LEGISLATIVE COUNCIL

Tuesday 11 December 1990

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

ASSENT TO BILLS

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

Stock,

Wilpena Station Tourist Facility.

PETITION: VISUAL/HEARING IMPAIRMENT

A petition signed by 209 residents of South Australia concerning the lack of existing services provided specifically for those suffering from visual/hearing impairment and praying that the Legislative Council urge the Government to set up a parliamentary select committee to investigate the tragic plight of South Australian citizens who suffer from deafness or blindness, but particularly those who suffer from a severe visual/hearing impairment, was presented by the Hon. Bernice Pfitzner.

Petition received.

QUESTIONS ON NOTICE

The PRESIDENT: I direct that written answers to the following questions, as detailed in the schedule that I now table, be distributed and printed in *Hansard:* Nos 77 to 79, 83 and 84.

MS JUDITH BLEECHMORE

77. **The Hon. DIANA LAIDLAW** asked the Minister of Tourism: Subsequent to Ms Judith Bleechmore's appointment as Marketing/Promotions Officer for the proposed new Outback Tourist Association, will the Minister be seeking her resignation as Executive Officer of the S.A. Tourism Awards due to industry concerns that such an appointment would represent a conflict of interest with Ms Bleechmore's current responsibilities?

The Hon. BARBARA WIESE: Ms Bleechmore has not taken a position as Marketing Officer for the Outback Tourist Association.

REGIONAL TOURISM CONFERENCE

78. **The Hon. DIANA LAIDLAW** asked the Minister of Tourism:

1. Which officers of Tourism South Australia attended the Regional Tourism Conference at Charleville, Queensland, and what was the rationale for their attendance?

2. What was their mode of transport and the cost?

The Hon. BARBARA WIESE: The replies are as follows:

1. The Director, Regional Administration, Regional Manager for the South-East, Riverland and Murraylands; Regional Manager for the Mid North and Yorke Peninsula; and Regional Manager for Adelaide Hills, Kangaroo Island and Fleurieu Peninsula attend the National Outback Regional Conference at Charleville, Queensland. Also attending at their own cost were two other staff members of the Regions Division together with the officer assisting the Outback Tourist Association. The rationale for staff attending was based upon the content of the conference agenda and the availability of vacant seats on the chartered aircraft.

2. Charter flight. The cost to Tourism South Australia was $500 as this was part of a joint promotional arrangement between Tourism South Australia and the airline company.

TOURISM REGIONAL MANAGERS

79. **The Hon. DIANA LAIDLAW** asked the Minister of Tourism: In respect of the two positions of Regional Manager appointed in August 1990, were vacancies publicly advertised, and, if not, why not?

The Hon. BARBARA WIESE: The positions were not publicly advertised in accordance with the Commissioner for Public Employment's Circular 33 relating to external recruitment into the Public Service.

SAFIAC

83. **The Hon. DIANA LAIDLAW** asked the Minister for the Arts: Since the development of guidelines to enable the South Australian Film Industry Advisory Committee to roll over development investments into equity investments, what projects have been granted this means of assistance, and, in each instance, what was the date of approval and who was the producer?

The Hon. ANNE LEVY: Two projects have received approval to roll over development investments into production investments, with the details as follows:

Title	Amount $	Producer	Approved
1. *Struck by Lightning*	10 000	Terry Charatsis Trevor Farrant	30/8/89
2. *The River Kings*	47 600	Rob George	20/9/90

DEPARTMENT FOR THE ARTS

84. **The Hon. DIANA LAIDLAW** asked the Minister for the Arts:

1. What is the estimated cost in the first year and subsequent years of award restructuring on the Department for the Arts budget?

2. Will these costs have to be found internally or is it understood that the Government will provide additional funds to cover the costs?

The Hon. ANNE LEVY: The replies are as follows:

1. Each division of the Department for the Arts is currently working through the award restructuring process. Some organisational changes are contemplated in line with the general thrust of award restructuring. However, the various options are still being developed and considered and, as such, the implications for staffing and on budgets have yet to be determined. Productivity improvements, probably resulting in a marginally smaller work force, are expected to offset award increases for employees.

2. The Government expects the Department for the Arts to manage the award restructuring process within its annual budget allocations and without adversely affecting program and service delivery to the community and its clients.

PAPERS TABLED

The following papers were laid on the table:

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

Listening Devices Act 1972—Report 1989-90;

South Australian Superannuation Board—Report 1989-90;

Boating Act 1974—Regulations—Lake Albert.

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

Reports 1989-90—

Controlled Substances Advisory Council;

Department of Fisheries;

Office of Energy and Planning;

South Australian Centre for Manufacturing;

South Australian Psychological Board.

Dried Fruits Board of South Australia—Sixty-first Report, year ended 28 February 1990.

By the Minister of Consumer Affairs (Hon. Barbara Wiese)—

Commissioner for Consumer Affairs—Report 1989-90.

Liquor Licensing Act 1985—Regulations—Thebarton Oval (Amendment).

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

Aboriginal Lands Trust—Report 1989-90;

Road Traffic Act 1961—Regulations—Level Crossing Warning Device;

District Council of Mallala—By-Law No. 25—Fire Prevention.

QUESTIONS

PHYSIOTHERAPY EDUCATION

The Hon. R.I. LUCAS: I seek leave to make an explanation before asking the Minister representing the Minister of Employment and Further Education a question about physiotherapy education.

Leave granted.

The Hon. R.I. LUCAS: I raise the issue of what has been described to me as a crisis facing physiotherapy education in South Australia. Trained physiotherapists are in very short supply both nationally and in South Australia where the shortage has been described as chronic. Yet, as a result of the adoption of the Commonwealth Government's relative funding model, which is being used to fund higher education institutions throughout Australia, there will be a need to cut the South Australian Institute of Technology's School of Physiotherapy's budget (which of course will be part of the new University of South Australia next year) by 50 per cent during the next five years. This will mean that the minimum clinical practice component needed for a graduate to be registered as a physiotherapist in South Australia (and other States in Australia) will not be met by the school from 1992.

A 50 per cent reduction in the budget will also mean that every clincial supervisory position would be abolished and four staff in established positions would lose jobs. The reason why the South Australian Institute of Technology, which presently administers this course, has found it necessary to forewarn these cuts is that in South Australia 95 per cent of the cost of the clinical component in educating physiotherapists comes from the education dollar. This contrasts starkly with other States where a large proportion of this cost is met from their health department or commission budgets. In this State the Health Commission only contributes about 5 per cent of clincial education costs.

Clinical teaching involves a minimum of 1 000 hours per student in order for the student to obtain registration after graduating. This represents some 35 per cent of the total cost per student of presenting a basic undergraduate course. Graduates of SAIT's School of Physiotherapy are highly regarded throughout Australia and the school is known throughout the world as a centre of excellence in teaching and research in manipulative physiotherapy, and it is rapidly gaining the same reputation in neurological physiotherapy. If the School of Physiotherapy was unable to continue using the Royal Adelaide Hospital for its clinical practice component of its four-year course, the hospital would need to employ at least four physiotherapists to service patients.

Similar situations (with smaller staffing replacements) would be needed at each of the other major Adelaide and suburban public hospitals. In each hospital the school provides equipment used to treat the hospital's patients; the equipment is often used by hospital staff when students are not present; and the equipment is even maintained by the school's technical officer. My question to the Minister is: will the Minister of Employment and Further Education begin urgent discussions with the Minister of Health and the Commonwealth Government to see what options exist to ensure that this possible crisis in physiotherapy education is averted?

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

POLICE FILES

The Hon. K.T. GRIFFIN: I seek leave to make a brief explanation before asking the Attorney-General a question about access to police files.

Leave granted.

The Hon. K.T. GRIFFIN: Last week the Minister of Correctional Services, Mr Blevins, was questioned in the House of Assembly about the murder of a prisoner in Yatala. The next day, after saying that he would arrange for the member for Bright, Mr Matthew, to be interviewed by police, the Minister said that he had the result of the investigation in the following terms:

> The member for Bright gave a statement to a detective sergeant at 5.50 yesterday evening. The statement is here and, if anyone wishes to see it, is available. I have been advised through the Minister of Emergency Services by the Commissioner of Police of the following.

Then the Minister of Correctional Services went on to quote from the Commissioner's report. Putting aside the question of privilege, which is an issue for the House of Assembly, no-one has yet addressed the important question of public access to statements taken by police from witnesses in the course of a criminal investigation. The Attorney-General has previously said that it is inappropriate for the Executive arm of Government to give to police directions other than a formal direction given publicly under the Police Regulation Act. The Attorney-General, as the Chief Law Officer of the Crown, does periodically have briefs referred to him by the Crown Prosecutor for instructions, but never are those briefs released publicly other than as evidence being adduced in court.

The action of the Minister of Emergency Services last week in making available to the Minister of Correctional Services a statement taken by the police from a member of Parliament in relation to a criminal investigation, and even the supply by police to the Minister of Emergency Services of that statement, raises serious questions about political interference with the police. My questions to the Attorney-General are as follows:

1. Is the supply by police to the Minister of Emergency Services of statements of witnesses in criminal investiga-

tions an event out of the ordinary, or has it happened on a number of occasions?

2. Is the supply of a witness's statement to another Minister, such as occurred with Matthew's statement last week and then making it available publicly, a proper course of action?

3. What guarantee does any member of the public have that in giving a statement to police in a criminal investigation it will not be made public or be transmitted to other Ministers, except in the course of court proceedings?

The Hon. C.J. SUMNER: This matter is being dealt with in the House of Assembly, and I suggest that the honourable member study the debate in that place as far as Mr Blevins' explanation in relation to this matter is concerned.

The Hon. K.T. Griffin: He's in big trouble.

The Hon. C.J. SUMNER: He certainly is not in big trouble. I think it is very important—

Members interjecting:

The PRESIDENT: Order! The Attorney-General has the floor.

The Hon. C.J. SUMNER: —to realise that this matter arose because a member of Parliament—Mr Matthew—made quite extraordinary and serious allegations about the conduct of prison officers at Yatala Gaol. Effectively, he was suggesting that prison officers had conspired to in effect ensure the murder of prisoner Stone. That was an extraordinarily serious allegation made by Mr Matthew in the Parliament. Surely, in that context, while it may be that Mr Matthew has his privileges as a member, I have no doubt that the Minister responsible for prisons also has a public responsibility to respond to those allegations and not to exercise—

An honourable member interjecting:

The Hon. C.J. SUMNER: Yes he did. Not to respond to those allegations would have left him in a position of being criticised for dereliction of duty. As I understand the matter, it was referred to the police; the police interviewed Mr Matthew; and a copy of the statement was made available to the Minister responsible—the Minister of Emergency Services—who, in turn, made it available to the Minister responsible for prisons—the Minister for Correctional Services. So, in requesting that statement, the Minister of Emergency Services was acting as the Minister responsible for the police. Obviously, the Minister responsible for prisons had an interest in receiving and seeing that particular statement as it related—

An honourable member interjecting:

The Hon. C.J. SUMNER: Well, it related directly to his responsibilities as the Minister responsible for correctional services. If members cannot see that, I do not think they understand the basic principles of ministerial responsibility. The Minister of Emergency Services, as the Minister responsible for the police, was entitled to receive the statement, as was the Minister of Correctional Services, as the Minister responsible for the prisons, in the context of a very serious allegation having been made, albeit in the context of Parliament. I suppose one can only say that the more this happens in the Parliament, the less serious we can take accusations that are made in Parliament.

I suppose we can say, 'Well, it is just another statement from Matthew, Lucas or Irwin. Who cares?' That is the situation that we have arrived at in the Parliament at the present time. Allegations are just brought in off the top of the head and, when they are actually taken seriously by the Ministers concerned, we get the sort of questions that we got today. If they are not taken seriously by Ministers, presumably the members come back subsequently and criticise the Ministers for having done nothing.

Members interjecting:

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

The Hon. C.J. SUMNER: First, if one works through the principles concerned, one will see that a serious allegation was made in another place relating to the administration of prisons and the possibility of serious criminal conduct on the part of prison officers. Secondly, the Minister of Emergency Services, as responsible Minister, had a right to receive the information that the police obtained in relation to this matter. The Minister of Correctional Services, as the Minister responsible for prisons, had a right to receive that information to ensure that he could carry out his responsibilities in relation to the proper administration of his portfolio in the prisons. So far, I see nothing that is contrary to the basic principles of responsible Government in that area.

The question then arises whether, in suggesting that anyone who liked could look at it, it involved a breach of privilege; that is a matter that is being dealt with—

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: I have dealt with your question, so far.

An honourable member interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: I have just answered them all. I'm sorry, but you haven't been listening.

Members interjecting:

The PRESIDENT: Order! The honourable Attorney is trying to address the question.

Members interjecting:

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

The Hon. C.J. SUMNER: Whether or not the action of Minister Blevins, in suggesting, as I understand it in a fairly offhand manner, that anyone could look at it, constituted a breach of privilege is a matter that is before another place at the present time. All I can say is that I have had the Crown Solicitor examine whether a breach of privilege is involved in these circumstances, and he is of the view that, on the matters that he has had before him, a breach of privilege was not disclosed by the actions of Mr Blevins. However, whether or not the House of Assembly takes a different view of that matter is a matter for that House. I hear the bells ringing now, and I assume that it is in the process of debating that matter at the present time.

Obviously, statements relating to criminal investigations are not provided to the Minister responsible for the police, or indeed to me, as a matter of course, but that does not mean that the Minister responsible for police—or I as Attorney-General—is not entitled to statements taken in relation to criminal investigations.

Clearly, as Ministers, I should think that is fairly fundamental to the Westminster system. The police are charged with the duty of getting on with their job of investigating criminal matters. But clearly, as has happened, I should think, many times in this Parliament, not only with myself as the responsible Minister for the criminal justice system but I suspect when the Hon. Mr Griffin was Attorney-General, there are large numbers of matters where statements taken by the police are made available either to the Attorney-General or to the Minister responsible for the police.

We have had this debate in this State on two occasions in the past two decades. The first related to the moratorium debacle in 1970 when Justice Bright made it quite clear that the police were an arm of executive Government in the final analysis. Although having substantial independence of

action, in the final analysis we are subject to the directions of the executive arm of Government through directions of the Governor in Council. That was established by the Bright Royal Commission in 1971 and accepted by the Government of the day.

We had a further debate about the relationship between the police and the executive arm of Government in 1978, I think—which I would have thought all members would recall—in the debate about the dismissal of Police Commissioner Salisbury for failing to provide accurate answers to questions to the Minister responsible for the police. At all times the important and critical question is that there has to be a Minister in the Parliament taking responsibility for the actions of the police, but naturally, as a matter of propriety and good practice, the Minister does not seek to intervene in criminal investigations.

Under the Police Commissioner, with his statutory responsibilities, the police have the duty to investigate criminal behaviour and to carry out their other functions. But in the final analysis the Minister is responsible and is entitled, as the Attorney-General may be in most circumstances, to statements which relate, in the Attorney's case to criminal prosecutions and, in the case of the Minister, to matters that relate to the operation of the Police Force. That is the very basis of responsible Government in the Westminster system.

An honourable member interjecting:

The Hon. C.J. SUMNER: You are quite right; I agree with that. It may be that members can be critical of the use that a Minister might make of that particular information, and clearly in certain circumstances there would be improper use of that information; but, in the case that we are immediately talking about, I fail to see how members opposite can be critical of what has occurred, except possibly about the Minister's saying that anyone can look at it. The matter was raised in the public arena by a member of Parliament, the allegations were extraordinarily serious, and the Ministers responsible took whatever action they could to track the matter down, and I think that they would have been in dereliction of their duty had they not done so. I hope that outlines the situation correctly in terms of ministerial responsibility, and I would have thought that most members would accept it.

The Hon. K.T. GRIFFIN: As a supplementary, does the Attorney-General's answer mean that if any member of Parliament should raise an issue privately or publicly, which would require investigation by the police, we can now expect the statements of any witnesses in the context of that inquiry to be made available both to Ministers and to the public?

The Hon. C.J. SUMNER: No, not as a matter of course, obviously not. But if an issue is raised in the Parliament, in the public arena, about these matters, the Minister responsible is entitled to be briefed about them. That is the simple fact of the matter. To suggest otherwise is quite an extraordinary concept of the Westminster system. Obviously it does not mean that the Minister will get statements from anyone who goes to the police. That is not the situation.

However, if an issue is raised publicly the Minister is entitled to be briefed about the investigation. How the Minister responds to that investigation is a matter for the Minister and, if the Minister abuses information or uses it improperly, he can be subject to appropriate criticism in the Parliament perhaps, or in the public arena.

I do not see, however, that there is a blanket rule, as the Hon. Mr Griffin has tried to suggest. There are conventions which operate and which are fairly important, and I do not believe they have been abused in this State, and it is certainly not the intention of this Government to start abusing them.

SOUTH AUSTRALIAN FILM CORPORATION

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation before asking the Minister for the Arts a question about the South Australian Film Corporation.

Leave granted.

The Hon. DIANA LAIDLAW: The South Australian Film Corporation announced at the weekend that it will close its documentary division by the end of the month due to the problems being experienced in funding post production costs of the television series *Ultraman*. The closure is seen to be a major setback for the State's documentary film industry, as the division has provided vital work and training for local film-makers, a matter confirmed to me by several independent film producers who have telephoned my office in recent days, agitated about this decision.

The closure also appears to confirm that the corporation has been unsuccessful in selling the television rights to *Ultraman* in Australia and New Zealand. Certainly, following the Minister's decision last month to redirect some $550 000 from the Government documentary film fund to help meet the *Ultraman* debt, the Minister held out the 'olive branch' that profits from the sale of the rights would be put back into the fund and utilised by the documentary division (now to be closed) to provide work for independent film producers. The closure seems to be in conflict with information provided by the Minister in this place on 13 November when responding to the following statement by the Chairman in the corporation's annual report for the year ended 30 June 1990. Mr Bachmann noted in that report:

> The adverse financial impact that *Ultraman* has had on the corporation is one which will cause difficulties to the corporation for the foreseeable future.

In reply to my questions on that statement the Minister assured members as follows:

> While at the time the Chair wrote the report for the South Australian Film Corporation there may or may not have been concern regarding the financing of the *Ultraman* overage. As a result of the financial arrangements which have been put into operation, *Ultraman* has no longer any effect on the Film Corporation.

That was the Minister's statement one month ago and yet, as I noted earlier, the documentary division is to close as a further consequence of the fall-out over *Ultraman*. I ask the Minister:

1. Why has the decision been made to close down the documentary division prior to the release of the consultant's report on the operations of the South Australian Film Corporation?

2. As section 11 of the South Australian Film Corporation Act provides the Corporation with '. . . the sole and exclusive right to produce or arrange for the production of film for or on behalf of the Government or for and on behalf of any instrumentality of the Government. . .', does the Government propose to amend the Act to delete this provision now that the documentary division is to be closed?

3. If not, what other arrangements are proposed to ensure that productions sponsored by Government agencies can proceed and the independent film production section in South Australia is not sacrificed as a consequence of the Corporation's *Ultraman* debt problems?

The Hon. ANNE LEVY: First, let me say that, if the independent film sector in South Australia existed entirely on Government documentaries, it would not be a very

healthy industry. It does a great deal more than just exist on a few documentaries that are produced for Government use, and to suggest that that is all the independent film sector does in South Australia is absolutely ludicrous and rather insulting to the independent film sector, which has considerable vitality and which has achieved a great deal apart from just making a few documentaries for Government use.

I have not received a report as to why the decision was made to close the documentary division. It was a decision made by the board of the Film Corporation. I presume it is because they did not have sufficient funds to continue it. The use of the money from the documentary film program to meet the overages on *Ultraman* was announced a considerable time ago, not just on 13 November. I cannot recall the actual date, but it was certainly announced before that time. In consequence, there have not been the funds available to the Film Corporation. I know attempts have been made to sell the rights for *Ultraman* within Australia and New Zealand. I presume they have not as yet been successful.

The Hon. Diana Laidlaw: They clearly haven't.

The Hon. ANNE LEVY: Or, if they have been, they have received no money for them. Certainly, the decision was one made by the board of the Film Corporation and, I presume, for the very good reason that it no longer had the funds to continue it. We have certainly said that the Government film fund will be available again when the *Ultraman* overage has been paid for, and we would expect it to be able to commission documentaries in eight to 12 months, depending on a number of factors. That decision remains: it is in no way altered.

As to how the Film Corporation will organise its affairs at that time: I am happy to refer that question to the board of the Film Corporation. It is their responsibility. I would expect them to make the appropriate arrangements at the appropriate time. As I am sure the honourable member is aware, it is possible for the Film Corporation or any producer to employ people on contract to do particular jobs at any time should they wish. The film industry is not alone in being able to take people on specifically for particular jobs. In fact, that is the norm in the film industry rather than the exception. I would expect the honourable member to know that and to realise that there are many ways in which the Film Corporation can fulfil its responsibilities under the Act without having that particular documentary division, with the particular employees who were employed therein, until the Film Corporation, of its own volition, made the decision to close that division.

The Hon. DIANA LAIDLAW: I have a supplementary question, Mr President. As the Minister indicated on 13 November that she anticipated she would be receiving a consultant's report in one to two weeks, and it is now some four weeks since that date, will she advise when she anticipates receiving a report and when it will be released?

The Hon. ANNE LEVY: Certainly, I do not see that as supplementary in any way to the question about the documentary division. I would have thought that it was a separate question, dealing with the report on the South Australian Film Corporation. However, Mr President, if you do not wish to rule it out of order on the grounds of not being supplementary, seeing it relates to a report which was not mentioned in either the question or the original answer—

The Hon. Diana Laidlaw: It was simply because you chose not to answer the first question.

The Hon. ANNE LEVY: The first question was why the decision was made regarding the documentary division.

The Hon. Diana Laidlaw interjecting:

The Hon. ANNE LEVY: I have answered that. I said the decision was made by the board of the Film Corporation presumably because they did not have the money to continue or did not wish to.

Members interjecting:

The PRESIDENT: Order! There is too much conversation.

The Hon. ANNE LEVY: In my response, Mr President, I made no mention whatever of the report on the Film Corporation from the consultant.

The Hon. Diana Laidlaw: That is because you chose not to.

The Hon. ANNE LEVY: I have always understood that under Standing Orders supplementary questions arose out of the reply given by the Minister.

Members interjecting:

The PRESIDENT: Order!

The Hon. ANNE LEVY: That is the interpretation of Standing Orders and of Erskine May as I understand it. However, Mr President, I am quite happy to answer this quite unrelated question and to inform the honourable member that I have not yet received the report from the consultants. Two and a half hours ago I had a discussion with the consultants regarding a draft of their report, but I have not yet received their report. When I do, I would expect to have a few hours or days in which to read it before making it public, but I can assure the Council that, depending on its contents or whether its contents need editing in some way to protect personal privacy (subject to that caveat) the report will certainly be made public at some stage. I cannot say when, because I haven't got it.

Members interjecting:

The Hon. ANNE LEVY: I haven't got it; I cannot release a report which I have not got.

Members interjecting:

The PRESIDENT: Order! Order!

STATE LIBRARY

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister of Local Government a question about the State Library.

Leave granted.

The Hon. M.J. ELLIOTT: There has been a great deal of speculation over recent weeks as to the future of the State Library's lending services. In fact, I have received a number of phone calls over some weeks. The first couple I dismissed as crank calls and not based on any fact. Quite frankly, I found it hard to believe that the State was going to wind up its lending services. Today's *Advertiser* reported on the contents of a draft report on the restructuring of services presently provided by the library, including the closure of the lending service.

I have not during my five years in Parliament received any complaints about the quality of service provided by the library. The draft report does not identify any problems which need to be addressed through restructuring, nor does it point to any benefits to be gained or cost savings to be experienced by the community through such a move.

Information I have received suggests that the State Government is keen to have the matter of lending services resolved before Christmas, and negotiations are under way with the Adelaide City Council which is not overly keen or willing to pick up the cost of providing central lending services for the city. People with whom I have spoken have expressed concern at the closure of the service and the

handing over of State Government functions and, therefore, costs to local government.

It has been pointed out to me that, because public transport in Adelaide is essentially radial, it is often far easier for people without cars to gain access to the lending library in the city than to the library run by their local council. Many people use the city library simply because the choice of readily available books is far wider than offered locally.

Of particular concern to some of these people is the ongoing acquisition of quality books for public libraries. That function, under the system outlined in today's *Advertiser*, will be given to the newly established Bureau of Local Government. However, from June 1993 that bureau will receive no State Government funding.

While the State Government purchased books from money collected as general revenue, some equity was achieved across the State, but the ability of councils to contribute to the acquisition of books varies greatly. My questions to the Minister are:

1. Why was the decision taken to close the lending facilities of the State Library, given that it has a history of providing a quality service?

2. When will that lending service cease operating?

3. Can the Minister assure the public that access to quality books will not decrease, given that the State Government presently funds the acquisition of books and that in 1993 this will become the entire responsibility of local government?

4. What guarantees do we have that the lending services available to South Australians will be of a similar standard in the future as are available through local libraries and the State Library?

The Hon. Barbara Wiese interjecting:

The Hon. ANNE LEVY: The Minister for Tourism suggests that that is a dorothy dixer. I do not think the honourable member understands the current situation that applies in South Australia. With regard to the lending services we have a system unequalled anywhere in Australia whereby there are 135 public libraries spread around the State that are jointly funded by the State Government and local government.

The Hon. M.J. Elliott: At present.

The Hon. ANNE LEVY: At present. That is the current system. There has never been any suggestion that in the reorganisation of responsibilities between the State Government and local government that that would in any way change. The State Government is committed—and I have stated so publicly on numerous occasions—to maintaining the subsidy that we provide for the public libraries system throughout the State which, I emphasise, is the envy of other States and is something of which all South Australians can be extremely proud.

The acquisition, ordering, cataloguing and distribution of books for those 135 libraries is done by a group that rejoices in the name of the Public Libraries Branch, which used to have its headquarters in Norwood but which now occupies a site in Hindmarsh. If the honourable member has not visited that site to see how the books are received, distributed, catalogued and stored, I suggest that he make contact—I would be happy to arrange for him to visit the branch and be impressed by it.

As has been announced on several occasions, the control of that branch will be moving from the Department of Local Government, which will cease to exist in a few weeks, into the Bureau of Local Government Services. In consequence, like anything else in the bureau, it will be fully funded by the Government for the current financial year. The total bureau will have half that amount of funding provided by the Government for the following financial year. How that funding is distributed by the bureau will be a matter for the management committee of the bureau to decide. That management committee will consist of State Government and local government nominees, with the majority of them coming from the local government sector.

As far as I am aware there is no suggestion that the Local Government Association or anyone else would wish to see the abandonment of the facility at Hindmarsh, as everyone recognises the enormous advantage it brings to our public library system by having a centralised ordering of books, cataloguing of books, acquisition and distribution of books. I have not heard anyone in any sector—be it State or local government—suggest that that should not continue to exist.

The Hon. M.J. Elliott: Neither did I. Why don't you answer the questions? You have told us nothing that we didn't already know.

The PRESIDENT: Order!

The Hon. ANNE LEVY: The honourable member asked me how public libraries were going to be affected if they had to do their own ordering of books.

The Hon. M.J. Elliott: I did not. Go back to *Hansard.*

The Hon. ANNE LEVY: I am suggesting that they will not have to do their own ordering, cataloguing or acquisition of books at all, that none of this will change. The one exception has been the lending service of the State Library which, while situated in the City of Adelaide, has been run entirely by the State and has had no contribution whatsoever from the local government of the area, which is the Adelaide City Council. I think I have indicated—

The Hon. M.J. Elliott: Used by people from throughout the city—

The PRESIDENT: Order! The honourable Minister.

The Hon. ANNE LEVY: I have indicated previously in this Council that all other councils for capital cities in this country run a lending service—but not just for the residents. Although of course it is certainly for the residents of the council area, it serves a much greater function. I am sorry if the Hon. Mr Elliott had to learn about that report from the press; I understood that a copy of it was being sent to the Democrats, as was the case with the Opposition and anyone else who requested it. It is by no means a secret document, and the more widely it is distributed and discussed, the better.

As is made very clear from that report, no decisions have been made. It is a report by the Director of the Department of Local Government both to me and to the Libraries Board. It is now available for public discussion and comments on it are welcome. They will be taken into account before any decisions are made about reorganisation of the State Library. I would point out, as I have done previously, that negotiations are occurring with the Adelaide City Council. There have been discussions and there are ongoing discussions on this matter—again, this is no secret; it has been in the paper—with the aim of Adelaide City Council undertaking to run a public library within the City of Adelaide. I can assure honourable members that part of that discussion includes the facilities and subsidies that would be made available to the city council by the State Government. Obviously, any lending library run by local government bodies receives 50 per cent subsidy from the State Government.

Adelaide City Council could certainly expect to receive that, as a minimum, if the negotiations about a lending library within the City of Adelaide led to the outcome that many people desire to occur. There is no suggestion that definite decisions have been made. Discussions are proceeding. As to when anything might happen, I am unable

to answer that, not because I want to be difficult but because until decisions are made it is a bit difficult to say when they are going to take place.

COOPERATIVE HOUSING

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Minister of Tourism, representing the Minister of Housing and Construction, a question about Merz housing cooperative.

Leave granted.

The Hon. L.H. DAVIS: In each of the past three Auditor-General's Reports, concern has been expressed about the lack of financial control in the housing cooperative program. I have been advised that a recent applicant for the cooperative housing program—the Merz housing cooperative, centred at Brompton—has already spent $15 000 on design and development costs for housing, which involves one bedroom units 80 per cent larger in area than an equivalent Housing Trust unit; it provides for conversation pits; and the design is regarded as being grossly out of character with surrounding buildings. In fact, a recent meeting of the Hindmarsh council's planning and development committee refused the application to build 13 dwellings for the following reasons:

1. That the development does not harmonise with the existing dwellings in style, materials and character;

2. That the developments do not enhance the traditional compact scale and form of neighbourhood development in the locality; and

3. That the external appearance and style of the building does not retain or complement the character of the original dwellings.

In fact, I have received a leaked document, not from John Luckens, Director of Housing, but, in fact, one written by John Luckens, Director of Housing, expressing concern about this. Dated 12 November 1990 the letter, in part, states:

> The attached trust memo indicates that the proposed Merz development at Brompton appears more expensive than that of Housing Trust units. For instance it notes that 17 units, not 13, could be accommodated on this site, and that professional fees are high.
>
> This proposal has already caused concern at Hindmarsh council and Hindmarsh Development Committee due to its appearance. It appears Merz are keen to continue with the development. I believe we need to be supporting low cost housing solutions, but I am not convinced this is one. Rammed earth walls are expensive and these are proposed between all units.

In fact, some of the buildings were constructed of rammed earth. The letter continues:

> This proposal appears to push the coop program to the limits of our policy, and I am not clear that the Merz proposal is being well handled.

He then asks a number of questions, including:

> What funds were allocated: what so far is committed; what spent? Does the Government have the right to stop the project, that is, how locked in are we?

And he then states:

> I would like to see the costs and some controls imposed here as a matter of urgency.

The letter is signed John Luckens, Director of Housing. Attached to that memo was a letter from B. Pennington, quantity surveyor, dealing with the same subject. The memo states:

> Further to your request to make comments concerning the above proposal with regard to any aspect which differs from normal trust standards of accommodation I list below my observations.
>
> I list below the various aspects of the proposal which differ from trust normal expectations:
>
> In this location we would reasonably expect to achieve a density of 150 sq.m per unit or approx. 17 dwellings, which is four more than the current proposal.
>
> The nine-one bedroom units range from 83.4 to 91.9 sq.m in living area. The trust's expectation would be 50 sq.m.
>
> The provision of the 'common room', 'conversation pit', and 'gazebo'.

I am not sure what a conversation pit is. The list also includes:

> Drying deck at first floor level.
>
> Extensive use of western red cedar glazed window walls . . .
>
> Fully glazed entrance doors.
>
> Fully automatic watering system for garden areas.
>
> Professional fees of 7 per cent plus engineering, and surveying fees are considered high.
>
> Provision of showers and bath to each unit.

Community leaders involved with public housing projects have expressed concern about cooperative housing projects such as this and believe that the public housing program is being swamped by elitist, left wing yuppies with the active backing of the Minister of Housing and Construction. My questions to the Minister are as follows:

1. Why are not firm guidelines set down for new houses being built for tenant-managed housing cooperatives?

2. What are the costs, as of today's date, of the Merz coop development, and will the Government require Merz to pay the preliminary costs of a development which is blatantly outside public housing guidelines if the development does not proceed and the necessary additional costs, if it does proceed?

The Hon. T.G. Roberts: Murray Hill would be utterly disappointed.

The Hon. L.H. Davis: I saw Murray today and he was very supportive.

The PRESIDENT: Order! The Minister has the floor.

The Hon. BARBARA WIESE: I will certainly be happy to refer the honourable member's questions to my colleague in another place, and I am sure he will provide a very suitable reply. As the honourable member would be aware, changes have been made to the rules under which the housing cooperative scheme works, and there is legislation currently before the Parliament dealing with those very questions.

As to the issue of the Merz program, it seems from the information that the honourable member has provided that the matter is well in hand in the Office of Housing. However, I am sure that the Minister in another place will have further information on this question that he will want to put before the honourable member.

ABORIGINAL HEALTH ORGANISATION

The Hon. BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Minister of Local Government, representing the Minister of Aboriginal Affairs, a question about the demise of the Aboriginal Health Organisation (AHO).

Leave granted.

The Hon. BERNICE PFITZNER: The AHO is involved in health training, education and updating of the Aboriginal health workers. This is done on a yearly basis and it is well known that Aboriginal health workers are well trained to provide health education to the Aboriginal community. It has been the policy that aboriginal health workers were the best personnel to provide the service to their people.

The Aboriginal communities which the Aboriginal health workers served were not only in the metropolitan area but also in the near and far country areas, such as Point Pearce on Yorke Peninsula and Yalata on Eyre Peninsula. This organisation has now been disbanded, or is about to be

disbanded. The staff of the Aboriginal Health Organisation are now not sure where they will be relocated or what they will be doing and are therefore uncertain and insecure. My questions are:

1. Where will the staff of the AHO be relocated and what agencies will they merge with?

2. What will be the roles and functions of the nurse educators now?

3. Who will provide the updating and in-service training to the Aboriginal health workers now that they have been dispersed and therefore are fragmented?

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

BENEFICIAL FINANCE CORPORATION

The Hon. I. GILFILLAN: I understand that the Attorney-General has a reply to a question I asked on 22 August about Beneficial Finance Corporation.

The Hon. C.J. SUMNER: In the light of the time, I seek leave to have the answer inserted in *Hansard* without my reading it.

Leave granted.

The Premier has provided the following response to the honourable member's question.

1. In answer to this question, the honourable member should refer to statements made by the Premier in answers to questions in the House of Assembly on 14 and 15 August 1990.

2. No.

3. As at 30 June 1989, Beneficial Finance Corporation Ltd held a 49 per cent interest in Pacific Rim Leisure Pty Ltd. As it was not a subsidiary there were no requirements to consolidate the results into Beneficial's balance sheet. Details of the investment in Pacific Rim Leisure and its activities were disclosed in the Chairman's Review and the Managing Director's Report, which formed part of the 1989 Annual Report of Beneficial Finance Corporation.

As at 30 June 1990 the interest in Pacific Rim Leisure Pyt Ltd is included in the State Bank Group Accounts as it became a wholly owned subsidiary of Southgate Corporate Holdings Ltd, also a wholly owned subsidiary of the State Bank on that day.

4. The 30 June 1990 account of State Bank and Beneficial Finance Corporation made allowances for reduction in market value of assets where necessary.

CORPORATIONS (SOUTH AUSTRALIA) BILL

Adjourned debate on second reading.

(Continued from 20 November. Page 1979.)

The Hon. K.T. GRIFFIN: This Bill, as the State part of the corporations law package, is not about catching corporate crooks; it is about power. The Government which controls the law-making process with respect to companies has the power to dramatically change the face of Australian society through the exercise of that power. Until now, companies law has been used to regulate the formation and winding up of companies and the conduct of activities, without imposing a social or a social justice obligation. That now has the potential to change.

Former Federal Attorney-General, Mr Bowen, made his grab for power in an attempt to take over unilaterally the law relating to companies and securities with the Commonwealth Corporations Act. That grab for power foundered when the High Court decided that the Commonwealth did not have power to incorporate corporations.

Members interjecting:

The PRESIDENT: Order! There is too much audible conversation within the Chamber.

The Hon. K.T. GRIFFIN: Mr Bowen asserted, with the subsequent help of Mr Tony Hartnell, the now Chairman of the Australian Securities Commission, that the Cooperative Companies and Securities Scheme of 1981 was not working, did not provide uniform law, did not provide uniform administration and was inadequate to bring corporate crooks to heel.

The campaign of misinformation by the Commonwealth and the big Sydney-based corporations was significant and some, regrettably, fell for it. The bullying and cajoling by Mr Bowen, and then by his successor Mr Duffy, continued at a frenzied pace. The stakes were high: control of companies and securities with power to impose social obligations, on the one hand, or a mere share in the responsibilities in this area of the law with checks and balances in place to prevent abuse of the law by any one Government, on the other.

The claim that the cooperative scheme was discredited was promoted by the Federal Government and Mr Hartnell, along with large corporations, because it suited their long-term plans to do so. The Commonwealth could gain enormous power. The big corporations would not have to convince a majority of the ministerial council of the need for a certain course of action. They could deal with one Minister, a Federal Minister, who is most likely to be reasonably well known by and accessible to big business. Too bad about the less populous States, such as Western Australia, South Australia and even Queensland. In the scheme of things at Federal political level and national business level they were largely irrelevant.

The States, having won a significant constitutional battle in the High Court on the Commonwealth's unilateral attempt to hijack the law relating to companies and securities, finally capitulated. When New South Wales and Victoria signalled that they were prepared to do a deal with the Commonwealth, the dam had been breached, and it was only a matter of time before the Commonwealth won effective control over companies and securities.

When the New South Wales Government led the charge to capitulate, it was the beginning of the end. But, New South Wales has everything to gain from the present scheme. Sydney wants to become the financial capital of the region. It has a substantial number of corporate head offices. It has a thriving and high-flying professional community serving those corporate head offices. Its members of the Federal Parliament are numerous, and its representation in the Federal Parliament is significant. Access to Federal political decision makers is assured. It has the head office of the Australian Securities Commission. What more could they want? They probably have more influence under the new scheme than being one of eight members of the ministerial council under the cooperative scheme, where each member has one vote.

What of the less populous States such as South Australia and Western Australia? From having a powerful voice and vote on the ministerial council under the cooperative scheme, with a real say in policy and legislation, it now effectively has none. The business and professional community of Adelaide, which presently can make direct representations

to a responsible State Minister on policy, legislation and administration with a pretty good prospect that the representations will be acted upon, will now have to talk to the Regional Director of the Australian Securities Commission office, go through peak councils to the Australian Securities Commission Chairman or the Federal Minister, or hope that a State Minister with no power will pass the message on.

One can be fairly confident that a business or professional person in South Australia trying to get something done in Canberra will not get much of an audience from the Federal Minister unless it is through a peak council where the strength will come most likely from Sydney and Melbourne.

What of the criticisms of the existing cooperative scheme? Those who argue that the law was not uniform are either dumb or deliberately misrepresenting the situation. It was uniform throughout Australia. Exactly the same mechanism, which supported the cooperative scheme, is now being used to establish the new corporations law: a Commonwealth Act for the Australian Capital Territory establishing the substantive law, and State Acts which adopt that law as the law of South Australia, or other States as the case may be.

The criticism was also made that the administration was not uniform. In most respects it was and, in those cases where it was not, the differences were minor; in any event, the National Companies and Securities Commission had the power to change it. The State Corporate Affairs Commissions were the delegates of the National Companies and Securities Commission. If there were problems, they could have been corrected, I suggest, with relative ease, through the National Companies and Securities Commission and the delegations that were granted to State Corporate Affairs Commissions.

There was also criticism of State Corporate Affairs Commissions, some of which was justified, particularly in New South Wales. There were delays in dealing with some matters. The problem really arose from two issues, the first of which was funding by State Governments. The gap between funds received and funds spent widened dramatically in the decade of the operation of the cooperative scheme. That should not have happened; the administration should have been properly funded. The Commonwealth, too, was at fault, because it was rarely prepared to increase its contribution to the National Companies and Securities Commission.

But, that was typical of the Commonwealth Government. The Federal bureaucrats, under both Liberal and ALP Governments, could not come to terms with the concept of the National Companies and Securities Commission and fought it all the way. Even when I was on the ministerial council in the early days of the cooperative scheme, the Commonwealth and its bureaucrats could not appreciate that the NCSC was not a Commonwealth body and that the Federal Department of Finance could not treat it as though it were. The lack of funds and the hassles of getting even some resources were disgraceful.

The unwillingness of the Commonwealth in particular to contribute its share of adequate funds to the NCSC was, in large part, the contributor to the downfall of the cooperative scheme. I can recollect many occasions when the relevant Federal Minister on the ministerial council was being dictated to by the Federal Department of Finance, whenever there was any request either for more staff or additional resources for investigations or other activity in the corporate regulatory area. The Federal Department of Finance sought at all times to treat the NCSC as though it were another Commonwealth instrumentality, which of course it was not and was never designed to be.

It was designed to have a significant measure of independence from the Commonwealth Government and the State Governments of the day, although the accountability was designed to be maintained through the Ministerial Council. That, of course, had a number of advantages. It ensured that there was no political control over the NCSC and that it could act without fear or favour.

The other reason why State Corporate Affairs Commissions experienced difficulties was that in the last three years there has been such instability created by the Commonwealth's unilateral grab for power that the career structure faltered and top grade professionals were unsure where their future lay. Instability and uncertainty were thus created. Yet the South Australian Corporate Affairs Commission up to that time probably had the best record in Australia for service and lack of delays. I can remember on many occasions lawyers and accountants making very complimentary remarks about the Corporate Affairs Commission in South Australia, because they could always seem to get things done more quickly here than it was possible to get them done in, for example, New South Wales.

The failure to catch corporate criminals was another criticism of the cooperative scheme. Mr Henry Bosch, the retiring Chairman of the NCSC, who was always very vocal about criminal corporate behaviour and always wanted more punishment than the courts would deliver, on 29 June 1990, in the *Advertiser*, said:

> The new Australian Securities Commission was unlikely to be successful in prosecuting corporate criminals.

He went on to blame 'the legal system, the extreme complexity of financial deals and obstruction by ambitious public servants for the failure of corporate watchdogs to bring corporate cowboys to justice'. He attacked the Federal Government and political infighting for weakening the NCSC, and also referred to lack of funds. I know there was a difference of opinion on occasions between the objective which Mr Bosch publicly set and the criticism which he made of the courts, but, on the other hand, he was attempting to ensure that the NCSC was effective within its charter.

Later, on 5 October 1990, Mr Bosch put the whole area of corporate criminality into perspective. In the *Business Australian* of 5 October 1990, he said:

> There can be no doubt that the reputation of Australian business has been damaged by the corporate excesses of the 1980s. Both businessmen and politicians returning from overseas have brought back stories of foreign criticism.

I pause there to say that on occasions many comments were made publicly and privately by people who had been overseas and who said that the corporate excesses of the 1980s in Australia had discredited the Australian commercial system and that, therefore, the cooperative scheme was to blame—a conclusion which I would significantly dispute. The article in Mr Bosch's name went on to say:

> Perhaps more importantly, domestic investors are showing reluctance to return to the markets. Clearly, confidence in our financial and business system has been diminished. Yet criticism has been taken too far. Some commentators appear to believe that corporate behaviour in Australia has been the worst in the world.
>
> A few days ago a journalist telephoned me and said, 'My editor wants me to ask you if there are any honest businessmen left in Australia.' There has been an extraordinary swing in the pendulum of public opinion. The mid-1980s saw a blind, unthinking adulation of financial success, however achieved. We now see an equally unthinking condemnation of business behaviour.
>
> The criticism needs to be put in perspective. Unquestionably, dreadful things happened during the long boom. They ought to be and they have been condemned. But we need to remember that there are some 10 000 public companies in Australia, of which nearly 1 500 are listed. Of these not more than 100, and

probably not more than 50, were involved in the practices now so rightly condemned. The majority of companies are and always have been behaving legally and ethically. Moreover, unscrupulous behaviour has by no means been confined to Australia.

The expression 'the decadent decade' originated in the United States. We have seen nothing here to compare with the scandal of the American thrifts. The events associated with Milken, Boesky, Levine and many others should remind us that our corporate crooks only aspired to play in the Big Game.

The British, too, have had their fair share of scandals. The memory of the Barlow Clowes. Guinness and National Westminster (Blue Arrow) affairs should help us to keep our own excesses in perspective. Yet proportion is lacking.

Many commentators, particularly in the media, have engaged in a degree of self-flagellation that has become counter-productive. It is entirely right to condemn the behaviour of many of our paper entrepreneurs, entirely right to differentiate them from the honest mainstream of business, but inaccurate and unjust to turn that criticism into a generalised disparagement of Australian business. It is clear that something went wrong and that it needs to be fixed. But it should be equally clear that it can be fixed and it is time to stop the self-flagellation and turn our attention to that more positive and constructive process.

One has to recognise the complexity of many financial dealings. I should have thought, from the publicity given both to criminal and to civil proceedings by the NCSC in recent years, that it had done a pretty good job in regulating takeovers, taking on the high flyers, Mr Bond, Mr Skase, Mr Connell and others, and protecting small shareholders.

Of course, one cannot forget that there are areas of the civil law which are equally important, and, whilst there may be a suspicion of criminality, the objective has been to protect the shareholders—that is, particularly small and minority shareholders—to ensure that there is full disclosure of information about particular corporate activity. One can see, even in recent weeks, that the National Companies and Securities Commission has not been afraid to step into some of these on a civil basis and to take some initiatives. Spedley Securities and Spargo Investments are just two of many where the NCSC has used its powers to put things right and, if not right, to ensure that action is taken to bring the perpetrators to justice.

There were other criticisms of the cooperative scheme and of what I would regard as relatively minor matters. All these things could have been corrected by a responsible assessment of the cooperative scheme within the framework of cooperation. Part of the problem, I think, was the lack of practical experience of some Ministers in the area of corporate affairs and the general push publicly to discredit the scheme by the Commonwealth and its supporters.

I must also refer to one other matter. It was said that it was difficult to get amendments to the cooperative scheme and to get them quickly. In my view, that was one of the great merits of the cooperative scheme. Company law has developed for well over 100 years. It has been a steady process of evolution. Loopholes were closed when they were identified and further regulation was undertaken when careful examination had been made of issues and the regulation became necessary. Under the cooperative scheme there was a practice of exposing proposed Bills for public comment, considering submissions, refining proposals, agreeing with them at the ministerial council level and then progressing through the Federal Parliament.

There was no opportunity for knee-jerk reactions to be reflected in hastily and frequently poorly drafted laws or legislation by press release which has been a feature of the Federal tax system in recent years, a feature which has attracted significant criticism not only from the legal and accounting professions but also from the perspective of the business community because of the uncertainty which such legislation, through press release, creates. Of course, one can only speculate whether or not that is likely to happen under the new corporations law. I would suspect that it is more likely to happen there, particularly in those areas where the Commonwealth has absolute power, than under the existing cooperative scheme.

The cooperative companies and securities scheme was born out of a desire by the Commonwealth and the States in the late 1970s to cooperate and to achieve uniform company law in a relatively safe constitutional manner. It fell over, as I have indicated earlier, largely because the Commonwealth ultimately refused to cooperate.

It was interesting that an article by Carolyn Cummins that appeared in yesterday's *Business Australian* raised the question of whether this new corporations law is necessary. She quotes Mr Geoff Baker, the senior commercial partner from the law firm of Barker Gosling. That article, in part, reads:

In 1981 regulation was passed that was greeted with enthusiasm and unity among the captains, lawyers and accountants of Australian industry—the Companies and Securities Code. In three weeks, another law will come into force to fix up the supposed wrongs of the same financial community and to replace the old code, which some commentators have said was inefficient and weak. On 1 January the Australian Corporations Act will be out on the bookshelf, but unlike 1981 there is no whooping with joy—just a lot of people scratching their heads. The problem is that while the financial industry appreciates the hard work being done by the Chairman of the Australian Securities Commission, Mr Tony Hartnell, and his staff, no-one is sure if all the new legislation is needed. And ironically, last week, the old code—the one people said needed replacing—was used to charge three very prominent business men. Do we need more legislation? According to a senior lawyer, the answer is no. The senior commercial partner from the law firm Barker Gosling, Mr Geoff Baker, said yesterday the concern was that there was already far too much law and corporate Australia did not want any more. 'There was a need to revamp the old code, that is undeniable. However, I think that people have become over-zealous in their attempts to right the wrongs of the excesses of the past 10 years,' Mr Baker said. 'I am concerned, as a lawyer, that in the next six months or even the next three years there will be even more legislation, and with it, accompanying guidelines, that soon only a few people will bother to read. I think we have sufficient legislation at present that does need an upgrading, but not in the form of a 500 page book.'

The article later goes on to say:

'The only winners of the new legislation will be lawyers and even they will have to work hard to get up to speed on the Act—when it gets passed through Parliament.' During the next three weeks Corporate Affairs Commissions in each State will be moving to new premises and will emerge next year under the ASC banner. New forms that will have to be filled in under the new law are still being printed and companies are trying to come to terms with the new Australian Company Number. 'The administrative hiccups will go through until at least January and February and that worries me,' Mr Baker said. 'There just does not seem to be any time left to get everything that is required ready; there is just so much uncertainty. I think we have enough legislation at present so there really is no need to regulate any more.'

. . . 'The present code has the teeth, as was proved last week and the fact the ASC has more money than the previous National Companies and Securities Commission meant it can afford to prosecute more individuals or companies. I am just afraid that it has been a knee-jerk reaction to the past and no amount of legislation will stop people breaking the law if they want; they will get caught, but it can still happen. The new legislation is not easy, but it could be made so if the authorities did not rush into anything.'

There has been a lot written over the past two or three years in the area of companies and securities and I do not want to take a lot of the Council's time in reading various quotes into *Hansard*, but a selection of them is appropriate because they reflect in the business and professional communities and press areas concern about where everything might be going.

On 21 June 1990, before the Alice Springs Ministers' meeting, Bryan Frith wrote in the *Business Australian*, in a similar vein to the article by Carolyn Cummins:

There is a certain irony in the fact that on the day in which the new corporate watchdog, the Australian Securities Commission (ASC) released its 'first major contribution to the operation

of the substantive corporate law that it will have responsibility for administering', the Law Institute of Victoria recommended scrapping the Federal Corporations Act. The Law Institute now favours basing the legislative framework for the new scheme on the existing Federal-State cooperative scheme—in other words, fix the defects in the existing scheme rather than start again from scratch. It is a pity that the Law Institute did not speak up a lot earlier, rather than after the battle is virtually over.

I agree with that. I think it is unfortunate that organisations such as the Law Institute did not exert a lot of pressure and speak up at a much earlier stage. The article continues:

The public support of such bodies, when the former Federal Attorney-General, Mr Bowen, embarked upon the Federal takeover, claiming overwhelming support from business and securities industry practitioners, may have helped prevent this needless exercise.

It has always been the case that the preferred solution was to fix the defects in the cooperative scheme, and that could basically be achieved by ensuring that the existing watchdog, the National Companies and Securities Commission (NCSC) was given adequate resources. In terms of funding and staffing, and that it gained genuine control over the State corporate affairs commissions (CACs), which would function as branch offices.

That could have been achieved easily and at far less cost than will now be the case—and the Law Institute now recognises this fact. The institute has written to the Victorian Attorney-General, Mr Jim Kennan (who has much to answer for in undermining those States holding out against the Federal takeover) seeking his support. The institute argues that the perceived faults in the cooperative system do not to any appreciable extent lie in its substantive legislation but were almost entirely thought to lie in administration and enforcement of that legislation. And it maintains that the Federal Government has consistently underestimated the costs and difficulties involved in moving from the present Companies Code to the Corporations Act. It has decided that the costs will far outweigh any conceivable benefits.

The article later continues:

Moreover, the compromise solution forced upon the Commonwealth by the High Court ruling is a step backwards for corporate regulation, in that the new watchdog does not have the independence assured for the NCSC by the Ministerial Council structure, but is inherently open to political influence and, perhaps more importantly, bureaucratic control, under the dead hand of the Federal Attorney-General's Department.

At that stage there had been no decision on the final structure of the scheme as to whether it would be a Federal Corporations Act making law for the Australian Capital Territory and applied by State application of laws legislation.

However, regardless of those views, it seems clear that the Commonwealth and a majority of the States and the Northern Territory will press on with the new scheme. The concern around Adelaide is the mad rush to have the new regime in place by 1 January 1991, an impossible timetable for most companies, business and professional people, with no time for proper research and to make appropriate transitional arrangements.

The business and professional community was very much behind the opposition to the Commonwealth takeover and wanted refinements to the cooperative scheme. Since the State and Commonwealth and Northern Territory Ministers in June reached a large measure of agreement on the new scheme there has been mixed reaction. Some in Adelaide still oppose the new scheme; some support the new scheme; while a large body in the middle grudgingly accepts that the scheme is a virtual *fait accompli* and there is no practical alternative but to go along with it.

There are a number of problems with the way this has been handled, particularly at the Federal level. For a start, the negotiations have involved only Governments. Parliaments, of which Oppositions are an integral part, have largely been ignored until the rubber stamp has been sought to be applied to the deal. Part of the difficulty with Western Australia could have been avoided if Oppositions had been kept fully briefed and had been involved at State and Federal levels. However, Governments have very largely taken Oppositions and Parliaments for granted.

I could not even get a copy of the heads of agreement entered into by Ministers in Alice Springs in June 1990. Even though they had not been finalised, we could not find out the detail of the matters which had been agreed so far. They were said to be confidential. Why the need for confidentiality, unless it was to avoid public debate until it was too late for proper consideration of the issues? Had there been a lot more openness about the matters which were being debated and the reasons for and against those matters, certainly the debate would have been vigorous and would have been controversial, but I think in the long term it would have been to the advantage of corporate regulation in Australia.

I did receive a copy of the formal agreement from the Commissioner for Corporate Affairs on the instructions of the Attorney-General on 26 November, after I requested it, but even then it was supplied on a confidential basis until it was ratified by the parties, and I have respected that confidentiality. That ratification by the parties—that is other States, the Northern Territory and the Commonwealth—was, I was told, expected within a few days. But I still do not know if I can now refer to that document publicly. This is the document upon which the Commonwealth and the State legislation is said to rely.

The Hon. C.J. Sumner: As far as I am concerned you can.

The Hon. K.T. GRIFFIN: The Attorney-General has interjected that as far as he is concerned I can refer to the agreement. I appreciate that indication. However, it is staggering that the agreement which governs the relationship between the Commonwealth, the States and the Northern Territory has until this stage not been public, nor embodied in ratifying legislation before the substantive law is considered.

According to the formal agreement—that part to which I do intend to refer publicly—the Commonwealth has already defaulted. That relates to timetables. The drafting of the legislation was to occur in September and the Bills introduced in that month. In October-November completion of passage of the Bills was to occur. In fact, the Commonwealth Bill was introduced on 8 November. It was required to be debated six days later on 14 November. No advance copy of the Bill was made available for consideration by members of the Federal Parliament and I am told that today the Senate is actually considering the Bill.

Mr Peter Costello, the shadow Minister for Business and Consumer Affairs, when dealing with the Bill in the House of Representatives, said a number of things about the way in which this had been handled:

In years to come people will litigate questions of company law and they will look for holes in the Corporations Legislation Amendment Bill. When the courts come to consider such issues they will look at the speeches that have been made and they will look at the explanatory memorandum to find out what was meant. It is important that when they do so, they know the deplorable way in which this legislation was handled.

This legislation, which would be one of the most complex pieces of legislation to come before this House, has been allowed a total time for debate of 60 minutes. When those who come to construe what the legislation actually means look for guidance, they will find no guidance in the cursory second reading speech or the explanatory memorandum. I thought I might read the memorandum to try to find out what the Bill meant, and realised I had to read the Bill to find out what the explanatory memorandum meant.

There are 300 pages in this Bill, and 60 minutes has been allowed to debate it—about 12 seconds per page. The Opposition, having half that time, has about six seconds per page. This is consistent with the disgraceful conduct of this Parliament, where 39 Bills have been guillotined—a fine tradition continued by the Hawke Government of guillotining legislation in this place.

Later he goes on to make the following references:

To work properly, not only has this Bill to pass this Parliament but also legislation in very similar form has to pass six State Parliaments and the Northern Territory Parliament, and all of that has to be done before 1 January 1991. This Parliament is being asked to pass this legislation with only about a third of the picture. The third of the picture that this Parliament has is the legislation which is before it. Another third of the picture is the legislation to go before State and the Northern Territory Parliaments—legislation that was still being finalised on Monday of this week and legislation which we have certainly not seen as part of the progress of this legislation in this place.

But the other third of the picture, of course, is the agreement between the Commonwealth and the States which provides the background for the implementation of this scheme. That agreement, as I understand it, has not been signed as yet. So what we are doing is putting through legislation in this place, without seeing the State legislation, to implement an agreement which has not been signed. There will be technical problems in relation to this legislation that the Attorney-General (Mr Duffy) has not even considered as yet. If there had been significant and proper debate, those matters could have been discussed and necessary amendments could have been moved.

At the end of his contribution to that debate, he did indicate that, in view of the lack of consultation and the lack of time:

But we will not take any responsibility for all of those problems which will arise. We will not take responsibility for the technical defects when they come up. We will not take responsibility for the holes. All of those problems have been caused by the Government's neglect and delay in getting the legislation into this place, its neglect and delay in allowing adequate debate, its neglect and delay in allowing the opportunity to amend the legislation. Because the Government has acted in the way it has chosen, it can take responsibility for all of those problems that arise.

Apart from the amending Federal Bill, the unofficial consolidation comes in two rather voluminous volumes, which I received only about ten days ago. That is the substantive law. It is an unofficial consolidation of the original Federal Corporations Act and the amending Bill which is still in fact before the Federal Parliament.

That unofficial consolidation has 1 362 sections, plus schedules, a total of 1 176 pages. It has 47 pages of definitions and 68 pages of interpretations before one even gets into the substance of the corporations law. So, there has been grossly inadequate time not only for the business and professional community but more particularly for members of Parliament throughout Australia to come to terms with both the substantive law and the application of laws Bills to be passed by the States and the Northern Territory.

Even the staffing situation is a mess. I understand that, up to yesterday, there had not been any offers by the Australian Securities Commission to State Corporate Affairs Commission staff in respect of their transfer to the Commonwealth, and that was the position, as I understand it, in other States. Their future is in limbo, as is the staffing of the regional offices. How this scheme is to be up and running and providing a proper service to the business and professional community, and to the community at large on 1 January 1991 is beyond imagination.

The prediction that has been made is that there will be significant problems in the way in which the scheme gets up and running on 1 January unless the Federal Government can be persuaded to defer the date of operation beyond 1 January 1991. As to the Australian Securities Commission regional offices, there has been some concern about the quality of service and the standard and level of service. Back on 5 July 1990 the Attorney-General, speaking at an Institute of Chartered Accountants Professional Development Forum, did make some observations about regional offices. The article states:

The South Australian Attorney-General, Mr Sumner, has conceded that the establishment of the Australian Securities Commission may lead to a decline in the level of corporate services on offer at a regional level . . .

Mr Sumner yesterday told an accounting seminar that 'there may be some degree of truth' to the argument that services would decline in the regional economies such as South Australia as a result.

I know that in Western Australia one of the concerns expressed by the Liberal and National Party members in the Upper House, as well as other members of the Liberal Party, was about the level of services that can be provided in Western Australia in servicing the business and professional community in that State.

Before I deal with aspects of the scheme, I want to quote one other pertinent comment made at a public seminar by Mr David Wicks, Chairman, Bounty Investments and a board member of Argo Investments. He said that, in his view:

The main thrust of the current legislative package is to snatch its administration away from the States . . .

The latest amending Bill (a document of some 300 pages with an explanatory memorandum of nearly 400 pages) was introduced into the Commonwealth Parliament for the first time on 8 November 1990, and yet the law is expected to come into force as soon as 1 January next. The regulations which are an important part of the package have still not surfaced.

I think this legislation is an example of the contempt by which the institute of Parliament is treated by Governments in power. Perhaps the institution is no longer deserving of respect but I must say that this whole affair does little credit to those in charge of the passage of this legislation.

In responding to the Bill in the House of Representatives, Mr Peter Costello reminded the House that members had been given a whole hour in which to debate the Bill, one of the most significant measures to have come before the House for decades.

One would expect that something as complex and important as this would remain dormant for six months or so to enable the Public Service to properly prepare for its administration to enable company officers to acquaint themselves with their new obligations and responsibilities and for advisers such as ourselves [that is, lawyers] to have proper time to study the new law and to give advice on it before the start-up time.

I think the Commonwealth Government should not be allowed to get away with this sort of thing without a stern rebuke from the business community. A delay of three months or so would be neither here nor there.

He is in fact reflecting the views held by a number of business and professional groups around South Australia and interstate. The Chamber of Commerce and Industry is one body that grudgingly recognises that the scheme proposed in the corporations law should go ahead, that there is no alternative in the current context but for that to occur. The Stock Exchange is concerned about the transitional arrangements. The Law Society, the Institute of Directors and the Law Institute in Victoria and several large national public companies all have expressed concern about the haste with which this is moving.

I understand that in the Senate there will be a move to have the Bill referred to the Senate Legal and Constitutional Affairs Committee for urgent consideration and, in particular, to deal with the question of transition. But, as I understand it, that is unlikely to be supported by the Government or the Australian Democrats because of the Federal Government's desire to push on regardless of the confusion that it will cause and regardless of the inconvenience and cost to the business and professional community. I must say that lawyers and accountants are the ones most likely to benefit from that confusion because they will be given the job of trying to sort out the messes. That is an unfortunate consequence of the bull-headedness of the Federal Attorney-General, Mr Duffy.

I would like to turn to an examination of the structure of the scheme and in doing so it is important to reflect upon the current cooperative scheme, which was the product of negotiation between Labor and Liberal Governments—the Federal Liberal Government and various State

Liberal and Labor Administrations. In this State at the time it was being developed, Mr Peter Duncan was the Attorney-General and he had carriage of the legislation for the then State Government before the change of the Government in 1979.

The structure for cooperative scheme is that the Commonwealth Parliament enacts laws at the request of the Ministerial Council for Companies and Securities and those laws are enacted as laws of the Australian Capital Territory, and under State application of laws legislation, those laws are automatically applied within the State and Northern Territory boundaries as State and Territory laws. Therefore, uniformity is assured.

The ministerial council comprises eight members, each of whom has one vote, and I suggest that that is as it should be. Although, from time to time, the Commonwealth has sought a weighted vote, there was in my view no reason for it because, essentially, company law was a matter for the States and the Commonwealth was involved only to the extent of its responsibility for the Australian Capital Territory.

Matters came before the ministerial council for consideration if they were issues relating to legislation requiring amendment; draft Bills were exposed to public comment, submissions were received and consideration was made of the submissions; and then final decisions were taken. When the ministerial council had approved any legislation, it was submitted by the Federal Minister to the Federal Parliament for passing and then became a matter of State law under the application of laws provisions in the various States and the Northern Territory.

Some concern was expressed that the Federal Parliament was, effectively, a rubber stamp, and that was so. However, in my view, if one wanted uniform legislation where there was a cooperative scheme, it was really a question of which was the best way to achieve that, whilst still retaining some public accountability. Although one can criticise the cooperative scheme arrangements, it seems to me that there really was no better mechanism to avoid constitutional challenge, except to transfer law or power to make laws from the States to the Commonwealth—a course of action which I think was not particularly well received by very many State members of Parliament.

Concern was also expressed that the National Companies and Securities Commission was not accountable. In the early stages there was a difficulty because the chairmanship of the ministerial council depended upon the State in which the council met on a rotating basis. That was not satisfactory and, as a result, in the early 1980s a move was made to make a Minister the Chairman.

The Hon. C.J. Sumner: By me.

The Hon. K.T. GRIFFIN: That is fine. The Attorney says, 'By me.' I do not deny that; I think it was a good move because it then made one Minister responsible for a year for the operation of the ministerial council. That certainly overcame a lot of *ad hoc* accountability that was complained about in the early stages. As I said, there were some difficulties with resources. However, that is already on the public record.

The new corporations law follows almost identically the structure adopted under the cooperative scheme. It was adopted in this way because there was no guarantee that, even if the Commonwealth, as it was inclined to do even after the High Court decision in favour of the States, sought to go it alone, there would undoubtedly be other challenges to the constitutional validity of the Commonwealth's legislation. I think there was some substance in the challenges that would have occurred.

So, the scheme that has now been agreed at ministerial level is that the corporations law is passed by the Commonwealth Parliament as a law of the Australian Capital Territory and is applied as State law by State application of laws legislation. Of course, for South Australia, that is the Bill which we have before us. However, there are significant changes. Under the State Bill, the State law is to be treated as though it were Federal law. So, although it is State law, it is, for the purposes of the Bill, to be treated as though it were Federal law.

The Australian Securities Commission is a creation of the Commonwealth and is given the responsibility for administering the corporations law in the Australian Capital Territory, the States and the Northern Territory. It is accountable only to a Federal Minister, who may give it directions in a public manner. It is more subject to ministerial direction than the present National Companies and Securities Commission.

The Australian Federal Police is the law enforcement agency that is to have responsibility for investigating alleged breaches of the corporations law. Even though the corporations law in South Australia is a State law, the Australian Federal Police will be required to investigate. If there are to be any prosecutions the prosecutions for breaches of what is, in fact, State law will be the responsibility of the Federal Director of Public Prosecutions.

In administering the corporations law in South Australia, various Federal legislation is to apply: the Administrative Appeals Tribunal Act 1975, the Administrative Decisions Judicial Review Act 1977, the Freedom of Information Act 1982, the Ombudsman Act 1976, and the Privacy Act 1988. Of course, in addition to those administrative laws that apply, other Commonwealth law also applies, and that is defined to mean:

> any of the written or unwritten laws of the Commonwealth, including laws about the exercise of prerogative powers, rights and privileges other than the corporations law of the Capital Territory, the Australian Securities Commission law of the Capital Territory or provisions prescribed for the purposes of the definition of 'Commonwealth law' in section 4 of the Corporations Act by regulations under section 73 of the Corporations Act.

That is the Federal Act. So, for all practical purposes, the State is seeking to pass a State law but to say that in every respect it is to be treated as though it is a Federal law. I must say I think that that may well be open to some form of challenge in the future, but I will leave that to those who have a better knowledge of constitutional law than I to pursue.

Under the agreement, there is a ministerial council, and the ministerial council comprises the Commonwealth, the States and the Northern Territory, but it is not on an equal basis: the Commonwealth has four votes, and each of the other members has one vote. In addition to that, the Commonwealth Minister is the Chairman of the ministerial council and, in the event of an equality of votes, the Commonwealth has a casting vote, so that, effectively, the Commonwealth is very much on the way to controlling the ministerial council. It is always possible for the Commonwealth, with four votes, and New South Wales and Victoria with one vote each. They have interests to preserve in supporting the professional and business community with its head offices in Melbourne and Sydney.

Under the agreement that was reached, the ministerial council is to have a consultative function only in respect of legislative proposals relating to matters for which chapters six to nine of the Corporations Act 1989 make provision. They are: the areas of takeovers, securities, public fundraising, and futures. So, the ministerial council may be con-

sulted but, after the consultation, the Commonwealth can go it alone.

Under the agreement, in respect of other legislative proposals, the council does have a deliberative function but, as I have already indicated, that is largely weighted in favour of the Commonwealth, New South Wales and Victoria. But, in that context, the Commonwealth is not to introduce any proposal without the authority of a majority vote of the council, although the Commonwealth will not be obliged to introduce any such proposal with which it does not concur. So, it very much has the whip hand.

Even in those areas where the ministerial council has a deliberative function, when amendments are moved in the Commonwealth Parliament the Commonwealth is to use its best endeavours to ensure adequate consultation with the ministerial council. However, where there are amendments which relate to those matters on which the ministerial council has a deliberative role, the approval of a majority of the ministerial council to any amendments moved in the Federal Parliament will not be required.

So, really the role of the ministerial council is virtually non-existent, because any Commonwealth Government which has a proposition before the ministerial council, where it is given some deliberative function, a proposal might be approved by the ministerial council, other than the Commonwealth, which might oppose it. In that event, the Commonwealth would not have to introduce the legislation into the Federal Parliament; and, if it did it could have its own members propose amendments, and those amendments would not have to go back to the ministerial council for consideration.

From a practical point of view, this agreement hands over substantial power to the Commonwealth, maintaining a mere token involvement by the ministerial council. Under the proposal, there has been an arrangement in relation to funding, with a formula by which the Commonwealth will reimburse the States $51 million for the half year 1 January to 30 June 1991, and each year thereafter $102 million indexed in line with the CPI from the 1989-90 base.

That is to be divided, according to this agreement, between the States. New South Wales will get 33.23 per cent; Victoria, 29.05 per cent; Queensland, 16.36 per cent; Western Australia, 10.07 per cent; South Australia, 7.49 per cent; Tasmania, 2.32 per cent; and Northern Territory, 1.48 per cent. That, in monetary terms on the $102 million base, is: $34.01 million for New South Wales; $29.73 million for Victoria; $16.74 million for Queensland; $10.31 million for Western Australia; $7.67 million for South Australia; $2.37 million for Tasmania; and $1.7 million for the Northern Territory.

It is interesting to note from that table, by way of digression, that South Australia has only 6.9 per cent of the companies which are registered in Australia, whereas New South Wales has 37 per cent; Victoria, 30 per cent; Queensland, 14.3 per cent; Western Australia, 9.2 per cent; Tasmania, 1.4 per cent and the Northern Territory, .9 per cent.

The Hon. I. Gilfillan: Does not the ACT have any figures?

The Hon. K.T. GRIFFIN: The Commonwealth has the responsibility for the ACT, and the Commonwealth will collect all revenue from the operation of the scheme. However, it has made a commitment that from the revenue which it collects it will reimburse to the States and the Northern Territory about $102 million in the 1990-91 base year, escalated by the CPI. The Australian Capital Territory does not feature in it because it is essentially the Australian Capital Territory law which the Commonwealth has passed and on whose behalf the scheme will be administered. So, it does not need to share, in any form, revenue forgone as a result of the introduction of this scheme.

The Hon. I. Gilfillan interjecting:

The Hon. K.T. GRIFFIN: I am not sure; there would be a number of them. The Attorney-General might be able to provide information about this. All I have is the information on the schedule of the formal agreement which identifies the basis by which the revenue is apportioned between the States and the Northern Territory.

The other thing which is interesting about the formal agreement is that, although some consultation is required on various matters, essentially the Commonwealth has control. I will give a few examples. Clause 3.8 provides:

> State Ministers will be entitled to raise complaints as to levels of Australian Securities Commission service at Ministerial Council meetings and the Commonwealth Attorney-General will provide written comments within one month to all members of the Ministerial Council if the meeting so resolves.

It is a pretty hollow opportunity to raise the complaints and get a reply from the Minister and no guarantee that the complaints will be rectified. Clause 3.9 provides:

> The States will be entitled to nominate a panel of persons for potential appointment to the Companies and Securities Advisory Committee and the Legal Subcommittee.

The Commonwealth will make the appointment and will ensure the appointment of at least one member from each State to each of those bodies. The Commonwealth will give first priority consideration to the appointment of persons so nominated. Where the Commonwealth proposes to appoint a person other than one so nominated, the Commonwealth Attorney-General will consult with the relevant State Minister.

There is to be a Federal parliamentary committee established under the Corporations Act to monitor the way in which the corporations law is operating. One would hope that, unlike the National Crime Authority parliamentary committee, the evidence given to this Federal parliamentary committee will be on the public record, because that would seem, in my view, to be the only way that there will be a measure of public accountability not only of the ASC but of the Federal Minister in the context of this legislation. State Ministers will be entitled to raise questions or complaints with that Federal parliamentary committee, but the committee can handle them how it likes.

The Commonwealth gives an undertaking that it will consider the desirability of appointing part-time members to the Australian Securities Commission. There are to be some consultative procedures which apply to the part-time members similar to the consultative procedures applying to the appointment of full-time ASC members. The ASC is to consult with representatives of the business community in all States.

State Ministers with portfolio responsibility for companies and securities matters are to be entitled to make a request to the relevant regional commissioner of the Australian Securities Commission for information not on the public data base of the ASC. Power will be delegated to the regional commissioners and the response to a request by a relevant State Minister shall be at the discretion of the chairperson or chairperson's delegate; that is, the chairperson of the Australian Securities Commission. Although they are administering State law, the State Minister will no longer have power to gain access to information relating to the regulation of companies and securities and will be dependent upon a public servant at the Federal level as to whether or not that information will be delivered. It is to be left to the discretion of the chairperson of the ASC. I find that a quite intolerable position for State Ministers to be in.

The establishment of a corporations and securities panel, which is described as the Takeover Panel, is to be made again by the Federal Minister. The agreement provides that at any time one member of the panel shall be a person selected from a pool of names of persons with industry experience nominated by the States. It is not as though the States make any choice; they put up the pool of names and it is still up to the Federal Minister to determine whether or not a particular person will be chosen.

The States are to make available to the ASC their existing companies data bases. Arrangements are to be entered into with respect to the archives and the taking over of records. The ASC is to take over all Corporate Affairs Commission public registers of company documents, all files relevant to current Corporate Affairs Commission operations relating to companies and the regulation of the securities and futures industries and other classes of Corporate Affairs Commission files identified by the ASC as necessary for ongoing activities. That is not identified by any more specific description. I do not know whether the agreement has yet been signed, but, if it has, it ought to be available for public scrutiny.

The Hon. C.J. Sumner: No, it has not.

The Hon. K.T. GRIFFIN: It has not been signed yet?

The Hon. C.J. Sumner: It hasn't been drafted.

The Hon. K.T. GRIFFIN: It has not been drafted!

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: During the Committee stage I shall want to ask the Attorney-General some questions about the heads of agreement, the formal agreement, and what they mean for the administration of company law. As I said earlier, it is extraordinary that at the Federal and State levels we should be pushing ahead with consideration of the substantive law and the application legislation without having before us a formal agreement. It really is putting the cart before the horse. I suppose that if it has not yet been drafted, one has to raise the question whether, if State and Federal legislation is passed, there is then any incentive for the Commonwealth to push on with the negotiation of that agreement and the execution and subsequent ratification of it.

Before I deal with the various options available on this Bill, there are some other matters on which I want to comment relating to the way in which the new scheme might operate. In relation to investigations and prosecutions, it was suggested to me that, under the cooperative scheme provisions which enable the Corporate Affairs Commission to undertake a public examination, it was possible in any subsequent prosecution to use material which had been gained in the course of that examination, and that that had been compromised in the new corporations law. Because there is such an amount of reading to be undertaken, I have not had an opportunity to check that point but I would appreciate the Attorney-General indicating whether that is an issue which has now been appropriately addressed and whether, in fact, there is a weakening of the examination provisions of the corporations law which might compromise investigation of corporate criminality.

The other matter which goes to the substance of the law is an article relating to South Australian Brewing Holdings by Brian Frith dated 30 November 1990 headed, '$375 million purchase of Penfolds Wines'. He speculates that that could run into unexpected problems created by what he says is the slipshod manner in which the changeover to the new Federal system of corporate law has been handled. I will quote some of the article so that the Attorney-General can give some answers to it, perhaps in the Committee stage:

South Australian Brewing plans a $130 million rights issue to shareholders to help pay for the acquisition of Penfolds from the hapless Adelaide Steamship (Ad Steam) satellite, Tooth. Unfortunately for South Australian Brewing, its rights issue straddles the scheduled 1 January date on which the existing law will be superseded by the corporations law. South Australian Brewing has adopted a short issue timetable for its rights issue (in fact, the shares were traded ex-rights yesterday) but even so the closing date for acceptances and renunciations is 7 January. If the Federal and State Governments meet the deadline (and there is a determination to do so, to get the new watchdog, the Australian Securities Commission up and running) then the issue will still be open when the Corporations Act comes into force. That could create a problem because, as things at present stand, South Australian Brewing's rights issue would not comply with the new corporations law. It would be illegal.

Under the corporations law, companies making rights issue must issue a prospectus. There is no requirement under the existing law and South Australian Brewing has not produced a prospectus. Provision has been made in the amending legislation of the Corporations Act to specify that a prospectus registered by the outgoing regulator, the National Companies and Securities Commission, within six months of commencement of the corporations law will be taken to be a prospectus lodged or registered under the corporations law. That does not apply to South Australian Brewing. As mentioned, it has not issued a prospectus. Moreover, it is understood that there is at least one other company, and possibly several, poised to make rights issues. All face the risk that those issues would become illegal if they are still open when the new legislation comes into force.

The authorities are, of course, aware of the problem and discussions have been held among various parties to try to thrash out a solution. This is not an academic debate; it is fundamental because it goes to the issue of whether contracts entered into before 1 January are legal and valid if the law under which they were entered into conflicts with the new corporations law. The Corporations Act provides that, where such a conflict exists, the new corporations law will prevail and the existing law will effectively cease to exist.

The Commonwealth has apparently suggested that it will not prosecute in such instances, but that is not a solution. Turning a blind eye to illegalities does not make them legal; nor would it solve the problems which might arise.

What, for example, would happen if the market price of the issuing company collapsed after shareholders had sent in their acceptances, and some shareholders sought to cancel their subscription on the ground that the issue was illegal?

The problem over rights issues looms because the Commonwealth did not allow the usual procedure and negotiate transitional arrangements to cater for matters which are current at the time of changeover. That would include matters such as existing investigations and prosecutions.

So, that is one issue which needs to be addressed. I would appreciate some response on that in due course. Let me deal now with some matters which have been raised with me as causing concern. I am told that major problems arise because highly skilled investigators are needed but they are not going to be readily available in the Australian Securities Commission. The existing State salary structures are acknowledged to be inadequate compared with the private sector.

The Commonwealth, as I understand it, proposes to pay less. In that context there are really serious questions as to whether or not skilled investigators can be recruited. The indication is that the Commonwealth will be relying largely upon a new graduate intake and, if that is so, it has to be acknowledged that it will probably take somewhere between five to eight years to train an appropriate team. Of course, one has to consider also that the prosecution function is to be removed from the existing State Corporate Affairs Commissions and/or the Crown Law Departments and vested in the Commonwealth Director of Public Prosecutions. Again, I am told that the office of the Director of Public Prosecutions does not have the resources nor the experience to handle these matters, either in terms of volume or complexity.

That fact is well known, but it has really not been faced up to by the Australian Securities Commission. I would

suggest that, if that is so, as I understand it to be, then it really does fly in the face of the public statements by the Commonwealth and the Australian Securities Commission that it will be taking a much more vigorous position in relation to the detection of corporate crime, the apprehension of corporate criminals and their prosecution before the courts. If there is to be such a shortage of staff, then we can expect over the next five years an inadequate response to the community concern to prosecute corporate crime.

The other point which I think needs to be made in that same context is that the Australian Federal Police do not have adequate resources to take over existing functions of the State Corporate Commissions and are unlikely to develop the necessary skills for quite some time. One has to recognise that in South Australia, for example, and I presume it was the same in other States, the Corporate Affairs Commission had its own investigators, its own professional staff, most of whom had been there for a long time. They were highly skilled and competent and they worked in conjunction with a group of very skilled police officers who were seconded to the Corporate Affairs Commission.

There is no indication as to what is happening with respect to those skilled police officers, whether they are going to be seconded to the Australian Federal Police or whether they will go back into the Fraud Squad and deal with matters relating to fraud under the State Criminal Law Consolidation Act. From a State point of view that is highly desirable, because it puts more resources back into the Police Force and the detection of white collar crime. But from a corporate point of view it is undesirable, if we are to be left at both the Australian Federal Police level and the Director of Public Prosecutions level with inexperienced and inadequate staff.

There is a concern about various lodgment and search functions. At the time that this current scheme was being developed, the Federal Government did a deal with Victoria to buy its support for the corporations law. It gave Sydney the head office of the Australian Securities Commission and it gave Victoria the data processing and record keeping functions. As a result, in the Latrobe Valley there is a computer installation which is going to be the central data base for corporate records in Australia.

However, many company searches are going to have to be undertaken twice. The pre-1991 documentation is stored on microfiche. There is some limited information available on a computer data base. If one wants to check the reliability of that or even get more detail, the search will now have to be done twice: the microfiche for pre-1991 and the data base in the Latrobe Valley for 1991 transactions and thereafter.

There is also a problem with the accuracy of the information on the data base, and this has been raised by me on previous occasions publicly: that, so far as people wanting to search the register are concerned, there will be no guarantee that the information on the data base is accurate, that it has either been accurately put into the system or maintained up to date. One can imagine that if hard copy documentation is to be transported to the Latrobe Valley and held there and those who act for companies or those dealing with companies are required to undertake a search to satisfy their professional negligence obligations, it will be not at all easy or comfortable to rely only on the computer printout, because there will be no guarantee that it is either up to date to the minute or that the information on it has been accurately put into it. That will cause a particular problem.

I can give a couple of examples of that. When one is acting for a lender to a company, generally a charge is taken and that charge is registered at the Corporate Affairs Commission. Under the cooperative scheme the professional adviser will at settlement make a search of the register at the commission to ensure that there are no prior registered charges. Certainly, there would have been an initial search, and there may well have been periodic searches of the hard copy documentation up to the point of settlement, but it is not uncommon to have a clerk undertake a search at the Corporate Affairs Commission prior to moneys being handed over and even the settlement deferred for a short period of time while searches are undertaken up to the last minute and the documentation properly stamped and lodged at the commission.

That sort of procedure is going to create a problem for professional advisers where the data base is in the Latrobe Valley. there will certainly be on-line communication with the regional office, and even into legal and other professional offices, but getting access to the hard copy upon which professional advisers will only rely is going to be either difficult or impossible. I would suggest that is a major problem. I would like the Attorney-General to give some clarification of the way in which that system is going to be satisfied and accurate.

So far as regional services are concerned, I said earlier that there is a concern about the level of service in South Australia. It is important to recognise that the intergovernmental agreements guarantee State revenue but they do not guarantee that the Commonwealth will inject a specified level of resources into State regional offices. At the moment the indication is that the existing resources of the South Australian regional office will be adequate, but that can be reversed almost immediately.

The only other issue concerns State courts. This Bill makes significant changes to the position under the cross-vesting legislation. The cross-vesting of jurisdiction is permitted under legislation that I think we passed last year, so that the most appropriate court can hear a matter but, if a course of action properly arises here, the State courts cannot be divested of that jurisdiction unless there is some special reason for that to occur. But the Bill significantly changes the jurisdictions of the courts. Full jurisdiction is conferred upon both the Federal Court and any State Court with respect to civil matters. I would suggest that that is a significant erosion of the Supreme Court's established jurisdiction.

Under existing law, proceedings can only be commenced in the Federal Court if there is an issue relating to the Federal Court's ancillary jurisdiction, or if the matter can be properly cross-vested. The concern I have is that, because of the strength of the commercial and professional community in, say, Sydney and Melbourne, we will see a lot more cases which could properly be dealt with in the South Australian Supreme Court being dealt with in the Federal Court and most likely in Sydney or Melbourne. That will have a disadvantage for our businesses. It may add to the costs, but particularly because of the much higher legal fees that are charged in Melbourne and Sydney than in South Australia. Moreover, if the work disappears to those other States when previously it would have been undertaken here, it does have a depressing effect on the legal and accounting professions. If there is not the complex and significant work to be undertaken in this State, more and more of it will go interstate and our professional people will not develop the neccessary expertise to deal with it. They will not be able to compete in that respect with the big law firms of Melbourne and Sydney.

Companies will suffer because the expertise will then not be readily available here and, in the longer term, when we

are working on developing our business and professional base in South Australia to encourage more industry and more development, we just will not have the professional services with the expertise necessary to handle the sorts of complex transactions which are neccessary. So, I do express concern about the way in which the Supreme Court's jurisdiction in practice will be eroded.

I now turn to the situation in Western Australia. It is difficult to get a handle on everything that has occurred there, but as I understand it the Upper House, where the Liberal Party and the National Party have a majority of members, exercised its majority to indicate its opposition to the State application of laws legislation, expressing the view that the State Corporate Affairs Commission would be more appropriate to deal with the administration of uniform law as an agent of the Australian Securities Commission. As I understand it, the proposition was that the State Corporate Affairs Commission would be a delegate of the Australian Securities Commission and act as its agent, that there would be substantive law guaranteed, but that would be administered in Western Australia as State law and not as the application of laws legislation provides—that is, administered as though it were Federal law with all of the consequences of that.

We saw reports of Mr Hartnell racing across to Western Australia to undertake some negotiations. We saw all sorts of public opinion expressed both for and against what was happening in Western Australia. We heard concern expressed by the business community that Western Australia not being a part of the corporations law would place considerable burdens upon the Western Australian business community.

I think that there is some measure of truth in that because if there is no compromise between Western Australia and the Commonwealth involving the Australian Securities Commission, and the Commonwealth persists with its headlong rush to implement this legislation on 1 January 1991, we will have a situation where one law may apply in a large part of Australia, but another law in another part. Whilst the substantive law initially is not very much different, in terms of administration there will be differences and, in the longer term, there may be a growing lack of uniformity as occurred with the Companies Act 1961, which started off being uniform but which subsequently, State by State, ceased to have that essential uniformity.

However, in Western Australia there is a large measure of concern about the extent to which, being at the other end of the continent from the power brokers and yet having a significant corporate community, it will not have a guaranteed level of service of input to policy, legislation and administrative matters under the ASC scheme. In the *Financial Review* of 5 December, John Hurst referred to what was happening in Western Australia, as follows:

> The seemingly endless problems associated with the creation of a uniform and effective corporate regulatory system will continue well after the Australian Securities Commission comes into force on 1 January next year.
>
> As lawyers wade through the new Corporations Act, lengthy debate will arise over the many changes that are about to be made to corporate law in this country.
>
> Questions will also be asked about the exclusion of several recommendations from advisory committees.
>
> The West Australian Liberal Party has already ensured that controversy will continue at a political level by insisting that the State's Corporate Affairs Department act as agent for the ASC in Western Australia.
>
> The compromise between the ASC Chairman, Tony Hartnell, and the Liberals will lead to the farcical situation of Western Australia being the only State that will not accept the ASC as Australia's sole regulatory body.

He then goes on to talk about the Law Institute of Victoria and its call for a six month delay. Further, he states:

> There have been rumblings that the concerns of the West Australian Liberals may be taken up by some parts of the private sector prepared to challenge the validity of the Corporations Legislation Amendment Bill.
>
> The Bill is aimed at achieving the same effect as references of power by the States to the Commonwealth, without those references having actually occurred.

Of course, that is one of the keys to the position, as I understand it, in Western Australia: that the Upper House earlier this year passed a resolution that it would not allow to pass legislation which either transferred power or effectively did so. It was not through lack of signals that the final decision occurred: it occurred notwithstanding that. I can remember that at the time the decision was taken at the Western Australian Liberal Party and National Party level, there was a signal from Peter Costello, the shadow Minister of Business and Consumer Affairs at the Federal level, which indicated that there should be more consultation; that the Federal Government had ignored State Upper Houses; and that, in particular, it had not undertaken this process of regulation and adopted the new scheme in a way which would encourage confidence in the scheme.

In the 7 December edition of the 'Business' section of *The Australian*, Brian Frith made some further observations about the Western Australian problem. I think it is appropriate to make reference to his observations because, as I said, there has been criticism of Western Australia and there has been concern among the business community that there will be a need for registration in Western Australia as a foreign company if companies are incorporated, say, in Sydney, and if Western Australian companies want to carry on business in, say, New South Wales or Victoria: those Western Australian companies will have to register as foreign companies in the other States. Of course, to some extent, that is akin to the situation that occurred when the Northern Territory did not initially go into the cooperative scheme because it believed it could go it alone and would attract companies because of its different administration. However, subsequently, it came into the cooperative scheme. In the article in the 'Business' section of *The Australian* of 7 December (featuring on the same page as a large photograph of the South Australian Attorney-General), Bryan Frith comments as follows:

> The Commonwealth and Eastern States Governments need to take care that their confrontationist attempts to bludgeon Western Australia into joining the new corporate regulatory scheme do not sow the seeds for Australia's version of Quebec.
>
> The secessionist movement has long been at its strongest in Western Australia, due in part to Western Australia's distance from the eastern States, and its sense of isolation, Until the jet age that isolation was real.
>
> The fracas over the Corporations Law is not the stuff of which secessions are made; it simply does not have enough public appeal.
>
> But it could further heighten the attitude of 'them' and 'us' which is prevalent in Western Australia; if so it would increase the potential for a future move by Western Australia to secede.
>
> There is a widespread view in Western Australia that if the State were to join the corporations scheme as it is now constituted, there would be a real and substantial reduction in Western Australia's political, constitutional and administrative power.
>
> Moreover, the professions would tend to shift from Western Australia to Sydney and Melbourne to be near the source of the decision-making of the new corporate regulator, the Australian Securities Commission (ASC).
>
> It is suggested that some Western Australian businesses, which operate outside the State, will put pressure on the Western Australian Opposition to reverse its stand. But it is probably too late; the West Australian Parliament is due to recess today and to reconvene in late March 1991.
>
> In any case, the Western Australian Opposition's stance no doubt has the support of the majority of Western Australia business, 90 per cent of which operates entirely within Western Australia.

Moreover, the Western Australian Chamber of Commerce has publicly supported the action of the Western Australian Opposition in rejecting the corporations legislation.

The Commonwealth's bully-boy tactics of trying to beat the States into submission caused considerable bitterness and division.

I support that, and my remarks indicate that that is certainly my attitude. He continues:

That approach failed when the High Court dealt the Commonwealth a body blow by ruling that it did not have the constitutional power over incorporation of companies.

The Commonwealth was forced to switch its tactics and NSW and Victoria were then bought out.

It is unfortunate that the States caved in; had they shown the same fortitude as the Western Australian Opposition has demonstrated they may have been able to fix the defects in the existing cooperative scheme, which would have been preferable to the new corporations legislation.

Once the States caved in it became preferable that Western Australia should go along with the corporations law—a split and disuniform system of corporate regulation is not in the best interests of Australia.

However, if Western Australia insists on exercising the constitutional rights which the High Court has endorsed, the Commonwealth and the other States should accept it and cooperate with Western Australia to work out the best system of administration.

There is no alternative if the Commonwealth and the States which have agreed to the corporations law are dedicated, as they claim, to reform of companies and securities legislation.

The object must be to achieve, as far as possible, that reform, not to make a dissenting State pay for its dissent, particularly as those likely to be most disadvantaged would be Western Australian companies.

He goes on to say:

There is scare talk by politicians that Western Australian companies will be saddled with a heavy additional overt burden because of the need for additional documentation. There need be no heavy added cost.

Moreover, it should be remembered that Western Australia could retaliate if the Commonwealth and the other States attempt to take a big stick. The Western Australian Parliament could amend the legislation to ensure that all Australian companies incorporated outside Western Australia must also register in Western Australia, and be forced to pay additional fees.

As there will be more non-Western Australian companies wishing to trade within Western Australia than Western Australian companies wishing to trade outside their State, Western Australia could be the winner from such an outcome.

Some of the perceived difficulties in reality will create little problem, although they heighten the perception—particularly in the eyes of disillusioned overseas investors—of disunity.

Further, he says that, if Western Australia does stay out:

Thus, different rules will apply, but they should not cause serious dislocation.

That puts a different perspective on the Western Australian situation. It is appropriate to mention the position in South Australia. Whilst I have taken considerable time to express views about this legislation and this scheme, it is important to recognise that it is a most dramatic change in the balance between the States and the Commonwealth. I venture to say that it is the most substantial change in the power relationship between the States and the Commonwealth since the uniform tax cases of the 1940s, when the Commonwealth took over income tax power by force. I say that because whilst not legally, I suppose, a transfer of power to the Commonwealth constitutionally is, nevertheless, the effect of this legislation. It is for those reasons, therefore, that I really wanted to put on record the views which I and my Party hold about the way in which this whole scheme has been developed.

There are really now four options: first, to support the Bill; secondly, to oppose the Bill; thirdly, to delay the Bill; and, fourthly, not to oppose the Bill, but support the Bill and to propose some amendments. I have great difficulty, as does the Liberal Party, in giving outright and unqualified support to the Bill.

We have been a very strong opponent of the Commonwealth takeover of the law relating to companies and securities, and effectively this is what this Bill achieves, if not by direct confrontation between the Commonwealth and this State by the unilateral action of the Commonwealth, then by the back door and by the abdication by the States of their responsibility and the concession of power. So, I do not propose to give unqualified support to this Bill. On the other hand, the Liberal Party does not propose to oppose the Bill because of the problems which are likely to confront the business community if opposition were to occur and to be successful as in Western Australia. The view, which has been expressed to the Liberal Party by the whole of the Adelaide professional and business community is, 'Well, we fought a hard battle. We would very much prefer to have input through the cooperative scheme, but the Executive arm of Government has taken this so far that we cannot turn back the clock.'

To present to the business community, in particular, in a time of exceptional economic and business difficulty a mechanism which means that South Australian companies are required to register in other States as foreign companies or other companies are required to register in South Australia as foreign companies adds a measure of administrative complexity and workload with which they will find difficulty in coping in the context of the difficult economic environment which will force many of them to the wall.

So, notwithstanding the past strong opposition by the Stock Exchange, the Institute of Directors, the Law Society, the accountancy groups, the Securities Institute, the Chamber of Commerce and Industry and the Employers Federation to the takeover by the Commonwealth of this area of the law and the strong view that a cooperative scheme is preferable for South Australia, they are now grudgingly giving support to the scheme on the basis that the battle has been fought well, but lost.

At this point, I should say that there are others—not the professional organisations or business organisations, but individual companies and individuals—who probably are more positive in their support for the Commonwealth scheme than I have indicated. However, the view of the Liberal Party is that we will not unequivocally support the legislation, nor will we oppose it. The next consideration is delaying the Bill.

The Hon. I. Gilfillan: I think you have done that fairly well.

The Hon. K.T. GRIFFIN: Well, no, it is a very important piece of legislation. Whilst the Hon. Mr Gilfillan may say that in my speech I have been able to delay consideration of the Bill, I think that was a facetious remark, and I take it in the spirit in which it was offered by way of interjection. That is a possibility, particularly because the business and professional community is overwhelmed by the workload, and particularly because the Commonwealth legislation, the substantive law, was not introduced into the Federal Parliament until 8 November. It now, as a consolidation, comprises two massive volumes of some complexity, and the State legislation was not introduced in South Australia until 20 November.

I understand that in some other States it has not yet been passed. It is an attractive proposition. As I have indicated, there are groups in South Australia who prefer that to happen. The Liberal Party is not prepared to take the responsibility of delaying it; that will have the effect of heaping criticism upon our heads when in fact the criticism ought to be heaped upon the Federal Government's head in particular and on other Government's heads for the way in which this whole issue has been handled.

I certainly make a plea to the State Attorney-General, and hopefully through him to the Federal Attorney-General, to consider the hardship which will be created by the headlong rush towards implementation on 1 January. Delay will hurt no-one and will work to the advantage of the regulators as well as the business and professional community by giving them an opportunity for a better and more considered transition.

The fourth option, which I and the Liberal Party support, is to indicate that we will not oppose the Bill; we will not positively support it; we will let it go through and allow the criticism and responsibility to be carried by the Executive arm of Government—a place where that responsibility most properly rests.

However, there are three areas of concern. One is that the executive arm of Government has effectively hijacked this scheme and made it a *fait accompli*. The Liberal Party would like to see a sunset clause which provides that the Bill expires in a period of five years after it comes into effect. That will not prejudice the uniform nature of the scheme; it will not prevent its implementation. If the scheme is up and running and has overtaken all the events in five years, in my view, it would be inappropriate not to extend or remove the sunset clause. On the other hand, I do not think that we ought to allow this scheme by default to get up and run and not be subject to any review either at the State or Federal level for ever and a day. A sunset clause would require a conscious review of the way in which the scheme has operated and every Party to apply their minds to whether there ought to be some amendments or changes in emphasis, whether the States ought to get more power or less and whether the Commonwealth ought to get more or less power. It seems to me that that can then involve not only Governments but Parliaments. I shall be moving for a sunset clause.

The second area is to ensure that the Commonwealth cannot extend its corporation scheme to building societies, credit unions, cooperatives, friendly societies, associations and strata corporations without the South Australian Parliament being involved in that decision. I do not want any *de facto* delivery of responsibilities to the Australian Securities Commission by the State Minister—the executive arm of Government. That decision ought to come back to Parliament, so I shall be seeking to include in the State Bill a provision that will limit the power of the Commonwealth and, by force of this scheme, the State to hand over responsibility for other corporate bodies without the matter coming back to this Parliament.

The third area relates to clause 67 of the State Bill. Clause 67 is related to the last amendment that I talked about, but I think that the clause should be deleted. It provides:

(1) The Minister, or a person authorised in writing by the Minister, may enter into an agreement or arrangement with the Commission—

that is, the Australian Securities Commission—

for the performance of functions or the exercise of powers by the Commission as an agent of the State.

(2) The Commission has such functions and powers as are referred to in such an agreement or arrangement.

That means that the administration of building societies, for example, can be handed over to the commission by the Minister. I do not support that as an executive decision. That is something that Parliament ought to decide. If it is the intention of the Government of the day to do that, it ought to come back here. Removal of clause 67 will achieve that objective.

The other area on which I want some clarification—and I flag it for consideration by the Attorney-General probably during the Committee stage, but he may care to reply on it—relates to clause 90 of the State Bill. That clause deals with situations where there has been a reference in another piece of legislation unrelated to a State law to a provision of the Companies Code. For example, in the Associations Incorporation Act there is a provision which adopts the winding up provisions of the Companies Code. The Payroll Tax Act contains a definition of related corporation which picks up the definition in the Companies Code.

There is much other legislation—the Building Societies Bill with which we dealt last week, credit unions and cooperatives—which refers to different parts of the Companies Code. I do not want to see an automatic translation of the provisions of the corporations law into State law or an involvement of the Australian Securities Commission in other areas of State law by virtue of clause 90. I would like the Attorney-General to explain the procedure which is intended to be followed in relation to all of those other references to the Companies Code in other State legislation and how the transition is to be handled.

Another area which is related to that is that if we pick up, for example, the winding up provisions of the corporations law in relation to associations, it may be in the future that the winding up provisions in the corporations law are amended by the Federal Parliament. I want to ensure that if those amendments are made they are consistent with State law and that we do not have these foisted upon associations, cooperatives and building societies without a conscious decision being taken as to whether or not to adopt those amendments.

As I understand it, some of this will be done by regulation. I do not want us to be served up with one regulation which bundles everything together, because we cannot easily disallow that. For each particular law I would like to see a separate regulation if that is the way it is to be done. If the Attorney-General could indicate the way in which this is to be handled, I would appreciate it.

During the Committee stage I shall want to direct a number of questions to the Attorney-General. However, I end this part of my contribution by saying that we will not stand in the way of this Bill passing. We will not unequivocally and conscientiously support it, but we will certainly not oppose it.

The Hon. I. GILFILLAN: I should like to speak to the Bill a trifle more briefly than did the previous speaker, but I would like to make a point in relation to that. I congratulate the Hon. Mr. Griffin on a wide-ranging analysis of the situation, and, in spite of one or two interjections, I appreciate his knowledge and concern about it. I think it is unfortunate that, yet again, we are jammed into a time frame which does not allow proper analysis of the consequences and significance of what is a monumental piece of legislation from South Australia's point of view.

I have a rather naive sense of State propriety. I have always felt uneasy when we have sacrificed autonomy, the power of legislation, into a global Federal/Commonwealth scene on the bais of uniformity and simplification. I think, as on other occasions, we risk sacrificing State rights as the price of expediency which is argued by people who are not so concerned about the intrinsic value of the State system.

I listened with some alarm to the Hon. Trevor Griffin's analysis of the ministerial council's toothless character. It appears to me that there are several rather hollow edifices built up by this legislation which sound good but in effect will virtually have no direct influence and certainly no power.

The Hon. Mr Griffin identified another area of concern to anyone who holds dear the strength and resources of

South Australia—the seeping interstate of legal and accounting professional expertise. It is inevitable that, with what is anticipated as the consequence of the Corporations Act, the nodes, the centre of gravity for the sophisticated legal and accounting requirements of Australia, will centre more on the major cities of Melbourne and Sydney.

I started from a position of deep concern at this move. I still have deep concerns from a State identification/identity point of view. I gather quite clearly from the Hon. Trevor Griffin's remarks that the Liberal Party will not be raising substantial objections and, certainly, will not be blocking the transition of this Bill, so it matters little what the Democrats do or feel about this other than to express our concerns as I am now doing.

The arguments of those who run companies and have corporate interests, that this is a highly desirable measure, are understandable but they are motivated very much from the vested self-interest of those who see an easier and less complicated life. Well, easier and less complicated lives do not necessarily mean that it is better for South Australia. Nor does it mean that there will be better control, scrutiny and inspection of the corporate sector because of it.

I express my reservations and concerns and I acknowledge a substantial and valuable contribution to understanding the issue as given by the Hon. Trevor Griffin. I intend to listen intently to the amendments that he indicated he would move in the Committee stage. But, with that analysis, I repeat that the Democrats' view will be incidental, as the Bill will definitely go through. I suspect that the sunset clause may be a useful gate further down the track in order to have another look at the matter and therefore I indicate our sympathy with that as an amendment. We will not oppose the second reading but we hope to contribute in some small way in the Committee stage to improve the legislation, if possible, particularly from South Australia's point of view.

The Hon. L.H. DAVIS: I commend my colleague, the Hon. Trevor Griffin, for his far-ranging and wise contribution to what is undoubtedly a very complex and difficult piece of legislation. In a few days, on 14 December, the National Companies and Securities Commission systems are effectively going to be wound down and the ASC will come into operation. We are debating this matter on 11 December as, indeed, are a number of other Parliaments in Australia. The legislation before us, together with regulations yet to be proclaimed, comes into effect on 1 January 1991. That makes me extraordinarily nervous, as someone with some background and perhaps some modest experience in the financial area.

There is no question that the situation we are faced with is not desirable. The regulations yet to be put in place are basic to an understanding of how the new laws will operate. In fact, they will not be available until after the start-up date of the legislation. I find that quite beyond belief. Certainly, the Attorney-General is not to be blamed for this difficulty but it should be pointed out that the Federal Labor Government has been warned that there is a problem. The shadow spokesman for Corporate Affairs, Mr Peter Costello, has been advising Mr Michael Duffy for some months that there were going to be inevitable delays in getting this legislation up and running.

The Federal Liberal Party has been correct in its predictions that this legislation was going to be passed at the eleventh hour. Those predictions have come to pass and I find that alarming, to say the least, because the consequences that flow from that, with the uncertainty created in what is already a very uncertain economic period, could be quite devastating.

I want to briefly address some of the practical matters that confront us with this changeover. As I understand it, we are not having the difficulties that some other States have had in getting the staff of corporate affairs offices to accept the changeover date of 1 January. Both Victoria and Queensland have had not only the difficulty of preparing for 1 January but they have also had protests from their public servants who have resented the less attractive conditions which have been offered them as they transfer from being State public servants to becoming Federal public servants. In Victoria, for example, the bans have extended to include receipt of any collections of Federal documents, Federal mail, revenue and any communications at all with the ASC.

So, fortunately, that is one problem we have not had. Another difficulty which is peculiar to Western Australia is the fact that there the legislation has been blocked by the Upper House—more specifically by the Liberal Party in the Western Australian Legislative Council. That has had the consequence that Western Australian companies wishing to do business outside Western Australia will have to register as foreign companies with the Australian Securities Commission, and so incur extra costs. In fact, as has been indicated by Mr Tony Hartnell, the ASC Chairman '. . . after 1 January any Western Australian companies trading outside Western Australia without registering as foreign companies will be acting illegally'.

I do not support what the Western Australian Upper House has done. I can sympathise with its position but I do not support it. I join with the Federal Leader of the Liberal Opposition, Dr John Hewson, in his comments, when he said that the Liberal Party in Western Australia was wrong and they will have to live with the consequences.

In South Australia we are in a position, as set down by the Hon. Trevor Griffin, where we are accepting the inevitable, that however much we may dislike some aspects of the legislation or the consequence of the legislation, ultimately, we see that there is no other option. Looking at the situation as of now, 11 December, and knowing the massive problems that are going to be encountered in putting this new national corporate law legislation in place, there is a very strong argument to say that the legislation should not come into effect until 1 July 1991. In other words, there was a very strong argument for delaying the operation of ths legislation.

There are several good reasons for this. As I have said, the regulations that govern the operations of the ASC and how it is to interpret the corporations law will simply not be ready by 1 January. The new laws cannot be looked at without the regulations. In other words, the laws are in some ways meaningless until the regulations are promulgated. So, we have this vacuum from 14 December when the NCSC winds down, through the Christmas period and into the new year, when businesses will not know the regulations under which they are meant to be operating.

Indeed, we know that the law, the amendment Bill which brought the corporations law into this State Parliament, became available little more than a month ago. We have had the problems, as mentioned by my colleague, the Hon. Trevor Griffin, about the job transfers to the CAC staff. That, of course, is important in itself, but pales into insignificance compared with some of the immediate problems involved with this transition period in the weeks ahead.

At a seminar last week the ASC Chairman, Mr Hartnell, argued that there simply could not be any delay in the introduction of the legislation, for three reasons. First, that

the ASC's information base was dissimilar to that of the NCSC and the old system will simply close down on 31 December. He also pointed out that Parliament has already appropriated money for the ASC, but the NCSC and the cooperative schemes are running out of funds and will run out of funds. Finally, the personnel for the new system are locked into the 1 January 1991 start and, of course, in some instances the staff operating at the State level no longer have positions.

So, it all is beyond redemption. We have a situation, in other words, where the lawyers of corporations and the corporations themselves do not know which corporate laws and regulations are going to be in place on 1 January. That makes many companies very vulnerable. Certainly, the ASC has indicated that it is going to be generous in its interpretation of breaches of the new laws in the opening weeks and months, but one must recognise that there are situations where technical breaches of corporate law may trigger problems for corporations.

For example, the ASC has said that it will not prosecute a company for not having its company number printed on all its stationery on 2 January, but unless that is actually built into the regulations then it could well be a breach and, if there is a technical breach of the law, it may well impact on a company which is in financial difficulties.

Many companies are in financial difficulties and some of those companies may well only require a technical breach to trigger a breach of the trust deed, which would enable the lender to move in against that company. In other words, its borrowing covenant could provide that, in the event of default, in the event of any breach of corporate law, then it has breached the covenant with their lender. So, that company could well be vulnerable. A company in a takeover situation may well be able to rely on a technical breach in that sort of situation.

It is clear that in these weeks ahead there are going to be some very major problems. One aspect about the new legislation that has been given some publicity is the application of section 68 of the Act, which refers to signed statements and other records of information. Where previous legislation allowed privilege only for evidence itself, section 68 of the Act refers also to signed statements and other records and information.

It extends privilege to anything subsequently arising as a 'direct or indirect consequence of the person making the statement or signing the record'. Legal sources have argued that a problem arises as a result of that; that it is an open-ended privilege for witnesses compelled to incriminate themselves. In effect, that will impact on the powers given to the Tricontinental Royal Commission. There has been recent publicity about the weakening of those powers as a result of this new legislation.

The battle is all but lost for States' rights in the area of corporate law. Clearly, as a result of this legislation we are going to have national corporate law with one national body responsible for the enforcement of corporate law. Sadly, State corporate affairs offices and the predecessor of the ACS, the NCSC, have both had difficulty in adequately enforcing the corporate law in Australia.

One could argue that it is not so much the system that has been at fault but the resources available within the system. In some ways it is a mistake to argue that this legislation is necessary on the basis of the wave of corporate white collar crime in the aftermath of the 1986-87 boom. I would prefer to argue that the difficulties encountered have been not so much the system but the lack of resources within the system. That is a point that my colleague the Hon. Mr Griffin has argued consistently for a long time.

As the Attorney-General would know, I have been critical of that point. I have raised the issue of white collar crime in this Council previously and it is a concern to me that, at a time when Australia is facing criticism overseas for its corporate cowboys, we have yet again not been able to put in place smoothly this major change in our corporate legal framework.

It is a fiasco that we will be facing in the next few weeks and months. I accept the inevitability of the fact that this legislation will pass—must pass—if we are going to have a system in place on 1 January. I accept that employer groups and respected financial community leaders in South Australia are *ad idem* in supporting this legislation, albeit reluctantly. There is a recognition that if resources can be made available, then this system will ultimately work, notwithstanding the imperfections that it contains.

I do not think the Attorney-General should be allowed to indulge in the luxury of thinking that this structure is going to be the answer to the problems in the corporate law area. It is necessary for his Government and for the Federal Labor Government to recognise that resources must be directed to this area. There must be a recognition that trained and skilled staff, with adequate back-up, are necessary. I recoil with horror at the examples of South Australian-based companies that have not been adequately kept in check because of a lack of resources. In some cases, notably the example of the IRL Claremont Enterprise Gold Mine Group, it has actually been left to shareholders to lead the charge against directors and management whom they believe (in my view quite properly) have not acted in the best interests of shareholders. Certainly, they were entitled to be concerned, particularly in the example I have mentioned, where $70 million of shareholders' funds disappeared. That is just one of the many examples that one can cite where there was not proper scrutiny, perhaps because of a lack of adequate resources.

Although it is pleasing to see that some of the so-called corporate cowboys have been brought to account in the last few weeks, that should not cloud over the nub of the argument that the Hon. Mr Griffin has advanced today. In my view, there will be unintended consequences flowing from this massive change in the law, and there will be examples where companies enter into transactions over the Christmas period and through into 1991 where they will not know under which law they are operating. Whilst, as I have said, the ASC has said that it is going to be sympathetic in its handling of such transactions, it is quite feasible that problems will occur, that financially costly unexpected consequences will occur as a result of this changeover date. Nor should it be forgotten by the Attorney-General that there will perhaps be ruthless opportunists who will seek to take advantage in this hiatus, offered by this transition period. That will also result in a challenge for the ASC.

I accept the inevitability of the legislation but I sympathise with the people whose responsibility it will be to look after the clients who will be disadvantaged in the changeover period. It is going to be very difficult to comply with the corporate law when one does not know what is actually in that law.

The Hon. Diana Laidlaw: Or in the regulations.

The Hon. L.H. DAVIS: Yes, and when I talk about the law, naturally I include the regulations. It is also difficult for companies and their advisers to be absolutely confident about what the ASC says in good faith—that it is going to be charitable and reasonable—about the changeover period, because there will be inadvertent consequences, such as breaches of covenant and takeover situations, where breaches

of the ASC law may have unintended and negative consequences for corporations.

So, there is no real alternative. We are trapped in a situation not of our making or of our choice. It says, I think, a lot about the state of the Federal Labor Government in Canberra that we are in a situation such as this today. Had there been more thought about it, there could have been some delay. The ASC has decided that it is not going to do this. It refuses to accept that; it is locked in and, as a consequence, we are going to have confusion, uncertainty, and we are going to have unintended consequences. I fear that, as we end 1990, in a state of deep depression, this is the very worst time of all for corporations to be facing yet another difficulty. It is going to be a difficulty not of their making and it will add quite possibly a cost burden which many of them will find difficult to bear.

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

[Sitting suspended from 6 to 7.45 p.m.]

SENIOR SECONDARY ASSESSMENT BOARD OF SOUTH AUSTRALIA ACT AMENDMENT BILL

In Committee.

(Continued from 6 December. Page 2421.)

New clause 8—'Transitional provisions.'

The Hon. M.J. ELLIOTT:

Page 3, after line 46—Insert new clause as follows:

Transitional provision

8. The board must not approve syllabuses for subjects comprised in the prescribed certification requirements for any academic year prior to the 1993 academic year unless permitted to do so by the regulations.

I indicated when the Committee last met and we were discussing clause 2 that I would move this amendment. I indicated then that there was significant concern that all SACE subjects would not be ready to be prepared for the beginning of the 1992 school year. In fact, the Hon. Mr Lucas also noted similar concerns. It is important to note that the teachers who are reporting this to me are those who, in many ways, are closest to the action and who know whether or not schools will be ready with those subjects.

There is no doubt that already we are somewhat behind schedule. Yet, to this stage the SSABSA board seems to be insisting that it still wishes to commence at the beginning of 1992. The intent of my amendment is to allow commencement at the beginning of 1993. However, should the board, and therefore the Government, wish the full SACE courses to commence earlier, that is, the beginning of 1992, they could do so by regulation. That would then allow at least some feedback to this House from people on the ground, who would be able to inform us whether or not they are confident that things were ready to go.

I must say, as a former practising teacher, that I have grave concerns about the implications that this has for schools. It appears that curriculum development has been an ever-increasing burden, particularly in senior secondary schools. I have been involved in the development of courses from time to time, and it is an increasing burden.

The Institute of Teachers indicated long before the teacher cuts that there already was some difficulty. As I noted before they had requested meetings with the Minister which, some months later, he still had not acceded to. It is an important matter of concern. I made quite clear that my intention in moving this amendment was not to interfere in any way with the composition of the courses. I really do want to see the independence of education occur as much as is possible, but I am concerned that the courses should be prepared properly before they begin in schools.

Effectively, this legislation is asking us whether we approve of SACE beginning. We say that we approve. I do not think it is unreasonable to say that we believe at this stage that 1993 is a suitable date, but we could be persuaded otherwise. I think a suitable time would be around the middle of 1992. We would then know whether the time that had been lost had been picked up or whether indeed we were further behind. This is not an intent to be obstructive, but rather, it is aimed at ensuring that the courses begin at the appropriate time.

The Hon. ANNE LEVY: The Government opposes this amendment. The time frame for SACE has been negotiated and agreed to and the Government would not like to see the arrangements which have been agreed to delayed. This does not mean to say that the Government is insensitive to the concerns which have been expressed by a number of people. It is certainly sympathetic to the idea that transition arrangements should operate in 1992 to ease the pressure on schools. In fact, the Minister has written to the board of SSABSA, and perhaps I could read into *Hansard* the letter which the Minister has sent, as follows:

> I have received a number of comments about the proposed timetable for the introduction of the South Australian Certificate of Education.
>
> While supporting the introduction of the SACE, individuals have outlined to me some concerns about the pressures being experienced by schools, particularly at the stage 1, year 11, level.
>
> With this in mind, I seek advice from the board about possible transition arrangements. The transition arrangements would need to ease the pressures being felt by some schools for stage 1 in 1992, while at the same time allowing for the first South Australian Certificate of Education to be awarded on the conclusion of the 1993 assessment program, conducted by SSABSA.
>
> I seek your earliest advice on this matter.

I understand that in response to this letter from the Minister asking the board to consider a possible transition arrangement, while holding to the previous time frame, transition arrangements will be considered by the SSABSA board on 19 December, and I am assured that this flexibility is possible and could involve a number of alternatives. The board could identify various subjects which could receive status in 1992, for the pattern requirements. Of course, many schools are ready to proceed with SACE and want it implemented in 1992. They do not wish a hold-up to occur and, for these schools, a delay would create quite a hiatus and a year of inactivity, which would not be welcomed by them.

I agree that flexibility is needed for the board to adjust implementation to meet the needs of the schools which feel that they need this extra time, and it is felt that it would not be difficult to derive transition arrangements that would allow for this, while not holding back the schools that do not wish to be held back in this way. This flexibility would, it is felt, meet the needs and requirements of all the schools—both those that wish to hasten slowly and those that are ready to go full steam ahead. Of course, I cannot speak for the SSABSA board or indicate what its decision will be: it would be most improper of me to do so.

However, I am sure that the SSABSA board is most responsible and that it is most unlikely to ignore a letter from the Minister. I would be very surprised if it did not give it very careful consideration indeed, in view of the fact that, as I am assured, it is quite possible to achieve the flexibility that is desired without delaying the program unnecessarily and so disappointing other people in relation to the timetable that they have set themselves. For those reasons I feel that the amendment is unnecessary and that

it would be unwise to incorporate it in the legislation, when I am quite sure that the board will give very serious consideration to the request from the Minister to undertake the transition arrangements that he is suggesting and so retain the flexibility that will meet everyone's needs.

The Hon. R.I. LUCAS: In her response the Minister indicated that there were a number of options if, indeed, SSABSA were to go down the transitional path as she outlined. She said that one of the options was that some current year 11 subjects could be given status for the South Australian certificate. As I understood our discussions when the Committee last met, that would mean that in 1992, if I were a student at Unley High School, for example, I might do a combination of current year 11 subjects and some new year 11 extended framework subjects as part of my level one contribution to receiving the South Australian certificate at the end of 1993. That is one option, as I understand it. Is the Minister able to indicate what are the other options, or was she referring to various options within that particular option; that is, various mixtures of subjects?

The Hon. ANNE LEVY: It has been suggested to me that, for example, Australian studies could be considered for trialling in 1992, and other arrangements for SACE which could be considered include, for example, implementing the literacy and pattern requirements. Furthermore, there could be identification of those subjects that need further work before implementation, and perhaps some of those subjects could be trialled in 1992. I should perhaps stress that the subjects for status in 1992 need to be considered by the SSABSA board and should not be pre-empted at this stage. However, perhaps that type of consideration can give an indication of the sort of arrangement that can be made. Furthermore, the honourable member can be assured that the SSABSA board would determine the final transition arrangements in full consultation with the secondary sectors. It is unlikely to reach final decisions in isolation; it would certainly undertake consultation with the secondary sector on such transitional arrangements.

The Hon. R.I. LUCAS: Obviously a key player in this is not only the Minister of Education but also the attitude of the Education Department and the Director-General of Education. Can the Minister confirm whether or not the Director-General of Education has written to the SSABSA board expressing any view in relation to the possibility of transitional arrangements that the Minister has alluded to in his letter to the board?

The Hon. ANNE LEVY: I understand that the Director-General has written to the Director of SSABSA asking him to take up with the board the question of easing the transition in 1992.

The Hon. R.I. LUCAS: It would be fair to say then that the Director-General of Education's view, as expressed to the Director of SSABSA, is that he would support a transitional arrangement as alluded to by the Minister of Education in his letter to the SSABSA board?

The Hon. ANNE LEVY: I am informed that that can be taken as 'Yes'. However, I personally have not seen the letter from the Director-General to the Director of SSABSA.

The Hon. R.I. LUCAS: As I alluded to you in a private conversation, Mr Chairman, this is one of the happy moments when we see democracy in action. Members of the Legislative Council consider amendments and, obviously, to a large degree, make judgments as they listen to the debate in the Chamber. For a number of reasons that I will allude to in a minute, the Liberal Party will not support the amendment being moved by the Hon. Mr Elliott. As the Hon. Mr Elliott indicated, I do support the background reasons for his amendment.

As I indicated in the second reading debate, I share many of the views put by the Hon. Mr Elliott. I guess the concern I had—and we did have discussions with the Parliamentary Counsel and others—relates to whether it is possible to achieve the purpose that we want to achieve without causing other by-product effects that we do not necessarily support. Certainly, my personal view remains very strongly that there ought to be a 12 month delay in the introduction of the South Australian certificate. However, I do not believe that we as a Party should inflict our view on SSABSA, schools, the Government and others in this case.

For the reasons that I alluded to earlier in relation to the debate on higher education, while it does not involve the same convention, I am reluctant to inflict the Liberal Party's position on schools, the SSABSA board, etc., particularly as the Government, the SSABSA board and others have indicated some preparedness to compromise and to meet some of the concerns that teachers and other groups in the Liberal Party have expressed.

I am concerned about the precise form of the drafting of the Hon. Mr Elliott's amendment. One of my concerns is that, under the drafting, if the Government were to promulgate a regulation in the middle of 1992, it would be within the prerogative of any of the 69 members of both Houses of Parliament to move a disallowance motion for that regulation. As the Hon. Mr Elliott's amendment envisages, the Government's regulation would say the SACE could be introduced in 1992 and the disallowance motion could be put on in either House of Parliament sometime soon afterwards, whenever the House sat in August or perhaps September. In relation to the traditions and conventions of the Houses of Parliament, for example, one has only to look at the disallowance motion for the video gaming machines in the House of Assembly where the private member controls the passage or otherwise of his or her disallowance motion. In effect, the disallowance motion could, in effect, roll over for a considerable number of months. That might be deliberate, or it might well be just through the process of so many people wanting to speak on the disallowance motion. Indeed, there might well be two disallowance motions, as there were for the video gaming machines, one in either House of Parliament.

I do not believe that, with the introduction of SACE, SSABSA and schools ought to be left in such a position perhaps from June to December, even though the Government had indicated a preparedness to go ahead, because of the disallowance procedures of Parliament. In the end no-one would know whether or not it was going to go ahead in 1992 or 1993. That is not the only reason for which I indicate my opposition to the amendment from the Hon. Mr Elliott, but it is one of the reasons why we could not support the amendment moved by the honourable member.

One then needs to consider the compromise position that the Government, through the Minister, has outlined here this evening. Whilst it is not the position that I would prefer in the ideal world, I think it does indicate a preparedness of those associated with SSABSA, the Minister, the Director-General and others to come half way to listen to some of the criticisms that have been made about the rushed introduction of the South Australian certificate. The Minister has indicated that the Minister of Education has written to SSABSA in appropriate tones. Of course, he has not directed SSABSA as he would not wish to do so, and as I would not wish him to do so. However, he has put a point of view. The Minister has also indicated that the Director-General of Education has put a similar position to SSABSA.

Yesterday, I spoke to the High School Principals Association, and its President indicated that, as of yesterday, the

transitional model that is being discussed now is indeed one that the high school principals, as key players obviously in the introduction of any new South Australian certificate, have been pushing for a little time, and we are prepared to support it. Today, I was contacted by Catholic education, which corrected a position that it put to me or my office yesterday. Its position is that it, too, supports this transitional position. The Independent Schools Board would be closer to perhaps supporting the sort of proposition that the Hon. Mr Elliott moved, although it did see the problems in relation to the disallowance of that regulation, and the dilemma in which that might place SSABSA. Certainly, I guess its ideal position is very close to the ideal position I would support, that is, for a 12 month delay in the introduction. Nevertheless, given the option of continuing, as we might have done a week ago, and the position that is now being outlined, it chooses the position that the Minister and the Government are now outlining.

The key players—the Minister, the Director-General of Education, high school principals, Catholic education and the independent schools board—all have varying degrees of preparedness to support the position. I am not sure whether the Hon. Mr Elliott has had recent contact with either David Tonkin or Phil Endersby of the South Australian Institute of Teachers, but I must say that, in the most recent discussion I had with them, they seemed attracted to the Hon. Mr Elliott's amendment. However, I did not gain a final position from them, and I am not sure whether the Hon. Mr Elliott is in a position to inform the Committee of what SAIT's final position was on his amendment.

On balance, in relation to those options, I hope that we cannot, and would not wish to, force a position on SSABSA for the sort of transitional option that is being considered. I add my Party's and my personal support for what the Government has indicated via the Minister to the board. I hope the SSABSA board will listen to it and consider it seriously, and will look very seriously at the transitional operation. I am heartened to hear that one of the options that might be considered by SSABSA would be trialling of some subjects in 1992. In particular, in relation to any new subject such as Australian Studies, it is impossible, no matter how good one is, to come up with the perfect subject first go. There will always be criticism of anything that is new. I think it is sensible planning.

If it is possible to trial a new subject in schools, weed out the bugs and have it up and going, flying full steam ahead in 1993, I am pleased to hear that that will at least be one of the options that the Minister will consider. I have expressed concerns before in relation to Australian Studies; the Director and I have been doing a duet on various radio stations over the past 48 hours about that. However, it is related to my concern about the mathematics component of year 11, which remains a concern of mine and many within maths, engineering and science faculties.

For all those reasons, I indicate that we will not support the amendment of the Hon. Mr Elliott, although we understand and support his reasons to seek to do something. We place on the record our support for the compromise position that the Minister has indicated that the Government will undertake, together with SSABSA, for the introduction of the South Australian Certificate of Education.

The Hon. M.J. ELLIOTT: In relation to one of the concerns of the Hon. Mr Lucas, I believe that, if his concern was the method by which regulations are disallowed, it would mean that, potentially, some troublemaker in either House of Parliament could delay the legislation forever and cause great uncertainty. Of course, the amendment could have been further amended such that it would have to be disallowed within a fixed number of sitting days. I suspect that, regardless of that, for other reasons the Hon. Mr Lucas would oppose it. Although he quoted that as being one of the reasons, I do not think it is the major reason—and I note that he is nodding his head in agreement to that.

Quite clearly, the numbers are not here in support of the amendment. The point at issue has been made quite clearly by the Opposition, by the Democrats, and certainly a number of bodies out in the real world have also made those observations. I hope that SSABSA does take it on board. In the long run, for the good of the teachers who have to prepare and implement those courses, and for the good of the students, proper time needs to be taken. Although I will not be calling for a division, I hope that the point has been made.

New clause negatived.

Schedule and title passed.

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

That this Bill be now read a third time.

I should like to take this opportunity to correct a statement which was made in the Committee stage last Thursday when the Leader of the Opposition was talking about bonus points. He asked for the scale of bonus points, and I have been informed that the information that I gave was not correct. In order to keep the record straight. I should like to read into *Hansard*—

The Hon. R.I. Lucas interjecting:

The Hon. ANNE LEVY: I do not want to be accused of misleading Parliament. That is why I want to correct the matter.

A bonus of five points is for a score of 20; a bonus of four points is for a score between 17 and 19; a bonus of three points is for a score of 14 to 16; a bonus of two points is for a score of 11 to 13; and a bonus of one point is for a score of 10. A score anywhere between nought and nine does not receive any bonus marks.

The Hon. R.I. LUCAS (Leader of the Opposition): In a spirit of brevity and not wishing to delay the Corporations Bill, which I understand will be under way shortly, I indicate the preparedness of the Opposition to support the new South Australian certificate.

I want to place on record one recent lobby that was lobbed on my desk in the past 24 hours and I leave it with the Minister and with SSABSA. It is a plea from people associated with language education in South Australia. They have put a strong view to the Liberal Party and the Government about the fact that there is no-one with a language background on SSABSA. They would like the Government, SSABSA and all constituent bodies, in their nominations for new people to SSABSA, to bear in mind the fact that language education is and should be an important part of what goes on in the senior secondary years. Will they at least take on board that lobby from language educators and consider having someone with a background in language education on SSABSA?

Bill read a third time and passed.

MOTOR VEHICLES ACT AMENDMENT BILL (No. 3)

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

CORRECTIONAL SERVICES ACT AMENDMENT BILL (No. 2)

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

LOCAL GOVERNMENT ACT AMENDMENT BILL

Returned from the House of Assembly with the following amendments:

No. 1. Clause 4, page 2, line 15—After 'entered' insert 'in accordance with principles (if any) prescribed by the regulations,'.

No. 2. Line 17—Leave out paragraph *(a)*.

No. 3. Line 18—Leave out 'details of'.

No. 4. After line 33—Insert new subsection as follows:

(5) A Chief Executive Officer is not required to include in a Register of Allowances under this section details of any reimbursement of expenses of a prescribed kind incurred by a member in performing official duties.

No. 5. Clause 5, page 2, lines 38 to 44—Leave out all words in these lines after 'entered' in line 38 and insert new words as follows:

, in accordance with principles (if any) prescribed by the regulations—

(a) the title of each position held by an officer or employee of the council;

(b) in relation to those positions held by officers or employees who are paid according to salary scales set out in an award or industrial agreement under the Industrial Conciliation and Arbitration Act 1972 or the Industrial Relations Act 1988 of the Commonwealth—

(i) the classifications of the officers or employees who hold those positions;

(ii) the salary scales applicable to each classification (indicating in relation to each scale the number of officers or employees who are paid according to that scale);

and

(iii) details of any other allowance or benefit paid or payable to, or provided for the benefit of, any of those officers or employees as part of a salary package;

(c) in relation to each position held by an officer or employee who is not paid according to a salary scale set out in an award or industrial agreement referred to above—

(i) the salary or wage payable to the officer or employee who holds that position;

and

(ii) details of any other allowance or benefit paid or payable to, or provided for the benefit of, that officer or employee as part of a salary package.

No. 6. Page 3, line 1—Leave out 'an appropriate' and insert 'a'.

No. 7. After line 7—Insert new words as follows:

'(insofar as may be necessary or appropriate in the circumstances of the particular case)'.

No. 8. After line 12—Insert new subsection as follows:

(5) A Chief Executive Officer is not required to include in a Register of Salaries under this section details of any reimbursement of expenses incurred by an officer or employee in performing official duties unless that reimbursement occurs by way of the periodical payment of a lump sum that is not calculated so as to provide exact reimbursement of expenses incurred by an officer or employee in performing official duties.

No. 9. New clause, page 6, after line 4—Insert new clause as follows:

Minimum amount payable by way of rates.

16a. Section 190 of the principal Act is amended—

(a) by striking out from subsection (3) '1991/1992' and substituting '1992/1993';

and

(b) by striking out from subsection (3) '35 per cent' and substituting '50 per cent'.

No. 10. Clause 26, page 8, line 20—Leave out '21' and insert '60'.

Consideration in Committee.

Amendments Nos 1 to 8:

The Hon. ANNE LEVY: I move:

That the House of Assembly's amendments Nos 1 to 8 be agreed to.

They relate to the amendments which were inserted by the Legislative Council in the Government's Bill relating to the register to be maintained by the Chief Executive Officer of any council relating to allowances and benefits paid to members and to salaries and benefits paid to members of staff. The amendments in no way alter the principle. They have been moved and accepted by the other place to simplify the administrative work of councils, so that the type of records which they need to put forward will contain all the essential elements but it will be administratively much simpler for them.

The Hon. R.I. Lucas: Are you saying that they are consequential on the amendments we moved?

The Hon. ANNE LEVY: They are amendments to the amendments which you moved which in no way alter the principle of them. For instance, they are saying that, when it comes to staff, rather than have a separate sheet of paper giving the name and salary of each staff member—some councils have large numbers of staff—the council can instead make available a sheet in which it writes, 'We have three health inspectors and under the award health inspectors receive a salary of $X', without specifying the names of the health inspectors. If their health inspectors received any over-award payments that, of course, would have to be indicated.

The Hon. Diana Laidlaw: As individuals, in their names?

The Hon. ANNE LEVY: Yes. This amendment has been moved to simplify the record keeping for councils: still to provide the same basic information—there is no dilution of the principle—but it will also mean that the names of the most junior staff members in the council do not have to be sort of blazened to all and sundry, that anyone can find out, for example, that the council has three typists and the typists earn so much, without necessarily having to know the names and addresses of each typist. It would seem to me that this fulfils all the requirements which were included in the amendments moved in this Council, also making it much simpler for councils to keep these records.

The reference 'principles, if any, prescribed by the regulations', is there so that, if there are any concerns at a later stage, regulations can set out, for instance, whether the salary indicated is to be the yearly salary or the monthly salary or the weekly salary. Obviously, these matters are going to have to be uniform, if they are to mean anything across councils, but rather than decide now in just what form the salary should be indicated, we have put in the first amendment, that regulations can prescribe matters such as that, to clear up any possible ambiguities.

Amendment No. 8 clearly states that 'the register of salaries need not include reimbursement of expenses' if in fact the reimbursement is of actual expenses which have been incurred in undertaking duties. However, on the other hand, it would have to include reimbursement of expenses if a lump sum was taken for expenses without it necessarily being exactly what were the expenses incurred.

The Hon. R.J. Ritson: Allowances as distinct from expenses.

The Hon. ANNE LEVY: Allowances would certainly be indicated, but this is reimbursement of expenses legitimately undertaken in the course of their duties. An amendment such as this will certainly reduce the paperwork which councils will have to undertake without in any way minimising or weakening the principle of the amendment, that the details of the emoluments and benefits should be available to ratepayers so that they are aware of where ratepayers' money is being spent. These amendments to the original amendments passed by the Council, while in no way dimin-

ishing the principle, will ease the administrative burden on councils in adhering to providing the information requested.

The Hon. DIANA LAIDLAW: In relation to that last matter, I appreciate the Minister's explanation, that it is not necessary for the register of allowances to detail any reimbursement of expenses by a member in performing official duties, but I wonder why the words 'of a prescribed kind incurred' have been incorporated before the words 'by a member in performing official duties'. The explanation provided by the Minister seemed to be most adequate. I am not sure what is envisaged? What else does the Minister have in mind?

The Hon. ANNE LEVY: In this regard I was really speaking to amendment No. 8 rather than amendment No. 4. Amendment No. 8 refers to reimbursement of expenses by staff, while amendment No. 4 relates to reimbursement of expenses by elected members. This is because there are reimbursements possible which are set out in the Act now. There are rights already in the Local Government Act for reimbursement of certain expenses to elected members. This provision will avoid repeating that, when it is freely available information, which has to be passed by council, anyway, and the amounts are controlled by the Local Government Act for particular functions, like a meal allowance. If the council meets, breaks for a meal and then continues, it is set out in the Act that a meal allowance can be paid. It would seem unnecessary that every time that occurred the CEO had to amend the register for every member of council.

Motion carried.

Amendment No. 9:

The Hon. ANNE LEVY: I move:

That the House of Assembly's amendment No. 9 be disagreed to.

This amendment was moved in this place and was defeated here. That same amendment was moved in another place and accepted. Without wishing to reiterate all the arguments that we had previously, I maintain that the Council rejected the amendment previously and I think we should continue so to do.

The Hon. J.C. IRWIN: The Opposition does not support the motion moved by the Minister. Likewise, I will not canvass all the arguments again, except to say that everyone in here knows that there is very strong support from local government to set in the first instance their own level of minimum rates without having any percentage dictated to them by another form of Government. If one recalls the conference when a Local Government Act Amendment Bill went through with this in it—and I do not know whether that was last year or the year before—the conference was then dealing very closely with this particular matter, but hanging over its head was the prospect of the Bill being lost, and one can remember the bidding as it went down from 80 per cent through the 50s down through the 40s to 35. I cannot remember the limit that we actually came down to for the purpose of compromise, but at no stage did we come down below 50 per cent. The Opposition is going to stick to that 50 per cent in the debate on this motion now. The Opposition does not support the motion.

Motion carried.

Amendment No. 10:

The Hon. ANNE LEVY: I move:

That the House of Assembly's amendment No. 10 be disagreed to.

This amendment relates to the expiation fees for parking. The Bill as introduced into this Council gave 21 days for someone receiving a parking ticket to expiate it by payment of the appropriate fee, without any penalty whatsoever—other than payment of the expiation fee. The House of Assembly has changed the 21 days to 60 days. I know that that period is strongly opposed by local government bodies. They do not wish these matters to be hanging around for that length of time, particularly as once that time has expired if the parking ticket has not been expiated, they would then have to undertake a search to find the owner of the car and send a notice to the owner saying that if he or she were not in charge of the vehicle at the time, could he or she provide a statutory declaration to indicate who was.

There would be a three week time frame on this, following which, if they received a letter from the owner saying that a particular individual was the driver, they would need to send the notice to that nominated driver and again wait a certain time for that driver to pay the expiation fee and then eventually—months down the track, if necessary—they would start taking court proceedings. Local government certainly does not like this whole process being drawn out for months and months. It does not want an initial time for payment of an expiation fee, without any additional penalty, to be extended beyond the 21 days originally in the Bill. I ask honourable members to reject the amendment No. 10 from the other place.

The Hon. J.C. IRWIN: The Opposition does not support the rejection of the amendment No. 10.

Motion carried.

The following reason for disagreement to amendments Nos 9 and 10 was adopted:

Because the amendments are against the original intention of the Bill.

ADELAIDE CHILDREN'S HOSPITAL AND QUEEN VICTORIA HOSPITAL (TESTAMENTARY DISPOSITIONS) BILL

Returned from the House of Assembly without amendment.

CORPORATIONS (SOUTH AUSTRALIA) BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 2546.)

The Hon. C.J. SUMNER (Attorney-General): I will briefly reply to some of the questions raised by honourable members and deal with others in Committee. The first matter dealt with the situation concerning such inquiries as the Royal Commission into Tricontinental in Victoria. The current examination powers of a special investigator mean that any information obtained during the course of such an examination can be used in subsequent prosecutions. In fact, there is no right to refuse to answer on the grounds of self-incrimination. The Corporations Act removes the special investigation powers, but these powers have been given, as such, to the ASC.

However, there is a restriction in the new powers given to the ASC in that someone being examined can refuse to answer on the grounds of self-incrimination. So, in that sense, the examination powers under the new legislation are weaker than under the old legislation. In any future inquiries, where those powers are being exercised, people being examined will be able to refuse to answer on the grounds of self-incrimination.

The second matter dealt with the South Australian Brewing Company takeover. The Hon. Mr Griffin quoted Mr Frith in the *Australian*. What the honourable member said was basically correct. For a rights issue under the old leg-

islation, a prospectus was not needed, but, under the new legislation for a rights issue such as that being used by South Australian Brewing, a prospectus will be needed. However, under section 108 (3) of the Corporations Act when passed the power of exemption exists in the ASC, so that South Australian Brewing could apply to the ASC for an exemption from the new requirements to issue a prospectus for its rights issue.

As we are in the transitional period, I feel that the Chairman of the ASC would probably view that sympathetically. In any event, it may be that the South Australian Brewing Company situation will not be caught by the changeover, but that is a matter on which they will have to seek their own legal advice. It is possible that an offer could already have been made, but I am not aware of the full details of the stage that that matter has reached.

As to the question of highly skilled investigators, a final offer has not yet been made to staff in the South Australian Corporate Affairs Commission to transfer to the ASC, but it is probable that those investigators at the top level will lose about $3 000 per annum in the changeover from the Corporate Affairs Commission to the ASC. However, that is offset by the fact that there is salary maintenance guaranteed by the Commonwealth for four years. Presumably in that four year time span there will be considerable movement, which may allow the investigators to make up any actual loss.

It is also true that the South Australian Government is giving investigators. or staff that transfer to the ASC the option of coming back to the State service within a period of two years. To overcome any deficiency in skilled investigators, Mr Hartnell is establishing a permanent training school for investigators, which should assist to increase the professionalism of the ASC by training new employees in investigation techniques. The Federal Director of Public Prosecutions has embarked upon an advertising program for new staff to ensure that as far as possible it is ready to meet the new responsibilities after the changeover.

The question was raised relating to the South Australian police currently employed in the Corporate Affairs Commission. As I understand it, in the changeover period, the Australian Federal Police and those SAPOL officers will cooperate and SAPOL officers will be available to continue work on ongoing matters. In other words, there will be a phase-out period, and then the South Australian police officers will return to the local Fraud Squad.

As to the information that will be available under the new system, all information that the public or lawyers will want or require on any company will be available from the Adelaide business offices of the ASC which will open on 2 January. I think it will be situated on the fourth floor of the MLC Building in Pirie Street. The State business office will also be established there, so it will be one-stop shopping, although the ASC office will obviously be run by the ASC and the State business office by the new division of the Attorney-General's Department.

Microfiche will be available. In fact, the South Australian Government will charge the ASC for storage and search of microfiche. Computer print-outs of most commonly used company information will be available. Post-1 January 1991 documents will all be held in the Latrobe Valley facility, but will be available in South Australia on a document image system. So, practitioners and others will be able to obtain hard copies from the ASC business office in Adelaide.

As to the level of service to be maintained by the ASC, the heads of agreement and subsequent negotiations contain a specific undertaking by the Commonwealth to maintain the pre-existing level of service in the new ASC office in the respective capital cities, including Adelaide.

The Hon. I. Gilfillan: That's a bit like AN to me.

The Hon. C.J. SUMNER: Well, that may be. That is in the agreement and was a matter of major concern to the smaller States, particularly Western Australia, Queensland and South Australia. In the negotiations for the agreement we insisted that the level of services be maintained. In fact, the ASC in South Australia has already agreed and is in the process of employing more investigators than existed in the Corporate Affairs Commission, although the number that it is adding to the South Australian ASC office is the number that had already been agreed by South Australia but not actually implemented. As I understand it, it is maintaining the level of investigation at that which would have been the case had the Corporate Affairs Commission in South Australia remained in existence.

What the Hon. Mr Griffin has said about the courts is basically correct. Of course, it will be up to the South Australian professional community with respect to the courts—lawyers principally but, obviously in this general area, accountants as well—to compete and to offer a service which means that clients may well want to come here to use the courts. Under this legislation it will be possible to issue proceedings anywhere in Australia. There is provision for cross-vesting and for transfer of proceedings from one State to another and from one State Court to a Federal Court. Obviously, at the present time, the Federal Court in South Australia has a considerable amount of expertise in commercial matters because of the personnel who currently make up that court, namely Justice Von Doussa and Justice O'Loughlin.

With the appointment of Justice Debelle to the Supreme Court, the level of expertise in that court in commercial matters has at least been maintained given that that was an area in which Justice Jacobs, who just retired and was replaced by Justice Debelle, had some expertise. So, depending on the circumstances, it may be that proceedings will be issued in South Australia because it might be felt that the judges here have expertise, that the trial lists are shorter in South Australia, or for other reasons. It seems to me that it will be a matter for the local professional community to offer a service which is competitive with that offered in other States. I think that answers the specific questions raised by the Hon. Mr Griffin. Any further questions can be dealt with in the Committee stage. However, I should say that none of the amendments are acceptable to the Government, and I will deal with those again in the Committee stage.

Certainly the first category of amendments, clauses 67 and 68, will be strongly opposed by the Government. In fact, if those amendments are passed, it will completely foul up the arrangements to be entered into for the ASC to run South Australia's business names register, which is to be part of a nationwide business names register and is fairly essential for the operation of this scheme. If you are to have a system whereby names are reserved, unless there is to be open slather with passing-off actions, there must be throughout Australia a national business names register so that those wanting to register companies on a national basis will know not only what company names but also what business names are already taken.

I can see absolutely no merit whatsoever in sunsetting this piece of legislation. That would give the wrong signals to use modern jargon, to everyone. The fact is that we now have, for better or worse, embarked on this particular course of action and we need to ensure that, as far as Australia is concerned (and this is what we have to be concerned about),

we get this set and certain, and the uncertainty that will be created by a sunset clause is totally unacceptable. Whatever people say about it, whatever the historical reason for it (and I do not blame the cooperative scheme as the Federal Government has tended to do for the problems of corporate collapses and the fact that the people involved have not been pursued; but that is the perception and view put by the Federal Government), the plain and simple fact is that, at the present time, Australia's reputation overseas is dreadful—full stop. There is no argument about that. Unless we clean it up, unless we get a decent and firm course of action—no shilly-shallying around and no uncertainties because of sunset clauses—in my view that reputation which is dreadful will have the potential to continue.

During one of the various negotiating sessions that we had on this legislation in New South Wales we were spoken to by the Premier (Mr Greiner) who, as members know, is a Liberal Premier, and he emphasised what I have just said. He emphasised the importance of getting this situation corrected as soon as possible and getting Australia back on track as far as corporate regulation is concerned. I am not going into the history of the reasons why we have reached this point. To some extent, I agree with what the Hon. Mr Griffin said about the history of it. The history has been rewritten by the victors, which is a common occurrence I suppose. The Federal Government has rewritten history by claiming that the cooperative scheme was responsible for the fact that there were the company collapses in the late 1980s and that they were not pursued with diligence. In fact, the initial thrust for a national scheme—that is, a Commonwealth takeover—came from the Commonwealth because it did not like the interventionist style of the National Companies and Securities Commission under Henry Bosch. It felt there was too much interference and too much regulation. So, the thrust for the Commonwealth takeover in fact had a deregulatory rationale to it when it was first proposed because the fact was that the Federal Government did not like Henry Bosch and his style and the NCSC.

However, when the company collapses occurred, as I said, history was rewritten by the victors and they have used the company collapses and the so-called lack of regulation to justify a Commonwealth takeover and stronger regulation. I accept, not completely to that extent, that that is something of what the Hon. Mr Griffin was saying. What I have been able to add is from the fact that I was involved in the discussions right from the beginning. I repeat: whatever the history, whether or not it has been rewritten, we are now in a situation where, for Australia's sake, we just have to fix this up and fix it up quickly. I do not therefore believe that putting in a sunset clause will do anything to enhance certainty in this area, and I therefore oppose the amendment.

Bill read a second time.

In Committee.

Clause 1—'Short title and purposes.'

The Hon. K.T. GRIFFIN: This is probably the appropriate clause in which to deal with a number of general matters and also to ask some detailed questions on the heads of agreement; there is probably no better place to do it. The Attorney-General indicated by way of interjection during the second reading debate that the formal agreement has not even been drafted yet. Can he indicate whether the heads of agreement have now been agreed by all parties? If they have, when is the formal agreement likely to be completed and executed? If the heads of agreement have not yet been agreed, can he indicate what is the hold up and when it is likely to be resolved?

The Hon. C.J. SUMNER: The heads of agreement were substantially arrived at in Alice Springs at the end of June. However, clause 1.4 was subject to some further negotiation and was agreed to in Sydney in November. There were still some reservations from New South Wales and Victoria, but I assume that they have now agreed with the heads of agreement because the legislation has passed the Parliaments of those States. So, I can say that, although I have not been formally notified, there is full State and Federal agreement to the heads of agreement.

The heads of agreement were the basis for proceeding. It was always envisaged that there would be a formal agreement similar to the formal agreement that governs the present cooperative scheme. Because of the attention that had to be given to the drafting of the legislation to meet the parliamentary timetable and the start-up date of 1 January, the formal agreement has not yet been drafted, but is being drafted, and it will incorporate the heads of agreement as agreed to in Alice Springs and subsequently clarified. That formal agreement, when drafted, will be attached to a Bill to be introduced into the Federal Parliament next year.

The Hon. K.T. GRIFFIN: I presume that that will also need to be ratified through State legislation?

The Hon. C.J. SUMNER: No, it will not need to be. There is no intention to bring that agreement back to the respective Parliaments. The passage of this legislation will give the legislative *imprimatur* to the new scheme, and the formal agreement will be an intergovernmental agreement approved by the Federal Parliament.

The Hon. K.T. GRIFFIN: But not necessarily approved by the State Parliaments. I have not had time to check what happened to the formal agreement for the cooperative scheme. I just have a recollection that it was introduced for ratification in each State Parliament as well as in the Commonwealth Parliament. It seems to me to be a bit strange just to put it into the Commonwealth Parliament.

The Hon. C.J. Sumner: It is in the schedule of the NCSC Act. State provisions of the Act apply to the NCSC Act.

The Hon. K.T. GRIFFIN: Presumably that will be the scheme then for approval of this one?

The Hon. C.J. SUMNER: That has not been decided. Of course, that is what we are now doing, in effect, in the State application of laws legislation. Effectively, that is what this is. Of course, we are doing it without having the formal agreement attached to the Federal Corporations Act. So, the precise way in which the formal agreement will be dealt with has not been determined. However, my recollection is that a formal agreement will certainly be drafted, and it will be similar to the current formal agreement and will be attached—I am fairly sure that agreement was reached—as a schedule to a Federal Act.

The Hon. K.T. GRIFFIN: I would like to spend a bit of time working through the heads of agreement. I was given a copy of it on a confidential basis. I do not know whether or not anyone else other than the Minister has received a copy. I think those who have not seen it will have to bear with me as I raise issues on particular clauses.

The Hon. I. GILFILLAN: Why is this heads of agreement a confidential document?

The Hon. C.J. SUMNER: It is not confidential anymore. However, it was confidential because, as I said, until a reasonably short time ago the negotiations in relation to it were still proceeding.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: Yes, they are complete; it is not confidential anymore. I suppose I can get Mr Griffin to photocopy it. You were offered a full briefing on this Bill.

The Hon. I. Gilfillan: When—5.30 in the morning or something. When in the hell did you think we could fit it in?

The Hon. C.J. SUMNER: You have been offered briefings on this matter for weeks. That really is totally unfair. The Democrats have been offered a briefing on this legislation for ages, and to suggest they have not been is wrong.

The Hon. I. Gilfillan: I didn't say we hadn't been.

The Hon. C.J. SUMNER: No. The Corporate Affairs Commission has been available to give briefings on this Bill.

The Hon. I. Gilfillan interjecting:

The Hon. C.J. SUMNER: However, if the honourable member wants a copy of the heads of agreement, I suggest we have it photocopied, and we can then get on with some other questions.

The Hon. K.T. GRIFFIN: In the heads of agreement there is a reference to the office of the Commissioner of the Australian Securities Commission being in Sydney until, I think, the middle of 1993 and the Deputy Commissioner in Melbourne until the same date. Has there been any discussion about where ultimately the office will be, or is it intended that, notwithstanding those dates, it will be an indefinite location for both the Chairman and the Deputy Chairman?

The Hon. C.J. SUMNER: There is an office of the chairman in both the Sydney and Melbourne offices. I imagine that where the chairman will be located will depend on who the chairman is. At the moment, it is a Sydney person, so he chooses to have his office in Sydney. If, after his term expires and a new appointment is made and that person would prefer to live in Melbourne, the chairman would operate out of the Melbourne office. As I understand it, they are both titled offices of the chairman, in both Sydney and Melbourne.

The Hon. K.T. Griffin: Is that to be distinguished from the office of the Australian Securities Commission and, if it is, where is that principal office?

The Hon. C.J. SUMNER: As I have said, there is an office of the chairman in Sydney and Melbourne. That will include the office of the chairman, the deputy chair and the so-called member companies. At present the office of chairman is in Sydney, the member responsibility for companies is in Sydney, and the deputy chair is in Melbourne. Theoretically, it is possible that all three could end up either in Sydney or Melbourne. I would think that, given the politics of the situation, it would be likely that at least one of those people would be in either Sydney or Melbourne at any particular time. In addition, there are regional offices in each of the States, the Northern Territory and the ACT, which, even in Sydney and Melbourne, are separate offices from the office of the chairman.

The Hon. K.T. Griffin: Is there a formal head office of the ASC?

The Hon. C.J. SUMNER: I suppose there are two: there is the head office of the chairman in Melbourne and Sydney, I have outlined the membership but it could change, of course, when term of office of the current incumbents expires.

The Hon. K.T. GRIFFIN: As I work through the agreement many questions that might ordinarily be raised in specific clauses of the Bill could probably be covered by the questions I raise on the agreement, so I do not plan to duplicate the two. This is the first opportunity I have had to raise questions, and I do not want to miss it or let it pass lightly. In relation to clause 1.4, which was still being negotiated until some time in November, I take it that the arrangement now is that the Commonwealth will not seek to regulate, through the corporations law or any subsequent amendments to it, building societies, cooperatives, friendly societies, strata corporations, and other State-based bodies corporate.

The Hon. C.J. SUMNER: The current position is that the *status quo*, that is, the situation, whatever it was, that applied under the cooperative scheme will continue to apply for the time being under this new scheme. However, the extent to which the corporations pact will cover the institutions, as the honourable member has mentioned, will be discussed and considered further. However, we were unable to agree at the last meeting on what application the Corporations Act should have to those non-bank financial institutions in the States. So, in order to get this matter progressed, it was agreed that, whatever the law is at present, it would apply after 1 January 1991, but that the whole issue would be further discussed in the new year.

The Hon. K.T. GRIFFIN: Does that mean then that it is possible even if there is not an agreement of all States and the Northern Territory that a majority of the ministerial council can approve amendments to the corporations law and effectively override the wishes of any State or the Territory with respect to those institutions by amending the corporations law?

The Hon. C.J. SUMNER: The Commonwealth could legislate unilaterally to cover certain activities of these organisations; for instance, fundraising and securities because they are areas where the Commonwealth Parliament will have exclusive legislative jurisdiction under the agreement that has been entered into. I should say that, at the recent Premiers' Conference, there was no agreement that the Commonwealth wanted to take over the whole of the administration of the non-bank institutions. I should also say that I believe personally that it would be better if it did, because the cat is out of the bag in this area at the moment, and whether it is a building society, a credit union or whatever it ought now to be regulated nationally with uniform prudential controls, and I would prefer to see it administered nationally. Then let all the financial institutions compete around Australia on a level playing field administered by one regulatory authority. However, I should say that that view is not accepted by the States. In fact, it is not even accepted by my Government. But it is clearly what should happen, and it is clearly what will happen one day.

There is no doubt in my mind that it will happen. It is one of those inevitabilities that I think will come about. We are a nation and we have to see ourselves more as a nation, particularly in the area of financial regulation. The notion that we should have different State laws administering different sorts of corporations is crazy in my view, and it is time that we got off that track. Anyhow, whatever my views are at present, they are not relevant.

The agreement at the special Premiers Conference was that the regulation of non-bank financial institutions would remain with the States, but that a Commonwealth-State working party would be established to look at uniform prudential controls and a system of national liquidity support. But the Commonwealth made clear in Brisbane at the Premiers' Conference that it did not want the responsibility of administering or regulating those non-bank financial institutions.

In so far as the Corporations Act will apply to them after 1 January, it will presumably be only in those areas which can properly be regulated by the Corporations Act, such as fund-raising by these institutions, and so on, or obviously, if they are involved in dealing with securities, that could be regulated by the Corporations Act. Part of the problem was that there was some doubt about the exact scope of the present law. There were some in the Commonwealth who

were arguing that these non-bank financial institutions should not be completely excluded from the fund-raising provisions, for instance, of the Corporations Act. Other States—I think New South Wales—said that they should be. No agreement could be reached, so we agreed to maintain the *status quo*, with the matter being subject to review in the new year.

The Hon. K.T. GRIFFIN: At the commencement of his remarks, the Attorney-General was focusing on non-bank financial institutions. There is also the related question of associations and bodies such as cooperatives which I do not think can be put into the category of non-bank financial institutions. Does the same position apply in relation to them as to the non-bank financial institutions?

The Hon. C.J. SUMNER: Yes.

The Hon. K.T. GRIFFIN: I want to focus on clause 3.3 of the heads of agreement. This relates to the level of service to be maintained in the regional offices and business centres. I presume that Adelaide will have the regional office and business centre operating together, but the Attorney might care to say whether or not that is correct.

The Hon. C.J. SUMNER: Yes, that is correct.

The Hon. K.T. GRIFFIN: In his reply at the second reading stage the Attorney-General said that more investigators are being engaged now than the Corporate Affairs Commission had, although it was at the same level as the Corporate Affairs Commission was proposed to be staffed by investigators. Can the Attorney-General indicate whether the same applies in relation to counter staff, registry staff and others performing the non-investigative functions of the ASC regional office?

The Hon. C.J. SUMNER: I am advised that the counter staff are basically the same; there are fewer registration staff because of the facility in the Latrobe Valley; corporate analysts are basically the same; and there are more support staff than previously. Obviously, when we talk about the level of service, it does not mean that exactly the same configuration of staff will apply under the ASC as applied under the Corporate Affairs Commission, because of new technology, computerisation and the like. The undertaking, as clause 3.3 provides, is that the level of service will be not less than current levels of service. That does not mean staff; it means levels of service.

The Hon. K.T. GRIFFIN: Clause 3.4 of the heads of agreement relates to the ASC putting in place performance indicators to ensure the maintenance of those levels of service with a view to reporting twice yearly to each State Minister on the performance of the ASC.

Clause 3.12 provides that the ASC will consult the representatives of the business community prior to 1 January 1991 to settle performance indicators. Can the Attorney-General give any indication as to the nature of those performance indicators, whether there have been consultations by the ASC with the business community in South Australia, whether the requirement to consult the business community extends to the professional community and whether the State Government has been consulted about those performance indicators?

The Hon. C.J. SUMNER: The Corporate Affairs Commissioner advises me that he has informed the ASC of the performance indicators which have operated within the Corporate Affairs Commission to date; that is, how long it takes to register a company or to issue a prospectus, but I suppose that is not relevant now. They are the sorts of things that the Corporate Affairs Commission has established as its own performance indicators—time limits for doing various things. The ASC has been advised of those. I am advised by the Corporate Affairs Commissioner that the ASC believes that it can meet those performance indicators after 1 January. However, there has been no consultation to date under clause 3.12, at least as far as the Corporate Affairs Commissioner, Mr Grieve, is aware. I will undertake to write to the ASC or to contact it in some form to point out that this should take place before 1 January. I think it was always envisaged that, where it referred to representatives of the business community, that would include the professional community as well. Certainly the liaison committee that I had to advise during this whole protracted business included members of the business community as such and representatives of professional organisations such as the Law Society and accountants.

The Hon. I. GILFILLAN: There is a question that I feel it may be appropriate to raise now. With the eastern States, New South Wales and Victoria being the ones where the ASC will have its office, chairman and deputy chairman, does the Attorney-General see any advantage to the corporate communities in those two cities because of lower costs? I know, having flipped through this earlier, that there will be a State free on-line access to the State offices, but in my mind there is a suspicion that remote States will bear an extra cost unless some equalisation or compensation factor is applied.

The Hon. C.J. SUMNER: The theory is that there will be a set schedule of fees applicable and that that will be a uniform set all around Australia. I cannot answer the honourable member's question any more than that. Whether one is in Broome or Collins Street, the cost of your access to the data base, information about companies, etc., should be the same.

The Hon. K.T. Griffin: The land line will cost you more.

The Hon. C.J. SUMNER: No, it will not cost you more. It will cost the ASC more, but it will not cost the client more.

The Hon. I. GILFILLAN: I am glad the Attorney made that point. In other words, there will be an equalisation system in place which compensates for the higher on-costs for remote locations in Australia in direct practical terms in telephone and fax?

The Hon. C.J. SUMNER: That is what we have been advised by Mr Hartnell as to how the ASC will operate. They have 008 numbers into the Latrobe Valley facility already. We were assured at the last meeting at which this issue was specifically raised, that there would be facilities available at the same cost no matter where you were in Australia. If you are a lawyer in Western Australia and you want to gain access to hard copies of material, or whatever other information you want about companies, then you will be able to get it in Western Australia at the same cost as you would get it in Melbourne.

The Hon. K.T. GRIFFIN: Clause 3.5 relates to the ASC delegating the exercise of powers to regional commissioners to the fullest extent practicable. Of course, one of the ways by which the local business and professional community can best be served is if there is in place an officer who makes decisions and does not just refer them to head office. Can the Attorney-General indicate whether or not there has been any decision taken by the ASC, of which he is aware, as to the extent of the delegation of the exercise of powers to the South Australian Regional Commissioner?

The Hon. C.J. SUMNER: No.

The Hon. K.T. GRIFFIN: Could I ask that in due course the Attorney might be able to pursue that and let us have a reply if possible?

The Hon. C.J. SUMNER: I will undertake to write to the ASC about that matter.

The Hon. K.T. GRIFFIN: Clause 3.6 deals with regional liaison committees. I could not find in the heads of agreement any formal composition of such a committee. Can the Attorney-General indicate what sort of membership was envisaged and whether it was also envisaged that either through that committee or in some other way the State Minister would have the same level of information provided as regional committees and the same opportunities other than through the Ministerial Council for dealing with the regional commissioner.

The Hon. C.J. SUMNER: The composition of the regional liaison committee would be determined by the regional commissioner, but I imagine that it would be of similar composition to that which we have had operating in South Australia now for a good number of years: in fact, I am advised, since 1981. That committee would not advise the State Minister of Corporate Affairs, although there is no reason why he could not meet with the State Minister from time to time as well, or why the policy officer, whoever that might be and wherever he or she might be located in the State bureaucracy, should not also be involved in those meetings.

A selection for the position of regional commissioner has been made, I can say. I was advised that the announcement would be made this week, but obviously it has not been as yet, although there is a bit more of this week to go. When that appointment is made, undoubtedly he or she will talk to me and I will be happy to talk to them about the composition of the committee. In fact, I am happy to ask the Commissioner for Corporate Affairs, Mr Grieve, to discuss the composition of the regional liaison committee with the new regional commissioner, to raise the questions that it should include business and professional, that there ought to be some means of liaison with the State organisation or the State Minister and the State bureaucracy, the State business office—and any other things the honourable member would like me to raise.

The Hon. K.T. GRIFFIN: It is interesting that the regional commissioner has been appointed. I would suspect that was only in the past few days, and that is yet another reason why it does not appear that the ASC is going to have its act together by 1 January 1991, unless of course there is a hectic crash introduction course undertaken by the regional commissioner to equip that person for the task of taking over on 1 January. That is by way of an aside.

Clause 3.11 deals with a consideration by the Commonwealth of the desirability of appointing part-time members. Can the Attorney-General indicate whether there has yet been any decision on the appointment of part-time members and, if there has, what that decision might be? If there has not, is there any indication that there may be part-time members appointed and in what context?

The Hon. C.J. SUMNER: There is provision to have part-time members but, as I understand the policy of the Federal Government, and probably the policy of ASC as well, it is not to favour part-time members.

The Hon. K.T. GRIFFIN: Clause 4.1 I presume, touches on the matter that the Attorney-General raised in his reply at the second reading stage. Could I get an appreciation from him of what at the moment might be intended by the South Australian Government with respect to the integration of relevant State functions under this clause?

The Hon. C.J. SUMNER: The residual functions regulation of non-bank, financial and other institutions, including business names, will rest with the State and will be incorporated in a division of the Attorney-General's Department, at least for the time being. I cannot recall exactly what the name of the division will be, but it will be something like the Business Affairs Division. The State Business Office, which will be the shopfront for the regulation of those organisations, will be collocated with the ASC business centre at the Pirie Street address that I mentioned.

The Hon. K.T. GRIFFIN: That is collocated rather than integrated, so that at this stage there is no intention to activate clause 4.1?

The Hon. C.J. SUMNER: So far as South Australia is concerned, I took the view that they should not be integrated, because that would only cause difficulties. I am advised that Victoria is the only State that has developed an integrated office. I did not approve of that, because I think one can get confused lines of responsibility. We agreed with the collocation.

The Hon. K.T. GRIFFIN: I support what the Attorney has indicated—that it is inappropriate to integrate State operations with the ASC. The question of collocation is dealt with under clause 4.3. Does it mean that officers of the ASC and the State Business Centre effectively will be side by side but not sharing the same registry or the same public reception area?

The Hon. C.J. SUMNER: Yes. Apparently there is a wall between the two organisations but they are in the same place.

The Hon. K.T. GRIFFIN: The Hon. Mr Gilfillan has already referred to the cost of State access to the ASC national data base. The State is going to bear the equipment cost and the cost of terminals, lines and other equipment. Can the Attorney indicate what will be the cost of that to the State?

The Hon. C.J. SUMNER: There is no substantial cost in that. That provision means that the State, like any other organisation that wants to access the data base, will have to provide its own facility, terminals and lines. Baker, McEwin, Thomson, Finlaysons or whoever wants to access the data base from terminals in their own premises will have to provide them at their cost. Similarly, so will the State, but that is not going to be a major cost.

Progress reported; Committee to sit again.

EVIDENCE ACT AMENDMENT BILL

Returned from the House of Assembly without amendment.

LOCAL GOVERNMENT ACT AMENDMENT BILL

The House of Assembly intimated that it insisted on its amendments Nos 9 and 10 to which the Legislative Council had disagreed.

Consideration in Committee.

The Hon. ANNE LEVY: I move:

That the Legislative Council insist on its disagreement to the House of Assembly's amendments Nos 9 and 10.

Motion carried.

A message was sent to the House of Assembly requesting a conference at which the Legislative Council would be represented by the Hons. I. Gilfillan, J.C. Irwin, Diana Laidlaw, Anne Levy, and R.R. Roberts.

Later:

A message was received from the House of Assembly agreeing to a conference to be held in the House of Assembly conference room at 10 a.m. on Wednesday 12 December.

CORPORATIONS (SOUTH AUSTRALIA) BILL

Adjourned debate in Committee (resumed on motion.)

(Continued from page 2555.)

Clause 1—'Short title and purposes.'

The Hon. K.T. GRIFFIN: Clause 6.1 allows the State Minister to make a request to the relevant Regional Commissioner of the ASC for information not available on the public data base of the ASC. It is a curious provision, because it is the Regional Commissioner who makes the decision, but ultimately a discretion is exercised by the Chairperson of the ASC or the Chairperson's delegate. Can the Attorney-General indicate whether there are any guidelines yet negotiated which relate to access to that information not on the public data base?

The Hon. C.J. SUMNER: No.

The Hon. K.T. GRIFFIN: I put on the record that I think it is rather strange that we have got a State Minister having to go cap in hand to the Regional Commissioner for information, when this is meant to be established by State law, even though it is to be regarded as Federal law.

Clause 8.1 provides that provision will be included in the Corporations Act 1989 and applied State laws prohibiting the incorporation in the Australian Capital Territory under the Corporations Act or in a State under an implied law of a company whose name is identical with a business name recorded on an electronic national register as a currently registered business name. I must say that time has not allowed me to make a very careful assessment of the Corporations Act, but I could not see anything in there or in the State Bill before us which reflected that head of agreement. I wonder if the Attorney is able to identify where it is.

The Hon. C.J. SUMNER: I will have to try to find that.

The Hon. K.T. GRIFFIN: I will leave it on notice. I now progress to clause 12.2. Can the Attorney-General indicate what is meant by the description, 'non SES staff'?

The Hon. C.J. SUMNER: They are staff not in the senior executive of the State service; in other words, that is all non-executive officers.

The Hon. K.T. GRIFFIN: On the question of staff generally, can the Attorney-General indicate when offers are likely to be made to State Corporate Affairs Commission staff here, and is he able to indicate what the current position is in other States in relation to offers to State Corporate Affairs Commission staff?

The Hon. C.J. SUMNER: I understand that offers have been made in Victoria, but to date not in any other State.

The Hon. K.T. GRIFFIN: Is the Attorney-General able to indicate when such offers might be made to the State Corporate Affairs Commission staff, particularly in South Australia?

The Hon. C.J. SUMNER: I do not know precisely, but it was supposed to be this week, and one can only hope that that time table will be met.

The Hon. K.T. GRIFFIN: I must say in passing that one of the concerns I have had about the operation of the ASC is that it just will not have the staff on board by 1 January to undertake the basic functions of the registry. On the other hand, I think it is also grossly unfair on Corporate Affairs Commission staff, who do not know whether or not they will get any offer and what they should do about their own future. I presume from what the Attorney-General said that the State Corporate Affairs Commission staff will be entitled either to remain in the State Public Service located in the business office or in some other part of the Public Service or, if they do transfer to the Commonwealth, they will have a period of two years within which they can make a decision on where they can finally go—State or Commonwealth.

The Hon. C.J. SUMNER: Yes.

The Hon. K.T. GRIFFIN: In relation to staffing, clause 13.3 provides that as a general rule offers will be made in the order in which terms and conditions are agreed with particular jurisdictions. Does the fact that offers have not been made in South Australia suggest that terms and conditions have not yet been agreed?

The Hon. C.J. SUMNER: Yes.

The Hon. K.T. GRIFFIN: I presume that that agreement is between the Government Management and Employment Board and the ASC.

The Hon. C.J. SUMNER: A number of negotiations are going on. As far as the Commonwealth is concerned, the negotiations are with the Department of Industrial Relations, and it has the final decision in relation to these matters. However, local negotiations are being conducted by the PSA, on behalf of employees, and the Corporate Affairs Commission, with and the State Department of Personnel and Industrial Relations. That is the current structure for negotiations.

The Hon. K.T. GRIFFIN: Is the Attorney-General able indicate what is holding back agreement?

The Hon. C.J. SUMNER: No.

The Hon. K.T. GRIFFIN: Is that because the Attorney does not know?

The Hon. C.J. SUMNER: It is because the Commonwealth has not made the necessary offers yet.

The Hon. K.T. GRIFFIN: That is incredible. I do not criticise the Attorney-General for that, but I find it extraordinary, that the Commonwealth, which wants to get this scheme up on 1 January, is really dragging the chain. I think it is quite unreasonable on staff, and it is quite difficult to understand why that is occurring. However, I suppose one should not be surprised at anything the Commonwealth does in this respect if past dealings with it over the staffing for the NCSC are any indication.

I turn to clause 19.2. The Commonwealth and the ASC will consult with the relevant State Minister in relation to the appointment of the Regional Commissioner for the State. Can the Attorney indicate whether there were effective consultations with him in relation to the appointment of the regional commissioner? If the answer is 'yes', can he indicate what form the consultations took?

The Hon. C.J. SUMNER: The responsibility for the appointment of the Regional Commissioner rests with the ASC, and the State Government was consulted. The appointment committee comprised the Chairman of the ASC (Mr Hartnell), the Deputy Chairman (Mr Williams), and the third member, Mr Robinson. In addition, the State Government, was invited to nominate two representatives to that committee. I nominated Mr Grieve, the current Corporate Affairs Commissioner, and Mr Laidlaw, who had been a part-time member of the ASC. I understand that the committee agreed unanimously to the appointment, which I believe will be announced shortly.

The Hon. K.T. GRIFFIN: Clause 20.1 refers to accommodation transfer. Do I take it from what the Attorney-General had to say in his reply that the accommodation in which the ASC will be housed and the State Business Office next door is new accommodation and a new location, and that therefore clause 20.1 no longer applies?

The Hon. C.J. SUMNER: There will still be some phased transfer because all the new accommodation will not be available on 1 January.

The Hon. K.T. GRIFFIN: But I take it that the public registeries will be located there, and their support staff will be in other locations?

The Hon. C.J. SUMNER: There's will be available; ours will not be on 1 January.

The Hon. K.T. GRIFFIN: Clause 21.5 deals with the ministerial council secretariat. It provides that it will remain co-located with the NCSC pending absorption of the function into the Companies and Securities Branch of the Attorney-General's Department on 1 January 1991. Do I take it from that that the ministerial council secretariat will no longer exist as a separate entity and that all the servicing functions of the ministerial council will be undertaken by the Federal Attorney-General's Department?

The Hon. C.J. SUMNER: Yes.

The Hon. K.T. GRIFFIN: Does the Attorney-General see any difficulties with that in view of the fact that the ministerial council, at least technically, has some functions independent of those of the Commonwealth?

The Hon. C.J. SUMNER: Whether or not I see any difficulties is not the point; that is about all we can do.

The Hon. K.T. GRIFFIN: I am not enamoured of that; I think it is one more nail in the coffin of any cooperation that might have been intended as a result of this legislation. I do not need to deal with any aspects of the ministerial council consultations because that is reasonably straightforward, even though I do not agree with it. I presume that it will be set out in detail at some stage in the future, in whatever formal agreement might be drafted.

I now turn to clause 24.3, which deals with the quarantining of funds that are being made available by the Commonwealth to the States. The clause provides that the distribution from the agreed formula will be guaranteed from Grants Commission assessments and that the Grants Commission will be asked to exclude the companies and securities regulation functions being transferred to the Commonwealth from its future assessments and relativities updates. Is it intended that there should be any legislation which affects that quarantining, or will this just be a request to the Grants Commission?

The Hon. C.J. SUMNER: No legislation is anticipated; it will be a request to the Grants Commission.

The Hon. K.T. GRIFFIN: I presume from that that there is no guarantee that the Grants Commission will actually comply with the request.

The Hon. C.J. SUMNER: I suppose that, technically, that is true, but it will be a request supported by all Governments.

The Hon. K.T. GRIFFIN: In clause 24.6 reference is made to ASC staff, both permanent and temporary, seconded to undertake Corporate Affairs Commission work during the transition period being paid for by the relevant Corporate Affairs Commission. Can the Attorney indicate what staff from the ASC may have been seconded to the CAC during the transition period, and can he confirm that the transition period is, in fact, until 1 January 1991?

The Hon. C.J. SUMNER: The transfer period is to 1 January 1991. No staff were seconded to the South Australian Corporate Affairs Commission, although I understand that that did occur in some other States.

The Hon. K.T. GRIFFIN: With respect to the national data base referred to in clause 25, in clause 25.3 the States will make available to the ASC their existing companies data bases. Does that envisage handing it over lock, stock and barrel, or just gaining access to it? If it is a matter of handing over lock, stock and barrel, does that mean that the States will lose any effective control over it in the future?

The Hon. C.J. SUMNER: It involves providing tapes of all the South Australian computer records, and it means that the control of it in future will rest with the ASC.

The Hon. K.T. GRIFFIN: Does the State Corporate Affairs Commission keep copies of the tapes?

The Hon. C.J. SUMNER: Yes.

The Hon. K.T. GRIFFIN: As I understand it, the hard copy documents are to be forwarded from the State Regional Office to the Latrobe Valley Centre and they will, in fact, be copied onto the computer and that will be accessed. If that understanding is correct, what sort of time frame is expected to elapse between lodging the document in South Australia and it being on the computer for access by the public?

The Hon. C.J. SUMNER: Information that is needed immediately will be put on the data base directly from the South Australian business office. Other information will be put on within a similar time frame to that which currently happens under the existing scheme.

The Hon. K.T. GRIFFIN: Would that be a day or two days?

The Hon. C.J. SUMNER: Two days.

The Hon. K.T. GRIFFIN: Clause 27.1 deals with prosecutions under the new national scheme. Clause 28 *(a)* provides that Commonwealth and State prosecuting and police authorities will enter into arrangements in relation to continued involvement of State DPPs and police in matters referred to in paragraph 28 *(a)* (1). That relates to the ongoing conduct of current prosecutions and investigations, and the institution of any new prosecutions and investigations. What arrangements, if any, have been entered into between the Commonwealth and the State of South Australia under that clause?

The Hon. C.J. SUMNER: None at this stage; they are still being discussed.

The Hon. K.T. GRIFFIN: Clause 28.1 refers to the Australian Federal Police being empowered to investigate possible associated breaches of State criminal laws of the kind referred to in section 13 (1) *(b)* of the Australian Securities Commission Act. I may have overlooked it, but where in the State Bill has that empowerment been included?

The Hon. C.J. SUMNER: That will have to be checked. I will take that question on notice.

The Hon. K.T. GRIFFIN: Clause 28 *(a)* (iii) relates to fines imposed and costs and/or reparations recovered under cooperative scheme prosecutions for which the Commonwealth (ASC) has resumed responsibility. It says that that will accrue to the Commonwealth. Is it possible to predict what amount might be involved in relation to South Australia?

The Hon. C.J. SUMNER: No.

The Hon. K.T. GRIFFIN: In relation to an earlier provision of this question of continuing current investigations, I presume from what the Attorney-General said earlier that the special investigation into the Bond group, for example, will continue on foot under the cooperative scheme, or is it to be carried on under the new corporations law?

The Hon. C.J. SUMNER: I am advised that all the other specials, apart from the Bond one, will proceed under the corporations law. The Bond one is in doubt because of the current uncertainty in Western Australia.

The Hon. K.T. GRIFFIN: Could the Attorney-General explain what he means when he says it is uncertain and is in doubt? Does that mean that it may not proceed?

The Hon. C.J. SUMNER: We do not know. Some of the companies being investigated will be incorporated under Western Australian law. Others will be incorporated under this legislation, and I am sure that it is the intention that

investigations into Bond will continue. It further emphasises the total stupidity of the Western Australian Liberal and Country Party in that Legislative Council.

The Hon. K.T. GRIFFIN: Clause 32.1 indicates that the ASC is to take over all CAC public registers of company documents, all files relevant to current CAC operations and other classes of CAC files identified by the ASC. Notwithstanding that takeover, will those public registers continue to be accessible to the public?

The Hon. C.J. SUMNER: Yes.

The Hon. K.T. GRIFFIN: What other classes of files might be taken over? Can the Attorney-General indicate whether there has yet been any agreement as to other files which are CAC files and which may be taken over by the ASC?

The Hon. C.J. SUMNER: As I understand it, they do not want any other files except those which relate to ongoing matters.

The Hon. K.T. GRIFFIN: When are regulations likely to be available for public comment, if at all, and if they are not for public comment, when are the regulations likely to be promulgated, either under the State or Commonwealth Act?

The Hon. C.J. SUMNER: We do not know that.

The Hon. K.T. GRIFFIN: I presume that there will be some regulations under the State Act?

The Hon. C.J. SUMNER: Yes. The State regulations will be made before 1 January.

The Hon. K.T. GRIFFIN: One presumes also that the Commonwealth will get its act together and promulgate its regulations but, I must say that, if they are not given adequate public exposure, it is a recipe for confusion, at least. Is it proposed that there be any special rules of court dealing with the jurisdiction which the State Supreme Court will gain under the corporations law and, if so, is it proposed that they will be promulgated before 1 January or later?

The Hon. C.J. SUMNER: I understand that the Victorian Supreme Court is drafting rules which can be used uniformly throughout Australia, but I cannot say when they will be ready.

The Hon. K.T. GRIFFIN: My recollection is that the South Australian Supreme Court has a commercial division.

The Hon. C.J. Sumner: Not as such.

The Hon. K.T. GRIFFIN: Does the Attorney-General know whether it is intended to establish some sort of commercial division to allow expeditious handling of matters such that there will be appropriate competition with other jurisdictions so that the State Supreme Court is not bypassed in commercial litigation?

The Hon. C.J. SUMNER: This issue is under consideration, but it is not a simple one. There may be some advantages in having a commercial division which would enable expeditious dealing with matters in the South Australian Supreme Court. Of course, the problem is who is to pay for it, and that matter has not been resolved yet. On the one hand, we can have a commercial division and staff it adequately with judicial officers and judges, so that people who want to get their litigation heard can get it heard quickly. However, what is the point of doing that if it will cost the taxpayers of South Australia a large amount of money in order to offer that facility? That dilemma has not been resolved yet, but it is still being examined.

The Hon. K.T. GRIFFIN: My comment in relation to that is that, for years, the land and valuation division has worked reasonably satisfactorily and gives quick access on land and valuation matters. The judges are available to give priority to those sorts of matters but they also sit on other matters.

In respect of commercial matters, I recognise the question of costs to which the Attorney-General has referred, but I would have thought it would be in the interests of the court and of South Australia in particular that there be some mechanism for getting matters dealt with quickly without compromising to a great extent the other activities of the court, so that we could effectively have, as in the land and valuation division, judges who are expert in the commercial area but who are also available to sit on other cases when they are not occupied on commercial matters.

I acknowledge that the Attorney-General said that is being considered. I would have thought that with this new legislation it would be an issue that really does need to be addressed as a matter of some priority, otherwise litigants will go to the Federal Court more and more because its procedures are simpler and one can get on more quickly.

Clause passed.

Clauses 2 to 7 passed.

Clause 8—'Application of Regulations.'

The Hon. K.T. GRIFFIN: As a general comment, I must say that I have had difficulty comprehending some of the drafting of this Bill. That is not a reflection on the State Parliamentary Counsel, who, as I understand it, has been presented with something drafted at Commonwealth level, but in a sense it is drafted in typical Commonwealth style. Clause 8 subclause (2) contains a provision that, where regulations under section 22 of the Corporations Act take effect from a specified day that is earlier than the day when they are notified in the Commonwealth of Australia *Gazette*, they are taken to have always had that effect, as if those regulations had taken effect under the Corporations Act from the specified date. Is the Attorney-General able to indicate the reason for that and the sorts of situations to which that might relate, where some regulations are likely to come into effect even before they are promulgated?

The Hon. C.J. SUMNER: I take that matter on notice.

The Hon. K.T. GRIFFIN: In subclause (3) there is a reference to 'private person'; the rights of a private person are not to be prejudiced by some retrospective operation of a regulation. Subclause (4) defines 'private person' as a 'person other than the Commonwealth, or State or the Capital Territory, or an authority of the Commonwealth, of a State or of the Capital Territory'. Because the Commonwealth Acts Interpretation Act applies, can the Attorney-General indicate whether 'private person' extends to bodies corporate?

The Hon. C.J. SUMNER: We assume so.

Clause passed.

Clauses 9 to 12 passed.

Clause 13—'References to corporations law and corporations regulations.'

The Hon. K.T. GRIFFIN: I presume that clause 13 is in the Bill to try to avoid any constitutional challenge, but it is a clause with which I have difficulty. I will not oppose it, but I have difficulty with it because what it seeks to do is to change the way in which a State law is treated and to set out an object that the whole scheme is to constitute a single national corporations law applying of its own force throughout Australia. I think that that is just a device to get around the problem of no reference of power under the Constitution.

I suggest that, ultimately, that might be the source of challenge to the validity of this scheme when something is being presumed to be something it is not.

Clause passed.

Clause 14—'Interpretation.'

The Hon. K.T. GRIFFIN: I have difficulty in understanding why clause 14 is in the Bill. It provides:

To avoid doubt, a reference in this part to the Crown in a particular right includes a reference to an instrumentality or agency (whether a body corporate or not) of the Crown in that right.

Is that meant to extend to agencies such as SGIC and the State Bank, or is it intended to apply to some other body or group?

The Hon. C.J. SUMNER: It is intended to apply to those bodies that attract the shield of the Crown.

Clause passed.

Clauses 15 to 17 passed.

Clause 18—'This Part overrides the prerogative.'

The Hon. K.T. GRIFFIN: Is the Attorney-General comfortable with this clause? It seems to provide that, where the law of another jurisdiction binds the Crown in right of the State of South Australia, the Crown in that right is subject to that provision, despite any prerogative right or privilege. Effectively, that makes the Crown subject to the laws of another State or of the Northern Territory. I have not been able to explore fully the consequences, but it seems to me that that is a modification of the rights and privileges of the Crown in South Australia for that to occur and is, in that sense, an unnatural and unusual occurrence.

The Hon. C.J. SUMNER: It is fairly extraordinary, I agree with that, but it is part of the whole process involved in this Bill, which is to ensure that the Corporations Act applies throughout Australia.

Clause passed.

Clause 19 passed.

Clause 20—'Application orders for ASC law.'

The Hon. K.T. GRIFFIN: This clause is drafted quite strangely. It provides:

Part 1.3 of the corporations law of South Australia applies for the purposes of the ASC law of South Australia as if the provisions of the ASC law of South Australia were provisions of the corporations law of South Australia.

If part 1.3 is in fact the law of South Australia, this clause is superfluous. Perhaps I am not bright enough to understand the implications of it—

The Hon. I. Gilfillan: If you go around the circle, you get back to where you started.

The Hon. K.T. GRIFFIN: Many provisions of this Bill have taken me around in a circle to the point where I began. I find this clause very strange, and I constantly look for some hidden agenda. I cannot find a hidden agenda in the circle, but that does not mean that there is not one. I just wish to express the wonder that this particular clause is even necessary.

Clause passed.

Clause 21 passed.

Clause 22—'Fees (including taxes) for chargeable matters.'

The Hon. K.T. GRIFFIN: I only wish to ask whether this is a money clause because it imposes fees, including fees that are taxes, that are prescribed by the corporations regulations of South Australia.

The CHAIRMAN: It would appear that clause 22 should not be voted upon as it might be a money clause and it would have to be put in erased type.

Clauses 23 to 26 passed.

Clause 27—'Effect of part.'

The Hon. K.T. GRIFFIN: There are so many of these clauses that are curiously drafted that I do not want to take the time of the Committee and deal with all of them: we could probably spend all night doing that. However, I do want to pick out one or two and make reference to them. Obviously other provisions in the Bill could well do with some questioning, but I think a lot of it is related to the questions that I raised on the agreement. So, I really just take the opportunity to signal that I will not explore every clause; that will be a job for lawyers and accountants in the courts later. Clause 27 again is a curious clause. Subclause (2) provides:

Nothing in this part limits the generality of anything else in it.

I must say that that is an extraordinary piece of drafting. I just do not understand what it means. As I said earlier, I may not be bright enough to understand the intricacies of the Commonwealth Parliamentary Counsel's mind, but it seems to me that that is a ludicrous statement. It is probably one of those other areas that might end up being the basis for some sort of challenge.

Clause passed.

Clauses 28 to 34 passed.

Clause 35—'Application of Commonwealth administrative laws in relation to applicable provisions.'

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

Page 10, line 44—Leave out 'an applicable provision' and insert 'the applicable provisions'.

This amendment is a technical matter.

Amendment carried.

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

Page 11, line 2—Leave out 'an applicable provision' and insert 'the applicable provisions'.

Again, this amendment is a technical matter.

Amendment carried; clause as amended passed.

Clause 36—'Application of Commonwealth administrative laws in relation to applicable provisions of other jurisdictions.'

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

Page 11, line 14—Leave out 'an applicable provision' and insert 'the applicable provisions'.

Amendment carried; clause as amended passed.

Clauses 37 to 39 passed.

Clause 40—'Operation of Division.'

The Hon. K.T. GRIFFIN: I just want to make the observation that I do have concern that this Bill varies the provisions of the Jurisdiction of Courts (Cross-vesting) Act 1987, which I thought was a fair and reasonable basis for the cross-vesting of jurisdiction between the various Supreme Courts and the Federal Court. However, I do not intend to oppose any of the clauses in this part.

Clause passed.

Clauses 41 to 53 passed.

Clause 54—'Interpretation.'

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

Page 17, line 6—Leave out 'applied' and insert 'made'.

Amendment carried; clause as amended passed.

Clause 55 passed.

Clause 56—'Laws to be applied.'

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

Page 19, line 36—Leave out 'Part 9' and insert 'Part 8'.

Amendment carried.

The Hon. K.T. GRIFFIN: If there is a prosecution under the corporations law which might, for example, be a prosecution effectively under the Victorian corporations law and there is an acquittal, what protection is there for a person so acquitted from prosecution in another jurisdiction? Effectively, can a person be charged under another State's corporations law in relation to that offence?

The Hon. C.J. SUMNER: This is effectively one law for Australia. It is the whole basis and rationale for this particular scheme, so if there is an acquittal under the law in one State, I assume that it would apply as an acquittal in another State. If it did not, I could not imagine the court letting the thing go ahead in any event.

The Hon. K.T. GRIFFIN: I raise the question because it causes me some concern. Whilst I appreciate the reasoning that the Attorney-General has indicated, nevertheless I have some doubt as to whether that is the position. It is an issue

that at some stage the corporate regulator will have to look at.

The Hon. I. GILFILLAN: My question in relation to this clause was prompted by point 28.1 of the heads of agreement, but my concentration drifted off and I did not get around to asking it. That provision refers to the investigatory role of the Australian Federal Police and relates to the AFP assisting the ASC. In the light of the new character expressed for the NCA by its current Chair, is there any reference to the NCA's role in investigating matters under surveillance by the ASC and, if so, where will that be identified?

The Hon. C.J. SUMNER: No.

The Hon. I. GILFILLAN: Does that mean there will be no role for the NCA investigating matters under investigation by the ASC?

The Hon. C.J. SUMNER: No.

The Hon. I. GILFILLAN: Does not that conflict with the new description of 'character of role' of the NCA by the current Chair, Judge Phillips?

The Hon. C.J. SUMNER: No.

The Hon. I. GILFILLAN: That seems a strange contradiction because I recollect that the current Chair says that the NCA will concentrate on white collar crime. It seems to me that the areas where the ASC will be busiest will be in tracking down white collar criminals. If the NCA is to have no role in that at all, where will it be working?

The Hon. C.J. SUMNER: I did not say it was to have no role.

The Hon. I. GILFILLAN: You said, 'No' to my direct question.

The Hon. C.J. SUMNER: Your question was in the negative.

The Hon. I. GILFILLAN: So that the current readers of *Hansard* and I can understand what is the proper answer, will the Attorney explain where he sees the role of the NCA in investigating white collar crime, and does it have any connection with the sorts of areas with which the ASC will be concerned?

The Hon. C.J. SUMNER: It may have. That will depend on discussions that might occur on particular matters between the ASC and the NCA.

Clause 56 as amended passed.

Clauses 57 to 66 passed.

Clause 67—'Agreements and arrangements.'

The Hon. K.T. GRIFFIN: Initially, I had intended to oppose the whole clause. The Attorney-General in his reply said that if we opposed clause 67 it would negate any opportunity to develop a coordinated business names register in conjunction with the ASC. I acknowledge that that could then present some difficulties, because we want to ensure as much as possible the integrity of the companies names register as well as the business names register. In the light of that, rather than oppose the clause, I am prepared to move an alternative amendment as follows:

Page 27, line 17—Leave out subclause (1) and substitute the following subclause:

(1) The Minister, or a person authorised in writing by the Minister, may enter into an agreement or arrangement with the Commission for the performance or exercise by the Commission as an agent of the State of specified powers or functions under the Business Names Act 1963.

Having been explained by the Attorney-General that this is the area of principal concern, the amendments seems to me to overcome the problem. I do not believe that other functions ought to be assigned by the Minister—functions which might involve a *de facto* handing over of control in relation to certain functions—without the Parliament having made a conscious decision about it. For that reason, I believe that my amendment will overcome the difficulty which the Attorney-General specifically indicated but put a brake on other agreements outside the operation of the corporations law.

The Hon. C.J. SUMNER: The Government opposes this amendment. I have indicated the principal area of concern, but there may be others. We are not talking about taking away the legislative powers of the State; we are looking at what may in some circumstances be the best means whereby the administration of the law of a State might be carried out. That is a matter for the Government of the day. The administrative arrangements for giving effect to laws passed by Parliament generally are a matter for the Government. The Government is not prepared to accept this or any other amendment to clauses 67 or 68.

The Hon. I. GILFILLAN: I respect the Hon. Mr Griffin's caution in this matter. With the limited amount of debate and discussion that we have had on it, I think he has identified a concern; from a superficial reading of the Bill it does seem to offer an extraordinarily wide range—

The Hon. C.J. SUMNER: It is a uniform Bill which has been passed everywhere else. I really do not know what is wrong with it.

The Hon. K. T. Griffin: It does not prejudice the operation concerned.

The Hon. I. GILFILLAN: It may mean that in other places they have not been as diligent in looking at it, tedious though this procedure may be. I admit that it is an awkward situation to be in, because I recognise that there may be a very good reason why wider wording than that of the amendment is necessary. The Attorney-General has said so in general, though not specific, terms. I would ask through you, Mr Chairman, the Hon. Mr Griffin a question in relation to thinking this through.

I am inclined to support the amendment, but I am conscious that it may be restrictive and may need to be reviewed. If we had in hand a sunset clause that would necessarily compel the legislation to be reviewed, does the Hon. Mr Griffin believe that that would be an adequate safeguard for the purposes? I recognise that five years is a long time. I ask the Hon. Mr Griffin to comment on it.

The Hon. K.T. GRIFFIN: I suggest that this is unrelated to any sunset clause. Each has to be dealt with separately and on their respective merits. My concern is that, although the Attorney-General has interjected and said that it is uniform legislation, so be it. But, my amendment does not prejudice the operation of the companies law, which is the primary objective of this Bill and the Commonwealth Corporations Act. My concern with clause 67 is that, although it relates, as the Attorney suggested, to administrative matters, there can be such an arrangement as to administrative matters which ultimately leads to a *fait accompli* in relation to the legislative power.

If we have a situation where the Minister enters into some arrangements or agreements with the ASC to perform certain functions or to exercise certain powers by the commission then, if we have no measure of control over it as a Parliament, ultimately it can lead to *de facto* assumption of those powers by the commission. I draw attention to the fact that it relates to the performance of functions or the exercise of powers by the commission as an agent of the State. That can mean a *de facto* taking over with the concurrence of the Minister of certain powers and functions that are related not necessarily to corporations but to other areas of State responsibility.

It seems to me that if there is some arrangement between the Attorney-General or the Minister for Corporate Affairs (or whatever the Minister will be called) and the ASC, for

the performance of functions or the exercise of powers by the commission, it is a relatively simple matter to bring that scheme back to the Parliament and for us to make a decision on it in the full knowledge of what is envisaged by the Minister, so it becomes a parliamentary decision and not an Executive decision.

The Hon. I. GILFILLAN: I intend to oppose the amendment. It may well be an area of concern, but I accept that the Bill appears to restrict the functions to complying with what already are agreed legislative powers, so the Parliament has had some cognisance of it. From my limited position of experience, it would be unwise for me to support the amendment, which has come somewhat late on the scene and which has the strong opposition of the Government. I do not want to imply by that that I do not recognise that the Hon. Mr Griffin has raised a matter which I treat as serious and of concern.

The Committee divided on the amendment:

Ayes (9)—The Hons J.C. Burdett, L.H. Davis, Peter Dunn, K.T. Griffin (teller), J.C. Irwin, R.I. Lucas, Bernice Pfitzner, R.J. Ritson and J.F. Stefani.

Noes (10)—The Hons T. Crothers, M.J. Elliott, M.S. Feleppa, I. Gilfillan, Anne Levy, Carolyn Pickles, R.R. Roberts, T.G. Roberts, C.J. Sumner (teller) and G. Weatherill.

Pair—Aye—The Hon. Diana Laidlaw. No—The Hon. Barbara Wiese.

Majority of 1 for the Noes.

Amendment thus negatived; clause passed.

Clauses 68 to 85 passed.

Clause 86—'Regulations may exclude residual operation of cooperative scheme laws.'

The Hon. K.T. GRIFFIN: This clause provides that:

> Regulations under section 80 may provide that prescribed provisions of cooperative scheme laws do not operate, either generally or as otherwise prescribed by the regulations.

We then have the curious subclause 86 (2), which provides:

> Regulations in force because of subsection (1) have effect accordingly.

Can the Attorney-General give some indication of the way in which decisions relating to these regulations are to be made? What sort of matters are likely to be contained within those regulations, and has any consideration been given to this so far?

The Hon. C.J. SUMNER: We do not know, yet.

The Hon. K.T. GRIFFIN: Does that mean that it is unlikely that there will be such regulations?

The Hon. C.J. SUMNER: There will be no such regulations before 1 January.

Clause passed.

Clause 87 passed.

Clause 88—'Regulations may modify cooperative scheme laws.'

The Hon. K.T. GRIFFIN: This raises a question similar to that on clause 86. Subclause (1) provides that:

> Regulations under section 80 may provide that a specified cooperative scheme law, or specified provisions of a cooperative scheme law, has or have no effect with such modifications as the regulations prescribe.

Have any such regulations been considered yet?

The Hon. C.J. SUMNER: No.

Clause passed.

Clause 89 passed.

Clause 90—'References to cooperative scheme laws and regulations.'

The Hon. K.T. GRIFFIN: As I understand it, some consideration has been given to the way in which this clause will operate. I think it relates to those areas to which I referred in my second reading speech where other laws, not national scheme laws, pick up provisions of either the corporations law or, previously, the cooperative scheme laws. The Associations Incorporation Act picks up the winding up provisions of the Companies Code, and the Pay-roll Tax Act picks up definitions of associated companies or related corporations. Can the Attorney-General give any indication of the principles which will apply with respect to regulations made under this clause in respect of those sorts of matters, picked up by non-national scheme legislation?

The Hon. C.J. SUMNER: That exercise is being gone through at present. We are asking each department concerned as to whether or not there will be problems with their picking up the Corporations Act, that is, the new scheme legislation. If there are not, that is what will be adopted. If there is some problem, it may be that the existing provisions of the code will apply. In the long term, I would like to see all such provisions amended so that the Corporations Act provisions apply.

The Hon. K.T. GRIFFIN: There are two other questions. First, if the corporations law is amended in the future, and it affects one of the definitions or provisions which are picked up, will they be picked up automatically in the non-national scheme law?

The Hon. C.J. SUMNER: Yes. That is exactly what happens now.

The Hon. K.T. GRIFFIN: This time it is essentially a Commonwealth decision rather than a cooperative, ministerial council decision, so there is a distinction. My second question is whether, in the presentation of these regulations, the Government will promulgate them in relation to each piece of legislation so that they can be dealt with separately rather than having to move disallowance of the whole lot, which affects a whole range of things.

The Hon. C.J. SUMNER: Yes.

Clause passed.

Clauses 91 and 92 passed.

New clause 92a—'Exempt bodies.'

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

> Page 34, after line 25—Insert new clause as follows:
>
> 92a. A body corporate is excluded from the definition of 'corporation' in section 9 of the corporations law of South Australia if—
>
> *(a)* the body is not a company for the purposes of section 9 of that law;
>
> and
>
> *(b)* it is incorporated by or under a law of South Australia other than that law or a corresponding previous law.

Section 9 of the corporations law provides that the corporations law will not apply in relation to a body that is not a company for the purposes of section 9 of that law and that is incorporated by or under a law of South Australia other than that law or a corresponding law. It seems to me that it is appropriate to include in the State Bill a similar provision, to put it beyond doubt that amendments to the corporations law which can be undertaken by the Commonwealth do not seek to change the *status quo* without State Parliament being involved.

The Attorney-General and I had an exchange in relation to this issue, and it seemed to me that it was clear from what he had to say, and confirmed my view, that it is possible, technically, for the Commonwealth to amend its definition in the corporations law unilaterally and thus extend the operation of the corporations law to non-national scheme corporations. If that provision in the corporations law is embodied in the State law, it seems to me that it has the effect of preventing that from occurring without the involvement of State Parliament.

That is a desirable situation. If the Commonwealth and the States negotiate something different next year or the year after, it is appropriate, if it is to extend beyond the

status quo in relation to cooperatives, associations and so on, that it come back to this Parliament.

The Hon. C.J. SUMNER: The Government opposes the amendment. With respect to this question of exempt bodies, the current situation is that a similar clause to that in section 93 is in the current Companies Code. It is not in the State Application of Laws Act, and the Government does not see any reason why it should on this occasion be in the Application of Laws Act. It is quite satisfactory for it to be in the substantive Bill, that is, the Corporations Bill.

The Hon. K.T. GRIFFIN: I want to make two points in response to that. First, the cooperative scheme is in fact that—a cooperative scheme. This allows decisions to be taken to amend the substantive law without necessarily the concurrence of this State, either of the Parliament or of the Minister.

Secondly, I understand that in Victoria the State Application of Laws Act contains a reference to the exemption rather than its being part of the corporations law. I just want to protect that *status quo* by having this included in both pieces of legislation. It does not affect the operation of the corporations law or the question of uniformity: it just means that if a conscious decision is taken to change the application of the Federal corporations law, it will have to be considered here before it takes effect.

The Hon. I. GILFILLAN: I am not persuaded by the Attorney that there is a substantial reason to oppose this amendment. It seems to retain a reasonable second look by the State Parliament, and I intend to support it.

New clause inserted.

Clause 93 passed.

Clause 94—'Saving of provisions about Australian Stock Exchange Limited.'

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

Page 35, line 1—Leave out 'relevant Act' and insert 'relevant code'.

Amendment carried.

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

Page 35, line 7—Leave out 'Act' and insert 'law'.

Amendment carried; clause as amended passed.

Clauses 95 and 96 passed.

New Part 15—'Expiry of Act'.

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

Page 35, after line 34—Insert new Part as follows:

PART 15
EXPIRY OF ACT

Expiry of Act

97. This Act will expire on the expiration of five years from the day on which this Act comes into operation.

The Attorney-General and I have explored the arguments for and against this sunset provision. It is really a mechanism designed to ensure that the operation of the corporations law at State and Federal levels is reviewed. I do not agree that it will send unreasonable signals to the international community about what is happening in Australia.

As I said in the second reading stage, I think it is important to have some mechanism for review at both State and Federal levels, and the operation of a sunset clause after five years would provide that. If the scheme operates successfully without the chaos or trauma that have been predicted for it so far, and if there is genuine consultation between the States and the Commonwealth, I cannot see any problem at all with this sunset clause, so I move it accordingly.

The Hon. C.J. SUMNER: A sunset clause in this legislation would be quite ridiculous. The fact that it is even contemplated reflects a total misunderstanding of where we are with respect to corporate regulation in Australia. The notion that somehow or other after five years we will unscramble this thing and go back to the State-based regulation of companies and security is ridiculous.

As I said, we have to take a stand now. We cannot any longer have the stupid shillyshallying about that we have had with corporate regulation in Australia. Whoever is at fault, it has to be fixed up. To put in a sunset clause, which would enable the State Parliament to pull the whole thing down again in five years, is bizarre in the extreme, and I oppose it and will continue to oppose it right through the rest of the debate on this Bill.

The Hon. I. GILFILLAN: I get the impression that the Attorney is opposed to the sunset clause, Mr Chairman. I do not see a sunset clause as necessarily being a signal that chaos reigns in five years; it is a signal that we want to have an opportunity in five years to have a look at the way the legislation has been working and to consider what amendments may or may not be required. It may well be that there is no need for anything to change, but there is no guarantee—

The Hon. C.J. Sumner: You can do that in the normal process. It is crazy to say that in five years the legislation won't exist. That is what you are saying.

The Hon. I. GILFILLAN: The interjection from the Attorney is that we could introduce legislation—those of us who had a mind—without necessarily having a five year sunset clause to trigger it off. I agree because, technically, that is quite true.

The Hon. C.J. Sumner: All you have to do is have an Upper House that knocks it off and you have no legislation, and we are in corporate chaos again.

The Hon. I. GILFILLAN: The Attorney 'helpfully' interjects that in five years we could have a hostile Upper House that throws the whole Bill out. I have just been saying that sunset clauses do not necessarily mean dramatic or substantial changes to legislation; it is a stop sign which says that we will stop and look at it and then there may well be a green light to continue.

The Hon. C.J. Sumner: But you have to re-pass the whole Bill through Parliament again. That is what it means.

The Hon. I. GILFILLAN: The Attorney interjects, again 'helpfully', that a sunset clause means you have to rehash the whole Bill.

The Hon. C.J. Sumner: Well, it is not acceptable. You can make up your mind now: either we waste our time going through a process in the other House and bringing it back here and going to a conference or we fix it up now. It is not acceptable full stop.

The Hon. I. GILFILLAN: It is quite plain that I have had concerns about the implications of this legislation. I think it is a different matter for us to glibly pass a sunset clause, being two members of this place and not being ultimately responsible for the drafting of the legislation. In fact, we would not of our own right be able to substantially amend any legislation without the support of either the Government or the Opposition. I think the Attorney's real objection to the amendment is not so much that the Bill cannot be amended. If the Attorney could be a little more cooperative in debate, we may get somewhere that will satisfy all of us. I do not believe that there is a necessity to rehash the whole Bill.

If we could have an expression from the Government that it is prepared to look at amending legislation under the circumstances of requests and considerations by the Opposition and the Democrats, I would not feel obliged to consider a sunset clause. But, to date, the Attorney's expostulations have been, 'Take it as it presents. It is fixed all round the country. It is a waste of time even considering

tinkering with it, and be done with any idea of reviewing it down the track.'

That is not acceptable to me. However, if the Attorney is prepared to take a more temperate approach and say, 'Yes, within a period of time the Government is prepared to look at the ramifications of this legislation and to consider amendments if the Parliament feels that such a debate is worthwhile', I do not intend to support a sunset clause. I will not be bullied into opposing a sunset clause on the basis that I have to take it and shut up which, up to date, has been the only tenor of the logic of the Attorney's remarks.

The Hon. C.J. SUMNER: I did not say that the Government would not review the scheme or the situation. What I did say was that I did not agree with a sunset clause in this particular legislation. I may have said that fairly forcefully but there seemed to me no point in saying it other than forcefully if that was the view that I had. Certainly, I have no objection to the scheme's being reviewed by Government. I am not sure what the Hon. Mr Gilfillan requires as far as review is concerned, but almost certainly the Ministerial Council—that is, the Commonwealth and all the States—which is still in place, will keep the scheme under review from time to time. If the honourable member wants a specific timetable for review, I do not know that I can give him that because that would not be within the power of the South Australian Government, but I can certainly undertake that the scheme will be kept under review. If there are concerns, we will attempt to deal with them.

The Hon. I. GILFILLAN: Would the Attorney be prepared to consider introducing legislation, if in the Government's opinion amending legislation is necessary, before the end of this Parliament?

The Hon. C.J. SUMNER: If it is considered that amending legislation is necessary before the end of this Parliament, I am not quite sure. Obviously, if the scheme is not working and amendments are necessary, we would introduce them; that is clear.

The Hon. I. Gilfillan: Unilaterally?

The Hon. C.J. SUMNER: I do not know about unilaterally, except for fairly minor amendments. I do not think you can introduce amendments which undermine the fundamental basis of the scheme unilaterally, or you would no longer have the scheme, but more minor matters could certainly be looked at. I am prepared to undertake to have tabled in the Parliament the ASC report which would enable members to have in front of them a report on how the scheme is operating through the eyes of the ASC at least and, as a continuing member of the Ministerial Council, I (and, if not I, someone else as the responsible Minister), would be subject to being questioned in the Parliament about how the scheme is operating, what is happening, etc. So there is still some means of review for the State Parliament on the operation of the legislation—not direct ministerial responsibility as applies to departments but at least some degree of ministerial responsibility, because as Minister of Corporate Affairs I would still be on the Ministerial Council. I am happy to give undertakings that the scheme will be kept under review.

The Hon. I. GILFILLAN: I feel more content with that relatively substantive answer from the Attorney, and I believe that he gave an undertaking that it would not be outside the bounds of possibility, if the Government saw fit, that it would unilaterally move amendments of what he called a minor nature. By that, I understand him to mean that the Government would not substantially change the general thrust and method of operation of the proposed Corporations Act. With that in *Hansard*, I believe that that satisfies my requirement and I will not be supporting the sunset clause of five years.

I think it is reasonable to accept that, whatever misgivings we may have had, the Bill is supported substantially by the Government and the Opposition. Therefore, there does not seem to be any need for a total review of the Act after five years. With due respect to the Hon. Mr Griffin's argument, his criticisms have tended to be tangential or matters of detail rather than the overall picture. I do not feel that we are losing anything in the main game with the undertaking given by the Attorney-General. I appreciate that and indicate that I shall oppose the amendment for a five year sunset clause.

New part negatived.

Title passed.

Bill read a third time and passed.

ADJOURNMENT

At 11.38 p.m. the Council adjourned until Wednesday 12 December at 11 a.m.