffin); that can be reckoned on; unfailing, certain to do or be, sure to become'. Obviously that is not relevant. It says it is safe, affording security or not involving danger. The Government does not see the need to make the amendment.

The Hon. I. GILFILLAN: I am not really too fussed about the amendment. I think if the Parliamentary Counsel has seen fit to put the words as they have I am prepared to live with it.

Amendment negatived.

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

Page 3,
Line 31—Delete 'and'.
Line 32—Delete '2 days' and substitute '24 hours'.
After line 32—
Insert—
and
(c) may be renewed by a senior police officer for a further period (not exceeding 24 hours).

I am seeking to split up the period of two days into two periods of no longer than 24 hours. It seems to me that, if there is only a period of two days, there is less inclination to revoke the declaration than if it were limited to a period of 24 hours. A conscious decision would then have to be taken whether or not to extend that period. I am proposing in those circumstances to delete 'two days' and insert '24 hours', and then to allow renewal by a senior police officer for a further period not exceeding 24 hours. I think that just brings an additional check into the system.

The Hon. C.J. SUMNER: These amendments are opposed. The provisions in the Bill allow for an area to be declared as a dangerous area for a period of up to two days, which is a maximum period. The senior police officer will make a judgment as to the length of the period of the declaration at the time of making it. The two-day period is not seen as being unduly long, given that it may cover matters such as earthquakes, outback flooding, etc.

The Hon. I. GILFILLAN: I oppose the amendments. I do not think they are necessary.

Amendment negatived.

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

Page 4, line 5—After 'fails' insert ', without reasonable excuse,'.

This amendment modifies the offence relating to the failure to stop a vehicle pursuant to section 83b. It adopts the 'without reasonable excuse' test found in proposed section 74b *(a)* and *(b)*.

The Hon. K.T. GRIFFIN: I have no difficulty with that.

Amendment carried.

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

Page 4, lines 8 and 9—Delete 'A person who enters a dangerous area, locality or place contrary to a warning under this section' and insert:

'If—

(a) a person enters a dangerous area, locality or place contrary to a warning under this section;

and

(b) the person is convicted of an offence against subsection (5) *(a)*,

the person.

This amendment endeavours to come to grips with what I see is a problem, and that is that there may be circumstances where a person desires to enter a dangerous area to protect life or property and, also, to preserve the right of the media to report. I have suggested a proposition which I prefer so that, if a warning is given by a police officer to a person not to enter a dangerous area, locality or place but that person does so, if the person is convicted of an offence that person may be liable to compensation for the costs of operations reasonably carried out.

I later provide a defence to a charge of unlawfully entering a dangerous place in that the defendant entered the dangerous area 'believing it was necessary to do so in order to protect life or property' and that the defendant entered the dangerous area 'as a representative of a news media believing that it was necessary to do so in order to report adequately on the conditions'.

I would suggest that the Attorney-General's amendments are more limited because, whilst they recognise that other persons may enter, it seems to me that there is the added control that a police officer must give the approval for that person to do so. Whilst it is a matter of judgment as to which is the preferred option, I think that, in the circumstances of a particular dangerous situation, my amendment certainly gives more protection to individuals in respect of life or property and flexibility for the media, so I prefer my amendment in that context.

The Hon. ANNE LEVY: This amendment is opposed. The amendment would require a person to be convicted of an offence against new subsection (5) *(a)* before he or she would be liable to pay compensation under new subsection (6). This is considered to be too limited. The word 'convict' in paragraph *(b)* is a particular concern. Council would no doubt argue against the recording of a conviction in the court of summary jurisdiction because of the potential to pay compensation in the civil action. Different standards of proof would normally apply in a criminal trial as compared with a civil trial. The requirement for conviction would require the matter to be proved beyond reasonable doubt before civil compensation would be payable.

The Hon. I. GILFILLAN: As I said before, it seems to me that the Attorney has really resigned himself to a con-

ference on this matter. With due respect to the stand-in Minister, we will not be able to have a very constructive debate on the fine points of what are two relatively complicated ways of dealing with an agreed situation. So that this matter will be on the agenda for the conference, I will support the amendment but on the clear understanding that I do not understand either of them. For the Committee's edification, I will support the amendment.

Amendment carried.

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

Page 4, after line 10—Insert the following subsection:

(6a) It is a defence to a charge of unlawfully entering a dangerous area, locality or place contrary to a warning under this section to prove—

(a) that the defendant entered the dangerous area, locality or place believing that it was necessary to do so in order to protect life or property;

or

(b) that the defendant entered the dangerous area, locality or place as a representative of the news media believing that it was necessary to do so in order to report adequately on the conditions prevailing there.

In the context of that amendment having just been carried, I think that my amendment is the appropriate one to support, in a sense as a consequence of that, and I would urge that that be so, because the two run very much together.

The Hon. ANNE LEVY: The amendment is opposed, and I think it is important to explain why. This amendment was opposed by the Government in the other place, but at that time an undertaking was made to consider the amendment further following discussions with the police, and these discussions have been held. The Government opposes the amendment following those discussions on the ground that the inclusion of this amendment would severely dilute the authority and purpose of the section in so far as it could, in effect, allow virtually anyone access to a dangerous area.

The underlying purpose of this section must not be lost or trivialised, nor must the types of circumstances with which it seeks to deal be forgotten. An Ash Wednesday fire situation, or a major poison gas spillage or leakage are the sort of things that spring to mind. It could well be argued that, for police to allow a person to enter such an area, would amount to a form of dereliction of duty.

Having said that, one can readily sympathise with an owner of a house who, during a bushfire, is stopped by the police at a roadblock at the base of the foothills and is told they cannot proceed. However, the inescapable facts of such a situation are that the owner of these premises will, understandably, be in a highly agitated and emotional state and may be unable to assess in a rational manner the danger which is present. Their one aim, again quite understandably so, is to save, rescue or salvage their property, regardless of, or perhaps completely overlooking, the actual present dangers.

The police officer at the scene can therefore provide an element of stability, reason and objectivity, which may well be lacking in the property owner. When considering this proposed legislation a danger is to limit one's thinking to bushfires. More striking examples are readily apparent. In the *Advertiser* of Monday 26 March on page 3 an article described gelignite bombs being found at a chicken hatchery at Cavan. The area had to be cordoned off while the bombs were detonated or defused. There was also the recent LPG gas explosion in Sydney.

In the majority of such cases, factory owners, employees, sightseers, etc., will obey the police warnings and voluntarily keep out of the cordoned off dangerous area. But what happens if the owner of the factory disobeys the police direction and insists on entering the factory? In the particular case in question, death or injury would probably have resulted.

Another point which needs to be emphasised is the discretionary 'may' in new section 83b (3). As the proposal stands, police do not have to apply the sanctions of this new section. Obviously, they will not in the case of emergency personnel, but this can also apply to an ordinary member of the public if the circumstances are appropriate.

Nor is it the intention of the legislation to exclude the media. In many situations the media are using helicopters and they are not a problem. It is expected that the Police Media Liaison Unit will facilitate media access which will not impede police operations and enable responsible journalistic coverage. So, I would oppose the Hon. Mr Griffin's amendment and favour the one which is in the name of the Attorney-General.

The Hon. I. GILFILLAN: This amendment perhaps does lap together with the previous amendment. I do not understand the legal differences between the two and unless the Attorney is enthusiastic to really exhaustively debate that my indication is that I will support the amendment on the basis that the matter will be discussed in a conference.

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

Page 4—

After line 10—Insert new subsections as follow:

(6a) Where a police officer is satisfied that it is necessary for a person to enter a dangerous area, locality or place—

(a) to protect life or property;

(b) in the case of a representative of the news media—to report adequately on conditions prevailing in that area, locality or place;

or

(c) for any other proper reason,

the police officer may authorise that person, on such conditions as the police officer thinks fit, to enter the area, locality or place and, where such an authorisation is given, no civil or criminal liability is incurred under this section by the authorised person by reason of anything done in accordance with the conditions of the authorisation.

(6b) An authorisation may only be given under subsection (6a) by a senior police officer or a police officer assigned by a senior police officer to give such authorisations.

After line 19—Insert new subsection as follows:

(8) This section does not apply if—

(a) a declaration of a state of disaster is in force under the State Disaster Act 1980;

(b) an emergency order is in force under the State Emergency Service Act 1987.

This amendment addresses the difficult matter of allowing a property owner or the media to enter a dangerous area. The matter is very complex. The police would prefer that no defence or exemption be included but that the matter of entry be determined by them under the existing provision.

However, the Government acknowledges the real concerns expressed on behalf of property owners. Accordingly, the Government amendment will allow a person to seek an authorisation from the police officer to enter the area. The police will weigh up the need for entry and allow the person to enter on conditions the police officer thinks fit. The authorised person is not subject to civil or criminal liability under this section provided they act in accordance with the conditions of the authorisation.

The Hon. Mr Griffin's amendment carried.

The Hon. C.J. SUMNER: I seek leave to withdraw my amendment.

Leave granted; amendment withdrawn.

Progress reported; Committee to sit again.

MARINE ENVIRONMENT PROTECTION BILL

The House of Assembly requested a conference, at which it would be represented by five managers, on the Legislative

Council's amendments and suggested amendment to which it had disagreed.

The Legislative Council agreed to a conference, to be held in the Legislative Council conference room at 5.45 p.m. today, at which it would be represented by the Hons M.J. Elliott, Diana Laidlaw, Anne Levy, R.I. Lucas and R.R. Roberts.

[Sitting suspended from 5.55 p.m. to 7.45 p.m.]

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

That the sittings of the Council need not be suspended during the continuation of the conference on the Marine Environment Protection Bill.

Motion carried.

SUMMARY OFFENCES ACT AMENDMENT BILL

Adjourned debate in Committee (resumed on motion).

(Continued from page 1254.)

Clause 5—'Insertion of ss. 83b and 83c.'

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

Page 4, after line 19—Insert new subsections as follow:

(8) The Commissioner must, within seven days after the making of a declaration under this section, submit a report to the Minister stating—

(a) the area, locality or place in relation to which the declaration was made;

(b) the period for which the declaration was in force;

(c) the grounds on which the declaration was made;

(d) any other matters the Commissioner considers relevant.

(9) The Minister must cause copies of a report under subsection (8) to be laid before both Houses of Parliament within seven sitting days after receipt of the report if Parliament is in session, or, if Parliament is then not in session, within seven sitting days after the commencement of the next session of Parliament.

My amendment is consistent with an earlier amendment on reporting by the Commissioner of Police when a declaration is made about an area which is dangerous or unsafe. I want to ensure that there is a mechanism for accountability. I do not regard it as an impost on the Commissioner to report on each occasion that a declaration is made. Serious civil and criminal consequences can arise from such a declaration, particularly in relation to entry to a dangerous area. I am flexible whether it should be seven days or some other period, but there should be some mechanism for reporting. It is interesting to note that in the Bill there is no requirement for reporting. I believe that it is important to have such a provision. Accordingly, I move the amendment.

The Hon. C.J. SUMNER: The Government opposes the amendment for the same reasons as I opposed the seven day reporting with respect to road blocks—it is not necessary. If some reporting mechanism is necessary, the Government might be willing to consider it, but certainly not the notion that a report must be given on every one of these matters within seven days. It is interesting to note that there is a live example going on right now in Currie St, where there was a gas leak and some kind of explosion. The road has been blocked and the police are keeping people out.

The Hon. K.T. Griffin: They are doing it without the legislation and there are no problems.

The Hon. C.J. SUMNER: Exactly. If they are challenged at some point in time, that is the concern that they have.

The Hon. K.T. Griffin: Why not report it—

The Hon. C.J. SUMNER: There is no need to report it. There were 100 cases in the past financial year, including 53 Star Force roadblocks. It seems to be bureaucratic overkill to report on every one of those within seven days. It is just unnecessary. In the Government's view an annual report which gives the details is satisfactory.

The Hon. I. GILFILLAN: I agree with the general drift that there is a need for reporting. I believe that the amendment's requirements are excessive and that there is room for substantial moderation. With that in mind, the Democrats support the amendment so that it can be the subject of discussion in the conference.

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

Page 4, after line 19—Insert new subsection as follows:

(10) This section does not apply if—

(a) a declaration of a state of disaster is in force under the State Disaster Act 1980;

(b) an emergency order is in force under the State Emergency Service Act 1987.

The amendment seeks to remove the potential for any conflict with other legislation dealing with dangerous areas, for example, the State Disaster Act and the State Emergency Act. Where a declaration or an emergency order is in force under either of these Acts, new section 83b would not apply.

The Hon. K.T. GRIFFIN: I support the amendment. I did raise that issue. It seemed to me that it was unwise to have significant overlap of jurisdictions and I think that this amendment goes a long way towards removing those problems.

The Hon. K.T. Griffin's amendment carried.

The Hon. C.J. Sumner's amendment carried.

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

Page 4, line 31—Delete 'the commissioner' and substitute 'a justice'.

This new section relates to special powers of entry. The Commissioner has power to issue a warrant that will authorise a member of the Police Force to enter premises in which the person last resided before death and to search the premises for some material that can identify or assist in identifying the deceased or relatives of the deceased and take the property of the deceased into safe custody. It seems to me that, when it comes to breaking and entering, the warrant in these circumstances would more appropriately be issued by a justice than the Commissioner, and that is why I have moved this amendment.

The Hon. C.J. SUMNER: This amendment is opposed. The Commissioner is authorised by section 67 of the Summary Offences Act to issue a general search warrant to such members of the Police Force as he thinks fit. There is no reason to treat the powers to be exercised under new section 83c any differently. As I pointed out before, a justice is only a justice of the peace and I do not see that there are any greater or more effective protections in the honourable member's amendment than in the Government's proposal.

The Hon. I. GILFILLAN: I am not persuaded that the amendment has enough advantages to support it, so the Democrats will oppose it.

Amendment negatived.

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

Page 5, after line 3—Insert the following subsections:

(6) The Commissioner must, within seven days after the granting of an authorisation under this section, submit a report to the Minister stating—

(a) the premises in relation to which the authorisation to enter was granted;

(b) whether property was taken from the premises pursuant to the authorisation;

(c) the grounds on which the authorisation was granted;

(d) any other matters the Commissioner considers relevant.

(7) The Minister must cause copies of a report under subsection (6) to be laid before both Houses of Parliament within seven sitting days after receipt of the report if Parliament is in session, or if Parliament is not then in session, within seven

sitting days after the commencement of the next session of Parliament.

This amendment also relates to reporting where a warrant is granted to break into premises as envisaged by new section 83c. I have canvassed the reasons for that, acknowledging that the time frame might be much too limited, but that is an area in which flexibility can occur.

The Hon. C.J. SUMNER: The Government opposes this amendment for similar reasons to those outlined on the question of reporting. The police officer who enters the premises will have a warrant authorising such entry. New section 83c (5) requires the Commissioner to keep a proper record of property taken for safekeeping under this provision. It is not considered necessary for the Commissioner to report to the Minister on the exercise of these powers, nor do I think it necessary to have individual parliamentary scrutiny in relation to them.

I do not imagine that there will be a problem with some kind of reporting mechanism, but the Police Commissioner does not report on every matter on which an ordinary search warrant is issued. In this case, of course, the situation might be that police entry could be activated by a person on holidays whose gas has been left on or whose cat has been locked up in the laundry. I really do not see that much can be achieved in the public interest by regular reporting.

The Hon. K.T. Griffin: This only relates to bodies in need of medical assistance—not to cats and dogs.

The Hon. C.J. SUMNER: Whatever; I do not see that a reporting mechanism as envisaged by the honourable member is necessary in this case.

The Hon. I. GILFILLAN: I agree basically with what the Attorney has said but, for consistency and so that the matter can be dealt with in totality—in other words, so that there is an obligation on the Commissioner to report on activities that arise under the extended powers of this Bill—the Democrats will support the amendment. I indicate that with a very clear understanding that it be part of a discussion agenda only and is not to be construed as unquestioning support for the amendment.

Amendment carried; clause as amended passed.

Title passed.

Bill read a third time and passed.

STATUTES AMENDMENT (VICTIMS OF CRIME) BILL

Adjourned debate on second reading.

(Continued from 3 April. Page 1063.)

The Hon. C.J. SUMNER (Attorney-General): The Hon. Mr Griffin asked a question about the status of the Criminal Injuries Compensation Fund. I provide the following information:

1. The increase in payments from the fund will be minimal in the 1990-91 financial year. This is due to the fact that the increased maximum payment applies only to injuries sustained after it becomes effective, and few would reach a decision in that time. In subsequent years, an estimate of the full year cost based on current activity is $600 000, which is made on the basis of about eight cases being awarded the maximum and about 25 payments averaging approximately $35 000. Although they are the details provided by the Senior Finance Officer, Attorney-General's Department, I would not be surprised if the amounts estimated were in fact exceeded.

2. The fund balance at 31 March 1990 was $3 646 939.83.

3. An initial estimate of levies to be paid into the fund during the 1989-90 financial year was $1.772 million. The basis of receipts to 31 March 1990 on a revised estimate for the current financial year is $1.850 million.

4. To date, no projections have been made on estimated levies for 1990-91 but, if recent trends continue, an estimate of approximately $2.1 million would be reasonable.

Bill read a second time.

In Committee.

Clauses 1 to 3 passed.

Clause 4—'Amendment of Criminal Law (Sentencing) Act 1988.'

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

Page 3, line 12—Leave out 'or'.

My amendment deals with *ex gratia* payments that can be made under the legislation for criminal injuries compensation. It seeks to provide another category of *ex gratia* payment that can be made from the Criminal Injuries Compensation Fund. Some years ago a number of categories of *ex gratia* payment were incorporated in the legislation, and additional categories are included in this Bill. My amendment provides that there may be circumstances of an *ex gratia* payment, at the Attorney-General's discretion, that are consistent with the objects and policy of the legislation to compensate harm resulting from criminal conduct.

This amendment is a catch-all provision to try to ensure that there is no injustice with respect to *ex gratia* payments. I do not imagine that this provision would be used very often, but it is possible, particularly when one is dealing with the area of mental injury, that an individual may not have suffered strictly mental injury within the terms of the legislation and, although it may be just in all the circumstances for some *ex gratia* payment to be made, they may thereby not qualify for criminal injuries compensation.

In the case of the parents or the spouse of a murder victim, the South Australian legislation includes a payment for grief which equates with the payment for grief that is available under the Wrongs Act in the case of a death by negligence. Members will recall that Parliament inserted that provision in the legislation two or three years ago, and that is a unique provision in Australia; in other words, the applicant does not have to establish any actual mental or physical injury to be entitled to that payment for grief. It is just a payment for what it says—grief.

Members will also recall that in this Bill we dealt with the question of funeral expenses, but there may be circumstances, particularly in the area of mental injury, where it might be appropriate for an *ex gratia* payment to be made going, to some extent, beyond the payment for grief that is already available. I accept that it would not be used very often but, as this legislation is designed to assist people in distress, I consider that it would be useful to provide that the Attorney-General may make an *ex gratia* payment from the fund in certain circumstances that are not actually specified.

The Hon. K.T. GRIFFIN: My first observation relates to the use of the description *ex gratia*. I am comfortable with this term and it is well-known. I hark back to the debate last night when my colleague, the Hon. John Burdett, raised the question of the term *bona fide* which, I suggest, is equally well-known by lawyers and laypersons. It is interesting that, in this move towards plain English, which would remove from statute law the well-established phrase *bona fide*, this does not refer also to the description *ex gratia*. This is not a plea to remove the description *'ex gratia'* as its connotation and meaning are well-known.

In relation to the substance of this amendment, I have one or two difficulties with it. I do not object to the principle, but the concern which I have, and which the Attorney-General may care to address, is that it does not have any

limit. In the Bill new paragraph *(c)* refers to an *ex gratia* payment not exceeding the limits prescribed by this Act in relation to an order for compensation. Can the Attorney indicate why this limitation was not included in his amendment, bearing in mind that the maximum penalty is $50 000? I would have been much more comfortable with this amendment if a limit had been placed on it.

The Hon. C.J. SUMNER: *Mea culpa*, it was an oversight; it should be included in the amendment.

The Hon. K.T. GRIFFIN: Does the Attorney envisage that this section will be used for emergency type relief? He would be aware that on a number of occasions I have said that persons who are obviously victims frequently need support immediately after the crime, rather than having to wait 12 months or two years—they may need emergency assistance. I wonder whether this is envisaged by the Attorney-General as falling within the terms of this provision or whether it is already encompassed in the principal Act?

The Hon. C.J. SUMNER: The question of emergency assistance has been provided for, and I think it is adequate, but, if it is not, I guess that this amendment could be used to supplement it. Section 11 (3) *(a)* provides for an emergency payment.

The Hon. K.T. GRIFFIN: I am not unhappy with the Attorney-General's amendment to the amendment.

The Hon. C.J. SUMNER: I seek leave to amend my amendment as follows:

By inserting after 'payments' the words '(not exceeding in any particular case the limits prescribed by this Act in relation to an order for compensation)'.

Leave granted.

Amendment, as amended, carried; clause as amended passed.

Title passed.

Bill read a third time and passed.

STAMP DUTIES ACT AMENDMENT BILL (No. 2)

Adjourned debate on second reading.

(Continued from 28 March. Page 913.)

The Hon. R.I. LUCAS (Leader of the Opposition): The Liberal Party supports the second reading of this Bill. At the outset I note that this Bill is the second of three Stamp Duties Act Amendment Bills that the Parliament has been asked to consider in virtually the last two or three weeks of this session. With the comfort of opposition, and not having experienced the pressure of Government, I must say that I still find it hard to understand how a situation like this can eventuate and why we cannot have one Bill incorporating all provisions.

It is not as if each of the amending Bills is extraordinarily large. As I said, we have seen three of them in the space of about two or three weeks. Indeed, the Stamp Duties Act Amendment Bill (No. 3) is on our Notice Paper to be dealt with on Tuesday. From the comfort of opposition—and I appreciate that—I wonder whether the procedures of Government could not be organised so that one amending Bill accomplished the provisions all included in the three Bills.

This Bill proposes three principal amendments to the Act, two of which will provide extra concessions for some taxpayers and, of course, will be welcomed by most people and by the Liberal Party. The third amendment seeks to close what is labelled by the Government in the second reading explanation as a 'blatant tax avoidance scheme' which has recently been developed. While the Liberal Party has some specific questions and amendments in general terms, we support the additional concessions. We also support, in general terms, the attempt to close the possible loophole, although we have had some submissions suggesting that there might be unforeseen consequences of this amendment. During the second reading and Committee stages of the Bill I will be exploring some of the suggested possible unforeseen consequences and, in Committee, I will move amendments.

The first concession in this Bill extends to persons living in a *de facto* relationship the same concession that married persons enjoy with respect to stamp duty payable on the transfer of registration of a motor vehicle. This change will make this section of the Act more consistent with other provisions in the Act which already recognise *de facto* relationships for the purposes of exemption from stamp duty on the transfer of an interest in a matrimonial home. The Bill defines 'spouse' as follows:

'spouse' of a person includes a *de facto* husband or wife of a person who has been cohabiting continuously with the person for at least five years.

That was a matter of some debate and amendment in the other place, with the words 'husband and wife' and a few others being added to the original definition. Liberal Party supports this definition. In general terms it means that *de facto's* are recognised in terms similar to the way in which they are recognised under section 71cb of the Stamp Duties Act. Therefore, in that respect, it is consistent. It is approximately the same, but not exactly the same, as the definition of a 'putative spouse' in the Family Relationships Act, as members would be well aware. Again, this is a matter that this Chamber and Parties have debated over my eight years in the Parliament, both within the Party forums and in the Parliament as well. The definition of 'putative spouse' as defined in the Family Relationships Act, has been used in many other pieces of legislation. If we, as a Parliament, choose to recognise *de facto* relationships in other pieces of legislation, why do we not, on those occasions, perhaps pick up the definition of 'putative spouse'? As I said, it is heading down the same path as the definition 'of a putative spouse', but is not in exactly the same terms. Nevertheless, as the Liberal Party indicated in another place, we support, in general terms, this extension of the concession to those extra persons.

In relation to the first concession, the Liberal Party received a submission that called for a further amendment to the legislation that would bring the nature of this concession further into line with the concessions provided in section 71cb of the Stamp Duties Act. In that section, which was introduced in 1988, conveyances of interests in principal residences between spouses was made free of all stamp duty. Whilst the Liberal Party understands the logic behind that submission, we take the view that such an additional concession should be the subject of a Government policy decision. Therefore, we will not be moving an amendment in this Chamber to achieve that goal.

The second concession extends from 30 days to three months the period of time during which a refund can be made of stamp duty paid on a registration or transfer of registration of a motor vehicle where the vehicle is returned to the dealer from whom it was acquired. This concession is logical, because in many cases problems with a motor vehicle become apparent after the 30 day period and, in those cases, vehicle owners are required to pay stamp duty again on any replacement vehicle provided by the dealer. This three month period to be included in the legislation is also consistent with the warranty provisions of the Secondhand Motor Vehicles Act 1983.

The third purpose of this Bill is described in the second reading speech as follows:

Thirdly, it is proposed to amend the principal Act so that sales or gifts of property or interest in property that together form or arise from substantially one transaction or one series of transactions, are charged at the rate of duty that would apply if there were only one sale or gift.

The current provision, section 66ab only applies to land or interests in land being conveyed. Section 66ab was enacted in 1975 to counteract the tax avoidance practice of dividing land into smaller portions to avoid increased rates of stamp duty on higher value transactions.

The same problem has again arisen but in relation to other property, such as businesses and units in a unit trust. For example, one business was sold by way of 60 agreements between the same parties instead of by the normal commercial practice of execution of one document and instead of transferring 400 units in a unit trust scheme by means of one document the vendor purchasers executed 400 separate transfers of one unit each.

As I indicated earlier the Liberal Party shares the intention of this particular change in closing this loophole but we do believe there are some possible intended consequences in this amendment, and we have received some submissions highlighting those potentially unforeseen circumstances.

I further note from the Minister's response in another place that there has been a recent example where 350 transactions were lodged with the Commissioner for what was essentially one property and a subsequent loss of revenue to the State of some $100 000. I am sure that most members would not want to see such blatant examples of stamp duty minimisation continuing.

I now turn to those possible problems and, in doing so, I concede, as the submissions we have received would indicate, that the problems they raise are in relation not only to what is in this Bill but indeed to land transfers in the principal Act.

I shall refer to the situation in relation to a transfer of land and a recent court decision and then apply that to the legislation that we have before us at the moment in relation to extending this particular legislation to businesses. The submission we have received states:

A person could purchase from a vendor a piece of land for a proposed development. He may then purchase from an adjoining owner or adjoining owners other pieces of land.

It is important in this example to note, although the person making this submission does not make this point, that we are talking here about people acting separately and independently and that phrase will take on some importance when we look at the provisions of the Bill and the Act. The submission continues:

Notwithstanding that different persons may be conveying the land to him and it is a proper commercial arrangement, it is possible that the Commissioner can contend in this set of circumstances that there is a oneness about the transaction, notwithstanding there is a series of transactions. Facts not too dissimilar were recently involved in a case before the Supreme Court, entitled *Old Reynella Village Pty Ltd v Commissioner of Stamps* where the Commissioner succeeded in his attempt to aggregate a series of transactions never within the contemplation of the provision. The provisions clearly go far beyond the mischief proposed.

That is in relation to, in effect, a criticism I accept of the legislation as exists in relation to the purchasing of land. So one person, perhaps a developer, has bought a property from another person and has then bought adjoining properties from different people.

Those vendors are acting separately and independently. They have chosen to sell to one particular person who, perhaps, wishes to develop that particular series of properties for a property development, and in no way are these purchases intended to avoid or minimise stamp duty. What this submission is saying and what the recent court decision found was that the Commissioner of Stamps was successful in aggregating the stamp duty that is payable on those three purchases, and under the legislation those purchases would have had to be within a 12 month period.

The court determined that there was a oneness in that series of transactions, and the stamp duty deemed to be payable was calculated on the aggregated value and therefore was considerably higher for the purchaser of those properties. This legislation is now trying to close a loophole which has already been closed in relation to land, which loophole I referred to earlier in relation to the transfer of businesses, for example. The same criticisms can be made of those circumstances.

If I purchase a business on a particular street, then purchase the adjoining businesses on each side of it, from three separate persons, bringing them all together to form a super deli, perhaps, over the three properties, the argument that is developed is that, based on the precedent of the *Old Reynella Village Pty Ltd v Commissioner of Stamps*, the Commissioner of Stamps could aggregate the stamp duty payable, and the person who purchased those three businesses would have to pay stamp duty at a rate considerably higher than that person would otherwise have had to do if this legislation were not passed.

I hope I have explained, at least broadly, the intent of the amendment I will be moving during the Committee stage in relation to that part of the legislation. Obviously, we will be exploring in greater detail during the Committee stage the appropriateness of the amendment that the Liberal Party has on file and proposes moving during that stage. During my second reading contribution I did not intend to raise any matters other than that. I understand that the Attorney-General will not be doing the Committee stage tonight so I will explain briefly two or three other areas in relation to which I intend moving amendments so that the Attorney will be aware of the sort of amendments that the Liberal Party intends to move.

I have listed amendments in relation to clause 6, lines 33 and 36, which will insert further words relating to property situated in the State. Again, this problem has been raised with us in a submission about the way that the Commissioner of Stamps might treat some interstate transactions. For example, a business that has been sold might have property and plant in South Australia and in Victoria and there may be two contracts for the sale of that business, one in South Australia and the other in Victoria. Under the terms of the Bill, if this amendment goes through, the Commissioner of Stamps may be able to argue that he will assess duty on the instrument in South Australia for the whole value of the transfer of the business in both South Australia and Victoria.

Through the aggregation provision, to which I referred earlier in relation to the previous amendment, similarly, the Commissioner of Stamps could use this provision to assess duty on the whole consideration of the transfer of the business in both South Australia and Victoria, even though there are separate instruments for transfer, one of which is in Victoria. Those two amendments that I have on file relate to that example and potential problem.

I understand that the Commissioner of Stamps may argue that currently this is not the practice in South Australia, but the submission that we have received, which I put to the Attorney-General, is that, although it may not be the current practice of the Commissioner of Stamps, that might not always be the future practice of this Commissioner of Stamps or of persons who may hold that office. Therefore, whilst we debate this legislation, we believe that Parliament ought to look at the potential effect of the amendment and ensure that the Commissioner of Stamps should not be able to assess duty in that way.

There are two further areas on which the Liberal Party intends to move amendments. One relates to clause 6, page

3, lines 4 and 5, to leave out ', or is otherwise engaged or concerned in the preparation or certification of,'; then, in line 12, to leave out 'and could not reasonably have been expected to know'. New section 67 (5) provides:

A person who executes, or is otherwise engaged or concerned in the preparation or certification of, an instrument chargeable with duty under subsection (3) and who, upon submission of the instrument to the Commissioner for stamping, fails to disclose the total consideration (if any) given and the whole of the property included in the transaction or series of transactions in connection with which the instrument is executed, is guilty of an offence.
Penalty: $5 000.

The Liberal Party believes that it is fair enough that the person who executes an instrument ought to be covered by this provision, but because of the problems that I raised earlier in relation to the amendments that we will be moving and, in particular, in relation to the provisions in clause 67 (3), where we are again talking about this oneness provision, someone who is assisting or advising might not be aware of all the circumstances. New section 67 (3) provides:

Where two or more instruments to which this section applies—
(a) arise from a single contract of sale;
or
(b) together form or arise from, substantially one transaction or one series of transactions—

The argument is that someone who is assisting or advising might not be aware of all the circumstances of a transfer or series of transfers. Whilst it is fair to place an onus on the person who executes the instrument, it is unfair to place that burden on someone who is advising or, in the terms of the Bill, is otherwise engaged or concerned in the preparation or certification of that instrument.

The second part of the amendment relates to new subsection (6), which provides:

It is a defence to a charge under subsection (5) to prove that the defendant did not know and could not reasonably have been expected to known the matters required to be disclosed by that subsection.

Our amendment to that provision will make it a simpler test for the defence, that is, simply that the defendant did not know. If the defendant did not know, that is a defence. The last amendment relates to clause 8, which seeks to repeal section 69. The Liberal Party will be opposing the clause. The practical effect of that will be to retain existing section 69. The submission we have received in relation to that section is as follows:

This provision is not used in practice in some cases because the Commissioner refuses to allow it to be used.
Situations do arise in commerce where there are two or more instruments to which section 69 applies and where for good commercial reasons the instrument which is to form part of the public register should not disclose the consideration or stamp duty involved. To do so creates a commercial disadvantage for a party. Therefore, an instrument not required to be placed on the public register bears the duty and is expressed to describe the consideration. In that situation the party should have the right with the approval of the Commissioner to decide which of the instruments is the principal instrument and required to bear the duty.
Again the provision should be retained for those situations where there are one or more instruments and there is no tax avoidance element involved but the party desires to preserve certain commercial information.

As is clear from that submission, it is being argued that in a number of cases confidentiality of commercial information is a requirement and, if section 69 is retained in the legislation, it can allow for that confidentiality of commercial information. Therefore, the Liberal Party will argue by way of its amendment in Committee that we ought to retain that section. I conclude my comments by indicating that we support the second reading but we will be moving those amendments to which I have referred.

Bill read a second time.

EXPLOSIVES ACT AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 29 March. Page 989.)

The Hon. PETER DUNN: This fairly short Bill seeks to increase penalties that for some time have remained static under the old Act. The Bill increases those penalties and brings them into line with present day penalties. Why do we do this? I ask this question because there has not been much trouble in this State involving offences being committed by people using explosives.

In one area in my electorate explosives are used every day. Cars are driven around at Coober Pedy and Mintabie with 'explosives' written on a sign on the roof. Many explosives are used up there. I do not hear of many problems because the people involved become familiar with using explosives and they understand how to look after them. However, if we are to keep the legislation up-to-date, it is important to make the penalties fit the crime.

It has been brought to my attention that there are problems with the transport to Coober Pedy of dangerous substances such as gelignite and the primers that attach to explosives. At the moment, ANR takes the explosives as far as Tarcoola and they are then off-loaded to a truck and taken to Coober Pedy. There are only two outlets handling explosives in Coober Pedy, and these people want ANR to transport the goods to Manguri, which is basically due west of and the closest station to Coober Pedy. However, ANR will not do that because it does not have a regular station master there.

I would think that it is fairly dangerous to off-load at Tarcoola and drive 120 miles to Coober Pedy because of the passing traffic on the road. The railway line would be much safer. However, the people and I have been unable to get ANR to do that, but I bring it to the attention of the Council because it is a problem that ought to be corrected. The same applies to Mintabie because its explosives come from Tarcoola as well, which is another 200 km up the track. That is putting everyone who drives on that track at some danger.

The Liberal Party agrees that there should be some increase in the penalties. However, I do not believe that the increases need to be as high as the Bill provides because there are very few offences against the Act. However, according to the Minister, these changes are necessary, and the Liberal Party supports the Bill.

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

LONG SERVICE LEAVE (BUILDING INDUSTRY) ACT AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 3 April. Page 1065.)

The Hon. J.F. STEFANI: The Liberal Opposition supports the Bill. The portable Long Service Leave (Building Industry) Act commenced on 1 April 1977 and was amended in November 1987. The scheme allows building industry workers in certain occupational categories detailed in the first schedule and paid under the prescribed awards listed in the second schedule to be eligible for long service leave benefits on the basis of service to the industry rather than service to a particular employer.

The current benefits available to building workers are 13 weeks long service leave after 10 years service in the industry, with pro rata benefits after seven years service. At present, however, whilst electrical contracting and metal trades workers who are engaged to work on construction sites may be regarded as building workers, they do not enjoy the portability entitlements from employer to employer because, under the provision of the Federal Long Service Leave Award, only non-portable long service leave entitlements are payable after 15 years service with one employer.

These apparent award differentials were first raised by the Electrical Trades Union in March 1988 when an industry working party was established to negotiate and reach agreement on these issues. The working party, comprising representatives from the Electrical Contractors Association, the Engineering Employers Association, the Long Service Leave Building Industry Board, the Electrical Trade Union and the Amalgamated Metal Workers Union, reached agreement on the key areas of portability, date of operation, employer contributions and method of administration. To this end, enabling legislation allowing the establishment of a separate Electrical Contracting and Metal Trades Long Service Leave Fund was introduced by the Government in September 1989.

The amending Bill before Parliament incorporates an expanded and reconstituted board, increasing the number of members from five to seven. The name of the board is changed to reflect the broader coverage of the construction industry long service leave provisions. The Bill has the broad support of both employer and employee organisations. The new fund will be administered concurrently by the Construction Industry Long Service Leave Board and will be kept as a separate fund from the existing Building Industry Fund.

Initially, levies will be contributed by the Electrical and Metal Trades Employers at a level of 2.5 per cent of remuneration paid to workers engaged on construction sites by these two industries. This is 1 per cent higher than the level presently paid by other employers engaged in the construction industry. The two separate funds will remain in existence until liabilities incurred by the two industries entering this scheme have been met. The Bill incorporates the prescribed awards under which construction workers are engaged and introduces changes to the reporting and operational procedures aimed at improving administration. The Opposition supports the Bill.

Bill read a second time.

In Committee.

Clauses 1 to 18 passed.

Clause 19—'Imposition of levy.'

The Hon. J.F. STEFANI: The new section proposes to pay the levy to the board. Perhaps it would be more appropriate that the levy be paid to the fund. This is not a critical point, but the board does change from time to time and I would have thought that the wording could be that the levy should be paid to the fund.

The Hon. C.J. SUMNER: I am advised that another provision in the legislation provides that the board has to pay money into the fund in any event, so the money ends up in the fund, anyway.

Clause passed.

Remaining clauses (22 and 23) and title passed.

Bill read a third time and passed.

MOTOR VEHICLES ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 4 April. Page 1156.)

The Hon. DIANA LAIDLAW: This Bill is important in a number of respects. It seeks to amend the Act to simplify procedures for the issue, renewal and transfer of the registration of motor vehicles. It also seeks to simplify procedures for the issue and renewal of drivers licences and learners permits. The stated purpose of these amendments, which is to simplify procedures, is to facilitate the introduction of an on-line computer.

Members may recall that the saga of this on-line computer began back in the days of the Tonkin Liberal Government. It was an excellent idea, but there have been considerable difficulties in gaining the expertise to actually implement this important initiative and, a decade after the idea was first conceived, the department is still tackling the project. However, it appears that by August this year the on-line computer will come into operation. These amendments to the Act in relation to the transfer of registration of motor vehicles and in respect of drivers' licences and learners' permits will help in that regard.

I think it is necessary to note some of these changes because they are important. Provision is made for the issue of a new temporary permit to drive an unregistered motor vehicle in a case where an application for registration or renewal of registration cannot be processed immediately; for the issue of a permit upon payment of a nominal fee and a premium for insurance; and for the Registrar to return an application for registration or renewal of registration and any money paid.

In regard to the second matter—the issue of a permit upon payment of a nominal fee and a premium for insurance—the Liberal Party believes that this move has a second benefit in terms of the administration of the Motor Vehicles Act, because recently legal difficulties were encountered by the Registrar in a case involving a Mr Callipari. That case is still before the courts, so I will not go into the details or canvass our views in regard to that matter. However, it appears that this amendment in the Bill will overcome what appears to have been a mishap in administration by the Motor Registration Division.

Further amendments seek to protect vehicle buyers by tightening the transfer of registration procedures to deter manipulation of the system by those involved in car theft rackets. The stealing of motor vehicles has become a matter of considerable alarm not only for the police in this State but for the community in general. Even a dispassionate observer would suggest that car thefts are reaching record proportions in South Australia.

According to the latest police figures, we appear to be heading for a record year in respect of motor vehicle thefts in this State. Up to 31 December last year, which is the latest statistic available, 6 938 vehicles had been stolen in South Australia since 1 July—an average of 1 156 per month. This is a very disheartening and alarming figure and a trend that I would like to highlight. The figure I have just quoted has put South Australia on target to exceed the number of vehicles stolen during the 1988-89 financial year. If more than 14 000 vehicles are stolen, as the police predict, the level will exceed by 16 per cent the 1988-89 total of some 11 969 thefts, which was a record number for a financial year. I add that the figures include all stolen vehicles except vans and trailers.

Members should note that, with respect to these trends, 10 years ago a relatively small number of 5 850 vehicles were stolen in South Australia in one year. So, it appears that this year that total will be increased by 10 000 vehicles.

The Hon. T.G. Roberts: What about the recovery rate?

The Hon. DIANA LAIDLAW: The recovery rate tends to be quite good within a week after a vehicle is stolen.

That, of course, is heartening with respect to insurance claims. However, the recovery rate is not always, as insurance companies have pointed out to me, encouraging when one sees the damage that has been done to a vehicle, notwithstanding the fact that the police have been able to locate the vehicle within a short time.

I am very pleased that the honourable member raised that issue because, notwithstanding the recovery rate, I am informed by insurance companies that not only the number of vehicle thefts but also the damage done to vehicles that have been stolen will lead to increases in car insurance premiums this financial year. I think that that is a matter of concern not only to every member in this place but also to the community at large. So, it is heartening to see that this Bill seeks to tighten the transfer of registration procedures which will deter the manipulation of the system by those involved in car theft rackets.

I am not suggesting that all cars that are stolen necessarily relate to such rackets, but the very fact that there are to be deterrents in the system with respect to car registration procedures in the future will perhaps help deter car thefts overall, and not only in relation to so-called car theft rackets. A number of other housekeeping amendments have been incorporated in the Bill. One of the most important that I highlight is the provision that a vehicle registered at a reduced registration fee may be transferred if the balance of the fee is paid in respect of an unexpired portion of the registration.

This issue was raised with me several times in the past before I had the shadow portfolio of transport. I am very pleased to see that the Government is seeking to redress that issue in this Bill. It is also important to note that in this Bill an important new initiative is being undertaken by the Government in respect of registration discs, which will, in future, provide for the date of expiry. I commend the Government for reintroducing this practice. I remember that one of the Ministers of the other place, Mr Klunder, had considerable difficulty earlier this year with an unregistered vehicle. Perhaps if he had pushed for this initiative earlier, or perhaps if the date of expiry had been on the disc and, therefore, obvious to the driver, that oversight might not have occurred.

There are quite a few other issues that the Government should explore in relation to administrative practices, in order to deter vehicle theft in this State. There has been a working party report on this matter, and the Minister now has that report in hand. I hope that the Parliament will be informed of the major findings of that report. I respect the fact that the Government, because the report has been looking at and investigating illegal activity in relation to vehicle thefts, may not wish to circulate it for wide public consumption because it may tell a lot of people how they can become quite easily involved in vehicle theft.

Certainly, in my investigation of this Bill I have learnt a lot about the illegal practices that are going on in the community and, if such practices are also highlighted in this report, I suggest that it would not be wise for the report to be in public circulation. However, I believe that other measures are incorporated in the working party report, the details of which could well be advised to this place at some later stage. On that note, I indicate again that the Liberal Party supports the second reading of this Bill. It is not our intention to move any amendments.

Bill read a second time.

In Committee.

Clause 1—'Short title.'

The Hon. DIANA LAIDLAW: Because of the number of people who have helped me to understand the provisions in this Bill, I would like to record my gratitude to the Royal Automobile Association, the Insurance Council and the officers of the Motor Vehicle Registration Division who deal with this area. As this was the first Bill that I have dealt with in my new capacity as shadow Minister, I needed some quick instruction. I will not be asking any questions, or pursuing issues on various clauses not because of a lack of interest in the Bill, but because the Minister is in another place and, the Bill having been introduced earlier in that place, the member for Heysen was provided with questions on various issues. I am pleased that they have been answered by the Minister in another place.

The Hon. ANNE LEVY: I acknowledge the kind remarks made by the honourable member and thank her very much for them on behalf of the Minister and his advisers. We welcome such cooperation.

Clause passed.

Remaining clauses (2 to 27) and title passed.

Bill read a third time and passed.

WORKERS REHABILITATION AND COMPENSATION 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 view 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 addresses two significant issues. The first is a proposal to raise the maximum levy rate ceiling from the current 4.5 per cent to a new maximum of 7.5 per cent. The second is to tighten the definition of 'disease' to ensure that compensation is only payable where a disease is work related.

Since WorkCover's commencement in October 1987 the scheme has operated within a maximum levy rate ceiling set down under the Act of 4.5 per cent of remuneration. This compares with the situation under the previous private insurer system where premium rates of well in excess of 20 per cent of remuneration for high risk industries were being paid. This was achieved through low risk industries subsidising high risk industries.

In its first two years of operation the WorkCover Corporation achieved close to full funding by operating within this ceiling at an average levy rate of 3 per cent of remuneration. However, over the last 12 months the Corporation has experienced a serious and sustained deterioration in its claims experience and it is anticipated that it will have an unfunded liability of approximately $70 million by the end of 30 June 1990.

The deterioration that has occurred in WorkCover's claims experience over the last twelve months has a number of key features:

Firstly, claim numbers have been considerably higher than expected on the basis of earlier trends. While this increase in claim numbers is partly explained by the overall strong growth in employment in South Australia and the disproportionately higher growth in high-risk industries, this does not provide the full explanation for the increases observed.

Secondly, not only has there been a higher claims incidence but the average cost of each claim has also increased as a result of rising medical, hospital and rehabilitation costs and because the percentage of overall claims involving lost time from work time has increased.

Thirdly, a target of a 25 per cent reduction in the number of claimants remaining on benefits after one year has not been achieved although there appears to have been some improvement in recent months.

In the face of these rising costs, for the scheme to remain fully funded, it is necessary to raise the average levy rate from the current 3 per cent up to 3.8 per cent of remuneration.

The increased levy income that is required could be raised without lifting the maximum ceiling. However, strong equity grounds exist for raising the ceiling. This is because most of the increase in costs has occurred amongst the high risk industries. The current 4.5 per cent maximum ceiling prevents many of these high risk industries paying more as the majority are already on the 4.5 per cent rate. Under these circumstances if the ceiling rate is not raised to 7.5 per cent the major burden of the required average levy rate increase would unjustly fall on the low risk industries which are already subsidising the high risk industries. To avoid increasing the level of cross subsidy and to make high risk industries pay for their increasing costs it is essential that the maximum ceiling be raised to 7.5 per cent.

The Government is of course aware that in the face of these proposals to raise levies there will be an attempt made by some to lay the blame for the increased costs at the feet of WorkCover and on the level of benefits, which although providing for significantly less then 100 per cent compensation, are still claimed to be too generous. But what is the reality? The facts are that WorkCover deals with the symptoms of poor safety performance by a minority of employers. WorkCover statistics show that a mere 7 per cent of employers, who contribute approximately 34 per cent of the levy income, account for a staggering 94 per cent of the total cost. Of this group of employers, the worst 150, representing 0.2 per cent of employers, account for 12 per cent of the total cost. Whilst various theories can be advanced for the increase in costs the facts are that it is a minority of employers who are the root cause of the problems being experienced. What is worse, and this is the tragedy, is that these costs are avoidable. WorkCover has statistics that show that even in the riskiest of industries good management can keep workers compensation costs to an absolute minimum if not completely eliminate them.

Having said this, there is undoubtedly room for some improvement in the WorkCover Corporation's administrative procedures and this is being actively attended to. There is also some room for a tightening of the benefit provisions to ensure the integrity of the original act is maintained and this Bill contains one significant response to tighten up in this area. These necessary changes, however, are only dealing with the problem at the margin. As pointed out, the fundamental cause of the cost pressures being experienced by WorkCover is the poor safety management practices and procedures of a minority of employers. A number of strategies are accordingly being formulated and implemented to deal with these poor performers.

One such corrective measure, is the bonus/penalty scheme to be introduced by WorkCover on 1 July 1990 that is timed to tie in with the proposed increase in the average levy rate. This bonus/penalty scheme will reward those employers with good claims experience and severely penalise those whose claims experience is poor. The scheme will be revenue neutral, will only marginally affect the cross-subsidy and will, together with the 7.5 per cent ceiling, achieve a fair and viable compensation scheme. Importantly, severe penalties will be applied under the bonus/penalty scheme to the 7 per cent of employers (approximately 3 500 in total) who account for 94 per cent of the cost.

In addition to these penalties supplementary levies will be applied to the 0.2 per cent of employers (approximately 150 in total) who account for 12 per cent of the cost. The bonus/penalty scheme will complement other measures that are being developed and implemented by WorkCover, the Department of Labour and the Occupational Health and Safety Commission to target the worst performers in an endeavour to change their management approach to occupational health and safety.

The 7.5 per cent ceiling proposed under this Bill will reduce the existing level of cross subsidy. The rate set will preserve South Australia's competitive position having regard to the 8.4 per cent ceiling under the New South Wales scheme and the 7.7 per cent maximum under the Victorian legislation.

As an additional measure the Bill also provides for the removal from the Act of the fixed percentage levy classification steps below the maximum. This will allow WorkCover to set the structure of the classification rates below the maximum so that they can more closely reflect the actual claims experience of the various industry classes.

The second major issue dealt with in this Bill is the insertion of a new definition of 'disease' which is necessary to overcome a Supreme Court decision in the case of Ascione which had the effect of allowing certain non work related diseases to be treated as compensable under the Act. In the case of Ascione, the worker had a congenital condition that resulted in what could generally be called a stroke and which ocurred while the worker was travelling to work. The work itself did not contribute to the stroke. The full Supreme Court held that the stroke was not a 'disease' as defined under the Act but was an injury and therefore compensable as it had occurred in the course of employment on the way to work.

Under the previous repealed Workers Compensation Act autogenous conditions such as strokes were treated as diseases and in order for them to be compensable it was necessary to show that work was a contributing factor. As a result of the Supreme Court's decision, in cases such as Ascione's involving a disease where there is an obvious proximate cause, it is now only necessary to show that the disability occurred in the course of employment. There is no longer a requirement to show that the work itself was a contributing factor. As a result the Supreme Court's interpretation of 'disease' if allowed to stand, could potentially have a serious financial effect on the WorkCover fund.

When the Workers Rehabilitation and Compensation Act was drafted there was no intention of changing the wide meaning given to the definition of 'disease' that existed under the old Act. This Bill accordingly picks up the definition contained under the old legislation including the related provision on heart disease, to put beyond doubt that diseases are only compensable if they are work related. Furthermore, it is proposed that this change be made retrospective to the commencement of the new scheme.

Retrospectivity is warranted in this case firstly, because of the potential for a heavy financial drain on the WorkCover fund and, secondly, because the definition has in practice been given its plain meaning up to Ascione's case and no unfairness would be created by changing the definition to ensure that the plain meaning of the existing definition was preserved. However, in the case of Ascione

and any other cases that may have been determined, it is proposed that the retrospectivity would not apply and the decisions on those matters would be allowed to stand. Where a claim has not been determined the Bill provides for the recoupment of reasonable expenses reasonably incurred in making a claim to ensure that such claimants are not financially disadvantaged by the retrospectivity.

I commend the Bill to the Council.

Clause 1 is formal.

Clause 2 provides for the commencement of the measure. In particular, the amendment that inserts a new definition of 'disease' will be taken to have come into operation at the same time as the principal Act came into operation. The amendments relating to the levy rates will come into operation on 1 July 1990.

Clause 3 provides a new definition of 'disease' for the purposes of the principal Act. Paragraph *(a)* of the definition is similar to, and intended to have the same effect as, the definition of 'disease' in the 1971 Act that was repealed by the principal Act (other than in relation to the aggravation, acceleration, exacerbation, deterioration or recurrence of a condition). Paragraph *(b)* of the definition expressly provides (to remove all doubt) that any disability to which section 31 applies (whether set out in the second schedule of the principal Act or prescribed by regulation under section 31) is also a disease for the purposes of the principal Act.

Clause 4 proposes an amendment to section 31 of the Act in relation to the recurrence of a pre-existing coronary heart disease, so that the legislation will operate in a manner similar to the 1971 Act.

Clause 5 alters the levy rates that apply under section 66 of the principal Act. The maximum standard rate is to be increased to 7.5 per cent. The corporation will be empowered to apply any rate up to the maximum.

Clause 6 provides that the measure will not, in the retrospective amendment of the principal Act in relation to the definition of 'disease', affect the rights of the respondent in the Supreme Court case *Workers Rehabilitation and Compensation Corporation v. Ascione*, or the rights of any other claimant whose claim is determined before the commencement of the Act. Reasonable compensation for the costs of other claimants affected by the enactment of this Act will be paid by the corporation.

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

REAL PROPERTY ACT AMENDMENT BILL (No. 2)

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

The Hon. ANNE LEVY (Minister of Local Government): I move:

That this Bill be now read a second time.

In view 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 is designed to enable land division proposals to be developed in stages. The South Australian Planning Commission and councils have generally interpreted a staged division as being allowable under the Planning Act and Real Property Act and it has been standard practice for some land division developments, particularly large subdivisions, to be developed in stages.

Staged land division is the development of a portion only of a total proposal for which planning approval has been granted, followed by the development of further portions at later dates. The staging is carried out following the granting of separate certificates of approval to divide under the Real Property Act for the portions. These separate certificates implement a single planning approval for the total development given previously under the Planning Act. Staged land division is considered by developers and councils to be necessary in certain circumstances to allow development to proceed in an orderly manner.

An issue has arisen over the acceptance of staged development for land division. The Planning Appeal Tribunal, on 22 July 1988, delivered a determination on a matter in the District Council of Tatiara. The appeal involved an application to divide land at Bordertown into 68 allotments. It was the intention to proceed with the division of the land in stages. In the judgment the Tribunal stated that the Real Property Act does not contemplate a single planning approval for a large subdivision and then staged implementation under the Real Property Act.

The development industry has expressed concern with the uncertainty of the procedures to be adopted in processing land division applications for staged development. In order that land development can proceed in an orderly manner it is necessary for the Real Property Act to be amended.

Clauses 1 and 2 are formal.

Clause 3 inserts new section 2231ba into the principal Act. This section provides for staged division of land following planning authorisation.

Clause 4 replaces paragraph (3) *(a)* of section 2231f to make it clear that if planning authorisation has been given to the proposed division and has not expired a certificate may be issued by a council or the commission under this section notwithstanding that the development plan may have subsequently been amended so as to prohibit division of that kind.

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

WATER RESOURCES BILL

In Committee.

Clauses 1 to 8 passed.

Clause 9—'The Minister's functions.'

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

Page 4, line 13—Leave out ', as far as practicable,'.

I am attempting to manipulate the grammar a little so that we clarify the Minister's obligations in terms of the need to integrate Government policies in the areas of water resource management, land management and the environment. The words 'as far as practicable' dilute the purpose unnecessarily. The way it hung together did not clearly indicate what I understood to be the original purpose of the clause, which is as I have outlined. We need to integrate those three factors of water resource management, land management and the environment.

The Hon. ANNE LEVY: The Government is happy to accept this amendment if it is felt it is necessary to add to the clarity of the clause.

The Hon. PETER DUNN: The Opposition opposes this amendment. I believe that the word 'practicable' really adds practicality to the clause and, unfortunately, the legislation that goes through this place quite often is impractical. It is legalese, but it does not apply once the legislation is enacted. The provisions of the Bill allow some elasticity. This might sound better but does not mean anything. If we take it out, the clause is much more specific, and those three factors will be integrated.

The honourable member's amendment would force integration rather than allowing the Ministers to talk amongst themselves to find out what is practicable.

Amendment carried.

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

Page 4, lines 13 and 14—Leave out 'management of land and water resources' and insert 'water resources management, land management'.

Amendment carried; clause as amended passed.

Clause 10—'Powers of the Minister.'

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

Page 4—
Line 21—Leave out 'The Minister' and insert 'For the purposes of this Act the Minister'.
Line 31—Leave out paragraph *(g)*.

My first amendment is designed to try to put clause 10 into a more appropriate context. When I read clause 10, I was concerned that it could be interpreted as giving the Minister powers which were not necessarily qualified or implemented by other provisions of the Bill. It seemed to me that there needed to be some form of words that linked that with the express provisions of the Bill. I want to qualify clause 10 (1) by providing that, for the purposes of this Act, the Minister may do certain things and, consequential upon that, to delete paragraph *(g)*.

It seems to me that makes it a much more coherent piece of legislation in that the powers cannot be used in isolation from the other provisions of the Bill which are really the executive aspects of the power that the Minister is given by the Bill.

The Hon. ANNE LEVY: Although there is an implication of a limitation to the Minister's power, it seems to the Government that it makes no difference whatsoever in terms of the actions that any reasonable Minister might wish to undertake. We are happy to accept the amendment.

Amendment carried.

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

Page 4, line 31—Leave out paragraph *(g)*.

This amendment is consequential.

Amendment carried; clause as amended passed.

Clause 11—'Power of Minister to delegate.'

The Hon. K.T. GRIFFIN: I should like to make a general observation on this clause. I expressed concerns about the wide powers of the Minister to delegate. I still have those concerns, but to some extent they have been assuaged by the Minister's response. I can see that, although there is still a potential for problems, in terms of the general administration of the legislation it would not be appropriate to endeavour to draft what might be a fairly complex set of rules relating to delegation. I accept what the Minister has said in reply to my comments about the power of delegation being used sparingly in relation to some of the more significant powers of the Minister. There may be an opportunity from time to time during the implementation of the legislation and its administration to question what delegations have occurred, but ultimately the Minister is responsible for what occurs.

Clause passed.

Clause 12—'Establishment of council.'

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

Page 5, after line 36—Insert subparagraph as follows:
(vii) a member nominated by the Minister to represent the public interest in relation to the effect of water quality on health.

I understand that the Water Resources Council has a person who is specifically designated as a health representative. It is interesting to note that in this case there is not one. I would argue that, in the light of recent experiences and increasing awareness in the community, rather than remove a health person, we should make certain that a person with knowledge of health matters is included. We have only to consider what has happened at Lake Alexandrina and with water quality generally, including underground water quality, and the possible ramifications in the South-East, to realise that we should specify that one person on the council has specific knowledge of the relationship between water quality and health. It is a large council and not to have one person with such experience would be to fail to recognise that one important role of the council is to look after water quality and what that implies.

The Hon. ANNE LEVY: The Government opposes this amendment. I wish to make it clear that it is not a question of opposing someone who has an interest and responsibility in health matters. As I mentioned the other evening in the second reading reply, experience shows that rarely has the council dealt with any matters that could in any way be related to health. Although this may change in the future, the Government much prefers the flexibility that currently exists where there are three members at large, as it were, who can be appointed by the Minister. I can assure honourable members that if in some situation it is felt necessary to have someone specifically with health interests and background, the Minister would certainly appoint such a person amongst those three members at large. The Government would much prefer to keep this flexibility to enable it to appoint people as required according to situations and skill requirements as they arise, rather than adding another member to what is already a large council.

The Hon. M.J. ELLIOTT: I am disappointed with that response. The community is becoming increasingly aware of the ramifications of pollution of ground water or the deterioration of ground water—for a host of reasons—and pollution and deterioration of water in our watercourses. It seems patently obvious to me that not having a person with real expertise about the possible impacts of such things is a nonsense. How can the South Australian Water Resources Council carry out some of its functions? We are talking about effective and efficient use of water resources, and dealing with water resources generally, yet there is not a member with that expertise. There is no doubt that we have growing problems in South Australia in this area. To deny that would be foolish. The South Australian community would be disappointed if we do not take health aspects into account in the Bill. There is just one representative on what is a large council.

The Hon. T.G. ROBERTS: Can the council request expertise from a health expert as a consultant to it?

The Hon. ANNE LEVY: Yes, certainly. The council has done so in the past and access to Health Commission officers is freely available and should the council feel it needs such expertise or advice it can always turn to the Health Commission and obtain it. There are no problems with that whatsoever. It can readily obtain such advice whenever it needs it.

The Hon. M.J. ELLIOTT: How does one know there is a problem, and how does one know that one needs advice unless there is someone with sufficient knowledge to know that there is a problem? If a member on the council is not aware of the possible problems, the council might not seek

advice that it might need. I am concerned that the Minister seems to be resisting the amendment. I only hope the Liberal Party might be persuaded.

The Hon. PETER DUNN: The Opposition believes that the Government has got it right. The council has too many members, anyway. If more members are added, the council will become more ponderous and less likely to make good decisions. I think that everyone has got it wrong: we want a biologist on the council. I understand that the E&WS Department has those officers on hand, and I hope that they would be available to give advice if necessary. I refer the Hon. Mr Elliott to subclause (3), which provides the Minister with power to act in that area, but who wants a health officer on the council in dealing with the Great Artesian Basin?

I doubt whether that is necessary, and certainly not on the West Coast. People from the E&WS monitor total dissolved salts, *E. coli* and bacteria all the time, and it is not necessary to have such a person on a policy making body.

Amendment negatived; clause passed.

Clauses 13 to 16 passed.

Clause 17—'The council's function.'

The Hon. M.J. ELLIOTT:

Page 7, after line 11—Insert paragraph as follows:
(ab) the preservation of water quality;.

I do not think that this amendment changes the Government's intention, but I want to make quite clear that the council's functions include the need to consider the preservation of water quality. As I said, it is not necessarily precluded in this provision, but I want to make that clear.

The Hon. ANNE LEVY: The Government opposes this amendment because it is unnecessary. I take it that the intent is to clearly identify that the council's responsibility is to make recommendations in areas of policy and strategic planning. The amendment is quite superfluous. The Committee has already passed clauses 7 and 8. Clause 7 identifies the maintenance of water quality as one of the objectives of the Bill and clause 8 requires the council to act consistently with and to further the objectives of the legislation.

So, we have already agreed that the function of the council is to seek to further the objects of the Act. Clause 7 provides that one of the objects of the Act is the maintenance of water quality, so the council already quite obviously has that function. The Hon. Mr Elliott's proposed amendment could also create an ambiguity where the council is to be involved in day-to-day aspects of the management of water quality. Clause 17 already requires the council to make recommendations in relation to the policy and standard-setting level in relation to water quality. We do not argue with the intent of the proposed amendment but it is quite superfluous because it is already covered by the combination of clauses which have already been agreed to.

The Hon. M.J. ELLIOTT: The same argument could be applied to *(b)*, which refers to the effective use of water resources, yet the objects refer to the efficient use of water resources. That same duplication is there once again. I was a little worried that that extra emphasis seemed to imply that we were much busier looking at quantities and rationing out water, if you like, than looking at the actual quality of the water. I did not think I was duplicating this matter in the council's functions any more than the notion of efficient use of water resources is being duplicated in the objects of clause 7.

The Hon. PETER DUNN: I can understand what the Hon. Mr Elliott is trying to do. I have said before that, if the Act is clear, there will be no problem with getting it correct later. I believe that the council will be well briefed by the department and if what the Minister says is correct, as I believe it is, if water quality is included, it may be referred to as a day-to-day matter. My idea of this council is—

The Hon. M.J. Elliott: That would be a disaster if they considered water quality to be important!

The Hon. PETER DUNN: The honourable member has got it wrong. Their job is to put forward a policy on what they expect the standard to be roughly, not to determine from day to day the bacteria count or total dissolved salts or whatever.

The Hon. M.J. Elliott: It doesn't say that.

The Hon. PETER DUNN: No, it does not, but the Bill states earlier on that it will determine a standard, set a policy and advise the Minister or the department. For those reasons, we do not support the amendment.

The Hon. M.J. ELLIOTT: I believe, if there has been a failure in the administration of water resources in South Australia, it is that we have been very busy ensuring the quantities of water available but our job in terms of looking after the quality of the water—I am not just talking about water for drinking but for stock use and irrigation—has really lagged a long way behind. Building weirs and dams, and allocating quantities of water, is a relatively easy job, but management in terms of water quality is a harder one. In the long run, it is probably the more crucial job because, if the quality deteriorates sufficiently, it is totally useless for anyone.

Amendment negatived.

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

Page 7, after line 14—Insert subclause as follows:
(2) The council may, if it thinks fit, give the Minister advice under subsection (1) on its own initiative without first receiving a request from the Minister.

This is all turning out to be an incredible waste of time but, nevertheless, I will go through the routine. I am seeking to make clear that the council can, on its own initiative, give advice to the Minister. It is not necessarily precluded by what is there, but I certainly want to make it clear that it can give advice on its own initiative. I hope other members see that as being a useful function.

The Hon. ANNE LEVY: The Government opposes this amendment, again, not because we disagree at all with the sentiments expressed, but because it is quite superfluous. The clause already provides that the council's function is to advise the Minister in relation to a number of matters. I am advised that, legally, that imposes no impediment on the council's initiating any action and giving advice to the Minister. So, the amendment is quite unnecessary. Because it is superfluous, we see no reason for its insertion.

The Hon. M.J. ELLIOTT: I do not believe it is superfluous. Anyone who is elected to such a position and put on the council would ask, 'What is our function?' If they read the function provision in the legislation in the first instance, I think they would be very prone to becoming part of a highly mechanical body that largely looked at things that had been delegated to it. I can understand some public servants being somewhat threatened by the fact that these people might think for themselves. That would be highly dangerous to have such a thing happening in this place. I suppose that is where the greatest amount of resistance is coming from.

The Hon. PETER DUNN: I think that the Hon. Mr Elliott has a point there. I understand what the Minister is saying but, in the interests of clarity, the Opposition agrees with the amendment.

Amendment carried; clause as amended passed.

Clause 18 passed.

Clause 19—'Establishment of water resources committees.'

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

Page 7, after line 28—Insert subclause as follows:

(2a) The members of a committee must have knowledge or experience that will be of value to the committee in carrying out its functions.

The amendment almost speaks for itself. I suggest that, when people are nominated on to these committees, it is made quite clear that the people should have knowledge or experience that will be of value to the committee in carrying out its functions. It might seem almost obvious at first, but I have seen many committees where people have been put on who do not have relevant experience—they have been representatives of a particular body, and about the only thing they sometimes bring is a bureaucratic knowledge and no real knowledge to the matters in hand. I think that frequently happens at both local government and State Government levels where they put one of their bureaucrats in these areas, but they do not have the knowledge. That is not an attack; it is a question of choosing the right people. I think it is an obvious provision.

The Hon. ANNE LEVY: I have no particular feelings one way or the other regarding this amendment. It had been intended to put such a specification in the regulations under the Bill, so we are certainly agreed on its intent. Whether it is in the Act or the regulations is of no great moment to us.

The Hon. PETER DUNN: The Opposition believes that it is better in the Bill, if it is explained. I support this amendment for one good reason. Clause 12 (5) provides that at least one member of the council must be a woman and one must be a man. Rather than putting on one or the other gender purely because they are a particular gender, I would rather that they all be men or all be women if they have expertise in their specific field. For that reason, we support the amendment.

The Hon. ANNE LEVY: I must respond to that comment from the Hon. Mr Dunn. He seems to suggest in his comments that one or other sex throughout this community is devoid of knowledge and experience. That is implied in his remarks, and I think that is insulting, quite unnecessary, and unreasonably provocative.

The Hon. PETER DUNN: I apologise if I have insulted the Minister but, in relation to the Land Use Bill, at the moment we have a case in the South-East where a female cannot be found in the community to fill a position that must be filled by a female. Plenty of other people could fill the position, so I think that this clause is silly.

The Hon. ANNE LEVY: I do not believe you.

The Hon. PETER DUNN: You don't believe it. You'd better believe it! That is the practicality of the matter. I do not disagree with the Minister's sentiment; it is quite right to have this tribunal gender neutral, but to say that one member must be a man or one member must be a woman when they may not have the necessary expertise is plain stupid.

Amendment carried.

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

Page 7, after line 37—Insert subclause as follows:

(3a) A committee may, if it thinks fit, give the Minister advice under subsection (3) on its own initiative without first receiving a request from the Minister.

This amendment is similar to the one I moved in relation to the council's functions. I want to make quite clear that local committees should be able also to initiate action. In fact, in some ways I think that is every bit as important. These are people at the grass roots level, who are on the ground all the time, and, if it is made clear to them that they should be looking at initiating actions, that would be very healthy. I hope that my amendment is supported.

The Hon. PETER DUNN: The Opposition agrees with the amendment.

The Hon. ANNE LEVY: The Government's point of view is the same as it held in relation to the previous amendment—we do not much care one way or the other.

Amendment carried; clause as amended passed.

Clauses 20 and 21 passed.

Clause 22—'Permanent members.'

The Hon. ANNE LEVY: I move:

Page 8—

Line 38—Leave out 'not exceeding' and insert 'of'.

After line 39—Insert subclause as follows:

(2a) On the office of a permanent member becoming vacant, a person must be appointed in accordance with this Act to the vacant office, but where the office of a permanent member becomes vacant before the expiration of a term of appointment, the successor will be appointed only for the balance of the term.

This amendment was discussed in the summing up of my second reading explanation. I am quite happy for appointments to the Water Resources Appeal Tribunal to be for fixed terms of three years, but casual vacancies should be filled for the balance of the original appointment, and this amendment makes that provision.

The Hon. K.T. GRIFFIN: I appreciate why the Minister is prepared to move this amendment. It picks up the criticism I made of the Bill which drew upon the report of the Supreme Court judges in 1988 or 1987 which criticised the quasi-judicial tribunals whose members were appointed for a period of up to, say, three years where such appointment did not enhance independence. This goes some way towards that, although in the general range of tribunals ultimately consideration will have to be given to these tribunals to see whether there is a better way of appointing them to ensure that they are not only truly independent but appear to be independent of the executive arm of Government. I do not criticise the amendment—I support it—and I do not criticise the tribunal, my observation is more a general one in the context of quasi-judicial tribunals.

Amendments carried; clause as amended passed.

Clauses 23 to 25 passed.

Clause 26—'Personal interest of member.'

The Hon. PETER DUNN: The pastoral legislation was modified in relation to the personal interest of members of the Committee. I think that that matter can be restricted in relation to a member having a direct interest in their own property or area rather than a general interest across the board.

Clause passed.

Clauses 27 and 28 passed.

Clause 29—'Powers of authorised officers.'

The Hon. ANNE LEVY: I move:

Page 11—

Line 15—Leave out 'vehicle, vessel or aircraft'.

Lines 19 and 20—Leave out paragraph *(d)* and insert the following paragraph:

(d) where the authorised officer has reason to believe that an offence against this Act has been, is being, or is about to be, committed—enter or inspect any vehicle, vessel or aircraft and for that purpose give a direction to stop or move the vehicle, vessel or aircraft;.

These amendments pick up a suggestion of the Hon. Mr Griffin in his second reading contribution. We are happy to pick up his point and move these amendments to put that into effect.

The Hon. K.T. GRIFFIN: Again, I appreciate that the Minister is prepared to do that. I did kick up something of a fuss about stopping vehicles and inspecting.

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: No, I did not go that far. The amendment proposes a reasonable procedure whereby in

relation to the inspection of any vehicle, vessel or aircraft a direction to stop must be made only where the authorised officer has reason to believe that an offence against this legislation has been, is being or is about to be committed. I think that gives a proper balance to the powers of an authorised officer in undertaking his or her functions. The entry by force is, of course, dealt with under subclause (4), and that is on the authority of a warrant issued by a justice unless it is a matter that requires immediate action. So, I think we now have a much more appropriate and balanced regime for an authorised officer to exercise powers under the Act. I support the amendments.

The Hon. PETER DUNN: Do we have this amendment back to front? Should we not stop a vehicle before we enter it? I am really only being pedantic, after looking at the drafting of the amendment.

Amendments carried; clause as amended passed.

Clause 30 passed.

Clause 31—'Right of Minister to water.'

The Hon. PETER DUNN: On behalf of the Hon. M.B. Cameron, I move:

Page 13—

Line 5—Leave out 'The Minister' and insert 'subject to subsection (2), the Minister'.

After line 7—Insert new subclause as follows:

(2) When taking water pursuant to subsection (1) the Minister must not prejudicially affect the right of a riparian owner to take water for his or her domestic purposes or for the purposes of a business carried on by that person.

This amendment seeks to encourage the Minister to ask before he or she takes the water; that is deemed a right in this Bill. I would have thought that it is only sensible to ask before one takes water from a dam, well or bore. For instance, a farmer, pastoralist or whoever it might be, might have used the water at the back of the farm, intending to use the water at the front at a later date (and I am referring more particularly to dams rather than bores or wells).

If, as the Bill implies, the Minister comes in and takes water, without any reference to the owner, the farmer is denied his or her livelihood and it would cause great strain. It is asking the Minister to consider the riparian rights of the person who has the water on his or her land. I believe that the water ought to belong to the farmer in any case if it is on his or her land. However, the Bill removes that right.

The Hon. ANNE LEVY: I believe that my amendment is far preferable to the amendment moved on behalf of the Hon. Mr Cameron. In fact, I strongly oppose the Hon. Mr Cameron's amendment. I point out that the pre-eminent right of the Crown has existed in legislation for many years. In fact, it is found in section 6 of the existing Water Resources Act. The pre-eminence of the Crown is not a new notion by any means. I think that one can also say that Ministers of the Crown have acted responsibly in administering that right through the years and, wherever possible, riparian rights have been preserved. This has never created a problem in the past.

While I can understand the motivation of the Hon. Mr Cameron, I believe his amendment goes well beyond the proper balance between the rights of an individual and those of the Crown. Effectively, Mr Cameron's amendment would preserve all pre-existing domestic or business usage without any regard for the impact that it might have on other requirements in the community.

For instance, even in an emergency the Crown would not be able to take water for a domestic requirement without first having the agreement of the landowner. We regard this as quite unacceptable. The amendment standing in my name, which comes in a couple of lines later, certainly embodies the essential features of the Hon. Mr Cameron's proposal, yet it leaves the Crown with the flexibility which I think it should have to balance the needs of the individuals, the community and the environment. I would urge members to support my amendment as opposed to the Hon. Mr Cameron's amendment.

The Hon. M.J. ELLIOTT: I understand the concerns that have been raised by the Hon. Mr Dunn in moving the Hon. Mr Cameron's amendment but I also acknowledge the problems raised by the Minister. In this case I will support the Minister's amendment, which is yet to be moved. I think it possibly could have gone a little further than it has, but I think that of the two amendments this one is preferable. I will not therefore support the Hon. Mr Dunn's amendment.

The Hon. PETER DUNN: I guess we stand at philosophically different ends of the pile here. I just believe that if someone goes to the effort of putting in a dam, a tank or whatever, they ought to be allowed to say 'yes' or 'no' within reason. The Crown has access to all the underground water it wants or the pipe water that it distributes around the State.

I guess that if an area is proclaimed it has the right over that water and that the person whose land through which that water runs has very little choice in determining whether or not the Minister can take that water. However, for the Minister to have a right over water in, perhaps, a dam that supplies the homestead (and many homes have that) or in water tanks which they themselves have put there and worked for and which is for their everyday use, is a bit crude.

The Hon. ANNE LEVY: Riparian rights have nothing to do with water tanks.

The Hon. K.T. Griffin: This is not riparian rights.

The Hon. ANNE LEVY: The Hon. Mr Cameron's amendment does refer to riparian rights. Riparian rights in common law relate to naturally occurring water only, water for domestic use, and perhaps for stock, and certainly to questions where life is involved. One of the necessities of any living thing is water, and riparian rights recognise that fact.

Amendment negatived.

The Hon. ANNE LEVY: I move:

Page 13, after line 7—Insert new subclause as follows:

(2) The Minister must endeavour, as far as practicable, to avoid prejudicially affecting the right of a person to take water for domestic purposes or for the purposes of watering stock.

I do not propose to discuss this amendment, as it has been fully discussed in relation to the other amendment.

Amendment carried; clause as amended passed.

Clauses 32 to 38 passed.

Clause 39—'Certain uses of water authorised.'

The Hon. ANNE LEVY: I move:

Page 15, lines 18 and 19—Leave out subclause (4) and insert the following subclause:

(4) The Minister may vary or revoke a notice under this section by a subsequent notice published in the *Gazette* and in a newspaper circulating generally throughout the State.

This amendment arises from a point raised by the Hon. Mr Griffin during his second reading contribution, and we are very happy to pick up his suggestion that the notice should be not only in the *Gazette* but also in a newspaper circulating throughout the area.

The Hon. K.T. GRIFFIN: I appreciate that the Minister is prepared to pick up my suggestion. In this area, it is important to realise that not everyone reads the *Government Gazette.*

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: I know, but it is more likely to get wider circulation than the *Government Gazette* and

more likely to come to the notice of those who might be prejudicially affected by restriction. Where rights are to be either prohibited or restricted, wide notice must be given. I am pleased to be able to support this amendment.

The Hon. PETER DUNN: Why was it just the State and not, say, the area? Many areas have a local paper but do not receive the *Advertiser*. They might take the *Stock Journal*. That might cover it.

The Hon. Anne Levy: The *Stock Journal* goes throughout the State, as does the *Sunday Mail*.

The Hon. PETER DUNN: But there are local rags with very good coverage of those specific areas, and many of these provisions will only be specific.

The Hon. ANNE LEVY: I think that 'throughout the State' is preferable. It does not need to be the *Advertiser* or *Sunday Mail*. Obviously, there are specific journals that circulate throughout the State. The problem with a local journal is that its circulation may or may not cover the entire area to be affected by a particular proposal, and it would not be fair not to have it circulating for some part of the area merely because the geographical boundaries of distribution did not coincide with the areas concerned with the water.

Amendment carried; clause as amended passed.

Clause 40—'Restrictions in case of inadequate supply or over-use of water.'

The Hon. ANNE LEVY: I move:

Page 15, line 35—Leave out 'the *Gazette*', and insert 'the *Gazette* and in a newspaper circulating generally throughout the State,'

Page 16—

Line 2—After '*Gazette*' insert 'and in a newspaper circulating generally throughout the State'.

Lines 22 and 23—Leave out subclause (7) and insert the following subclause:

'(7) The Minister may vary or revoke a notice under subsection (1) by notice published in the *Gazette* and in a newspaper circulating generally throughout the State.'

These three amendments are all consequential on that which we adopted in clause 39.

Amendments carried; clause as amended passed.

Clauses 41 and 42 passed.

Clause 43—'Disposing, etc., of material into water.'

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

Page 17, line 31—Leave out '$100 000' and insert '$1 000 000'.

This amendment will make the fines under this legislation consistent with those under the Marine Environment Protection Bill. An offence under this legislation is just as serious, so we should be consistent.

The Hon. ANNE LEVY: The Government accepts the amendment for the reason put forward by the Hon. Mr Elliott. We feel that it is desirable to have parity between this legislation and the Marine Environment Protection Bill. As penalties have been increased under that legislation, we are happy to increase them similarly under the Water Resources Bill.

The Hon. PETER DUNN: There are big holes in this new theme of making fines on bodies corporate 10, 20 or 100 times larger than for others. When considering marine pollution, we were fundamentally dealing with large corporations. In this measure we are dealing with private companies. I have one; I run my own operation. It is convenient to do that for continuity of employment, pay and all the other things that one does to maintain small bodies corporate. I could get pinged for the same misdemeanour if I did not instruct my employee to do something. I could give a graphic description of how this could occur, but I will not go into detail. However, it means that I would be pinged $1 million and my neighbour would not.

The Hon. M.J. Elliott: That is the maximum fine.

The Hon. PETER DUNN: I appreciate that. I am demonstrating that there are thousands of small bodies corporate in South Australia. Fines for marine pollution are different. There would be some small bodies corporate in that regard, but not the numbers that we see in the South-East, the mid-north, the western and northern areas. I oppose the amendment for that reason.

The Hon. ANNE LEVY: In response to the Hon. Mr Dunn, I point out that this is the maximum penalty. The size of the company or corporation would probably not be a factor that a court would take into account; it would take account of the degree of pollution which has taken place. I suggest that the honourable member's small private company would be very hard pressed to pollute as much as the E&WS, Apcel or BHAS, even if it set its mind to it. The capacity for large scale pollution, which is likely to draw the $1 million penalty, is probably only held by large bodies corporate. Small corporations, even if they tried, probably could not do as much damage. The $1 million penalty is the maximum fine. The actual penalty in a particular case will obviously relate to the degree of damage that is caused.

The Hon. M.J. ELLIOTT: I agree with the Minister. I think that perhaps the Hon. Mr Dunn will be aware of the gross negligence of some companies in the South-East, which has got some farmers fairly towy. I think he is looking at farmers being sued for $1 million, but they would have to do a great deal of damage to score that. It would take a few drums of sheep dip down a well to do it. This provision will protect many farmers from the actions of large companies. I should have thought that the Hon. Mr Dunn would be keen to see this penalty acting as a disincentive and protecting small landholders.

The Hon. PETER DUNN: The Hon. Mr Elliott defeated his own argument by saying that it would only take a couple of drums of sheep dip down the well. That might happen. It might be an action by an employee or by a third party, but it could be on a farmer's property and the farmer would be responsible for it. What is the difference between me as a company and me as an individual? Why define that in the legislation? One person can do as much damage to an aquifer as a body corporate or a big company. We do not give instructions to the court—we allow a court to impose a fine of $1 million. My neighbour who operates in a partnership or as a single individual could not be fined $1 million, yet I could be fined to such an extent. That argument is not strong. I am emphatic about that. The Minister only thinks that and aims at big companies such as Apcel. However, I am looking at the implications across the State because everyone is affected by the need for water.

The Hon. M.J. Elliott: It's important.

The Hon. PETER DUNN: It is important, but it does not warrant a definition and a difference in fine as described.

The Hon. ANNE LEVY: I should think that the Hon. Mr Dunn is in the fortunate position of being able to choose whether he is treated as a natural person or as a body corporate; he can make that choice through the Office of Corporate Affairs at any time.

Members interjecting:

The CHAIRPERSON (Hon. Carolyn Pickles): Order!

The Hon. ANNE LEVY: I was not aware that it was impossible to wind up companies or that they were incapable of dying. That seems to be a ridiculous suggestion. I agree that it is highly desirable that the penalties in this legislation relate to those in the Marine Environment Protection Bill.

The Committee divided on the amendment:

Ayes (9)—The Hons T. Crothers, M.J. Elliott (teller), M.S. Feleppa, I. Gilfillan, Anne Levy, Carolyn Pickles, R.R. Roberts, T.G. Roberts and G. Weatherill.

Noes (8)—The Hons M.B. Cameron, L.H. Davis, Peter Dunn (teller), K.T. Griffin, J.C. Irwin, R.I. Lucas, R.J. Ritson and J.F. Stefani.

Pairs—Ayes—The Hons C.J. Sumner and Barbara Wiese. Noes—The Hons J.C. Burdett and Diana Laidlaw.

Majority of 1 for the Ayes.

Amendment thus carried; clause as amended passed.

Clause 44—'Disposing, etc., of material onto land.'

The Hon. ANNE LEVY: I move:

Page 17, lines 33 and 34—Leave out 'or from land (but not directly into water)' and insert 'land or from land, a vessel or aircraft (but not directly into surface or underground water)'.

This amendment results from legal recommendations to improve the clarity of the provision. It does not affect the substance of the clause.

The Hon. K.T. GRIFFIN: The Opposition supports the amendment.

Amendment carried.

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

Page 17, line 41—Leave out '$100 000' and insert '$1 000 000'.

This amendment will increase the penalty from $100 000 to $1 million and the arguments for the amendment are the same as those for my previous amendment.

The Hon. ANNE LEVY: The Government supports the amendment.

The Hon. PETER DUNN: The Opposition opposes the amendment. As to subclause (1), what is the time frame? Many years ago, before there was any law to make me guilty, I disposed of some chemicals in the bottom of a dam, which was subsequently covered with other material. However, should there be a large flood, there is a chance, I suppose, that the chemicals could get into a watercourse.

I interpret this provision as meaning that it would only apply after this Bill has been proclaimed, but that does not fix the problem. However, who would prove it? I might have put it in before or after. It would be jolly hard to prove at what time I put it in, or whether the Bill was proclaimed or not. For those reasons, a $1 million body corporate penalty is quite ridiculous for small people.

The Hon. K.T. GRIFFIN: I do not think one ought to go right through the Bill and increase the $100 000 penalty indiscriminately.

The Hon. M.J. Elliott: I haven't done that.

The Hon. K.T. GRIFFIN: It looks that way, because it has been increased whenever the $100 000 applies. Clause 44 deals with a person who disposes of or permits the escape of any material if the material, or any part of it, subsequently enters and degrades any surface or underground water. One can have some sympathy with the argument that has applied in relation to a person who 'disposes of'—which is a very deliberate act. However, where that is coupled with permitting the escape of material onto land—which is not an offence in itself—but it subsequently enters and degrades any surface or undergound water, I think this gets into a very difficult area of proof, as my colleague the Hon. Mr Dunn suggests.

It may be that it is preferable to split the clause so that if the tough penalty is to apply it is directed more towards the deliberate disposal rather than permitting the escape of material, because permitting the escape does not necessarily require a positive act. There is no requirement for criminal intent. It can be inadvertent and it can be over a long period of time. As my colleague the Hon. Mr Dunn has said, it may be that, around the State, someone has disposed of some DDT. It is only in the past two years that there has been this very heavy emphasis on surrendering DDT.

Previously, the dangers of DDT were not fully recognised. Someone may have disposed of it in a dump somewhere. Thousands of farms around South Australia have a trench dug that might be about 15 feet deep by 15 feet wide and about 50 feet long where the farmer or his family deposits junk, including old cartons or containers, empty or otherwise. In those circumstances, it seems to me that there is a risk that, if material does escape over a period of time, if perhaps there has been no conscious effort to go and check everything in the light of this legislation to make sure it is properly covered, and if a company owns the land, there is a risk that the penalty to which it is exposed is $1 million.

Putting aside all the hype about penalties and the real concern we all have about any of this dangerous material getting into surface or underground water, there is a risk of a draconian application of that sort of penalty, and that is why I prefer to retain it at $100 000. However, I make the suggestion that, as in the marine pollution legislation, it may be more appropriate to split the offences into separate clauses and deal with the penalties in that context.

The Hon. M.J. ELLIOTT: Under this clause some very grave and serious offences can occur, with wanton intent.

Members interjecting:

The Hon. M.J. ELLIOTT: I reiterate that I believe some very serious offences can occur. We are not talking about minor quantities. I know of some examples in this State, and there have been many examples interstate, of very serious disposal practices in particular, but I think that, if any serious degradation of water occurred not by simple disposal but by things being permitted to escape, once again we would have to talk about large quantities. I believe that a $1 million fine would be applicable in such cases, but I think that, in relation to the sort of cases which the members have in mind and which they fear, far lower penalties will apply. There will be a burden of proof on the prosecution. If it cannot prove when the offence was committed, then obviously the prosecution would fail.

The Hon. Peter Dunn: There's a reverse onus of proof in this one.

The Hon. M.J. ELLIOTT: There is not a reverse onus of proof in this one at all. If the offences occurred prior to the date of the proclamation of this Bill, this legislation is not retrospective. If material has been dumped in the past, or if it cannot be proven that it has been dumped in the past, obviously the prosecution would fail.

The Hon. ANNE LEVY: I agree with the comments made by the Hon. Mr Elliott and would point out that clause 48 refers to defences against prosecution and provides:

> It is a defence . . . to prove that there was nothing that the defendant could reasonably be expected to have done that would have prevented the disposal or escape of the material or reduced the quantity of material that was disposed of or that escaped.

As the Bill is not retrospective, if something was dumped 20 years ago there is nothing that anyone could reasonably be expected to do about it at this time, so there is the defence in clause 48 which, I agree, we have not yet considered, but it is provided in the legislation and I do not think that any amendment is suggested for that clause dealing with defences.

In terms of effective pollution, I do not really see that it makes much difference whether pollutants are put directly into the water, or whether they are put onto the land and thereby get into the water. The ultimate effect is exactly the same.

The Hon. PETER DUNN: I will cite one example. All the district councils within the incorporated area will now be required to dispose of chemical drums at one point in each district council. That is the aim. In my own district

council area the disposal point is about nine miles from me. That area was chosen because it was seen to be relatively inert and it did not have a lot of creeks running around it, so the district council disposed of its chemical drums there. There is a great problem today in disposing of plastic drums because they cannot be squashed or broken up, so they have to be stored as is, or buried. The effect of those new arrangements will be that district councils will charge huge amounts, because they will have to ensure that they do not allow that chemical to wash out and get into a watercourse or whatever. I can see that the costs will increase enormously, because the Government has legislated to make those chemicals—

Members interjecting:

The Hon. PETER DUNN: An amount of $1 million—

The Hon. Anne Levy interjecting:

The Hon. PETER DUNN: The Minister did not like being interrupted when she was giving her point of view, so I hope she shows equal respect to other people. This will put a big burden on district councils because under the provisions of this Bill it is likely to cost them $1 000 000, and they will impose some fairly hefty fines to be able to set up a point at which to dispose of chemical drums. We have legislated for that. I think that the Minister will find that this will put a high cost on district councils that ultimately will be paid by the ratepayer. I do not believe it is reasonable that ratepayers could be fined $1 000 000 for doing what they thought was right, but subsequently the offending substance escaped.

The Hon. M.J. ELLIOTT: I thank the Hon. Mr Dunn for such a powerful argument in favour of high fines. He is admitting that up to this time the practices have not been anywhere near adequate. Up to this time the defence has been ignorance, but that has now finished. We know of the potential problems of simply digging a hole and throwing things in it. Australia has been lagging behind North America and Europe in the recognition of this problem. We have a lot of time bombs planted underground at this stage. Some day someone will have to pay to clean up a lot of this stuff.

We talked about the possible cost of dumping substances properly, but if they are not buried properly eventually someone will have to bear the cost. This sort of attitude is not acceptable. The imposition of higher penalties is one way of getting the message across to people that they must behave in a responsible manner and, if acting in a responsible manner becomes a defence, that is a good thing.

Amendment carried; clause as amended passed.

Clause 45—'Storage or disposal of material underground.'

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

Page 18, line 2—Leave out this line and insert—
'A person who stores material, or permits the storage of'.

This clause deals with two issues: the storage and disposal of material at a depth below ground level that exceeds 2.5 metres or such other depth as may be prescribed. It creates an offence for a natural person, the division 3 fine for which is $30 000 and, in case of a body corporate, the division 1 fine is $60 000. It is an offence under clause 48 (3), where in relation to the storage of material a person can prove that the material was stored in a container and that no part of the material escaped from the container.

I want to separate those two matters so that the section deals, first, with a person who stores material or permits the storage of material at a depth below ground level that exceeds 2.5 metres or such other depth as may be prescribed. That person shall be guilty of an offence if the material is not stored in a container or escapes from the container in which it is stored. As far as disposal is concerned, that is absolute and there is no defence. The concern I expressed in the second reading stage was in relation to the many domestic and commercial properties with a basement or a cellar which is more than 2.5 metres deep and in which material may be stored in containers.

If there happens to be a problem, the onus of proof is on the defendant to demonstrate that it was stored in a container and that no part of the material escaped from the container. I would have thought, so far as storage is concerned, it is more appropriate and certainly fairer to put the onus on the Crown; and, so far as disposal is concerned, as I say, the liability is strict. So, my amendments to clause 45 are all related and are designed to split those two offences.

The Hon. M.J. ELLIOTT: How will it be proved whether a person has actually stored or disposed of something? One can put something in a drum, put it in the ground and say that it is stored there. One can have a container, say, a drum, which has the capacity to corrode and release its contents at a later time. What the Hon. Mr Griffin has set up is a defence for disposal by putting things in a drum first, and then, by putting dirt over it, everything is okay. It seems to me that not only the drum might have holes in it but also the amendment might have.

The Hon. ANNE LEVY: The Government also opposes this amendment for the reason that the Hon. Mr Elliott indicated. Let us not forget the purpose of the Bill, which is to protect water, to prevent pollution getting into water and providing penalties when it does. It does not much matter, as the Hon. Mr Elliott said, whether it is stored and then escapes or whether it is deposited straight out. The effect is the same, and it is the effect that we want to prevent. There is the defence further on in another clause, and it seems to me that if matter is being buried it would be absolutely impossible for the Crown to prove that something had been buried at a certain depth and that it was being stored and not disposed of. This would make a nonsense of a very large part of the intention of this Bill.

The Hon. K.T. GRIFFIN: With respect, that is not so. The whole object of the Bill is to deal with the prevention of pollution of waters. If the Minister looks at clause 45 she will see that it says nothing about the pollution of water. It provides:

> A person who stores or disposes of material, or permits the storage or disposal of material, at a depth below ground level that exceeds 2.5 metres or such other depth as may be prescribed is guilty of an offence.

That is clear. It has nothing to do with water. If, in the basement of one's home, one has material stored below 2.5 metres, one has committed an offence; and then the onus is back on the property owner under clause 48 (3) to show that the material was stored in a container and that no part of the material escaped from the container.

Clause 45 does not even require that material escape from the container. The whole problem with this clause is that it is so broad as to be ludicrous in its extent. If it was related to pollution and referred to a person who stored or disposed of material or permited that storage or disposal of material at a depth below ground level that exceeded 2.5 metres, and such storage of that material caused a risk of pollution of an underground water environment, for example, then one could understand it. But it is so broad that it will deal with homes. It will technically cover homes that have basements. It will cover basements of city buildings and a whole range of areas that have nothing to do with water pollution.

As I see it, that is the problem. It does not matter that it appears in a Bill dealing with water resources. The fact is that it is just so broad as to be of quite extraordinary consequence. If someone stores material then, technically, it is an offence if it is below 2.5 metres. Therefore, in a

domestic or commercial environment it can have some very extreme consequences.

I suppose the other area, which has not been addressed in any response, is that relating to places such as the Kangarilla rubbish dump or the Marion rubbish dump, where material is disposed of at a depth considerably greater than 2.5 metres, presumably in a manner that has been approved by the Waste Management Commission. That is not a defence because it is not one of the provisions that is exempted from the terms of this Bill. The real concern is the breadth of clause 45. I do not agree with the Hon. Mr Elliott about not being able to distinguish between storage and disposal. If someone puts something in the ground and buries it one can only conclude that that is disposing of it. On the other hand, if one puts material in a room, basement or cellar that is more than 2.5 metres below the surface, one can only presume that it is being stored.

The Hon. ANNE LEVY: This is another case when one cannot look at the clause without looking at clause 48, which provides the defences. Clause 48 (3) provides that:

> It is a defence to prosecution for an offence against section 45 in relation to the storage of material to prove that the material was stored in a container and that no part of the material escaped from the container.

Cellars or basements could be containers.

The Hon. K.T. Griffin: That's not so. One cannot say that a basement is a container.

The Hon. ANNE LEVY: Unless it has an earth floor. If it has an earth floor the question of materials getting into the earth and, hence, into the water table is something that needs to be taken seriously. If one has a container that will never allow any material being stored to escape into the water table, then that is a complete defence.

The Hon. K.T. Griffin: It doesn't say anything about that.

The Hon. ANNE LEVY: No, it is a defence in that no part of the material escapes. We are trying to protect water. Deleterious material that can escape into the water table will effect water.

The Hon. K.T. GRIFFIN: If you say 'escape into the water table' then that qualifies it. The Bill does not say that. There is no description of 'escape'. Clauses 43 and 44, refer to the escape of material that subsequently enters and degrades any surface or underground water. In this clause we are not talking about any part of the material escaping and subsequently degrading underground water. That is why it is just so extraordinarily broad.

I am not being pedantic about it. I just do not believe that any court would find that a large room was a container. The only point I am genuinely trying to resolve is that clause 45 and the defence in clause 48 (3) do not have any relationship or are not qualified at the moment to offences relating to potential for polluting water. That is my concern. It may be that the Minister wants to defer consideration of this until the end of the Committee stage—that is fine. However, I have a serious concern that it is just too broad.

The Hon. PETER DUNN: What happens in the case of long drop toilets? The clause talks about material and a depth of more than 2.5 metres. In the north of this State, in the Coober Pedy area, long drop toilets are very deep—they are certainly in excess of 2.5 metres. Under this legislation, they will be pinged a Division 3 fine, or a Division 1 fine for a body corporate. I am trying to demonstrate that we should be careful in respect of the drafting of this Bill.

The Hon. ANNE LEVY: There is a suggestion that the legal situation is not entirely clear. However, I can give a guarantee that if, after looking at this further it is felt that there is a legal problem, exemptions will be given under the regulations so that people are not caught in some of the situations suggested by the honourable member. Exemptions will not be given where there is the potential for polluting water. However, if there is no potential for polluting water I am empowered to give a guarantee that exemptions will be given, if required, under the regulations once the legal eagles have had time to argue their way through the different legal opinions.

The Hon. M.J. ELLIOTT: As a hypothetical situation, I am just trying to imagine what a judge would do if, under the Water Resources Act, a person was taken to court because he or she needlessly and wantonly allowed a sugar bowl to tip over their cellar and spread its contents upon the floor. What are the things that Mr Griffin is worried about that people might be prosecuted for? If he can give an example of such a case, it might help prove that a problem exists. I really cannot entertain a prosecution going to a court of law over what someone has done in terms of the storage of material in their cellar, unless that person is storing giant drums of copper chrome arsenate or something which then spills on to the earthen floor.

The Hon. Peter Dunn: It does not say that.

The Hon. M.J. ELLIOTT: I was just thinking about the sorts of examples the Hon. Mr Griffin has put forward in respect of likely prosecutions and how a judge would react. I am not sure that I really see any problem, anyway, but I offer the Hon. Mr Griffin the opportunity to give an example of the sort of things that might happen and which causes him the grave concern that he has.

The Hon. ANNE LEVY: I point out that the power of exemption which is in the regulation clause will be discussed later. It was mentioned when I closed the second reading debate. It is expected that under the regulations there will be exemptions specifically to section 45 for such things as long drop toilets; houses underground in Coober Pedy and Andamooka; in-ground dams for the storage of water; materials stored in excavations during the construction of buildings; materials used in the conduct of mining and quarrying operations during the active life of a mine or quarry, etc. It is proposed to include such things as exemptions, and it would merely be a question of adding to those exemptions if it was felt necessary after the lawyers have had their arguments.

The Hon. K.T. GRIFFIN: We are moving some way towards dealing with my difficulty. As a matter of principle, I do not like exemptions just being in the regulations—it is not a good approach. I do not believe that legislation should be so broad as to be all embracing and then to be narrowed down by regulation. We ought to have it all in the Act if at all possible. I should like to suggest that if there is an intention to exempt, as I understand there is, it may be possible for us to consider including some, if not all, of those by way of specific exemption in this Bill.

Turning to the concerns of the Hon. Mr Elliott, I cannot immediately contemplate all the possibilities. All I can say is that on a technical interpretation of clause 45 there are a number of potential problems in the circumstances to which I have referred, and there could be an offence. It is interesting to note that underground houses at Coober Pedy, for example, will be exempted. They would have been a problem, because even in a kitchen one would store materials that are toxic and, if they spilled in the course of ordinary domestic activity, under this Act there could be a problem. The defence would not apply. There would be a problem with people in those underground houses parking a car or truck in a garage. Material such as petrol flows onto the floor and that technically, is a breach of the Act.

The Hon. M.J. Elliott: A judge would throw it out as trivial.

The Hon. K.T. GRIFFIN: Not necessarily. You can argue that, but we are looking at a piece of legislation that should be around for about 15 years. The previous Act has been around since 1976. I should like to see something that will stand the test of time. We may not have people around who understand what the debate has been about and those who are administering the legislation may be of a different persuasion in terms of their application to it. We do not need to spend more time on this matter. It is obvious that we are at odds over it in many respects. However, I would want us to give more consideration to it before the Bill finally passes through Parliament.

The Hon. M.J. ELLIOTT: I shall not support the amendment proposed by the Hon. Mr Griffin. I have taken on board his concerns, but I still have not seen a concrete example of what might happen. I have spoken briefly to counsel, and I am considering the possibility of an amendment within the defence clause. I am not quite sure whether it is ready or what form it is in. I suggest that we bubble along and if I can see a satisfactory resolution I shall suggest that we recommit.

Amendment negatived; clause passed.

Clauses 46 to 50 passed.

New clause 50a—'Objections to licences.'

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

Page 19, after line 18—Insert new clause as follows:

50a (1) The Minister must not grant or renew a licence until the expiration of three months after notice of the application for grant or renewal of the licence has been published by the Minister in a newspaper circulating generally throughout the State.

(2) A notice must set out prescribed particulars of the application and must invite interested persons to make written submissions to the Minister in relation to the application.

(3) Before granting or refusing an application the Minister must have regard to submissions made under subsection (2) in relation to the application.

As I understand it, clauses 49 and 50 reflect the current situation in relation to the granting of licences. I have some concerns about the way that the granting of licences is structured. I refer to licences for the release of material, not for the use of water. I am no lawyer, but I understand that in clauses 49 and 50 we are removing the common law rights of individuals. For example, a person who lives downstream of someone who causes pollution would under the common law be able to prosecute that person if he lost stock or if there was damage to his crops.

If the Minister granted a licence to the person to release the material into the river or underground (I am not saying that that would happen, but let me give the hypothetical case to start off with), those common law rights would be lost. As it is currently structured, it would be worse than that: the Minister could grant a licence without a person being aware that someone had applied for a licence, and that person would have no opportunity to put his case to the Minister about what might happen in consequence of the granting of such a licence.

On top of that, they would still have no common law rights if something went wrong. That is no longer tolerable. I am not seeking to open it up to all objectors, but rather only to people who would have an obvious and genuine interest in the matter. Under subclause (1), if a farmer knows that a licence is to be granted for the spreading of waste, and he believes that his own groundwater or stream could be contaminated, he will be aware that such a licence has been granted.

Under subclause (2), the details of the application will be made available. People can make a written submission to the Minister in relation to the application. Under subclause (3), the Minister, before granting or refusing an application, must have regard to the submissions, and that is only reasonable. I hope members will support such a motion.

The Hon. ANNE LEVY: I move:

Page 19, after line 18—Insert new clause as follows:

Objections to licences

50a. (1) The Minister must not grant or renew a licence until the expiration of one month after notice of the application for grant or renewal of the licence has been published by the Minister in a newspaper circulating generally throughout the State.

(2) A notice must set out prescribed particulars of the application and must invite interested persons to make written submissions to the Minister in relation to the application.

(3) Before granting or refusing an application the Minister must have regard to submissions made under subsection (2) in relation to the application.

(4) If in the Minister's opinion a licence should be granted or renewed urgently so as to give the Minister some control over further entry of material into surface or underground water or over remedial steps to be taken in relation to material that has already entered such water, the Minister may grant or renew the licence without following the procedures set out in this section but, in that case, the Minister must, within one month after the licence is granted or renewed, give prescribed particulars of the licence by notice published in a newspaper circulating generally throughout the State.

The Government prefers the amendment standing in my name rather than that proposed by the Hon. Mr Elliott. In closing the second reading debate I said that the Government agreed that the Hon. Mr Elliott had made a valid point that some common law rights might be abrogated in this Bill.

The Hon. M.J. Elliott: They still are.

The Hon. ANNE LEVY: Yes. For that reason, I have moved my amendment, which accepts his proposal that the details of the application should be advertised to allow the community at large to make submissions to the Minister. However, the period of advertisement should not be excessive, as I indicated earlier.

My amendment proposes that the period of advertisement be one month, not three months. I doubt whether many people read newspapers that are three months old and it would cause an unnecessary delay and inconvenience for people to have to wait three months before getting a licence. The Government considers that one month is adequate.

Furthermore, my amendment differs from that of the Hon. Mr Elliott in making provision for emergency situations, which we hope will not arise very often. However, for the sake of completeness, it is felt that there must be provisions for emergency situations where the Minister will have the power to follow different procedures if it is considered necessary. The Government believes that this flexibility is desirable, and there is no intention to use this new section to bypass the procedures set out out in subsections (1), (2) and (3).

The Hon. PETER DUNN: Does this provision cover effluent disposal from, say, a piggery or a poultry farm?

The Hon. ANNE LEVY: I am informed that the list of exemptions includes such matters.

The Hon. PETER DUNN: I believe that the provision in the Bill is better than either of these two amendments.

The Hon. M.J. Elliott: This isn't a replacement, but it is an addition.

The Hon. PETER DUNN: I know; but, to be quite honest, I do not think they are necessary.

The Hon. M.J. Elliott interjecting:

The Hon. PETER DUNN: Yes, but the Bill covers all that and I think that the honourable member is being pedantic in giving three months to these people. Hard cases make bad laws but what would happen in the case of a person upstream who wants to empty a polluted dam? He goes to the Minister seeking a licence, knowing full well that it has a red bloom. He also knows that, when the water goes down

the creek, the red bloom will disappear and die because, as it dries out, that is what happens. Given that winter is coming on, if that person had to wait three months, as the Hon. Mr Elliott's amendment provides, the dam could not be drained. That is an extreme case.

The Hon. Anne Levy: That is an emergency and would be covered under subsections (4) and (5).

The Hon. PETER DUNN: I appreciate that, and that is why I lean towards the Minister's amendment. Three months could be too long, and that is why I support the Minister's amendment.

The Hon. M.J. Elliott's new clause negatived.

The Hon. Anne Levy's new clause inserted.

Clause 51—'Contravention of licence.'

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

Page 19, line 23—Leave out '$100 000' and insert '$1 000 000'.

Once again, quite obviously the higher level fine relates to the most serious offences, and grave offences can occur under this Act. This amendment is consistent with what has happened so far.

The Hon. K.T. GRIFFIN: The Opposition opposes the amendment.

Amendment carried; clause as amended passed.

Clause 52—'Variation, etc., of licences.'

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

Page 19, line 42—Leave out '$100 000' and insert '$1 000 000'.

Amendment carried; clause as amended passed.

Clauses 53 and 54 passed.

Clause 55—'Risk of escape of material from land, etc.'

The Hon. ANNE LEVY: I move:

Page 20—

Lines 36 and 37—Leave out ', in the interests of protecting surface or underground water,'.

Line 37—Leave out 'escape' and insert 'enter any surface or underground water'.

These amendments deal with the risk of escape of material from land. Clause 55 has been reassessed in relation to the range of circumstances to which it might apply. In its present wording, it would not allow action to be taken to prevent degradation of water, for instance where material is placed in a dry watercourse. This clause is intended to provide for action to prevent pollution before it arises. In particular circumstances, it would enable a person to be required to remove materials placed where they might subsequently impair water quality. These amendments make clearer what is intended in this clause.

Amendments carried.

The Hon. ANNE LEVY: I move:

Page 20—

Line 42—Leave out 'Division 6 fine' and insert 'Division 3 fine'.

Line 43—Leave out 'Division 5 fine' and insert 'Division 1 fine'.

These amendments increase the level of penalties to bring them into line with those applying under clause 45, which refers to storage of materials underground. It is further justified when compared with the maximum fine of $1 million under clauses 43 and 44. It is felt that the penalties in this case also need to be raised so that appropriate relativities are retained.

The Hon. PETER DUNN: The Opposition opposes these amendments on the basis that they provide draconian fines for not doing as one is told. We are back to the stage of: 'You will do it and like it and, if you do not, you will pay handsomely for it,' and the Government coffers get filled up again.

The Hon. M.J. ELLIOTT: The Democrats support the amendments.

Amendments carried; clause as amended passed.

Clauses 56 and 57 passed.

Clause 58—'Obstructions, etc., in watercourses and lakes.'.

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

Page 22, after line 9—Insert subclause as follows:

(2) It is not an offence under subsection (1) to destroy vegetation in pursuance of an obligation under the Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986.

The aim of this amendment is to ensure that one of the matters I raised in my second reading contribution is specifically referred to, namely, the destruction of vegetation in a proclaimed watercourse or lake. This amendment seeks to provide:

It is not an offence . . . to destroy vegetation in pursuance of an obligation under the Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986.

I understand that is what the Government intended to do probably by regulation but, for the sake of completeness, I would prefer to have it here and to have as many of the exemptions as possible in the Act rather than in regulations.

The Hon. ANNE LEVY: The Government does not oppose this amendment. I confirm that it was certainly intended to put this as an exemption under the regulations but, if the Council prefers it to be in the Act, we are quite happy for it to be included there.

Amendment carried; clause as amended passed.

Clauses 59 to 61 passed.

Clause 62—'Application of this Part.'

The Hon. PETER DUNN: I move:

Page 23, lines 13 to 22—Leave out subclause (1) and insert the following subclause:

(1) This Part does not apply to, or in relation to, a well of a class specified in schedule 1a.

This clause deals with the class of well and it actually prevents anyone interfering in anyway with that bore casing or the screen. It precludes any well that is deeper than 2.5 metres—

The Hon. J.F. Stefani: Which is most wells.

The Hon. PETER DUNN: It is not much of a well if it is only 2.5 metres; it is barely a depression in the ground.

The Hon. K.T. GRIFFIN: I also raised this question in the course of the second reading debate and I expressed concern about excavations, for example, and about a range of other holes in the ground that could be prejudicially affected by this clause. In discussions with officers, they kindly made available a list, both to me and to the Hon. Peter Dunn, of the sort of wells that would not be covered by the Act and were likely to be exempted.

In this amendment the Hon. Peter Dunn proposes to pick up schedule 1a, which is a later amendment, which provides for those exemptions. I think it is important to have as much clarity in the Act as possible and if exemptions are intended, and they can be identified now, it is important to include them. So, that is why I am prepared to support the Hon. Mr Dunn's amendment, which will be followed later with a schedule 1a.

The Hon. ANNE LEVY: The Government is happy to accept this amendment. As the Hon. Mr Griffin has indicated, we intended to do this by way of proclamation. If the Parliament prefers it to be made part of the Act, as detailed in the schedule, exactly the same end will be achieved.

Amendment carried; clause as amended passed.

Clause 63—'Drilling and maintenance of wells.'

The Hon. PETER DUNN: I move:

Page 23—

Line 26—Leave out 'A' and insert 'Subject to subsection (1a), a'.

After line 35—Insert new subsection as follows:

(1a) Subsection (1) does not apply to a person in relation to a well if—

(a) that person is the owner of the land on which the well is situated or is the employee or sharefarmer of the owner of that land;

(b) the well gives access to underground water the surface of which is at atmospheric pressure;

and

(c) the work is carried out solely for the purposes of maintenance and does not involve—

(i) substantial alteration to the casing, lining or screen of the well or the replacement of the casing, lining or screen with a casing, lining or screen of substantially different design or specification;

(ii) a substantial repositioning of the casing, lining or screen;

or

(iii) deepening the well by more than 1.5 metres.

The Hon. ANNE LEVY: I move:

Page 23—

Line 26—Leave out 'A' and insert 'Subject to subsection (1a), a'.

After line 35—Insert new subclause as follows:

(1a) Subsection (1) does not apply to a person in relation to a well if—

(a) that person is the owner of the land on which the well is situated or is the employee or sharefarmer of the owner of that land;

(b) the well gives access to underground water the surface of which is at atmospheric pressure and the salinity of which exceeds 1 800 milligrams per litre;

and

(c) the work is carried out solely for the purposes of maintenance and does not involve—

(i) substantial alteration to the casing, lining or screen of the well or the replacement of the casing, lining or screen with a casing, lining or screen of substantially different design or specifications;

(ii) a substantial repositioning of the casing, lining or screen;

or

(iii) deepening the well by more than 1.5 metres.

On the question of maintenance of wells, the Minister of Water Resources in another place gave a commitment that this issue would be further considered. My amendment to clause 63 gives a proper balance between allowing the 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.

The difference between the amendment moved by the Hon. Mr Dunn and the one that I have moved, following the numerous discussions that have taken place involving many parties, is that the Hon. Mr Dunn has removed the exception of better quality water suitable for drinking. In fact, his proposal is in conflict with the key object of this Bill, which is protect the quality of the State's surface and ground waters. Perhaps members will be interested to know that my amendment would allow significant maintenance work on 95 per cent of the wells of this State. Furthermore, current legislation does not allow any exemptions for the maintenance of casing, lining and screens and, according to the knowledge of the officers of the E&WS, this situation has not created any problems. So, in the circumstances, I would urge members to support my amendment in preference to that of the Hon. Mr Dunn.

The Hon. PETER DUNN: I will now discuss the rest of my amendment to this clause. The Minister nearly defeated her argument with her final statement that the E&WS Department had not found any problem. The reason the department has not found any problem is that people do not tell it.

I would like the department to say how many times it has been notified about a change to a well—a new bore casing or a change to the screen or filter. There would be few notifications, because people cannot be bothered with that sort of nonsense—and it is nonsense.

Maintenance can be required at either end of a bore casing. On many occasions oxygen or moisture gets into the top end of a bore casing and it is generally repaired by cementing to stop cracking or to prevent rust holes from appearing. The Minister's amendment provides that people cannot alter or maintain a bore casing at all. That is an absolute nonsense.

The Minister's amendment talks about 1 800 milligrams of dissolved salts per litre. For a start, that is the wrong way around. A person would not want salt water to enter a fresh water well. Why not worry about water that has a higher salt content than that? I would like the Minister to prove to me that 95 per cent of the wells in this State are outside the criteria, that is, 1 800 milligrams per litre of dissolved salts. Those who live in the South-East, where the water is of a better quality, should be able to do small maintenance jobs, particularly to the top of the casing of a well, and that usually involves concreting. A well may be sited in a paddock which grazes a lot of cows and after a heavy wet season, the surface water may dribble into the bore casing. What does the farmer do? According to the Minister's amendment, he is not allowed to do anything; he is not allowed to touch the casing. So the well will be polluted. In actual fact, that will not occur because a farmer protects his water. That well will be maintained correctly.

My amendment is clear. It provides that general maintenance should occur on the casing or the screen. If there is sand at the bottom of the screen, surely a person should be allowed to clear that. The Minister's amendment allows the deepening of the well by more than 1.5 metres. The well can be raised or lowered by 1.5 metres. Surely that in itself constitutes maintenance to the bore casing and the screen. I cannot determine the argument that they should not be allowed to do that. The fact is that it is being done illegally by any number of people. I do not think there is any evidence to suggest that the waters are any worse (because they are maintaining their own bores) than they were before.

The Hon. ANNE LEVY: In response to the Hon. Mr Dunn, I point out that the aim of this legislation is to protect water. In consequence, major maintenance should be done only by people who are qualified to do it, and that is the object of my amendment.

The Hon. M.J. ELLIOTT: I support the Government's amendment.

The Hon. PETER DUNN: It is disappointing that that is happening because we will again be enacting laws that people will break. It is absolute nonsense. Minor maintenance will be carried out: it is a fact of life. Is there no practicality in this Parliament at all? If we pass laws that will automatically—

The Hon. R.R. Roberts interjecting:

The Hon. PETER DUNN: I am talking about minor maintenance. Under my amendment, substantial maintenance cannot be carried out, but minor alterations are permitted. Surely that is not unreasonable.

The Hon. Peter Dunn's amendment to line 26 carried; the Hon. Peter Dunn's amendment to insert new subsection (1a) negatived; the Hon. Anne Levy's amendment carried; clause as amended passed.

Clauses 64 to 68 passed.

Clause 69—'Right of appeal.'

The Hon. ANNE LEVY: I move:

Page 25—

Line 41—After 'an application for the grant' insert 'or renewal'.

Line 42—Leave out 'to grant or issue the licence or' and insert 'to grant or renew the licence or to issue the'.

These and following amendments include, first, an extension of subclause (1) *(a)* to apply to the renewal of licences as well as initial licences. Members will recall that I foreshadowed this amendment during my response to the second reading last night.

The second amendment relates to new clause 50 *(a)* which has been inserted and provides that any person who is detrimentally affected who has riparian rights and who made a submission to the Minister under that clause has a right of appeal to the tribunal.

The third amendment relates to a situation where the Minister has, by publication in the *Government Gazette* and in a newspaper circulating throughout this State, prohibited or restricted the taking of water from a watercourse, lake or well. A person who is carrying on a business and who is prejudicially affected may appeal to the tribunal. This is considered to be fair and equitable. The balance of the amendments to this clause and to subsequent clause 70, which is still to come, are all consequential to the amendments which I have just explained.

The CHAIRMAN: The Minister has actually also covered the next amendments she will move.

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

Amendment carried.

The Hon. ANNE LEVY: I move:

Page 26, after line 3—Insert paragraphs as follow:

(ba) a person—

(i) who is likely to be detrimentally affected by the grant or renewal of a licence under Part V in relation to the use of water to which he or she has riparian rights or would, but for the Act, have such rights; and

(ii) who, in a submission to the Minister under section 50a (2), has opposed the granting or renewal of the licence or has expressed the view that certain conditions should be attached to such a licence,

may appeal to the Tribunal against the granting or renewal of the licence or the Minister's failure to attach those conditions to the licence;

(bb) a person who is subject to a prohibition or restriction under section 40 (1) in carrying on a business may appeal to the tribunal against the prohibition or restriction.

I have discussed this already.

The Hon. M.J. ELLIOTT: I have an amendment in identical words so, obviously, I will not move mine. I support the Minister's amendment.

Amendment carried.

The Hon. ANNE LEVY: I move:

Page 26, line 10—Leave out 'to grant a licence or' and insert 'to grant or renew a licence or to issue a'.

This is consequential.

Amendment carried.

The Hon. ANNE LEVY: I move:

Page 26—

Line 14—After 'direction,' insert 'prohibition'.

Line 19—After 'direction,' insert 'prohibition'.

This is also consequential.

Amendments carried; clause as amended passed.

Clause 70—'Decision or direction may be suspended pending appeal.'

The Hon. ANNE LEVY: I move:

Page 26—

Line 25—Leave out 'or direction has been made or given' and insert ', direction, prohibition or restriction has been made, given or imposed'.

Line 27—Leave out 'or direction' and insert ', direction, prohibition or restriction'.

Line 28—Leave out 'or direction' and insert ', direction, prohibition or restriction'.

These are all consequential on the amendments to clause 69.

Amendments carried; clause as amended passed.

Clauses 71 to 77 passed.

Clause 78—'Money due to Minister, etc., first charge on land.'

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

Page 28—

Line 16—Leave out 'first'.

Line 19—Leave out 'first'.

During the second reading debate I explored whether or not the Minister, in undertaking work on land pursuant to the provisions of the Act, should have a first charge on land, and argued strongly that there should not be a first charge. I am comfortable with the Minister's having a charge for costs expended, but have a concern that, notwithstanding the Minister's arguments in reply, the Crown is getting a priority which will override other priorities, such as mortgages, which may have been registered on the title over many years. For that reason, I believe that a first charge is inappropriate.

The Hon. ANNE LEVY: The Government opposes this amendment, as indicated in my reply speech last night. I remind members of the comments I made at that time. It should be remembered that any debts arising are liabilities of the landowner which, if paid by him, would take precedence over mortgage liabilities, but we must remember that protection of water rights to the land and any work related to that has the effect of increasing the value of the property, hence increasing the security held by the mortgagee.

Mortgages generally contain a clause requiring the mortgagor to comply with the law, so there seems little justification for departing from the well-established practice of making these types of debt a first charge on the land. Certainly, there is nothing novel in the proposal in the Bill.

The Hon. PETER DUNN: Would this apply in urban areas?

The Hon. ANNE LEVY: Yes, such matters are a first charge anywhere.

The Hon. M.J. ELLIOTT: The Democrats do not support the amendments.

Amendments negatived; clause passed.

Clauses 79 to 81 passed.

Clause 82—'Regulations.'

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

Page 29, lines 32 and 33—Leave out paragraph *(k)* and insert the following paragraph:

(k) prescribe fines—

(i) not exceeding a division 5 fine for contravention of or failure to comply with a regulation under paragraph *(j)*;

(ii) not exceeding a division 8 fine for contravention of or failure to comply with any other regulation.

One of the concerns that I expressed during the second reading debate was that all fines under regulation could be up to division 5, which is $8 000. I said that generally in legislation regulations may only impose fines up to about $500 or $1 000. In discussions with officers, it was put to me that more than $500 or $1 000 would need to be included in a regulation which might deal with the safety of reservoirs and dams, and I acknowledge that. I can see that a regulation which prescribes certain conditions in respect of a dam should have a sizeable penalty attached to it.

I am seeking to provide two levels. The first would deal specifically with the only problem in the regulation-making power which warrants the high fines, that is, regulations relating to the safety of reservoirs and dams for which there will still be a division 5 fine as a maximum, and then, for all other regulations, there would be a division 8 fine. For the information of members, that is $1 000, and that is consistent with the normal range of penalties in regulations.

In an endeavour to try to accommodate the arguments which were put to me and which I agree had substance, but in order to meet my concern, I propose a two-tier level of fines for regulations.

The Hon. ANNE LEVY: The Government opposes this amendment. The clause provides:

The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of the Act.

The matters set out are not exclusive. There is the possibility of other regulations being applied for the purposes of the Act. When, under the Act, some penalties may range as high as $1 million, the sum of $1 000 for breach of a regulation seems quite inadequate. The Bill, as drafted, permits penalties up to $8 000, which is probably insufficient anyway, but it bears a little more relationship to the major penalties set out in the legislation than does the Hon. Mr Griffin's amendment.

The Hon. M.J. ELLIOTT: I have some sympathy for what the Hon. Mr Griffin is attempting to do. Looking at clause 82 (2) *(e)*, I feel that some of the offences there should attract a fine beyond the level that is presently proposed.

[*Midnight*]

Can the Minister give a couple of examples of the more serious offences which could be committed and which will be covered by regulation?

The Hon. ANNE LEVY: Apart from the fact that we are setting only a maximum and not the actual penalty—actual penalties may be less—the regulations will cover many matters in respect of maintaining water quality. For instance, regulations will cover the keeping of records and, if records are not maintained properly, it will be impossible to know what has happened and hence monitor the quality of the water. Accurate record keeping is absolutely essential for the purposes of the Bill. To not maintain proper records could have serious consequences. Obviously, as to the water quality criteria, one cannot think of every possible circumstance, so there is a need to have flexibility to react to situations as they arise.

The Hon. M.J. ELLIOTT: I would like to consider this matter further. The Bill has gone fairly smoothly thus far, but I am concerned about exactly how regulations are used, what powers are in them and what penalties flow from them. I may come to the position of supporting what the Government has in the Bill, but after midnight the thinking process slows down a bit. At this stage I will support the amendment. This will give me a chance to talk it over further and either before it goes to the other place or before it returns there will be an opportunity to clarify a few matters. At this stage I support the amendment, but I may return to the Government's position.

Amendment carried; clause as amended passed.

Schedule 1 passed.

New schedule 1a.

The Hon. PETER DUNN: I move:

Page 30—Insert the following schedule after schedule 1:

Schedule 1a

1. A well that is 2.5 metres or less in depth (or such other depth as may be prescribed).

2. A well—

(a) that is not used to provide a supply of water; and

(b) in relation to which requirements imposed by or under the Mining Act, 1971, or the Petroleum Act, 1940, are in force.

3. A well of one or more of the following classes if the well is not used to provide a supply of water—

(a) a trench for the laying of pipes, cables or other equipment in relation to the supply of water, gas or electricity or the provision of sewerage or drainage;

(b) a drain that is under the control of the Commonwealth or State Government or a municipal or district council;

(c) an excavation for or in relation to a building or for a swimming pool;

(d) a private mine within the meaning of the Mining Act 1971;

(e) an excavation drilled for engineering or survey purposes if the excavation is not in a part of the State excluded from the operation of this paragraph by proclamation and the excavation is not more than 15 metres in depth;

(f) an excavation for the purposes of a temporary toilet;

(g) an excavation (not exceeding 15 metres in depth) for the installation of cathodic protection anodes or the measurement of pressure by means of a piezometer.

4. (1) A well drilled to a depth not exceeding the depth of the water table nearest to the surface for the purpose of obtaining samples of water for scientific research.

(2) An excavation (not exceeding three metres in depth) for the purposes of conducting an underground test or extracting material for testing.

5. A well of a class declared by proclamation to be excluded from the operation of this Part.

This schedule sets out those things that can be mined and determines what is not a well. It just clears up the Bill in this way, rather than by regulation, and that should happen more often.

New schedule inserted.

Schedule 2.

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

Clause 4, page 31—Insert at the end of clause 4 'until the expiration of the period specified in the order or until the expiration of six months after the commencement of this Act whichever occurs later'.

The reasoning behind this amendment, which may need some alteration, is to provide for a lag period for the appeal process in relation to the granting of licences. There needs to be some time after the commencement of the Act to allow people who already have licences and are applying for renewals to appeal, and that may take a couple of months. It may be that six months is too long.

The Hon. K.T. Griffin: If they have a licence they are all under the old Act.

The Hon. M.J. ELLIOTT: But the licences are granted for a set period.

The Hon. ANNE LEVY: The Government is happy to accept this amendment. The six months provision allows for a month for advertising, time for appeals and a built-in comfort factor for delays. Hopefully delays will not occur, but they often seem to.

Amendment carried.

The Hon. ANNE LEVY: I move:

Page 31, after clause 9—Insert clause as follows:

10. A notice served on the owner of land under section 61 (1) *(a)* cannot apply to an obstruction comprising a wall or embankment constructed before the commencement of this Act for the purpose of damming the flow of water in a watercourse.

This covers a point raised by the Hon. Mr Dunn regarding dams in watercourses. It was never intended to regard those dams as obstructions; hence the amendment which excludes existing dams from the operation of clause 61.

Amendment carried; schedule as amended passed.

Title passed.

Clause 48—'Defences'—reconsidered.

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

Page 18—

Line 33—After 'prove' insert '*—(a)*'.

After line 34—Insert paragraph as follows:

(b) that the material was stored in a container in a building and that no part of the material escaped from the building.

This amendment may not be perfect but I believe that another clause is likely to come back to this place in some form. In terms of keeping this matter at least alive—and I

think this amendment does address in some way the concerns of the Hon. Mr Griffin—regardless of whether or not she is satisfied generally with this amendment, I ask the Minister whether the matters raised by the Hon. Mr Griffin could be given a little more consideration in another place so that perhaps it might be straightened out a little more.

The Hon. ANNE LEVY: The Government is happy to accept the amendment. I suggest that it be put into the Bill before the amendment is considered in the other place. Further consideration can be given to whether or not the wording should be changed. If such further consideration results in no further change, at least it is there.

The Hon. K.T. GRIFFIN: Certainly the amendment goes some way towards assisting me with the problem I had about clause 45. On the basis that the Minister and the Hon. Mr Elliott have just indicated, I will certainly support it.

Amendment carried; clause as amended passed.

Bill read a third time and passed.

ADJOURNMENT

At 12.13 a.m. the Council adjourned until Tuesday 10 April at 2.15 p.m.