LEGISLATIVE COUNCIL

Wednesday 30 October 1991

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

MINISTERIAL STATEMENT: COURIER SERVICE

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

Leave granted.

The Hon. ANNE LEVY: I seek to clarify some of the claims made yesterday by the member for Bragg in another place about the State Supply Department and the delivery of items from State Supply's Seaton warehouse to his electorate office. The member for Bragg asked why State Supply had allegedly gone to the expense of using a $10 courier service for the delivery of a pencil to his electorate office. He also claimed, 'my office had not placed an order for the pencil'. On the one hand the Opposition claims to be concerned about good service but at the same time attempts to damage good service where it exists in South Australia.

I would like to inform the Council of the facts behind these claims. State Supply received, by fax, House of Assembly Customer Order No. 146613 on Thursday, 17 October. The order consisted of 15 lines of items, 13 of which were delivered the following Monday, 21 October—two working days later—by State Supply's parcel contractor Skyroad Express. I seek leave to table a copy of the order form.

Leave granted.

The Hon. ANNE LEVY: Two items, including a 2H pencil—not an HB pencil—were not in stock. Despite claims by the honourable member in another place that his office did not even order the pencil in question, it is clearly listed on the order form as 7510-0328—one pencil 2H. This order form was signed by a Mr John Moylan.

Members interjecting:

The PRESIDENT: Order!

Members interjecting:

The PRESIDENT: Order! The Council will come to order.

The Hon. ANNE LEVY: As soon as the pencil in question became available, it was dispatched.

The Hon. L.H. Davis: Just watch the eyeballs rolling on your back bench.

The PRESIDENT: Order! The Hon. Mr Davis will come to order. The honourable Minister.

The Hon. ANNE LEVY: It is interesting how all these people who claim to know a lot about business are so interested in good business practice. As soon as the pencil in question became available, it was dispatched by the contracted courier to the honourable member's office on Friday 25 October.

Members interjecting:

The PRESIDENT: Order!

The Hon. ANNE LEVY: The cost of the delivery of this parcel was $1.45—not the claimed $10. The honourable member's claim that the delivery cost $10 arises from a conversation he had with the General Manager of Tailgate Courier Services. Mr Ingerson rang that company and asked for a price for the delivery of a parcel to his electorate office in Toorak Gardens from the Seaton warehouse. The price quoted was for a one-off courier delivery. He is basing his claim on that telephone conversation—

Members interjecting:

The PRESIDENT: Order!

The Hon. ANNE LEVY: And, once again, he has gone off half-cocked, uninformed and unprepared.

Members interjecting:

The PRESIDENT: Order! The Council will come to order.

Members interjecting:

The PRESIDENT: Order! This took up the front page of the *Advertiser* and I would imagine that it is of some interest to some people. I ask the Council to listen to the answer. The honourable Minister.

Members interjecting:

The PRESIDENT: Order! The honourable Minister.

The Hon. ANNE LEVY: He has dragged this innocent courier company into his own battle without its consent. The courier company that is used by State Supply, Skyroad Express, charges a set standard rate for the delivery of small parcels, and that charge is $1.45 per item. This was the price offered at tender and it is the price that State Supply accepted for the contract. State Supply estimates that the cost of sending the items to the honourable member's electorate office by Australia Post would have cost at least $1.80. In terms of the delivery of the item—

Members interjecting:

The Hon. ANNE LEVY: The cost of postage and a bag in which to send it by Australia Post would have cost more—

Members interjecting:

The PRESIDENT: Order!

The Hon. ANNE LEVY: In terms of the delivery of the item, State Supply informs me that back orders for large accounts are held pending the next delivery to that particular location, but with smaller deliveries the order is processed as soon as possible. State Supply feels, and rightly so, Mr President, that it does not have the right to decide which orders should be held back, particularly with customers like hospitals where the ordered goods may be small but vital.

These claims only damage the excellent reputation and hard work of the staff of State Supply. They are proud of meeting all customer orders within three working days in the metropolitan area and of obtaining and forwarding any items out of stock in the least possible time. Neither Mr Ingerson nor any member of the media bothered to check the facts with either State Supply or me, as the Minister responsible, before providing headline publicity to what is a lie.

Members interjecting:

The PRESIDENT: Order!

The Hon. ANNE LEVY: I hope—

Members interjecting:

The PRESIDENT: Order! The Council will come to order. The honourable Minister.

The Hon. Peter Dunn: You don't reckon they could have used 20 cents to ring him up?

The PRESIDENT: Order! The Hon. Mr Dunn. Everyone will have the opportunity to question the statement if they so desire but, in the meantime, I ask everyone to observe the courtesies and let the Minister make her statement in silence. The honourable Minister.

The Hon. R.I. LUCAS: On a point of order, Mr President, on occasions you have previously ruled (and I know there have been some inconsistencies in rulings) as to whether the use of the word 'lie' is parliamentary or unparliamentary. I would be interested in your current ruling in relation to the use of that word by the Minister in her statement.

The PRESIDENT: In general terms, we have accepted it. In individual terms, when it is specific to a person, we have not.

The Hon. R.I. LUCAS: Then she should withdraw that.

The Hon. ANNE LEVY: I did not attribute it to a person.

The PRESIDENT: I am not sure—

The Hon. ANNE LEVY: I said it was the headline publicity which was a lie.

The PRESIDENT: That is alright, that is general. The honourable Minister.

The Hon. ANNE LEVY: I hope that this correction will be given the same publicity, or we will have to assume that, like Mr Ingerson, the media is not interested in letting the facts get in the way of a good story. I suggest—

Members interjecting:

The PRESIDENT: Order! The Council will come to order.

The Hon. ANNE LEVY: You don't know anything about running a business, quite obviously!

Members interjecting:

The Hon. ANNE LEVY: They would and be proud of it!

The PRESIDENT: Order! Standing Orders do not provide for repeated interjections.

The Hon. ANNE LEVY: I suggest that the member for Bragg use his 2H pencil to write and apologise to State Supply.

QUESTIONS

PUBLIC SECTOR FRAUD STRATEGY

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

Leave granted.

The Hon. K.T. GRIFFIN: The 1991 annual report of the Attorney-General's Department lists a number of challenges for the department. One of these is 'Developing the public sector fraud strategy and programs related to maintaining ethical behaviour in the public sector'. This challenge rather suggests that there are some areas of major concern about fraud and unethical behaviour in the public sector. My questions to the Attorney-General are:

1. Is the Attorney-General's Department developing the strategy and programs for the whole of the public sector, including statutory authorities?

2. What behaviour prompted this challenge and what issues are being addressed?

3. Who is involved in the development; what procedures are involved in that development; and what period of time will the development take?

The Hon. C.J. SUMNER: No behaviour prompted this policy. It was an initiative that I instituted following the general concern expressed over time about corruption and the like within the public sector. The NCA has found virtually no evidence so far as it is concerned of organised or institutionalised corruption within the public sector. The only matter to which it directed its attention was some corruption within the Housing Trust, and charges were laid and went to court following those inquiries. However, I believe that it was important as a preventive measure for the Government to develop an anti-fraud strategy.

That strategy has been developed and I released it some time ago. I can certainly make it available to the honourable member, together with the speech I gave when I launched the strategy. In fact, I launched the strategy at an anti-fraud strategy seminar which was held at the Hilton Hotel and which involved the heads of most public sector agencies. There is a public sector fraud committee chaired by the Commissioner of Police and, if my recollection serves me correctly, has representatives from the Attorney-General's Department, the Auditor-General and Treasury. It has a brief to oversee the implementation of the strategy.

Simply, it is a procedure and policy whereby agency heads are obliged to look at areas of their operation, where there might be the potential for fraud, particularly in the receipt of moneys, in the disbursement of moneys, in the consideration of grants and the like, and to ensure that procedures are in place within their departments to minimise the possibility of fraud occurring.

The seminar was designed to that end and the process of educating public sector agencies in this strategy will be an ongoing one. The Commonwealth Government has had such a strategy now for some three or four years and we obviously used the experience of that Government in the development of our own strategy.

As to the question of a code of ethics for public servants, that is also being developed. That is separate from the fraud strategy, but we have seen considerable attention being given in recent times to codes of ethics. A considerable amount is being done at the national level in the area of codes for business people—for directors and the like—and the former Chairman of the National Companies and Securities Commission has been cooperating with Federal Government agencies, such as the ASC and the NCA, in the development of codes of behaviour that directors in the private sector should follow to try to overcome some of the problems that occurred in the 1980s in the private sector.

The South Australian Police Department has a code of ethics, as do other agencies as well. So far as public servants are concerned, those employed under the Government Management and Employment Act have certain obligations under that Act, but the proposal is to flesh out those obligations to some extent and to establish a set of standards that those employed in the public sector should follow. Essentially, it is a preventative measure designed to try to ensure that the opportunities for fraud, corruption and improper behaviour by public sector employees is minimised. I expect it to be given full support by the honourable member opposite.

ROCK MUSIC INDUSTRY

The Hon. DIANA LAIDLAW: I seek leave to make an explanation before asking the Minister for the Arts and Cultural Heritage a question about South Australia's rock music industry.

Leave granted.

The Hon. DIANA LAIDLAW: Labor's arts policy at the last election featured a commitment 'to establish a South Australian Rock Foundation which will enable support to be given to contemporary music in South Australia'. In September last year the Minister appointed Mr Richard Ortner as the Government's rock industry consultant to prepare a report on the economic and cultural value of the industry, plus a development plan. I understand that $60 000 was set aside in the State Budget for this purpose. Also, the consultant recommended the appointment of a rock industry co-ordinator responsible for implementing training courses, with Government assistance, to create a support network for the local industry, working in tandem with national rock industry development groups such as Ausmusic.

Nationally, the rock industry turns over $850 million annually. It is forecast to be worth $1 billion within three years and to have the potential to raise substantial export revenue. South Australia, however, reaps only about 5 per cent of this business, a proportion that has declined over the past 18 years. I mentioned 18 years because, by chance, last week I discovered that 18 years ago the Labor Government of the day was also investigating the merits of estab-

lishing a Rock Music Foundation in South Australia. On 15 October 1973 in reply to a question from the Hon. M.B. Cameron, the Minister, Hon. A.F. Kneebone, said that a submission had been received from Mr David Turner, a director of the Sphere Organisation, proposing a foundation with an operational expenditure of $150 000 and a further $50 000 in interest free loans.

Mr Kneebone also advised that '... no funds have been made available during the 1973-74 financial year to assist the rock music industry to the degree suggested by Mr Turner', but that the proposal was to be referred to the Arts Grants Advisory Committee.

It appears that it has been there for some 18 years. It also appears that the rock industry in South Australia has again discovered that the Government has no funds available to assist the industry. I ask the Minister, first, whether the State Government has accepted the recommendations in the report of the South Australian rock music industry, commissioned last year from the consultant, Mr Ortner. If so, what funds are being provided this financial year for the implementation of the recommendations, and when will the department advertise for applications for the position of a rock music coordinator?

The Hon. T.G. Roberts: Are you looking for a job?

The Hon. DIANA LAIDLAW: As long as I do not have to sing. Was the department's $60 000 allocation last year fully expended on Mr Ortner's consultancy work? Finally, in terms of a foundation, what sums are being sought by the Government for the implementation of such an initiative?

The Hon. ANNE LEVY: That was an interesting stroll down memory lane with the honourable member. The report from the consultant, as the honourable member will no doubt have read in *Hansard*, had not been received by me at the time of the Estimates Committee. I was asked a question on it during the Estimates Committee and at that stage I had not received a report from the consultant. I have since received it, and at this stage we are still having discussions regarding the report and its recommendations.

The honourable member will also probably be able to deduce from the *Hansard* record of the Estimates Committees that again this year a sum of $60 000 has been set aside in the budget to be put towards implementing any recommendations that we feel are appropriate from the recommendation in the report to which she has referred. The report is still being evaluated and, whilst I hope that this can be achieved soon and announcements made, at this stage it is still being considered. Certainly, funds have been set aside in this budget for some program to assist the rock industry in South Australia.

The Hon. DIANA LAIDLAW: By way of supplementary question, will the Minister advise whether the implementation of the report's recommendations were costed and whether they are confined to the $60 000 set aside in the budget or what funds will be required for the implementation of the recommendations?

The Hon. ANNE LEVY: Certainly a large number of recommendations are contained in the report, most of which have a costing associated with them, but we need to evaluate the accuracy of those costings. This is one of the matters that is being considered at the moment. They are also prioritised with the full recognition in the report that there is a difference perhaps between the ideal situation and what may be achievable at present. I certainly hope that before very long this matter can be finalised.

AFTER HOURS CARE

The Hon. R.I. LUCAS: I seek leave to make an explanation before asking the Minister representing the Minister of Children's Services a question about outside school hours care.

Leave granted.

The Hon. R.I. LUCAS: I refer to a recent edition of *Network Bulletin*, produced by an organisation that provides management support for child-care centres and after-hours centres which care for children. Contained within the Bulletin was the news that, because of the recent Federal budget, from 1 January 1992 the operational subsidy for outside school hours care services will be virtually halved, from its present 54c an hour to 28c an hour.

This will mean that in an average after-hours child-care centre, which operates 30 places, operating for, say, 15 hours a week, the centre will have to raise more than $4 500 additional a year in increased parent fees to compensate for this shortfall in Federal Government subsidy. Other changes will result in the operational subsidy paid to occasional care centres being reduced from the existing $19.30 per place, to $20.70 for children under three years of age and to $13.90 for children three years and over. This cut will result in centres having no choice but to again increase parent fees.

Whilst fee relief may offset this increase for some families, the lack of information on income levels for families currently using occasional care makes it almost impossible to predict at this stage how many families will be affected, or unaffected for that matter, by the higher fees. My questions to the Minister are:

1. Is the Minister aware of the cuts in funding to centres outlined in the last Federal budget and, if so, is he concerned that, at a time when families are having to maximise their income to fight the recession, they face substantial rises in fees for after hours and occasional child-care?

2. What deputations, if any, has the Minister made to his Federal counterparts with a view to reconsidering the cuts in funding to these child-care services?

The Hon. ANNE LEVY: The honourable member obviously watches the *7.30 Report* also. I will be happy to refer those questions to my colleague in another place and bring back a reply.

SOUTH AUSTRALIAN COMPANIES

The Hon. I. GILFILLAN: I seek leave to make an explanation before asking the Minister representing the Minister of Industry, Trade and Technology a question about Government support for South Australian hi-tech companies.

Leave granted.

The Hon. I. GILFILLAN: At a time when we are struggling to achieve a reputation as a hitech, high knowledge country, it was rather alarming to me to discover how one particular South Australian company, Cadds Man Australia Pty Ltd, is struggling to hold its place in a potential world market. Computer aided design and computer aided manufacture, or CAD/CAM as it is known, along with technical computing, is one of the fastest growing industries in the world. Last year overseas imports into Australia in this industry exceeded $10 billion, but unfortunately less than 3 per cent of the market uses Australian-made CAD/CAM, and virtually no technology in this area is exported from Australia.

Here in South Australia we have an acknowledged world leader in this area with Cadds Man Australia Pty Ltd, which in the past year has won contracts to supply a number of

State Government departments, such as E&WS, ETSA and Marine and Harbors, with advanced computer software programs. There are, unfortunately, significant problems facing local companies, which have developed world class technologies and products, in penetrating our own domestic market, and inadequate help is forthcoming from both the State and Federal Governments. Australian technology companies are declining at an annual rate of around 15 per cent and, without a concerted effort by both State and Federal Governments to actively promote, endorse and use Australian-produced technology, it will be only a matter of time, so I am advised, before our dwindling high technology industry disappears altogether.

Australia has one of the most competitive software markets in the world, with around 130 overseas technical computing companies operating here compared with fewer than 80 in the massive Japanese marketplace. With such a wide open market, what chance is there for Australian companies to get any share? The local product is squeezed out by massive multinational pressure sales, unlike in Japan and the United States where it is only by absolute exception that industry will use overseas technologies when local product is available. One asks the question: why not here in Australia?

Attempts by local companies, such as Cadds Man, to be a part of major Australian projects have been thwarted by another phenonemon, the Australian Offset program. This requires overseas suppliers of imported technology to use their offset obligations in Australia. This disadvantages Australian companies because the offset companies subsidise research and development in Australia, but they insist that the money be used for research and development on their own products. This means that it is a backdoor form of promoting overseas competition that knocks out the Australian home-grown, home-made product.

The irony is that South Australia's Manufacturing Centre, the very body which could be promoting South Australian products, has considerable offsets, as has the education system, which is funded with hardware and software donations under which Australian companies are virtually shut out from their important seeding grounds. Once customers have 'hands on' experience with imported products they are much harder to persuade to buy the South Australian product in this case.

Other so-called Australian companies such as GMH, Mitsubitshi and the Australian Submarine project which was Kockums all have a technological umbilical cord back to their overseas head office and are therefore encouraged and supported in the use of that country's technology. In South Australia, the Cadds Man company has developed a product which can revolutionise the shipbuilding industry. This was recognised by some of the world's leading shipbuilding nations, such as Japan, Taiwan and India, which were canvassed by Cadds Man. I have spoken to the Managing Director, who said that they were very well received. The three countries accepted that the system was a world beater. But, as the company is small by world standards and has not received any assistance in marketing its products, those countries—Japan, Taiwan and India in particular—are applying the Cadds Man system but using other countries' products and Cadds Man has been cut out.

In the submarine project, here in South Australia, with Swedish firm Kockums holding a major interest, Cadds Man has been excluded, despite having a product recognised world-wide as the most appropriate for such an undertaking; so, too with the AZNZAC Frigate venture, Kockums has its base in Sweden and uses the Swedish system, cutting out the South Australian opportunity. If South Australia is to benefit, surely we should insist that suitable South Australian products are used. My questions to the Minister are:

1. Does the State Government recognise the gross inadequacy of coordination and promotion of South Australian products, particularly overseas?

2. Will the State Government give preferred treatment to an Australian CAD/CAM product if it is comparable, cost effective and well supported?

3. Will the Minister institute a policy for Government departments so that the purchase of overseas software products cannot be undertaken without proper justification unless similar products are unavailable on reasonable terms from a South Australian company?

4. Will the Government coordinate an overseas marketing initiative for South Australian based hi-tech products such as Cadds Man?

The Hon. BARBARA WIESE: The State Government, though its various instrumentalities, is doing a great deal of work in the area of developing and promoting technology-based industries of many kinds. I am sure that the honourable Minister of Industry, Trade and Technology will be happy to provide details to the Hon. Mr Gilfillan about the work that is being done and about the other numerous issues that he has raised.

ABORIGINAL IMMUNISATION PROGRAM

The Hon. BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Minister representing the Minister of Health a question about immunisation in the Aboriginal community.

Leave granted.

The Hon. BERNICE PFITZNER: It is the perception that our immunisation program for the general community is satisfactory. However, we note that, with regard to measles immunisation, there have been two outbreaks of measles, one at Tailem Bend and Murray Bridge in the Riverland and the second at Port Augusta. However, my present concern relates to the immunisation status of the Aboriginal community. Supporting my concerns are the reports in the June Epidemiology Notes and I paraphrase note 1, which relates to the fatal miliary tuberculosis in an Aboriginal infant. On 24 April 1991 a 15-month-old Aboriginal boy was transferred from Alice Springs to the Adelaide Children's Hospital with fever, abdominal distension, swelling of legs and knees and on admission the initial impression was that the infant was suffering from chronic malnutrition or pneumonia.

The CT scan showed marked enlargement of lymph nodes, which raised the possibility of tuberculosis. Chemotherapy was initiated. In Alice Springs the child also suffered from diarrhoea. On 27 April there had been no improvement. If the child had had bacterial pneumonia, he would have responded by this stage.

On 27 April he was transferred to the intensive care unit and on 2 May a fine needle biopsy was performed to sample the nodes, and it showed acid-fast rods, which confirm tuberculosis. Laparotomy revealed that there was an infection in the liver and the spleen.

On 6 May the child developed cardiac arrest and, although the infant was resuscitated, he developed progressive ventilatory failure. Death occurred on 12 May at the age of 16 months and the diagnosis of miliary tuberculosis was confirmed. The comment from the Epidemiological Notes says that BCG, which the infant had received, is usually considered to protect against miliary tuberculosis. However, the infant's malnutrition may have tipped the balance and there

was delay in diagnosis in the miliary disease. The child's uncle had active pulmonary tuberculosis. In my view, death from tuberculosis belongs to a Third World country or a developing country—not in Australia, a developed country. The second report relates to a case of measles which was found in Port Augusta.

The Hon. Anne Levy: Is this a speech or a question?

The Hon. BERNICE PFITZNER: These are two reports which support the questions that I am about to ask. A case of measles was found in Port Augusta in the Aboriginal northern homelands and an immunisation campaign was mounted by the Pika Wiya and the Indulkana health services. Further, it is known that 25 per cent of the Aboriginal community are carriers of hepatitis B. My questions are:

1. What statistics are kept regarding the immunisation status of the Aboriginal community?

2. What are the ongoing immunisation programs for Aborigines? In particular, are the immunisation services conducted in the Aboriginal communities or reserves and, also, are home visits being conducted?

3. As TB immunisation has been eliminated from the routine immunisation program, are we still targeting populations that may have a high incidence of TB compounded by a tendency to malnutrition, that is, in the Aboriginal community and among newly arrived immigrants?

4. As 25 per cent of Aborigines are hepatitis B carriers, are we still continuing the immunisation campaign to immunise all Aborigines against hepatitis B? I understand that this campaign has lapsed over the past two to three years.

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

ROAD FUNDING

The Hon. PETER DUNN: I seek leave to make a brief explanation before asking the Minister representing the Minister of Transport a question about road funding.

Leave granted.

The Hon. PETER DUNN: This is a good news question for a change. This year Eyre Peninsula may produce more than half the State's wheat and a significant part of the barley, oats and grain legumes for South Australia. In fact, it will comprise 10 per cent, perhaps 12 per cent, of Australia's grain production. The value of this production is approximately $200 million and that excludes fish, animal production and minerals. Harvest has already started, and that is as early as any harvest that I can recall, and the sample is quite satisfactory as this stage. This is the third year in a row in which Eyre Peninsula has grown above average yields, which is contributing significantly to South Australia's economic well-being.

There is still a large debt on Eyre Peninsula and people are still having to pay high interest rates. As a result, the money, which is normally spent in small towns on such articles as food, clothing and on capital items such as machinery, fencing and vehicles, etc., is not now spent in those towns because it is being used to service interest which, when paid to banks, leapfrogs the country town and finishes up in Adelaide, Sydney, Melbourne or overseas. As Governments are still getting their share of this money, my questions are:

1. Will the Bannon Government place stronger emphasis on road sealing and construction for Eyre Peninsula?

2. Will the Bannon Government adopt a more sympathetic approach to funding health services in this area?

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

DOMESTIC AIR TERMINAL

The Hon. DIANA LAIDLAW: The Minister of Tourism has advised that she has an answer to a question I asked on 10 September about the domestic air terminal, and I would be pleased for that to be incorporated in *Hansard.*

The Hon. BARBARA WIESE: I seek leave to have that reply inserted in *Hansard* without my reading it.

Leave granted.

Australian Airlines has advised that it has not allocated funds to the upgrading of the Adelaide Airport domestic terminal in this financial year. It has advised that the project should be considered on hold until such time as the aviation market stabilises and profits reach more sustainable levels. It has, however, advanced plans for an expansion of its check-in and baggage handling facilities to cost in the vicinity of $2 million to accommodate Compass Airlines. The commencement of that work is contingent on Australian Airlines and Compass agreeing on terms for a sublease of the facilities, negotiations for which are in progress.

WORKCOVER

The Hon. PETER DUNN: I understand that the Attorney-General has an answer to a question about WorkCover that I asked on 12 September.

The Hon. C.J. SUMNER: I seek leave to have it inserted in *Hansard* without my reading it.

Leave granted.

The Minister of Labour has provided the following response:

When WorkCover calculates bonuses and penalties, claims which are due to the aggravation of a former injury from which there has not been a full recovery are excluded from the bonus/penalty calculation (just as are claims due to journey accidents). WorkCover does not want any employer to have reason not to employ a worker who is suffering from an earlier injury. Many farmers have expressed concern that, as they are employers of itinerant labour, an injury suffered while in their employ is probably one which occurred in the first instance on another property. That is the situation of the two farmers mentioned in the Hon Peter Dunn's question.

When an injury that could well be a 'secondary disability' occurs, it is very important that the farmer gets early medical attention for the injured worker and specifically asks both the injured worker and the treating doctor whether the injury is an aggravation of a condition that existed previously (from which there had not been a full recovery). It is extremely difficult to establish that after time has elapsed and, more than likely, the itinerant worker cannot be contacted. The results of that inquiry should be recorded on the employer report form or a medical certificate.

Where it is established that the injury was an aggravation of a prior condition, the claim is excluded from bonus/penalty calculation, but still shows in the cost of claims attributed to the industry to which the employer is classified. In the case of the claim of Mr Greenfield of Kialpa, no symptoms were experienced by the worker prior to his employment. The claim could therefore not be classified as a secondary disability. If the honourable member will advise WorkCover of the Kangaroo Island farmer's name or have him/her do so, that claim will also be investigated.

WorkCover advises all employers of their claims details on at least a quarterly basis. Employers paying attention to their claims costs will examine these reports and verify that they have been coded correctly (in particular, if it is a 'journey' or 'secondary' claim, that the report shows it will be excluded from calculations of bonus and penalty).

CRIMINAL INJURIES COMPENSATION

The Hon. K.T. GRIFFIN: I understand that the Attorney-General has an answer to a question I asked on 12 September about criminal injuries compensation. I am happy to have that incorporated in *Hansard.*

The Hon. C.J. SUMNER: I seek leave to do so.

Leave granted.

In the Auditor-General's Report for the financial year ended 30 June 1991, outstanding debts to the Criminal Injuries Compensation Fund of $9.2 million are reported. This figure relates to the debt of people who are convicted of inflicting injuries for which an award has been made by the courts for a payment from the Criminal Injuries Compensation Fund. Following the payment of an award from the fund, action is taken to recover that amount from the person responsible for inflicting the injuries.

As can be seen from the size of the outstanding debt, this is a difficult task as the recovery is usually sought from people who are in gaol, with no significant financial means, or very difficult to locate. There is no amount included in the $9.2 million for outstanding levies. Levy payments to the fund are collected by the agency concerned. Because of the nature of the people from whom the recovery of the debt is sought, a large amount of debt is written off each financial year. All write-offs are pursuant to the requirements of the Public Finance and Audit Act. No write-offs are made without a concerted effort being made by officers of the Attorney-General's Department to recover the debt.

PUBLIC TRANSPORT ALTERNATIVES

The Hon. I. GILFILLAN: I am advised that the Minister for the Arts and Cultural Heritage has an answer to a question about public transport alternatives that I asked on 16 October 1991.

The Hon. ANNE LEVY: I seek leave to have that answer inserted in *Hansard* without my reading it.

Leave granted.

My colleague the Minister of Transport does not agree that current public transport policy has failed to reduce this city's dependency on motor vehicles. In the absence of the current public transport policies, he believes that public transport use in Adelaide would have been about half its current level, given the long-term trends in use arising from the growth in prosperity of the Adelaide population that has led to high levels of car ownership. By world standards Adelaide is a highly accessible city benefiting both business and the community.

The decline in public transport use is of concern to the Government. It has arisen not because public transport has failed but because so many people now have, through car use, access to the flexibility, privacy and independence they obviously value so highly. In face of this challenge the public transport solutions of the 1950's are obviously not going to be appropriate in the 1990's or the next century. The Government is pursuing a wide range of innovations as forerunners to converting the system into one that will better accommodate the needs of the community. These range from reform of the taxi industry through to the STA's Transit Link concept. The financial reality is that taxpayer funding can not be continually increased so as to 'buy' additional use with even more luxurious services and lower fares; rather the system must change so it meets customers' needs better than the alternatives they have available. These innovations will be put in place progressively, as concepts are developed, trials are undertaken and governmental and institutional changes are made.

DISABLED EDUCATION FUNDING

The Hon. I. GILFILLAN: I am advised that the Minister for the Arts and Cultural Heritage has an answer to a question about disabled education funding asked by the Hon. Mr Elliott on 13 August 1991.

The Hon. ANNE LEVY: I seek leave to have the answer inserted in *Hansard* without my reading it.

Leave granted.

My colleague the Minister of Education has advised that the $100 000 advance payment has not yet been received by the Education Department. A condition of Commonwealth funding was the provision of enrolment data identifying specific disabilities of students. This data is not collected by the Education Department through the normal school census, hence provision of funds has been delayed. The department is conducting a special survey to identify all students in receipt of special education as a separate initiative to establish a special education database. This information will be used to attract Commonwealth funding in 1991. When the funding is received it will form part of the program supporting the integration of children with disabilities, including autistic children, into Government schools.

ELIZABETH WEST ADULT CAMPUS

The Hon. I. GILFILLAN: I am advised that the Minister for the Arts and Cultural Heritage has an answer to a question about the Elizabeth West Adult Campus asked by the Hon. Mr Elliott on 9 October 1991.

The Hon. ANNE LEVY: I seek leave to have the answer inserted in *Hansard* without my reading it.

Leave granted.

My colleague the Minister of Education has advised that enrolment ceilings were negotiated in detail with all college and campus principals. These will allow increased predictability in their planning and staffing for the 1992 school year. Elizabeth West's target of 620 is consistent with its original estimated enrolments—no reduction has taken place. The ceilings will enable all schools to accept all full-time and part-time enrolments for SACE programs and adequate capacity will be available for the provision of bridging programs. Schools will no longer be offering recreational studies which are already available through TAFE Stream 1000 programs.

YELLOW BURR WEED

The Hon. PETER DUNN: I understand that the Minister of Tourism has an answer to a question about yellow burr weed that I asked on 28 February 1990.

The Hon. BARBARA WIESE: I seek leave to have the answer incorporated in *Hansard* without my reading it.

Leave granted.

The Minister of Agriculture has advised that two lines of Parabinga barrel medic seed which were certified by the Victorian Department of Agriculture and Rural Affairs were subsequently found to contain yellow burr weed, *Amsinckia spp.*, a plant proclaimed under the Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986 and prohibited under the Seeds Act 1979-1982. Clearly the yellow burr weed escaped the Victorian seed certification procedures.

To avoid a similar event, the presiding officer of the Animal and Plant Control Commission has discussed the matter with the Chief General Manager of the Victorian Department of Agriculture and Rural Affairs to establish the basic cause of the problem and to develop procedures to ensure Victorian certified seed maintains a high standard. Subsequently, the leader of the Seeds Unit of the Department of Agriculture met senior officers of the Victorian department to discuss the matter fully.

The Dimboola seed cleaner who processed the contaminated seed lines agreed to exchange any seed left from suspect contaminated lines and seed from the infested area of Victoria is now being double tested before certification. Officers from local animal and plant control boards from other parts of the State rearranged their work program from September to November to volunteer their services to help the boards on Eyre Peninsula monitor the properties affected by the certified seed and fodder contaminated by yellow burr weed.

The Animal and Plant Control Commission is redirecting resources to programs aimed at reducing the spread of yellow burr weed and other weeds such as silverleaf nightshade and cutleaf mignonette which are an even greater threat to Eyre Peninsula. This is being done by reducing the controls on widespread weeds such as onion weed, thistles and horehound. Controls on such weeds that are already widespread have been shown to have little effect on the economic impact of these species on agricultural production. The *Gazette* of 22 March 1990 included variations to proclamations of plants to facilitate this.

The Department of Agriculture will continue to promote certified seed as the best means of ensuring that genetically pure, weed-free seed is sown wherever possible. The seed certification scheme in this State is operating well and does not need any changes, nor is any additional funding warranted. The voluntary program coordinated by the Animal and Plant Control Commission proved to be an excellent training exercise and helped to improve the understanding between regions of the problems posed by serious proclaimed plants. The exercise will be repeated this year to ensure that yellow burr weed does not become widely established on Eyre Peninsula.

RURAL ASSISTANCE

The Hon. PETER DUNN: I understand that the Minister of Tourism has an answer to a question about rural assistance that I asked on 21 March 1991.

The Hon. BARBARA WIESE: I seek leave to have that answer inserted in *Hansard* without my reading it.

Leave granted.

The Minister of Agriculture has provided the following response to the honourable member's question:

1. The honourable member is correct in his understanding that in Victoria and New South Wales Rural Adjustment Scheme (RAS) Part A assistance is used to provide interest rate subsidies on commercially borrowed loans. In responding to the honourable member's question as to whether any thought has been given to this system in South Australia, I advise that one option I will be considering as part of the 1991-92 Rural Finance and Development Division (RFDD) lending program will be the introduction of interest rate subsidies applied to commercial bank loans for debt reconstruction purposes. The rural package announced by the Premier on 30 April 1991, also included interest rate subsidy support to eligible farmers who had been unable to obtain carry-on finance from their banks. The subsidy is provided under Part B of RAS with the costs shared equally by the Commonwealth and South Australian Governments and applies to carry-on finance loans where interest rates are not above prime plus 2 per cent.

2. While the honourable member's comments regarding the calculation of interest rate repayments on a credit foncier basis being higher than those on an interest only basis are correct, RFDD has consistently used this method of lending as it believes it best provides the basis for assessing a farmer's long-term profitability and his ability to repay. Provision of interest only loans may be of benefit in the short term, but a reducing balance loan can significantly lower outstanding debt over time. Most RAS loans are normally a 15-year term, which allows repayments to be structured so that a farmer's cash flow will support the loan, provided that there are long-term prospects. It should also be noted the average interest rate charged across the total RAS portfolio is of the order of only 10.7 per cent, which indicates that few farmers actually pay the maximum RAS interest rate.

In order to provide assistance to some 2 000 current RAS clients in terms of easing the cash burden of meeting loan instalments, the Premier's initiatives announced on 30 April 1991 included:

All existing RAS clients to receive a 2 per cent interest rate reduction for 12 months, lowering RAS interest rates to a minimum rate of 8 per cent and a maximum rate of 13 per cent. This reduction became effective from 1 May 1991 at a cost to the State of around $2 million.

Interest rate reviews on existing RAS loans to be deferred for 12 months from 1 May 1991. This represents a concession to existing RAS borrowers of some $750 000.

I hope this information provides some further detail on the Government's current and likely future approach to rural lending.

EYRE PENINSULA

The Hon. PETER DUNN: I understand that the Minister of Tourism has an answer to a question about Eyre Peninsula that I asked on 5 March 1991.

The Hon. BARBARA WIESE: I seek leave to have that answer inserted in *Hansard* without my reading it.

Leave granted.

The Minister of Agriculture has provided the following in response to the honourable member's questions:

1. The Eyre Peninsula project is made up of a number of projects of which the Smailes/Heathcote drought impact study is one. The projects cover three basic areas of ecological, economic and sociological impact on Eyre Peninsula and are managed by the Eyre Peninsula Study Coordinating Committee with representation from local government, United Farmers and Stockowners, Australian Conservation Foundation, local community groups and Government, including soil boards. Many of the projects are under way and others are in the initial stages and will run over a three or four year period. Some of these projects are under the management of the Department of Agriculture and, as the

honourable member mentions, Dr Swincer is responsible for these projects.

The total funding for the entire Eyre Peninsula project, encompassing all projects, is in excess of $5.6 million over a three-year period and $2.34 million has already been approved from a number of sources including State, Commonwealth and trust funds. Over a three-year period the State will contribute $2.54 million of the total funds representing 46 per cent of the total budget, with the remainder coming from Commonwealth and trust fund sources. With respect to the specific project the honourable member refers to titled Drought Impact and the Sustainability of Rural Communities in Northern Eyre Peninsula, I can indicate that the Australian Research Council has provided $29 000 for this project in 1991.

2. The total Commonwealth contribution approved over a three-year period is $1.15 million and those projects are under way.

EXPIRY OF REGULATIONS

The Hon. J.C. BURDETT: I seek leave to make an explanation before asking the Attorney-General a question about the expiry of regulations.

Leave granted.

The Hon. J.C. BURDETT: I refer to the annual report of the Office of Regulation Review. Members will recall that the purpose of the Subordinate Legislation Act Amendment Act 1987, which followed Queensland legislation, was to provide for the expiry of regulations every seven years so that, after that time, they lapsed or had to be promulgated afresh or, to use the terminology which has been used in the report, were 'exempted'. This latter procedure is not strictly speaking a process of exemption. Section 16a of the Act to which I have referred states that the relevant part of the Act applies to all regulations except, *inter alia*, any other prescribed regulations or regulations of a prescribed class. The report states on page 8:

> As there are no provisions to the contrary, exemptions from expiry have to date been granted for no specific period.

I could not disagree with that. As I have said, there are not, strictly speaking, exemptions but the expiry provisions do not apply to certain regulations. So, for practical purposes, they are exempted for all time. It is difficult to conceive that the provision in the Act could give a power to prescribe only for a particular period. Regulations are either prescribed or they are not. I am also aware of the Attorney's response by letter dated 12 March 1991 to the Subordinate Legislation Committee. The result is to counteract the whole purpose of the Act, which is to ensure that regulations expire after seven years unless re-promulgated. The report states that:

> In regard to the regulations due to expire on 1 January 1991, 46 per cent were exempted, and in the total program, 38 per cent have been exempted.

So, of those due to expire on 1 January 1991, almost half were outside the ambit of the program. This makes a nonsense of the expressed intention of the Act. One example, reported on page 9 of the report, is the abortion regulations which were exempted, and the reason given is that no action was taken by the Health Commission to review them. In other words, the Health Commission did not get around to it: hardly an adequate reason when that was what the Act was all about, namely, to ensure that the commission did get around to it and ensure that there was a review.

All the regulations to which I have referred are, in effect, exempted for all time, not just for a period, which completely makes a nonsense of the purpose of the Act and the procedure. On page 8, the report states:

> It is appropriate to consider the reasons given by the agencies seeking exemption from expiry. The Attorney-General indicated early in the year that a review of the Subordinate Legislation Act and regulations was appropriate in view of correspondence received from the Joint Committee on Subordinate Legislation. Amongst other things, the joint committee has expressed concern over the significant number of regulations which it believes are permanently exempted.

Another set of regulations is due to expire on 1 January 1992. Power to exempt for a specific period clearly needs to be considered. The problems raised by the Minister in his letter to the committee are real problems, but they could be addressed by amending legislation. My questions are: has the Attorney set up the review and, if so, what stage has been reached with the review? When does the Minister expect that a Bill to amend the Act will be introduced?

The Hon. C.J. SUMNER: I cannot say when a Bill might be introduced. As to the review, I assume it is being carried out at present by the deregulation adviser. I should say that there is a lot in what the honourable member said with which I would not disagree. If we are going to have regulation review procedures, they should be effective. However, a couple of points need to be examined in any review. One is whether the seven year period is too short, and whether or not it should be extended to some extent, and, secondly, whether the review procedure should be a bit more discriminating in the regulations with which it deals. Obviously, when the procedure was first set in place, we were dealing with older regulations, and a good number of those were not re-made. They were automatically repealed and the scheme was reasonably successful in getting rid of quite a lot of unnecessary regulations.

However, as the regulations that have been given attention become more recent, as we go through the procedure, questions have been raised as to whether the seven years is too short and whether there ought to be a category of regulations not brought within the automatic expiry system because they do not relate to regulations which impose any impact on the private sector, the community or the Government. They are the areas that we need to look at; that is what we should be in the process of doing. I will check the precise status of this review for the honourable member and bring back a reply, but I certainly understand his concerns. I agree with many of them, and I think that we will have to address this issue in Parliament again in the future. As the honourable member says, it is quite clearly unsatisfactory for agencies just to say they want an exemption because they have not got around to reviewing the regulations. That situation needs to be examined also.

COURIER SERVICE

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Minister of State Services a question about her statement concerning State Supply.

Leave granted.

The Hon. L.H. DAVIS: The statement from the Minister of State Services regarding the courier delivery of one 2H pencil to the member for Bragg on 25 October sought to make a virtue of the good service by State Supply. The Minister did not mention, and did not appear to comprehend, the time involved in packing and processing one individual item worth a few cents and arranging delivery of that item.

The Hon. C.J. Sumner: Why didn't he buy one himself if he was short?

The Hon. L.H. DAVIS: Well, Mr Ingerson did not ask for one pencil to be delivered separately: that is quite clear.

Members interjecting:

The Hon. L.H. DAVIS: He did not. It was part of an order of 15 items. He did not ask for that pencil to be delivered in isolation.

Members interjecting:

The PRESIDENT: Order!

The Hon. L.H. DAVIS: The Minister certainly did not make that clear. It almost appeared that the Minister was suggesting that South Australia could have a courier-led economic recovery. If the Minister bothered to make inquiries in the private sector, I believe that she would find the private sector would not follow that extraordinary practice, nor would it support the practice in the case that we have before us. Good service is not about delivering one pencil. I would suggest that that is dumb service.

The Hon. C.J. Sumner: What about ordering one pencil?

The Hon. L.H. DAVIS: The Attorney-General unwisely interjects and asks, 'What about ordering one pencil?'

Members interjecting:

The PRESIDENT: Order!

The Hon. L.H. DAVIS: It was a collection of 15 items. There might have been 10 pads, computer paper, and so on, and amongst them a dozen pencils. The Attorney-General is very unwise in making that inane interjection. From what the Minister has said, does it mean that one rubber will be delivered to Elizabeth, a box of drawing pins to Noarlunga, as well as a pencil to the Bragg electorate office at Toorak Gardens? That is what the Minister is saying: that this is the practice of State Supply.

The Hon. Anne Levy: Is that your question?

The Hon. L.H. DAVIS: No, it is not my question. The Sir Humphrey-like approach to delivering one pencil was backed up by the ministerial statement which I think the Minister could well sell as a comedy script to Hale and Pace, Steve Vizard or John Cleese.

The Hon. R.J. Ritson: And *Fast Forward*!

The Hon. L.H. DAVIS: Yes, and *Fast Forward.*

Members interjecting:

The PRESIDENT: Order! The honourable member will ask his question.

The Hon. L.H. DAVIS: My question to the Minister is a simple one: will the Minister review the procedures at State Supply to ensure that such a fiasco does not happen in the future?

The Hon. ANNE LEVY: State Supply has introduced a policy of 'customer first'. This policy has resulted in State Supply being a very successful business. The Auditor-General is very happy with the efficiency and productivty achieved at State Supply. State Supply is running a commercial business in competition with the private sector, because no agency is mandated to use State Supply. Mr Ingerson is quite free to go next door and buy his pencil if he so wishes. It is entirely up to each customer as to where they buy their products. Agencies choose to use State Supply because it provides excellent service. Its motto is 'customer first' and it has many satisfied customers throughout South Australia.

It seems to me that, if a customer orders goods and receives them as soon as possible, they are delighted with the service received. To say that businesses in the private sector do not deliver small items such as that is quite false. In my own experience I have ordered goods from Myers, which is hardly an insignificant member of the private sector and, when they have not been in stock at the time, Myers has delivered the goods as soon as it could, even if it was an item as small as a thimble, and it provided excellent service also.

SUPERANNUATION FUNDS

The Hon. M.J. ELLIOTT: I seek leave to make an explanation before asking the Minister representing the Treasurer a question about the South Australian Superannuation Fund Investment Trust.

Leave granted.

The Hon. M.J. ELLIOTT: My question relates to the State pension scheme and the police pension scheme and details about the schemes in SASFIT's 1990-91 annual report. There is growing concern over the future returns of the two schemes. Their asset fund is composed of several separate funds, two of which are cause for some concern. One is a property fund which comprises 25 per cent of the total assets and which suffered a loss of 4.9 per cent on properties held through 1990-91. This could be viewed as part of the cyclic nature of the property market but, as any upturn in property values does not appear to be in sight, the loss is of concern.

Despite that, it is the special investment fund, which comprises 20 per cent of the assets of the pension schemes, that needs particular attention. This fund suffered a return of minus 6.3 per cent, which is well below the benchmark return of the All Ordinaries Accumulation Index plus a margin of 5 per cent, that is, 10.9 per cent for the year ending June 1991. The major investment held by the fund is an interest in the ASER development. It is my understanding that the hotel has suffered a significant decline in the number of business travellers using its facilities and that the Casino has also suffered a significant decline in patronage.

The annual report says the Riverside office building, which is also part of the development, has only a 66 per cent occupancy rate, despite the relocation of the Housing Trust into the building. The Casino has recently retrenched about 200 staff, despite the introduction of gaming machines, and it now faces the threat of a more dramatic decline in both revenues and value with the proposed introduction of gaming machines into hotels and clubs. The auditors have noted in their report that:

> Special investments have been valued where possible by independent valuers. Where independent valuations are not available, investments have been valued by the members of SASFIT having regard to market conditions.

There is good reason for concern over the future of the special investment fund and, therefore, of the pension schemes. I ask the Treasurer the following questions:

1. Given that independent valuations of several components of the special investment fund have not been carried out, will the Treasurer seek independent valuations of all aspects of the special investment fund?

2. Will the Treasurer also return with a report as to the future prospects of the superanuation funds for the forthcoming years and whether or not the Government will be left with any commitments as a result of poor performance?

The Hon. C.J. SUMNER: I will refer the question to my colleague and bring back a reply.

SPEED CAMERAS

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Minister representing the Minister of Emergency Services a question about the use of speed cameras.

Leave granted.

The Hon. J.F. STEFANI: Last night when I was driving home from Parliament House at 11.45 p.m. I saw a police officer about to pack his flashlight speed camera that he had been operating on the downhill side of Northcote Terrace, opposite Wilderness school, booking vehicles travelling towards the city. I decided to stop and talk to the officer, who informed me that, in one hour, the camera had taken 70 photo frames, which included some police vehicles. I was informed that police vehicles on urgent calls are exempt from paying infringement notices. Therefore, my questions are:

1. Who determines the criteria of waiving the infringement notices issued on police vehicles under the speed camera system?

2. How many infringement notices have been issued to speeding police vehicles by speed cameras?

3. How many infringement notices have been issued to Government vehicles by speed cameras?

4. How many infringement notices have been withdrawn in respect of police and Government vehicles?

5. Who is responsible for the payment of infringement notices issued on speeding police and other Government vehicles?

6. How are payment arrangements administered?

The Hon. C.J. SUMNER: I will refer those questions to my colleague and bring back a reply.

ACCESS CABS

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation before asking the Minister representing the Minister of Transport a question about Access Cabs.

Leave granted.

The Hon. DIANA LAIDLAW: Last financial year 14 176 people were eligible for subsidised travel with voucher reimbursements amounting to $1.5 million. Taxicabs handle 80 per cent of all these voucher reimbursements. Notwithstanding the fact that this is an excellent scheme, there are administrative problems with it; for instance, taxicabs and drivers are finding that there is a delay in repayment concerning cab use by a person with a disability of six to eight weeks. During the Estimates Committee, it was revealed by Mr Tregoweth of the Office of Transport Policy and Planning that at any stage the Government would owe the combined taxi companies close to $250 000.

He went on to say that the cost could be seen very much as a contribution from the taxi industry to the Access Cab (or transport for people with disabilities) scheme. As I understand the Government has a general policy of paying bills within one month, will the Minister explain why taxi companies in this State, and in turn taxi drivers, have to be out of pocket at any one time to the tune of some $250 000—one-sixth of the annual cost of the operation of this scheme—and what is the Minister doing to speed up these arrangements?

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

INBARENDI COLLEGE

The Hon. M.J. ELLIOTT: I seek leave to make a statement before asking the Minister for the Arts and Cultural Heritage a question about the Inbarendi College Elizabeth West adult campus.

Leave granted.

The Hon. M.J. ELLIOTT: Today I received a reply to a question asked on 9 October which I do not believe answers the questions that I posed previously. The Elizabeth West adult campus has had a ceiling of 620 enrolments placed on it. I made the point last time that there is a significantly high unemployment rate amongst young adults in the Elizabeth area and large numbers are seeking to get at least to matriculation standard to further their opportunities of employment. It appears that some will be denied that opportunity by placing a ceiling on that campus, although it has the space to take more students. The answer I received gives no indication that there is any chance of lifting that ceiling. Why has the ceiling been put in place? Why are adult students being denied the opportunity to get a matriculation education?

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

FEDERAL TAFE TAKEOVER

The Hon. R.I. LUCAS: I seek leave to make a brief explanation before asking the Minister representing the Minister of Employment and Further Education a question about the Federal TAFE takeover.

Leave granted.

The Hon. R.I. LUCAS: Members will be aware that Mr Dawkins, the Federal Minister, and the Federal Government in general has put forward a proposal for the Commonwealth to assume the responsibility for funding all post-school education training in Australia at a cost estimated to reach about $1 billion a year by the end of the decade. This new proposal was broadly in line with recent recommendations of what has become known as the Finn Report on Post-Compulsory Education and Training, which endorsed an ambitious 54 per cent expansion of the TAFE system by the end of the decade. This matter was discussed at the recent special meeting of Premiers in Adelaide last weekend. After that meeting, we understand a letter was sent to the Prime Minister, signed by all Premiers, which 'noted with some disappointment' recent remarks by Mr Dawkins.

The letter further stated that Mr Dawkins' remarks had 'added an unfortunate note to what has otherwise been a cooperative process'. As a result of that letter and some press discussion about it, leaked as of yesterday morning to the *Financial Review* from Mr Dawkins' office (or perhaps Mr Dawkins himself) was a confidential departmental minute on the assumptions implicit in the Commonwealth-preferred funding option. One aspect of the minute states:

> Within the framework of agreed national standards and principles, State Government would also control the accreditation of courses and the registration of course providers, as well as the setting of entry requirements, course quotas and student assessment.

My questions to the Minister are:

1. Has the Minister indicated to the Federal Government that under certain conditions he would be prepared to accept the proposed Federal takeover of TAFE? If 'yes', what are those conditions?

2. What are the potential dangers for TAFE in South Australia if a proposed framework of agreed national standards and principles, as recommended by Mr Dawkins, were to be implemented?

3. What level of increased funding is being offered by the Commonwealth and is such funding accurately described as new money for TAFE?

4. Can the State meet the level of unmet demand for TAFE courses in South Australia without resorting to accepting the Dawkins blackmail proposal?

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

PATHOLOGY LABORATORIES

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

That this Council urges the State Government to investigate the introduction of an independent licensing procedure for pathology laboratories which guarantees—

1. a high level of quality and reliability;
2. regular independent inspections of quality control measures and occupational health and safety standards;
3. public involvement in the process and publication of the results to health professionals; and
4. laboratory participation in the Royal College of Pathologists of Australasia quality assurance programs.

I move this motion in response to concerns raised with me by past and present workers about the quality of service being offered to South Australians by pathology laboratories. It must be remembered that life and death decisions or early preventative measures often need to be taken on the basis of test results so that the quality and reliability of those results is vital. I raise these issues because they are of great concern to me, as I am sure that they will be to other members and the public at large. Many of the allegations I will raise relate to one of South Australia's major pathology laboratories, Gribbles, which has built a reputation on providing quick service to doctors.

The evidence of the people with whom I have spoken relates to several different areas, for example, immunology, haematology and histology. Many of the people who have made these allegations are still working in the pathology area. I have been told of frequent incidents in that laboratory's haematology department of specimens being mixed up and labelled incorrectly and cross-contamination of specimens because of dirty instruments and equipment. I have been told that it was only by luck that quite major mistakes were discovered when they were because only about half of the specimens processed were seen or checked by anyone other than the unqualified laboratory technician who put the specimen through the tests.

In this particular laboratory there were no special procedures for dealing with HIV-positive specimens. The implications of sending out incorrect, misleading or wrong results are quite horrific. I have heard similar allegations about the laboratory's histology department, which tests many skin specimens for cancer and in which specimens were misplaced or numbered incorrectly or processed so badly that it was difficult to make a microscope slide and therefore get an accurate diagnosis. An early diagnosis of cancer can mean the difference between life and death, so an incorrect test result can spell a death sentence for the patient.

I am told that staff in these laboratories feel very pressured by the amount of work which needed to be processed and that the level of pressure meant that mistakes are inevitable. They say that supervision of laboratory technicians, who did not have any formal qualifications, is inadequate for them to have confidence in their work. In the haematology department apparently no pathologist was on duty after hours, although a large quantity of work was processed overnight and that at other times there was only limited access to a consulting pathologist. In the histology department apparently quite urgent specimens often had to wait while the department head went interstate to do courses because the deputy was not qualified to take his place.

I am told that the machines and equipment used in testing procedures at this laboratory were only serviced when something went wrong, that a technician could not fix it by 'fiddling around', and in one section an ex-car mechanic, working as a lab technician, occasionally used rubber bands to keep a machine operating. I am told that staff were concerned that they did not have sufficient training to understand everything they should about the equipment they were using in relation to cleaning procedures and that no log book was kept to inform the next shift of a machine's status. They say that quality control testing and calibration of machines was undertaken infrequently.

One method of testing a machine's accuracy is to run a specimen at the start of a shift and then at various intervals during the shift to check that the same result is given. I understand that, at the IMVS, this procedure is done every 50 specimens, but I am told that at Gribbles it is done about every 300 and that the sample specimen is often not refrigerated in the meantime. Staff said that the in-house method manuals did not contain instructions of what to do should the result of the test specimen vary greatly from expectations. Because no-one knew what to do, the machine stayed in use.

I cannot say often enough (and the members here who are medically trained will have to agree, I would expect) that the implications for patients of incorrect or inaccurate results being returned because a machine was malfunctioning could be extremely serious. Concerns have also be voiced about the frequency with which testing methodology and equipment was changed in one of the laboratories without any explanation or validation of methodology and equipment.

Occupational health and safety issues have also been raised in relation to pathology laboratories. I have been told that the haematology laboratory mentioned earlier did not have a handbasin, no designated clean and dirty areas, no cleaning or disinfecting materials, no safety or fire officer on duty, no safety training for staff and no procedures ready in the event of a serious accident of chemical spillage.

Waste disposal is another issue. Allegations have been made about Gribbles laboratories, including the fact that there are no special procedures for the disposal of blood and urine or glass and sharp instruments and that trimmed human body tissue has been put into ordinary waste baskets while larger samples (including breasts and uteri which had been tested for cancer) were placed in large green council bins in an area accessed by the public. I have been told that Gribble's histology laboratory puts up to nine litres of toxic and carcinogenic chemicals down the sink twice a week. The chemicals included xylene, an oily petroleum-based product, formalin, formaldehyde and pure alcohol—all of which had been used to process human tissue samples. Small quantities of heavy metals, including cyanides and potassium chloride, which were used to stain specimen slides, were also routinely disposed of down the sink.

One staff member has told me that staff were not made aware of the dangers of the chemical dyes they used. One staff member was told that the dye being measured out centimetres from his nose was carcinogenic and a genetic mutagen only by chance by another lab technician who had also only found out by chance. Bulk chemicals were allegedly stored in a room accessible to the public car park, which had only a normal door lock securing it, and that the chemicals in the laboratories were kept on open shelves in full view of all staff, including cleaners, and members of the public getting out of the lift at the wrong floor.

From what I have gathered from a variety of sources, serious problems do exist within some laboratories posing a threat to workers and patients alike. This brings me to consider the existing mechanisms for overseeing the operation of pathology laboratories. Of course, my observations do not relate to any one laboratory but must be of concern to all. For the past four years, laboratories claiming on the Medicare system have been required to be 'accredited' by the Federal Government. This involves a written application to the Federal Government for accreditation and then inspection by the National Association of Testing Authorities for registration if suitable.

NATA is a private company funded by the registration fees of member laboratories; the more laboratories registered the more funds for NATA. I understand that NATA is still undertaking initial inspections of some laboratories, four years after the system was introduced. According to the *Advertiser* on 4 October about 200 'accredited' laboratories are operating around Australia, eight of them in South Australia, without having completed the inspection and registration process because NATA lacks the resources to carry out the assessments.

As a requirement of registration, laboratories must enrol in external quality assurance programs, one of which is operated by the Royal College of Pathologists of Australasia. However, the same *Advertiser* article claims that some laboratories are refusing or failing to complete these legally required programs, enrolling but then not retesting the specimens sent out to them by the college. The *Advertiser* says that the college has become so concerned about this that it has notified NATA.

My major concern about this system of accreditation and registration is that it is all confidential, carried out entirely within the industry. No-one but NATA and the laboratory involved knows that the inspection has taken place and what the outcome was. A former technician at a well-known Adelaide laboratory wrote to me about the accreditation system. I will not mention the name of the laboratory, but the letter says:

> The system of accreditation seems to be little more than a farce. NATA (National Association of Testing Authorities) arranges the inspection of laboratories by inviting people from other institutions but in the same field to inspect and report. So what happens if a large concern like (X) does not fulfil the requirements for accreditation?
>
> Will NATA tell the laboratory to cease operating? Will NATA notify anyone? Who are NATA accountable to? The public have a right to know which labs have been inspected and passed! The requirements are quite specific, and, if adhered to, will ensure well trained staff and good quality results from safe workplaces.

I share those concerns. Should a laboratory fail inspection or some concerns are raised about practices and conditions, there is no requirement for public notification, and doctors and patients continue to send tests in and rely on the results sent back.

Recently, after Gribbles Pathology received some publicity over an unfair dismissal claim involving concerns about work procedures in the laboratory, a spokesperson for the laboratory went on radio and claimed that it had passed its recent inspection with flying colours. However, it is my understanding that the report of that inspection has not yet been completed and, even if it had, it would not be made public. So, we have a laboratory about which serious concerns have been raised both to me and in the State Industrial Commission publicly claiming that it has passed inspection.

While I do not want to cast aspersions on the work NATA is doing, it appears that from the accounts of the standards within that laboratory and the fact that unsubstantiated public statements can be made, that the system is not as effective as it should be. In my view the public has a right to know that the laboratory to which their doctor sends their tests has been inspected by an independent body and has passed that inspection or, if it has not passed, why that is so.

Occupational licensing is undertaken by the State Government for, among others, builders, land agents and brokers, travel agents, second-hand motor vehicle dealers and credit providers. In most of these cases written objections to the licensing application can be submitted to the licensing body, and there is provision to appeal against the granting of a licence. The State Government has recently legislated with regard to licensing several health related professions and has legislation pending to extend this. One example, passed by the Parliament recently, was the Chiropractors Act, in which clear guidelines were placed on the way in which a chiropractic practice would operate. That is quite a separate issue from the registration of chiropractors as individuals.

The State Government also undertakes licensing of people and premises for particular areas of business, for example, liquor licensing. Under the Liquor Licensing Act 1985, a person may apply for one of 10 classes of licence and for some classes and the application is advertised publicly. Obtaining a licence involves appearance before a commissioner and the taking of written and oral evidence. Applicants must prove to the licensing authority that they are fit and proper persons to hold licences, and their premises must meet certain requirements.

Given the trust placed in pathology laboratories by people awaiting test results and the health professionals advising them, it seems absurd that they are nominally, at least, self-regulated. What we are talking about here is quality of service and protecting people from what could be shoddy operators.

I have reason to believe, from the information I have gathered, that there may be shoddy pathology laboratory operators in South Australia who do not deserve the trust placed in them by health professionals and the general community. Increasing non-medical ownership of health services and the pressure for profits that this brings in requires that some oversight of the health industry is kept by Government to ensure that the public's demand for quality, reliable services is not compromised. I believe that a licensing system is warranted in the light of the allegations made about the quality of service offered by some existing laboratories, and the lack of proper supervision, which clearly is not occurring at this stage. I urge the Council to support the motion.

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

CHILE

The Hon. I. GILFILLAN: I move:

That this Council, considering the continuing concerns of Chilean refugees in this State and the influence that a State Parliament can exert on that country, welcomes the positive measures taken by the civilian Government in Chile to address the legacy of past human rights abuses. Taking note of the obstacles faced in addressing these violations, this Council believes that the Chilean Government has a continuing obligation to ensure that—

1. full investigations into allegations of human rights abuses under the previous Government, including all complaints of torture, are carried out, that the full truth is made known and that those responsible are brought to justice;

2. the proceedings against prisoners charged with politically motivated offences are re-examined without delay, aimed at determining whether those prisoners who did not receive a fair

trial according to international standards should be released or should have their case re-heard under fair procedures;

3. the death penalty is abolished;

4. any allegation of torture or other cruel, inhuman or degrading treatment is immediately and impartially investigated and that those responsible are brought to justice;

5. there is a comprehensive review of the judiciary aimed at introducing reforms to bring about a genuinely independent and impartial judiciary which will never again condone human rights abuses committed by agents of the State.

It is with considerable satisfaction that I move this motion. I make no secret of the fact and I am proud to say that Amnesty International is urging world-wide pressure to be brought to bear on Chile, and this is part of that campaign. Before speaking to the motion in detail, I would like to share with members the recognition that any motion passed by this Chamber will receive because of Amnesty International's world-wide prestige and communication facilities. This motion will be clearly used and brought to the attention of the authorities in Chile.

I am also proud, as Chair of the Parliament House branch of Amnesty International, to say that we are joined by the Adelaide city group. I have a letter from Philip Scales, the Chairman of that group, which states:

On behalf of Amnesty International Adelaide city group, I wish to support the motion and your initiative. We look forward to cooperating with the parliamentary group of Amnesty in the future.

An honourable member: When does it meet?

The Hon. I. GILFILLAN: From time to time.

The Hon. Anne Levy: It has not met for ages or, if so, you have dropped me off the mailing list.

The Hon. I. GILFILLAN: I am getting some useful interjections inquiring as to when it meets, and that will prompt the Chair to organise it. I know that in the Chamber is the State Secretary, who will be very keen indeed to facilitate a meeting so that all urgent requests for a meeting will be facilitated. I look forward to the attendance of the Hon. Anne Levy, Carolyn Pickles and others, who I am sure will be interested in this work, at that meeting. I do not say that in any sarcastic way. I have previously been firmly convinced that many members in this Council share my concern for international matters and that in some small way, in supporting a motion such as this, we can do our part in this Chamber.

We can all remember the horror stories of the more than one million people that fled Chile into exile after the bloody military coup in 1973. They escaped to all parts of the globe, including South Australia. The stories told of the horrors of the military regime, which tortured hundreds if not thousands of their fellow citizens, organised death squads to depose their opponents, and caused families to be left without news of their relatives who had joined the many hundreds of 'disappeared'. Families are still without news of their loved ones and live in the uncertainty of not knowing if their relatives are alive or dead.

All members here have the honour to represent in this place a significant number of Chilean born Australian citizens and residents, many of whom fled the horrors that we all have seen in the media. Members, like myself, despaired at the loss of life and property in the former homeland of the Chilean expatriates. They have sought our help to have outside intervention brought into this situation to make sure that the events of the past do not occur again.

On 11 March 1990, Patrico Aylwin, leader of the 17 party Coalition of Parties for Democracy, took office as the President of Chile, ending more than 16 years of military rule. One of the central issues of the campaign preceding the presidential and congressional elections of 14 December 1989 concerned proposals for dealing with the serious human rights violations committed during the period of military government. Those responsible must be brought to justice so that families will have recourse in law in order that this type of human rights violation will not happen again.

Since assuming power, the Aylwin Government has taken important measures to address the legacy of past human rights abuses. These measures include the following: the creation of the Commission for Truth and Reconciliation to establish the truth behind many of the human rights violations committed between September 1973 and March 1990; proposals to reform legislation that had seriously affected the rights of prisoners charged with politically-motivated offences to a fair trial; the release of 49 convicted political prisoners following a presidential pardon; and a Bill calling for the death penalty to be eliminated.

The commission has no formal legal powers but transmitted information on cases within its mandate to the courts for judicial investigation. The commission's report, the Rettig report, which was published earlier this year, was four volumes long and dealt with approximately 1 000 deaths.

In addition, in August 1990 the Chilean Government ratified the American Convention on Human Rights and the United Nations Convention on the Rights of the Child. It also withdrew all but one of the reservations to the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment and reservations to the Inter-American Convention to Prevent and Punish Torture, both ratified by the former Government in 1988. These reservations had significantly limited the effectiveness of the treaties. In addition, the Government signed a declaration recognising the competence of the Human Rights Committee to examine interstate complaints under Article 41 of the International Covenant on Civil and Political Rights.

I, and the State Parliamentary Anmesty International group, welcome the positive measures taken by the civilian Government. It takes note of the obstacles faced by the Chilean Government in addressing the legacy of past human rights violations but believes that the Government has a continuing obligation to ensure that full investigations into allegations of human rights abuses under the previous Government, including all complaints of torture, are carried out; that the truth is made known, and that those responsible are brought to justice; that the proceedings against prisoners charged with politically motivated offences are re-examined without delay, which is aimed at determining whether those prisoners who did not receive a fair trial according to international standards should be released or should have their cases reheard under fair procedures; that the death penalty is abolished; that any allegation of torture or other cruel, inhuman or degrading treatment is immediately and impartially investigated and that those responsible are brought to justice; and that there is a comprehensive review of the judiciary aimed at introducing reforms to bring about a genuinely independent and impartial judiciary which will never again condone human rights abuses committed by agents of the State.

The scope of a number of the human rights initiatives taken by the Government were limited by a series of factors, many of them inherited from the previous Administration. The 1980 Constitution, for instance, although amended in several aspects following a plebiscite held in July 1989, continued to place restraints on the civilian Government. It ensured, for example, the continuing presence of General Pinochet as Commander-in-Chief of the armed forces. It also enabled the former Administration to appoint nine senators to Congress. This meant that, even though the Concertacion gained 22 of the 38 elected seats in the Senate, it failed to achieve an overall majority.

In practice, this enables representatives to the parties that supported the former Government and the designated senators to block a number of the legislative reforms proposed by the Aylwin Government—among them those that sought to facilitate the early release of some political prisoners and speed up the trials of the remaining cases. The members of the Supreme Court, appointed under the previous Administration, further hindered the Government's initiatives by blocking investigations into past human rights violations.

In August 1990, the Supreme Court upheld the decision by lower tribunals to use the 1978 Amnesty Law to close a case that originated in 1978 with a criminal complaint against senior members of the Directorate of National Intelligences concerning their responsibility for the 'disappearance' of 70 people between 1974 and 1976. The intelligence agency, which was formally disbanded in 1978, was implicated in a significant number of disappearances in the 1970s. The court's ruling established a legal precedent which undermined hopes that the fate of the victims would be clarified and that those responsible for human rights violations before 1978 would be brought to justice.

One of the hundreds of unresolved cases includes that of Juan Aguirre, who had been arrested by police, in front of witnesses, on 4 September 1984. Other youths were arrested with him but were released after a few days. Juan could not be found and police denied that he had been arrested. After 55 days without news, the headless and mutilated body of Juan Aguirre was found in a river near Santiago. It had apparently been disposed of in this way in order to cover up his death under torture. One of the youths who had been detained with him testified as follows:

> They began to interrogate (him). I could hear a loud buzzing from the electricity generator. There was a loud scream and then silence . . . I noticed that the agents who were carrying out the torture suddenly became very agitated . . . one of them said something like 'We've lost the bastard'.

In November the Supreme Court upheld a request from the military courts that investigations arising from the discovery of a mass grave in Pisagua, northern Chile, be transferred from civilian to military jurisdiction, leaving little prospect that the investigations would continue.

The disclosure in June 1990, just last year, that a mass grave had been uncovered in Pisagua, the site of a prison camp after the military coup, provoked a national outcry. Several hundred political prisoners passed through the camp between September 1973 and the second half of 1974. Some were summarily executed on the orders of war tribunals or under the pretext of trying to escape. For years relatives had been calling for investigations to clarify the circumstances surrounding the deaths of their loved ones and for the bodies to be returned to them.

Some of the bodies recovered in June last year were reported to be in near perfect condition as a result of the mineral content of the desert, and they still wore perfectly preserved blindfolds and ropes tying their hands together. Eight of the bodies were said to have been identified as those of prisoners who had disappeared, five of them for reasons not linked to political motives. Of the 11 identified as victims of extrajudicial executions, eight were reported to have been summarily executed on the orders of a war tribunal and three were shot under the pretext of trying to escape.

At the end of the year, the Supreme Court was also considering a demand by the military courts to have the investigations arising from the discovery of the remains of 18 peasants killed in 1973 in the settlement of Chihuio, in the southern central region of Chile, transferred from civilian to military jurisdiction.

Some civilian court judges continued, however, to investigate cases of abuses committed during the period covered by the amnesty law. They included judges investigating complaints of illegal burial arising from the discovery of secret graves, and the subsequent identification of some of the bodies even though many of the cases had already been granted amnesty in the military courts. Another investigation that continued was one conducted by Judge Gloria Olivares into the 'disappearance' in July 1974 of Alfonso Chanfreau Oyarce. He was arrested by the Directorate of National Intelligence of the Army (the infamous DINA) and held in Londres 38, a secret detention centre, until his 'disappearance' two weeks later.

The judge visited the former detention centre in September, accompanied by people who had been held there at the same time as Alfonso Chanfreau. With their testimonies, she was able to establish that Londres 38 was in use in 1974 as a DINA torture centre, and she was reported to have ordered further investigations. Although Amnesty International takes no position on post-conviction amnesties or measures of clemency, it believes that this should never be at the expense of the right of the victims and the relatives to truth, justice and compensation. Amnesty International believes that an important safeguard against the repetition of these practices is to ensure that those responsible for serious human rights violations are brought to justice.

In September last year, three journalists were arrested on the orders of military courts on charges of 'offending the armed forces' because they had written articles discussing the role of the armed forces in past human rights abuses. About 30 journalists continued to face legal proceedings in the military courts at the end of last year, most of them on charges of 'offending the armed forces' or 'offending the carabineros'.

Around 230 political prisoners whose trials were marked by serious irregularities remain in prison. Formal complaints of torture have been submitted to the courts on behalf of more than 30 people since March 1990. However, the courts appear to have progressed little in their investigations. The torture is continuing and that is one of the most persuasive reasons why the recommendations in my motion must be raised with the Chilean Government.

I will conclude with the following extract from the testimony of James Patricio Celis Adasma who was arrested on 9 July this year as he was driving towards the town of Concepcion. He was taken to the Investigaciones Police headquarters in that town. The extract states:

> . . . At about 9.00 p.m. at night they left me alone. Two hours later, several of them started asking me about all sorts of things. This went on practically all night long; they kicked me and punched me all over, apart from my face, and used a baton on my shoulders. They threatened me a number of times, saying that if I did not speak, they would kill my wife and children. This was repeated on Tuesday and Wednesday, especially at night . . . They did not allow me to sleep and if I dozed off, I was beaten. It was only on Friday, that I was given some tea and bread. On Thursday they took off the handcuffs and blindfold and untied my feet and I was taken before the judge. I did not tell him anything because I was afraid and because I did not know if he was the judge or not. They told me that they had detained my wife. I heard the cries of men and women and music to silence the sounds. On Thursday night, they gave me electric shocks. They took me down to what I believe was a basement; they stripped me naked and put me on to a metallic bed, with a thin mattress; they wet my body and with a couple of cables, they applied electric shocks to my anus, testicles, ears and temples, I don't know how long this lasted. This was repeated several times at night, from the night of the Thursday until Sunday. During the day, I was beaten while being questioned. There were constant threats against my wife and children . . . I was then medically examined but I felt very dizzy. I think they drugged me with the tea they had given me. I did not say anything to the doctor. In the afternoon the questioning and beatings continued. On Tuesday the 16th, they sent us to wash and to make ourselves look

better for the press. Afterwards, they took me to an office and forced me, under all kinds of pressure, to record a video with all my supposed political activities. They typed this confession and made me sign a series of papers that I was not able to read, as well as blank pages . . .

I believe that that last account is sufficient for me to rest my case. It is appropriate that we recognise that, while we are hearing complaints from the media as to the restriction a Privacy Bill might impose on them, in this day and age in some countries journalists are imprisoned for criticising the military. Further, at a time when we have a select committee looking at penal reform in this State so that prisoners can be treated with respect and dignity, people are imprisoned for so-called political offences and are being tortured in this totally inhumane way. Realising that, with the passage of this motion, it will move through the channels to the notice of the authorities in Chile, I urge members to support the motion.

The Hon. T.G. ROBERTS secured the adjournment of the debate.

SELECT COMMITTEE ON CHILD PROTECTION POLICIES, PRACTICES AND PROCEDURES IN SOUTH AUSTRALIA

Adjourned debate on motion of Hon. Carolyn Pickles:

That the committee's report be noted.

(Continued from 23 October. Page 1326.)

The Hon. CAROLYN PICKLES: I thank members for their contributions. It is very gratifying that this report has received unanimous support. I wish to place on record the fact that the committee did not table all the evidence it received and I do so because I have been approached by one of the witnesses in regard to what might appear to be an oversight on our part. However, I pointed out to him and I point out to members that the committee was given the power by the Council not to table all the evidence if it so decided. The reason we chose not to table some of the evidence was that it identified the children, and we felt it served no useful purpose to have those children's names identified in this place.

One other matter I will raise briefly is that the Hon. Dr Pfitzner took exception to the word 'inquisitorial'. I wish to point out to members that I understand her reservation because the word 'inquisition' has a rather unfortunate history. However, in this context 'inquisitorial' refers to the legal system in France which is one of the systems that the committee looked at. Indeed, it is one of the systems that the committee considered might better serve our children when they have to face the court system.

I wish to thank all members on the committee. They worked diligently over a number of years. The committee has made some sensible recommendations, and I hope that people who work in the area of child protection will take notice of the recommendations made. I hope the Government takes notice of the recommendations, that the work of the committee will bear some fruit, and that at the very least some of the recommendations will be implemented.

Motion carried.

PROSTITUTION BILL

Adjourned debate on second reading.

(Continued from 23 October. Page 1328.)

The Hon. R.J. RITSON: In coming to grips with the problem of prostitution we now have to choose between two matters of principle. I want to begin by talking about matters of principle and then I will proceed to discuss some practical difficulties I find with the Bill. Prostitution has always been with us and I do not think this Parliament will be able to alter very much the incidence of prostitution. However, that is not the question. The first question is whether we as a Parliament are going to maintain our present official position that prostitution is undesirable, or are we going to place on the public record an expression to the effect that it is desirable.

That is the first choice to be made and it is a choice between the libertarian philosophy and what I would like to call the cooperative sacrificial philosophy. It is claimed by many who adopt the libertarian line that it does not matter what you do so long as it does not hurt anyone else. This leads to each individual looking about himself or herself and subjectively not observing perhaps that they are hurting anyone else, and so permitting themselves to do what they like.

I am of a view that agrees with my colleague the Hon. Dr Pfitzner that the victims are not always obvious. It is too easy to interpret a libertarian philosophy in one's own favour, but I believe there are victims of prostitution. First, some of the prostitutes themselves are victims of their industry. They suffer exploitation and degradation, and I am not proud of being a male since the industry is male dominated in terms of customer and often management.

Furthermore, society in general can be a victim. It is all very well to call something a victimless crime because one cannot identify a particular person as a victim. But there are victims of the Grand Prix. We know statistically that a certain number of people will lose their lives as a result of additional road traffic hazards during the Grand Prix. We do not know who they will be or when they will lose their lives. We cannot tell which individuals would have died anyway and which extra individuals died because of the Grand Prix. If we knew that Fred Jones from a particular street would be the extra death because of the Grand Prix, would we still hold it?

I want to address the question of the rivalry between the two philosphies, whether, on the one hand, you simply do what you like and if there is not an obvious nominated victim around you it is okay or, on the other hand, whether there are certain principles requiring cooperation and sacrifice within society to produce a good for society that can only arise with a sacrificial and cooperative attitude. I do not believe that the good of society is the sum of the goods of each individual as each individual perceives it. I think it is something else. I think that a society that adopts a libertarian philosophy as its main motivating force will in the end become devoid of all those goods that require elements of sacrifice and perception of the overall good of society as being something different from what each individual wants for himself. I realise that conceptual stuff such as this is not easily digested by the general public and probably will not get much discussion. However, I put it on the record before I proceed to more practical matters because, in the end, as members will see, it does explain why I take the stand on this Bill that I do, namely, to oppose the second reading.

Value judgments—the amount of weight that one gives in the balance to those philosophies—are very subjective. I refer now to a paper produced by Professor Eileen Byrne in April of this year as a submission to the Queensland Criminal Justice Commission on this very subject. You will see, Sir, that by taking some global responsibility for soci-

ety's corporate behaviour you come to a different conclusion than does the libertarian. In particular, on page 24, the good professor wrote the following (and it is worth reading into *Hansard*):

> Encouraging prostitution encourages organised crime: It is inconceivable that anyone could remain unaware that organised prostitution creates an arena for organised crime of a wider order. It is difficult to believe that the Government or the public could be unaware that the existence of organised prostitution, requires, *ipso facto*, a system of procuration of the innocent, the vulnerable, a systematic recruitment of the young, in order to survive; and that the only way that systematic procuration can exist, is through organised criminal practices.

She goes on to say:

> There is no country in the world for which we have records, in which organised prostitution has existed without being interwoven with organised crime on a large scale. It has been argued by some, on little real evidence, that legalisation would diminish some elements of this. The long history of those countries with legalised prostitution at different stages in their history does not support this. Organised crime is not a question only of corruption of police by way of protection money, which some argue that legalisation would remove. (Although police have still been found to be engaged in other criminal or illegal activities even in countries where licensed houses of prostitution exist.)
>
> Brothels and prostitution networks are associated with the illicit drug industry wherever they exist. The concentration of brothels in certain areas of large cities also creates . . . criminal activities. The organised prostitution network is, in almost all (if not all) countries is part of the criminal information network. Areas where organised prostitution is concentrated have a high incidence of criminal violence.

The learned professor is not simply looking at one act of prostitution and taking the view that, because there is no obvious immediate victim in the same room or next door, it is all right. She is taking the view that the consequences of certain activities go far beyond the perception of individuals, in this case individual prostitutes. She takes a global view, weighs it in the balance, gives a high priority to that value and comes out against legalisation of prostitution.

The matter is very devisive and on this issue this Chamber is divided. By contrast, with the views of Professor Byrne, we have the views of Professor Marsha Neave which concentrate on the legalistic rationalism of producing a law which, in her view, makes better legal sense than does the present law. She does not give the same weight to the social consequences as does the learned Professor Byrne. So, she comes to the opposite conclusion. We have two eminent and learned professors, both understanding the woman's point of view, coming to opposite opinions. I give great weight to the extended effects upon social responsibility and the good of society that certain behaviour patterns have. I do not have to see an immediate victim to see that in the larger social scale of things prostitution is not victimless by any means. I concur thoroughly with Dr Pfitzner's view that society itself is one of the victims of the libertarian approach.

Perhaps that is enough of the philosophy because my view is firm and I will perhaps not persuade people who disagree with me to give more weight to the extended social effects. However, I wish to appeal to members, some of whom are opposite, who would perhaps give weight to the libertarian view that, notwithstanding that we might disagree on that principle, between us we might agree that this Bill is full of problems and ought to be rejected. The first thing one notices in picking up the Bill is that it is not a Bill to legalise or decriminalise prostitution, whatever those two terms might mean. Those terms are so bandied around that I am not sure what they might mean.

It is a Bill to regulate prostitution, as indeed it does. One of the very first things that one notices is that, in the principal Act, more than 40 new offences are created. Traditionally in the past an act of prostitution in isolation has not been illegal. It has not been illegal for two people to agree to have intercourse in return for an exchange of money.

The offences—a handful—have been for procuring, soliciting, living off the earnings of a prostitute and managing a brothel. However, the Bill really gets into regulation in a big way. In clause 3—the definition clause—reference is made to an authorised officer, and this means a member of the Police Force of the rank of sergeant or above. An authorised officer is required to enforce Parts III and V of this Bill.

Part III deals primarily with the management of unlicensed brothels and offences related to that. They are, more or less, administrative offences against the Act, and perhaps they could be reserved until there is a spare sergeant. Part V, which requires an officer of the rank of sergeant or above to enforce, includes entry to premises by police. It provides that, where an authorised officer demands entry to a brothel pursuant to this section and, entry is refused or delayed an officer may use reasonable force. So, obviously, all of the senior constables and police officers on the beat are now excluded from forced entry to a brothel, no matter what is going on. If I ran a brothel, I would be delighted because at the moment any police officer can visit my establishment and I would have to be speedy indeed if some other illegal operation were going on there, such as packaging heroin, and a constable might force his way in and discover that activity. However, under this Bill that officer must go away and find a sergeant.

I am even slightly amused by provisions constituting the board, because it is a lift of general provisions that the draftsperson carries over from one Act to another constituting any new statutory authority, with an addition of the provision that one of the board members must be a representative of the sex industry. However, it also provides that that person hold office only if they are of good behaviour. How can one say that a board representative involved in the prostitution industry is of good repute when, by definition, someone who has been breaking the law in many respects year after year after year must be appointed?

Furthermore, in building this complex web of more than 40 new offences—and an untold number of new offences that will be added by regulation—we somehow assume that the people out there who have been defrauding the Taxation Department and breaking half a dozen laws year after year will suddenly obey these 40 laws. This difficulty was recognised by the Police Commissioner, David Hunt. In an article that he wrote for a professional journal, he made clear that, while not purporting to instruct Parliament on the principles that it adopts when legislating, this Bill, if passed in this form, would create enormous difficulties for the police. Quite frankly, if I were Police Commissioner, I would be appalled if someone put a Bill on the table and said, 'An area of law that used to have half a dozen offences now has 40, but wait until you see the regulations—it could become 100—and you must enforce them all. You cannot rely on the observance of 100 new laws by people who have been breaking all the existing laws year after year. But, for a lot of the enforcement you cannot use all your police officers; for some of them you have to have a sergeant or above.'

I hope that this Bill will not be read a second time. I oppose it on a matter of principle, because I just do not believe that the libertarian philosophy should prevail. Mr Matthew Goode produced a discussion paper that was very learned and very useful to people who wanted to discuss the complexities of the law and how the law might be rationalised. In passing he referred to the fact that some

people hold moral beliefs, and he did not purport to tell those people what to believe. He sought, as he said in the paper, to make the discussion value-free. The fact is that not only people with a religious belief that prostitution is wrong from the point of view of their religious doctrine but also plenty of people who sit down and think carefully about what is really good for society at a humanitarian level conclude that the libertarian philosophy is dangerous humanly for all of us.

I have come to that conclusion and I give it such weight that the best Bill in the world would not persuade me to use legal rationalisation to outweigh my belief about the dangers of libertarianism. As I said earlier, for those who do prefer libertarianism this is the worst Bill in the world. If we are unfortunate enough to have to deal with the Committee stage, I think we will find that the practical difficulties with this Bill—the complicated web of multiple new laws—will cause us great difficulty at that stage. I believe that the Bill is not, in fact, amendable, and I urge members who support a libertarian approach to oppose the Bill because of its practical defects. They might then bring in something else, but we will face that when it comes.

The Hon. Anne Levy raised concerns about prostitutes and the double standards that the present law creates. I have some sympathy with that; I am not the sort of ghoul who wishes evil upon all prostitutes because they are prostitutes; I do not heap vilification on people's heads. I am too old and I have practised medicine too long to see individuals as evil and as deserving to be spat upon.

All of us probably have some faults that would make other people think we deserve to be spat upon, so I have no anger or ill-feeling towards prostitutes. I have treated them from time to time and I have a certain amount of sadness about the loneliness of their lives. I also have a certain amount of sadness about the amount of pelvic infections they suffer but, whilst in passing we touch upon the health issue, I do not think it is a central part of this debate.

The prostitutes probably have less sexually transmitted disease than perhaps young teenage sexually active women who have had no instruction on sexual hygiene, and I think it is just a nonsense to waste printing ink on putting provisions in a Bill like this about the compulsory use of condoms. People who want to comply will work in a licensed brothel and the people who do not want to comply, or cannot comply because they are drug addicts or because they have a criminal record, just go down the road and practise the same things that they are already practising now. This was the Melbourne experience—the people who could not comply with the rules in the pleasure houses simply went down market and onto the streets of St Kilda.

Not one drug addicted prostitute will overcome their addiction as a result of this Bill; she will just practise in another fashion. Not one person with a criminal record who is at present associated with prostitution will cease to be a criminal if this Bill passes. They will just evade the official brothels.

As to the question of dominance by doubtful money, if you like, of organised crime, I think that at the moment there may be some amoral business people who do not invest in brothels because they do not want a criminal record. If we give them some lawful brothels in which they can invest, they will do so. I do not know how one stops, dare I say it, avaricious investors who are on the fringes of the law but who want to stay within the letter of it.

I heard mention of triad money from Hong Kong being involved in Melbourne. This is a very shadowy area, and I do not know that we can predict what will happen, but Professor Byrne simply pointed to the world's record in this area and the world's record in this area is one of legislation and legalisation leading to an increase in organised criminality.

I would not be surprised that, should this Bill become law, if there were a bit of a battle between a handful of strong players to dominate the industry in Adelaide. When this matter was before a select committee of this Council a decade ago, there was a series of physical attacks. I think there was a fire bombing on the premises of one brothel.

There is an enormous number of practicalities, but I just urge the Council to remember that this is a complicated Bill that will be a nightmare for the Police Force and that not one of the present undesirable aspects of prostitution will be removed. There will be standover merchants, there will be disease amongst the less responsible operators, and there will be drug addiction and crime. However, if a system of licensed brothels is created and it is policed very strictly, all those other people whom I talked about just go somewhere else, perhaps around the corner or down to the Port; they do not put up the sign. So, nothing is solved and the police are given a bigger headache. That is it in a nutshell. The Bill will not solve anything; it will give the police a bigger headache.

In relation to the health aspect, about three years ago I went to Melbourne. I wanted to see their new licensed sex industry firsthand. I thought carefully and critically about myself. I thought, 'No, I am not going over there just for kicks.' Indeed, I did not even get an offer of a free sample.

However, I saw the farcical insincerity that existed in regard to the health aspect. I visited the STD clinic and spoke with the doctors. They were very compassionately and non-judgmentally treating those who had become sexually ill and who, for the most part, were not prostitutes but the general public. The prostitutes were attending for checkups. The doctor said to me, 'Of course, they want a certificate, but we will not give them certificates, because the certificate is only good until the path report comes back tomorrow, or until the next act of intercourse which, in most cases, is about 20 minutes. But they want certificates, so we give them things that look like certificates with nice official printing all over them that simply state that the prostitute has attended the clinic full stop.'

Later that day, the madam of a parlour that I visited was extolling the cleanliness of the place and said, 'Look, all our girls have certificates' and pulled out a great wad of these very same blue forms which the doctors were handing out instead of certificates. I really do not think that the health issue is very much part of this debate. It is a question of principle. I oppose the libertarian philosophy for the same sort of reason that Professor Byrne does and the Bill itself is the world's worst Bill.

If I should lose on the issue of principle and we were faced with the Committee stage of this Bill, I would urge the members who are in favour of some sort of legislation reform regarding prostitution nevertheless to toss out this particular Bill and start again, because it is a bad, bad Bill. Having said that, I urge the Council to reject the Bill forthwith.

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

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) AMENDMENT BILL

The Hon. ANNE LEVY (Minister for Local Government Relations) obtained leave and introduced a Bill for an Act

to amend the Local Government Act 1934. Read a first time.

The Hon. ANNE LEVY: I move:

That this Bill be now read a second time.

The Bill seeks to finalise a number of matters relating to the Act which have been developed in response to council requests over a number of years, and to rectify a range of anomalies and discrepancies which have arisen in recent years in order to facilitate the smooth operation of council affairs.

Members will be aware of the current negotiation process between the State and local government. In October 1990, a memorandum of understanding was signed by the Premier and the President of the Local Government Association. This agreement committed both levels of government to negotiate a new and cooperative relationship in relation to the legislative, financial and administrative roles and functions of each. In this process of negotiation the State has agreed that the Local Government Association will speak on behalf of councils, and the association has agreed to consult with councils and to ensure full representation of their views. The association has undertaken extensive work in providing information to, and consulting with, councils in the past year in order to fully participate in negotiations, and the Government appreciates the effort made by the association's President and Secretary-General, and the officers whose efforts have enabled councils to participate in these reforms.

The negotiations are progressing well, with a number of significant agreements reached, including the role and resourcing of the Local Government Grants Commission, the provision of information and advice on local government matters to councils and to the community, and the self-management by local government of fees and charges within the sector. A comprehensive review of the legislative relationship between the State and local government, which is being undertaken jointly by State officers and officers of the association, is under way. The first stage of that review focuses on reform of the role of the State in regulating a range of activities undertaken by councils. It is anticipated that legislation relating to these aspects will be introduced to Parliament in the autumn session, following negotiations on those matters by the negotiation task force representing both State Government and local government interests.

The Bill to which I speak today does not seek to make major reforms in the legislative relationship between the State and local government. As I mentioned earlier, it seeks to finalise a number of matters raised by councils with the then Department of Local Government and to rectify a number of difficulties with the Act which have been brought to my attention by councils. The provisions of the Bill have been developed in consultation with local government, some over a number of years, prior to drafting the Bill. The matters were formally discussed with the Local Government Association, which has requested that they be dealt with now, as a matter of urgency, rather than delayed and included in amendments arising from the legislative review under the memorandum of understanding. The association was also provided with the opportunity to include any additional legislative issues it felt should be dealt with at this time, and matters arising from negotiations on the reform of the administration of the septic tank effluent disposal scheme have been included in the Bill. The association has been very cooperative in assisting in the development of the Bill, and in meeting the timelines for response to the draft Bill to enable its immediate introduction.

The Bill also includes one provision, relating to the occasional slaughter of large animals for meat for household use, which is the result of issues raised by a member of Parliament through a private member's Bill, and I acknowledge his efforts in this matter. I will briefly outline the various provisions of the Bill.

First, I refer to council liability insurance. In this State the Local Government Association mutual liability scheme provides unlimited cover to member councils for civil liabilities which include both public liability and professional indemnity. All but one of the 119 local councils in this State are members of the scheme at the present time. The provision to require minimum levels of civil liability cover is included in response to a decision by Local Government Ministers in all States and Territories to enact nation-wide requirements for adequate levels of insurance cover. In this State the provision will be relevant to those councils which choose to seek civil liabilities cover outside the association's mutual liability scheme. Minimum levels of insurance cover will be determined in consultation with the Local Government Association.

Secondly, with respect to rating, the Bill seeks to rectify a number of anomalies in the rating provisions of the Act. These difficulties have been brought to my attention by individual councils and through the Local Government Association in its work with councils. I will not detail the provisions here, but they aim to remove the confusion experienced by some councils in administering their rating systems.

Thirdly, with regard to controlling authorities, a provision has been included to give certainty to the position of members of regional controlling authorities in relation to liability incurred for honest acts or omissions arising in the discharge of duties by such members. Such statutory protection is included for members of local controlling authorities but has been absent from provisions relating to regional authorities. Local Government officers have sought to rectify this situation. Other minor matters of definitions relating to the capacity of controlling authorities to carry out activities for the benefit of their constituent councils are also rectified.

Fourthly, with respect to movable business signs or sandwich boards, a number of councils have for some time sought the power to license the placement of movable business signs, known as sandwich boards, in public places. Such signs can obstruct the public use of footpaths and other public areas, and can create nuisance and potential damage and injury. Representations to provide this power have also come from members in the other place, including Mr Speaker.

Since late 1988 a working group on planning controls over outdoor advertisements in the Department of Environment and Planning has been developing a comprehensive approach to such controls as are necessary. This amendment to the Local Government Act forms part of an overall strategy for refining planning control for outdoor advertising, and is brought forward now in order that the definition of 'movable business sign' coincides with the intended changes to the development control regulations. The amendment enables movable business signs to be exempt from the development control regulations.

The power to license allows councils to consider the appropriateness of proposed sites for the signs and to set such conditions as are necessary to prevent public nuisance and obstruction, and to limit the potential for damage. Simply providing councils with a power to remove movable business signs which cause nuisance and are a hazard would create a situation in which the council would need to stringently police the placement of signs as they could be replaced, and continue to obstruct public access or create hazards.

Fifthly, with respect to parking, councils have raised a number of issues in the administration of the parking control provisions of the Act, and in the penalties available for various offences. The provisions in this Bill seek to ensure consistency in powers and penalties available to councils to regulate parking.

Sixthly, with regard to occasional meat slaughtering for non-commerical use, this provision restores to councils, through by-law powers, the capacity to ensure that the occasional slaughtering of large animals such as pigs, goats, sheep and calves for household purposes does not interfere with the amenity of urban or suburban areas. This matter was raised by the member for Light as an amendment to the Act. As the honourable member noted in introducing his Bill, it is not a widespread practice for households in cities and towns to kill their own meat but it does still happen, particularly in country towns and among people with farming or village traditions.

Such slaughtering is not subject to the provisions of the Meat Hygiene Act 1980, as it is 'once-off' slaughtering which cannot be construed as 'operating a slaughtering works' under section 20 of that Act. If such slaughtering gives rise to insanitary conditions, if the condition of the premises puts health at risk, or offensive material or odours are emitted, such slaughtering can be prevented and penalised under the Public and Environmental Health Act 1987. However, it is not usually the case that occasional slaughtering of an animal creates an insanitary condition. It is better described as a practice which may cause offence to neighbours. It is appropriate for local councils to have the power to regulate this activity in order to balance the interests of people within the community and allow the occasional animal to be slaughtered on properties which are suitable and in ways which do not cause undue concern to neighbours. The member for Light has agreed that this can be achieved by by-law rather than a general power within this Bill. The Government acknowledges his work on this issue.

Seventhly, as to control of cats, problems caused by the proliferation of cats in local council areas and the consequent nuisance caused by stray and feral cats have been the subject of extensive debate in recent years, and the Government has established a process of consultation with the Local Government Association and other interest groups to develop a wide-ranging strategy in this area. One aspect of such a strategy is the provision to local councils of powers to limit the numbers of cats which can be kept on premises. A number of councils has requested that a specific provision be made to this effect and, following consultation with the Local Government Association, this Bill includes a new by-law making power for those councils wishing to place limits on cat numbers within their areas.

In conclusion, once again the assistance of the Local Government Association in the development of the provisions of this Bill is acknowledged and, like the association, the Government looks forward to legislation in the autumn session to effect significant matters arising from the current negotiations on the relationship between State and local government. I commend the Bill to the Chamber and I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal.

Clause 2 provides for the commencement of the measure.

Clause 3 inserts into the Act a definition of 'business day'. The amendment is proposed in conjunction with new subsection (4c) of section 183.

Clause 4 will require a council to effect insurance cover against civil liabilities to the extent prescribed by the regulations. A regulation under the section will only be made after consultation with the Local Government Association.

Clause 5 proposes an amendment to section 176 of the principal Act to make it clear that where there are two or more townships in an area, there may be rating differentiation between the towns, and between the towns and other land. A related amendment is made in relation to differentiation according to zones, and according to whether the land is within or outside a township, to ensure consistency of approach within the relevant provision.

Clause 6 recasts subsection (2) of section 183 to provide that the occupier of land held from a council under a lease or licence will be taken to be the principal ratepayer for the purposes of the Act. New subsection (4a) will empower a council to impose a charge if it serves a notice on a lessee or licensee of land to pay rent or other consideration to the council in satisfaction of a liability for rates. New subsection (4c) will require an owner who receives an amount in contravention of a notice under subsection (4) to pay the amount to the council within one clear business day.

Clause 7 provides that interest on any amount paid in excess of a liability for rates runs from the date of the payment to the council. The interest will accrue monthly and be compounded.

Clause 8 recasts subsection (1) of section 192 so that rates are not payable for the relevant financial year in respect of land that becomes ratable after the rates for a particular financial year have been declared.

Clause 9 provides for a definition of 'contiguous' for the purposes of Part X of the Act.

Clause 10 replaces a heading that might otherwise suggest a limitation on the ability of a council to carry out projects under the Act.

Clause 11 relates to controlling authorities established by two or more councils under section 200 of the Act. A new provision will ensure that a controlling authority can (subject to the Act) carry out any project on behalf of the constituent councils. A provision relating to the personal liability of members of a controlling authority is also proposed.

Clause 12 makes the penalty under section 358 (2) of the Act consistent with other relevant provisions of the Act.

Clause 13 makes express provision in relation to the power of a council to regulate movable business signs through the introduction of a licensing system.

Clause 14 makes a consequential amendment to section 475e, in conjunction with a proposed amendment to section 743 relating to the facilitation of proof.

Clause 15 relates to schemes for the disposal of septic tank effluent. It is intended to apply new arrangements that do not require the involvement of the South Australian Health Commission. Instead, regulations will be prepared to act as guidelines to councils that undertake septic tank effluent disposal schemes.

Clause 16 will empower councils to make by-laws relating to the slaughtering of certain animals within municipalities and townships and to the keeping of cats.

Clause 17 repeals a provision that is inconsistent with the rating provisions of the Act.

Clause 18 clarifies a council's power to facilitate the proof of certain matters.

Clause 19 recasts section 789b of the Act. The new provision will ensure that the owner of a vehicle is guilty of an offence against the Act in prescribed circumstances where there is no evidence as to the identity of the driver.

Clause 20 amends section 789d of the Act to provide that in proceedings for an offence against the Act relating to the use of a motor vehicle, an allegation in a complaint that a specified notice has been sent in accordance with section 789d will be accepted, in the absence of proof to the contrary, as proof of the matters so certified.

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

MARALINGA TJARUTJA LAND RIGHTS (ADDITIONAL LANDS) AMENDMENT BILL

In Committee.

Clauses 1 to 5 passed.

Clause 6—'Substitution of first and second schedules.'

The Hon. PETER DUNN: In my second reading speech I said I thought that an anomaly had occurred in allotment 19 of the plan contained in the Bill where the eastern boundary runs north and south along longitude 133 and where the fence of Commonwealth Hill station is used as the eastern section of the boundary. I have looked more carefully at a map and believe that I am correct that the boundary of the Maralinga lands should remain on longitude 133 because, from its most northern point to its most southern boundary, it follows that line.

However, the Bill takes up about the last 90 kilometres by using the western boundary of Commonwealth Hill, but it is not a straight boundary and has a deviation in the centre of about 18 kilometres. As I pointed out, that will move over the years and there will be confusion as to where the boundary lies.

I contacted the Minister, who put me onto Lands Department staff. They indicated that they surveyed the fence from end to end and have it well documented with its coordinates but, when I asked a question of the department's officer about what were the coordinates, he was uncertain and could not tell me, so I am doubtful as to whether they have actually been along that fence line. They can say that it is there and that they can take an aerial photograph and probably use it as the surveyed line.

I want to put on the record that I believe it is wrong to do as the department is doing. The eastern boundary of the Maralinga lands should remain on longitude 133 from end to end. The remainder of allotment 19 is quite satisfactory and I believe that Commonwealth Hill should be given that piece of land—the 700 metres west. I can tell the Committee what will happen. As there is a boundary bordering the Maralinga lands, Commonwealth Hill will now be subject to a claim for the cost of erecting that fence. When I put it to the officer, he was not aware of it, but that is the case with any boundary fence and any repairs or erection costs will have to be met by those people.

I am sure that they did not think of it when they put it up, but they have insisted that it be the case so that they might have to pay for some 90 kilometres of boundary fence, or at least half of it. I alerted this Chamber to that fact and, if the Government wishes to continue with it, that is its problem. It will have to find the money for it in the long term.

The Hon. T. Crothers interjecting:

The Hon. PETER DUNN: It is not Ian McLachlan's. It is not Ian McLachlan's property and he has nothing to do with it—nothing whatsoever.

The Hon. T. Crothers: His family?

The Hon. PETER DUNN: Commonwealth Hill does not belong to Ian McLachlan's family—it is another McLachlan. He worked on it, but it was never his property. I put that on record as a problem that I see occurring, probably not in my lifetime or even in the next generation. I do so in light of what has happened with the eastern boundary of South Australia and Victoria, which was not put in the right place and which incurred problems. For posterity I place on the record my concern, because someone may wish to read it.

The Hon. ANNE LEVY: The honourable member raised the matter during the second reading debate and I provided what I hoped was an adequate reply. I can certainly reiterate the information that I have been given, namely, that the current proposal is for the boundary to follow the boundary line of Commonwealth Hill Pastoral Station to the dog fence and then to follow the dog fence north. Wherever possible the Department of Lands tries to have boundaries identified by markers on the land and not by longitudinal lines which are unidentifiable as people move across the surface of the land. Experience indicates that following an established and identified boundary reduces confusion by landowners. However, in relation to the boundary, I am assured that it is properly surveyed if future debates arise and the clearly identifiable dog fence is no longer identifiable in centuries to come.

I also reiterate that a very practical reason for incorporating the Commonwealth Hill boundary is that, by using the longtitude 133 line, it will leave a 700 metre strip of no-man's land, which will be unallotted Crown land and which will lie between the longtitude line and the Commonwealth Hill fence. I cannot see that 700 metres of land outside the dog fence would be of great value to Commonwealth Hill, yet it is regarded as being of value to the Maralinga people. Therefore, we can avoid the ridiculous situation of having a strip of land hundreds of kilometres long and only 700 metres wide which is neither fish, flesh, fowl nor good red herring. The current schedule will ensure that this strip of land forms part of the Maralinga lands, which will have a boundary with the Commonwealth Hill Pastoral Station.

Clause passed.

Schedules and title passed.

Bill read a third time and passed.

The Hon. K.T. GRIFFIN: Mr President, I draw your attention to the state of the Council.

A quorum having been formed:

DANGEROUS SUBSTANCES (COST RECOVERY) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 22 October. Page 1292.)

The Hon. J.F. STEFANI: The Opposition supports this Bill, which provides for the keeping, handling, packaging, conveyance, use and disposal of dangerous substances of a toxic, corrosive, flammable or harmful nature. The measure is further designed to provide general powers for State and local government agencies to undertake the recovery of expenditure incurred in undertaking the clean-up of dangerous substances. Owners or persons who are in control of dangerous substances and who, through an incident or spill, cause damage, will be held jointly or separately liable for the clean-up costs.

The Opposition notes that dangerous substances are subject to guidelines approved by Cabinet. These guidelines are set out under the emergency response procedures dealing with a leakage or spillage of a dangerous substance. The

emergency response plan involves all relevant Government agencies and provides for the allocation of responsibility for the provision of specialist advice, staff, equipment and materials to assist the fire service in dealing with an emergency.

The amendment will provide for the Government to recover only reasonable costs—and I emphasise the word 'only'. In the event of a dispute over a cost charged by the Government or Government agency, the Crown will obtain a ruling from the court. This amendment follows the principles applied to common law negligence, especially as it relates to vicarious liability. I note that actions to recover costs are not restricted to damages; costs can include all items of expenditure, heavy machinery hire, equipment purchase, and include costs incurred to analyse or seek specialist advice to decontaminate and monitor on-site damage of a dangerous substance. The Opposition supports the Bill.

The Hon. M.J. ELLIOTT: The Democrats support this Bill, which seeks to extend the existing provisions for cost recovery in the Dangerous Substances Act. At present, costs can be recovered by the Government only when action by an inspector, empowered under the Act, incurs an expense. However, in reality, in the event of an accident involving dangerous substances, not only are the health and environmental costs borne by the whole community but the emergency clean-up costs are as well through the involvement of the emergency services.

This Bill empowers all State and local government agencies involved in dangerous substance accidents to recover their costs from the person or company that caused the incident. This means that the Metropolitan and Country Fire Service and whatever other agency which contributes employees or equipment to combat an emergency can undertake cost recovery for their efforts. The amendment will put the responsibility for the clean-up cost on: the owner of the substance involved; the person in charge of the substance at the time of the accident; and the person who caused the incident.

Several defences are provided in the amendment which the defendent must prove. They are that the indicent was caused by the act of default outside of the person's control, that the incident could not have been avoided by the exercise of reasonable diligence and that the incident was not due to an act or omission of the person involved, unless it is proved that the incident was not due to wilful misconduct.

The Australian Democrats support measures which encourage secure and responsible handling of dangerous substances. We see this amendment as creating a financial incentive to companies to act responsibly and therefore avoid bearing the full and real cost of a clean-up which would follow an accident. I take the view that prevention is always better than cure and measures which can reduce the size of any spillage which does occur should be encouraged. I have for some time been calling for bunding to be required around hazardous chemical storage sites. All areas in which chemicals in liquid form are stored or handled should be constructed in a way that contains any spilt liquid. One way in which this can be achieved is to have bunding, or a liquid-tight ridge or bank, high enough to contain any liquid spill, built around any storage or handling site.

I would like the Minister to address—perhaps during the Committee stage, if not at the end of the second reading—whether the Government is investigating ways of minimising the need for emergency clean-ups so that there is, in fact, an attempt to contain spills or accidental leakage of gas, or whatever else. The Democrats support the Bill.

Bill read a second time.

POLLUTION OF WATERS BY OIL AND NOXIOUS SUBSTANCES (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 22 October. Page 1293.)

The Hon. BERNICE PFITZNER: This Bill seeks to amend the Pollution of Waters by Oil and Noxious Substances Act of 1987, which incorporates into State legislation annexures I and II of the MARPOL 1973/1978 Convention. This Bill has four objectives. First, it increases the penalties for offences under the Act. The increase is significant—$1 million for a body corporate. Secondly, it provides for the recovery of damages by persons who suffer loss because of a discharge prohibited by this Act. Thirdly, it prohibits discharges from ships, not being oil tankers, of less than 400 gross tonnage. This provision was omitted from the Act as the MARPOL Convention involves only large vessels in international trade. This Act applies to waters of small boat havens and gulfs of South Australia. Therefore, relatively smaller vessels must also be included.

Fourthly, it consolidates all provisions relating to the adoption of the MARPOL Convention. The United Nations investigation of the state of the marine environment rightly comments that man's fingerprints are found everywhere in the oceans. The open seas are relatively clean, but the margins of the seas are affected by man almost everywhere and encroachment on coastal areas continues world wide. Habitats are being irretrievably lost and global deterioration in the quality and productivity of the marine environment will ensue if contaminants enter the seas and oceans unchecked.

We have before us a significant increase in penalties ($1 million for a body corporate), which will indeed go a long way to act as a deterrent to such actions that will result in marine environment degradation and economic hardship. The findings of the report (1978) of the House of Representatives Standing Committee on Environment and Conservation on oil spills are of significance and I note the findings that are relevant to this Bill. First, with the increasing importation of oil and refined products to Australia, there is a serious threat of larger and more frequent oil spills. Secondly, oil spills cause substantial environmental and economic damage. They require rapid reaction if damage is to be minimised or prevented, and this requires adequate equipment and training. An article in the *Advertiser*—July 1991—reports that South Australia is well prepared for any oil spill crisis, although Greenpeace reports the contrary.

Thirdly, not enough emphasis is currently being placed on methods of preventing spill. Through this Bill we are addressing some of the methods of prevention. Fourthly, the likelihood of an oil spill disaster depends largely on the performance of people involved in the industry, both on land and at sea; and also the standard and maintenance of equipment. Finally, environmental damage caused by frequent small oil spills (chronic) is often as great, if not greater, than large, once-only spills (episodic). Not enough significance is attached to preventing small spills and dealing with these in an environmentally acceptable way. For small spills there is a need to upgrade physical recovery capability for sheltered and open waters.

We are addressing this in some way in this Bill by also prohibiting discharges from ships, not only oil tankers but also those ships of less than 400 gross tonnage. The oil slick discovered in September 1991 near Troubridge Island in the Gulf St Vincent was 22 km long and 300 metres wide,

30 km south of Edithburgh and 50 km south-west of Adelaide and is an example of the chronic spills.

The slick was dispersed by chemical dispersants, but there had been the potential to damage lobsters, fin fish and the prawn population. Under this new legislation a body corporate found to have dumped oil can be fined up to $1 million.

Other findings of the committee, which are more wide-ranging but nevertheless as important to note are as follows: the objective dealing with oil spills is primarily to protect the environment. There should be full environmental participation in contingency planning and action arrangements. Environmental specialists should be advised of all spills and provision needs to be made to advise any groups or associations if property is likely to be damaged in any way to allow them an opportunity to take avoidance action.

Further, dispersants damage the marine environment and their use should be restricted and carefully monitored. Dispersants should meet defined efficiency and toxicity standards and governments must have the strength to do nothing in the face of a serious spill if this is deemed to be the best approach. Decisions that would cause greater environmental damage must not be taken as a result of ill-informed public pressure.

Monitoring the effects of oil pollution and actions taken to deal with it can provide important information for compensation, for reviewing adequacy of contingency arrangements, and for developing reclamation proposals for the affected areas. There is a need for research into the possible effects of oil in Australian conditions on Australian species. A table on tanker accidents is interesting. The source is from Lloyds Weekly Casualty Reports. Mr President, I seek leave to incorporate into *Hansard* a table of statistics entitled 'Tanker Accidents Resulting in Oil Outflow'.

Leave granted.

TANKER ACCIDENTS RESULTING IN OIL OUTFLOW, 1969-73
Tankers over 3 000 Dead Weight Tonnes (DWT)

Type of Accident	No. resulting in oil spills	Per cent of involvements	Amount of oil (long tons)	Per cent of spills
Breakdown	11	2	29 940	3
Collision	126	28	185 088	18
Explosion	31	7	94 803	9
Fire	17	4	2 935	.3
Grounding	123	27	230 806	22
Ramming	56	10	24 656	1
Structural failure	94	21	339 181	32
Other	4	1	54 911	4
TOTAL	452		951 317	

The Hon. BERNICE PFITZNER: The table shows that structural failure was the greatest single source of oil pollution. Although most incidents involved vessels of 15 to 20 years old, the age is considered to be only a gross indicator of probability of failure.

The insertion of Part IIIA in this Bill regarding the construction of ships and, in particular, new section 24f relating to ships being surveyed periodically, are necessary and important amendments. We have to be vigilant regarding oil spills in our marine environment. A table by the US National Academy of Science Workshops, 1973 on the annual input of oil into the world's ocean emphasises this point. It notes that approximately 6.1 million tonnes per annum are discharged into the ocean and, of that, the second greatest single discharge is from tanker washing operations. Mr President, I seek leave to incorporate this table of statistics into *Hansard.*

Leave granted.

Table I
ANNUAL INPUT OF OIL INTO WORLD'S OCEANS

Natural seeps	600 000
Tanker washing operations	1 080 000
Other shipping operations	780 000
Accidents (shipping)	300 000
Offshore operations	80 000
Refinery effluents	200 000
Municipal/industrial wastes	600 000
Urban/river run off	1 900 000
Gaseous emissions	600 000
	6 140 000 tons per annum

Information from US National Academy of Science Workshop, 1973 published at 7th Offshore Technology Annual Conference, Houston, 5-8 May 1975.

The Hon. BERNICE PFITZNER: I therefore fully support the second reading of this Bill, which contributes towards a more stringent attitude in relation to pollution of waters by oil and noxious substances. However, I would like to alert the Minister to two clauses that I would like clarified perhaps in the Committee stage. With regard to new section 24f regarding ships to be surveyed periodically, who will bear the cost and can any surveyors be approached, or is there a list of reputable surveyors? I will also seek clarification of clause 21 relating to hours of inspection. I would like to know the qualifications of the inspectors and whether these inspectors will be provided with identity cards, as is the case in the Environment Protection Sea Dumping Act. Again, I support the second reading of this Bill.

The Hon. M.J. ELLIOTT: The Democrats support this Bill, which mirrors Commonwealth legislation and defines the territorial seas adjacent to the State and waters within the limits of the State. The Bill's four stated objectives are that it increases the penalties for offences under the Act to the same level as the corresponding Federal Act. It provides for the recovery of damages by persons who suffer loss due to an illegal discharge. It prohibits oil discharges from ships which are not oil tankers and have a gross tonnage under 400 tonnes, and it consolidates all the provisions relating to the adoption of the MARPOL Convention into the Act.

The Australian Democrats support all measures aimed at protecting the environment but, as I have said on previous occasions, environmental controls are only as good as the level of resourcing put into policing them. It is no good having tough laws and not enough inspectors to investigate breaches or to bring prosecutions and resources in the way of people and equipment to respond quickly in the event of a slick. I am sure South Australians will want to be assured that a quick and effective response is available, and we will ask the Minister to outline what is planned during the Committee stage.

On a recent trip to Port Lincoln, concern was expressed to me by residents about the practice of large ships that go to that port of discharging dirty engine oil or bilge into the sea. During the Committee stage, I will seek an assurance from the Minister that this practice is illegal or will become illegal by this amendment and, if that occurs, I suggest that the Government could provide an incentive to oil companies and ship owners to view used engine oil not as a waste

product to be discharged, but as a resource that could be collected in tankers and processed for reuse.

I would be interested to know if the Government has discussed, or has plans to discuss, this issue with oil companies. The shape of South Australia's coastline, with its enclosed gulfs, makes the potential devastation from a large oil slick washing onto our shores very great. That is, of course, not discounting the very real damage caused by oil slicks in the open sea to the marine environment, and birds and fish which depend upon it.

We have had several recent scares, and the most serious of these was one where we had a 22 kilometre slick reported in the Gulf St Vincent in September. The Democrats support measures to ensure that those responsible for polluting our seas are brought to account for it. We support the second reading.

Bill read a second time.

ENVIRONMENT PROTECTION (SEA DUMPING) (COASTAL WATERS AND RADIOACTIVE MATERIAL) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 22 October. Page 1244.)

The Hon. BERNICE PFITZNER: This Bill, otherwise known as the London Dumping Convention, seeks, first, to extend the application of the Act to waters within the limits of the State, that is, the Spencer Gulf, the Gulf St Vincent and historic bays. The present Act does not include those areas of water within the State limits. Secondly, it seeks to ban dumping of low level radioactive waste. The present Act, in accordance with the London Dumping Convention, allows for dumping of certain low level radioactive wastes by specific contracting parties and this amendment will prohibit this specific practice. Thirdly, it seeks to amend penalties for offences under the Act. In the case of serious offences, the maximum penalty is $1 million for a body corporate and $200 000 for an individual. Let us look at the global scene and how radioactive material can be present in the environment. Radioactive materials are present naturally in ocean waters.

I refer to such radioisotopes as potassium, rubidium, thorium and uranium. This group reaches the oceans as run-off from weathered rocks or decay of the primordial substance in the water itself. Other radioactive material such as hydrogen 3 and carbon 14 originate from the atmosphere through cosmic radiation reacting with constituents of the air, and can also be produced by human activities. These substances are deposited on the ocean's surface by precipitation.

Other human activities which produce naturally occurring radioactive substances are from leaked mine tailings—for instance, uranium mines and milling wastes. However, these activities produce increased levels of radioactive materials close to the source and have a negligible contribution to the ocean radionuclides. Nuclear weapon tests introduce artificial radionuclides into the environment through atmospheric fallout. Fallout from nuclear tests has been the only source of world-wide contamination of the oceans. However, it must be noted that the inputs of radioactive wastes to the ocean in the Southern Hemisphere have been half those in the Northern Hemisphere.

The scene here in South Australia is that the radioactive wastes come from hospitals and laboratory research animals and apparatus. These wastes are collected and buried under supervision at the Wingfield dump. Other radioactive wastes come from nuclear tests and uranium tailings. None of these wastes in South Australia applies to pollution of the coastal waters or seas. As mentioned, some low-level radioactive wastes have, in the past, been packaged and dumped in the sea. This practice was temporarily suspended in 1982, via the London Dumping Convention, but this Bill seeks permanently to discontinue the practice. However, the total amount of radioactive material dumped at sea is much less than that added to the oceans as a result of atmospheric nuclear weapons tests between 1954 and 1962.

As radionuclides vary widely in the extent to which they can affect marine organisms and man, it must be stated that dumping cannot be considered safe just because releases of radionuclides are small compared with the natural incidence of radionuclides in the environment. The present and future risk (of developing a fatal cancer or severe hereditary defect) to individuals from past ocean dumping of radioactive waste is small, and on a global scale the total casualties resulting from past dumping may be up to 1 000 cases spread over the next 10 000 years.

Nuclear accidents have not contributed significantly to the ocean inventory of radionuclides on a global scale. The three major accidents (Windscale, UK, 1957; Three Mile Island, USA, 1979; Chernoble, USSR, 1985) have resulted in radionuclides released into the environment, but the major pathways leading to man were not marine. The dominant pathway for this exposure would be via the consumption of food produced on land.

This Bill is a preventive measure, which is always better than treatment. A further concept relevant to pollution is that of 'sustainable development'. This term was outlined in the report of the World Commission on Environment and Development—the Brundtland report. This approach permits the expansion of human communities without detriment to the human condition. As the United Nations Environment Program writes:

> The underlying principle of sustainable development is that the exploitation of resources, the direction of investment, the orientation of technological development and institutional change should be consistent with future as well as with present needs. The profligate use of environment resources should no longer be acceptable, and action is needed to make economic growth compatible with an acceptable environment.

This Bill thus contributes to making the marine environment more acceptable to the present and future generations. I support the second reading of the Bill but would like to have two sections clarified in the Minister's second reading response or in Committee. I refer to clause 4 *(b)* which defines radioactive material. How was this 35 becquerels per gram arrived at as the criterion for radioactive material? Further, with reference to clause 17, what are the qualifications of the inspectors?

The Hon. M.J. ELLIOTT: The Democrats support this Bill, which applies the provisions of an International Convention on the Dumping of Wastes at Sea, to which the Federal Government is a signatory, to the waters within State jurisdiction. It also increases the penalties for breaches of the provisions of the Act, which is supported by the Australian Democrats. The dumping of any polluting substance into the marine environment should be considered a criminal act, but it must be remembered that dumping is not the only means by which pollutants can enter, contaminate and destroy that environment.

In considering this Bill, I want to address the issue of contaminants leaching into the sea, and one situation in which this may occur which is relevant, I believe, because

it involves low level radioactive wastes, one of the subjects of this Bill. At Port Pirie there are several tailings dams containing waste products from the processing of Radium Hill uranium in the late 1950s and early 1960s. There is currently before State Cabinet a proposal from the company SX Holdings Ltd which may mine those dams for rare earths as part of a rare earths plant planned for the city.

The dams are located in the intertidal zone, although they are currently protected from inundation. The location of these dams poses danger for the marine environment in the future in two ways: first, erosion may once again expose the contaminated area to tidal inundation allowing the radioactive materials to be washed or leached into the sea. Secondly, if the company is given permission to use the tailings, and does so, there is then the potential for accidents as there is in any human activity and the radioactive materials may find their way into the sea. I will pursue further this matter during the Committee stage. The Democrats support the second reading.

Bill read a second time.

PETROLEUM (MISCELLANEOUS) AMENDMENT BILL

Second reading.

The Hon. ANNE LEVY (Mininister for the Arts and Cultural Heritage): I move:

That this Bill be now read a second time.

In the last years, policy developments, emerging gas supply options, operational requirements in the Cooper Basin and administrative difficulties have highlighted the need for a number of revisions to the Petroleum Act.

Recent developments in proposed pipelines which may be required to bring gas into South Australia, and the possible sale by the Commonwealth of the Moomba to Sydney gas pipeline, have necessitated amendments to the pipeline licensing provisions of the Act. The requirement for a gas pipeline from South-West Queensland to Moomba is now very likely, and there is also a possibility of a requirement for a pipeline from the Amadeus Basin in the Northern Territory to connect with the existing Moomba to Adelaide pipeline.

The amendments included in this Bill clarify the category of pipeline that requires licensing to include, for example, a pipeline conveying petroleum from or to a place outside South Australia, provided that some part of the pipeline is located within South Australia. The amendments also provide that the Minister may in respect of a natural gas pipeline enter into an agreement with a licensee, or prospective licensee, that ownership of that pipeline will vest in the Crown at some future time. The purpose of providing for such an agreement is that it may be necessary to protect the long term strategic interests of South Australia. The amendments also provide that a pipeline licence cannot be transferred without the approval of the Minister.

A growing problem of disposal of waste materials resulting from petroleum exploration and, more particularly, production operations, has arisen over the last year or two. Essentially, all methods of disposal are forbidden by the Act. Necessary periodic inspection of facilities at Moomba for corrosion cannot occur until contained wastes are removed. The Bill contains an amendment to allow the Minister to give approval for waste disposal.

The fees, penalties and other monetary charges set out in the Act have not been reviewed since 1984, and an increase in line with inflation since that time is appropriate. In addition, a review has indicated that some South Australian charges are substantially lower than those levied interstate and these changes have been adjusted accordingly. The amendments to the Act move the monetary values of fees to the regulations to facilitate periodic adjustment.

There is currently no provision in the Act to allow delegation of ministerial powers. The Bill amends the Act to include this provision with the view to speeding the administrative process for matters of a relativefy minor nature. This amendment mirrors powers which already exist in the Acts governing offshore petroleum exploration and development.

Section 42 of the Act provides that agreements in which an interest in a licence is transferred are void if purporting to have effect on a date prior to that of the Minister's approval. This has caused problems in the registration of documents and is not entirefy consistent with the equivalent legislation in this State governing offshore petroleum. This Bill amends the Act such that agreements to transfer an interest in a licence have no effect unless approved by the Minister.

Amendments to sections 42 and 43 of the Act have also been necessary to remove anomalies as to certain types of documents which require approval and those that are only required to be lodged, and also clarifies the nature of documents which cither require approval or lodgment. I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 provides for commencement of the measure on a day to be fixed by proclamation.

Clause 3 amends section 3 of the principal Act to insert a new definition of 'pipeline'. This general definition will not apply for the purposes of the provisions requiring certain pipelines to be licensed. A more limited definition is proposed for the purposes of these provisions. (See proposed new section 80ca). Clause 4 inserts new section 4ab into the principal Act to confer a power of delegation on the Minister. Clause 5 repeals and replaces sections 42 and 43 of the principal Act. New section 42 requires Ministerial approval for any agreement to transfer a licence or an interest in a licence, or to confer any right to share in petroleum produced from the area of a licence, or profits derived from the production of petroleum. New section 43 requires joint licensees to file with the Director copies of agreements relating to the carrying out of operations under the licence or the sharing of petroleum produced from the licence area.

Clause 6 makes a minor amendment to section 64 of the principal Act to allow the Minister or the regulations to approve the disposal of wastes. Clause 7 inserts new section 80ca into the principal Act. This section defines 'pipeline' for the purposes of the licensing provisions. The new definition will cover pipelines that traverse the State as well as those that originate from petroleum fields within the State.

Clause 8 amends section 80h of the principal Act to provide that the Minister may enter into agreements under which the Crown may acquire title to pipelines. Clause 9 repeals and replaces section 80i of the principal Act to provide for variation or revocation of conditions of a licence at the time of renewal. The power to vary will not however apply to Pipeline Licence No. 2.

Clause 10 amends section 80j of the principal Act to remove obsolete references to the Compulsory Acquisition of Land Act. Clause 11 widens slightfy the provisions of section 80*l* under which the Minister may require a pipeline

licensee to carry petroleum for another licensee. New subsection (2) empowers the Land and Valuation Court to review and vary the terms on which petroleum is to be conveyed.

Clause 12 makes amendments to section 87 of the principal Act that are consequential on the introduction of Divisional penalties. The schedule introduces some divisional penalties, increases some monetary amounts prescribed by the Act and allows for others to be prescribed by regulation.

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

GOODS SECURITIES (HIGHWAYS FUND) AMENDMENT BILL

Second reading.

The Hon. ANNE LEVY (Minister for the Arts and Cultural Heritage): I move:

That this Bill be now read a second time.

The Goods Securities Register, operated by Department of Road Transport Road User Services Directorate, provides prospective purchasers of motor vehicles, (or other prescribed goods) with information on any prior financial encumbrances which might affect the title that a buyer could acquire. Where a buyer obtains a certificate as to that title he or she is entitled to compensation under the Act for any loss suffered in relying on an inaccurate certificate. The costs of maintaining the register, and the payment of compensation, are met from the Goods Securities Compensation Fund.

Following the merger of the Highways Department and the Motor Registration Division (Department of Transport) into the new Department of Road Transport, the need for a separate fund no longer exists. This is so since the Registrar is now part of the new department.

This Bill abolishes the Goods Securities Compensation Fund, and transfers the current balance to the Highways Fund, established by the Highways Act 1926. The Bill also transfers the responsibility for the cost of administration of the register to the Department of Road Transport and directs any fees paid under the Goods and Securities Act into the Highways Fund. To date, no successful claims have been made against the Goods Securities Compensation Fund. However, should any successful claims be made the Bill provides that any award of compensation would also be made from the Highways Fund.

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

Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 provides for commencement on a day to be fixed by proclamation. Clause 3 amends the definition of 'fund' in section 3 of the Act to substitute the Highways Fund for the Goods Securities Compensation Fund.

Clause 4 repeals sections 15, 16 and 17 of the Act, which establish the Goods Securities Compensation Fund and provide for the keeping of accounts of the fund and annual reporting in relation to it. A new provision is substituted which authorises the deposit of money collected under the Act into the Highways Fund, and the payment out of the Highways Fund of the cost of administration of the Act and any compensation which is payable under the Act.

Clause 5 inserts an additional transitional provision in to the schedule of transitional provisions to transfer money currently in the Goods Securities Compensation Fund into the Highways Fund.

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

[*Sitting suspended from 5.50 to 7.45 p.m.*]

DISTRICT COURT BILL

In Committee.

(Continued from 29 October. Page 1475.)

Clause 43—'Right of appeal.'

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

Page 11, line 30—Leave out ', subject to the rules of the appellate court,'.

Clause 43 deals with rights of appeal and subclause (1) provides that a party—

The Hon. I. GILFILLAN: On a point of order, Mr Chairman, I cannot hear the honourable member.

The CHAIRMAN: Order! I ask that the Chamber observe a little bit of silence.

The Hon. K.T. GRIFFIN: For the benefit of the Hon. Mr Gilfillan, I indicate that clause 43 (1) deals with the right of appeal. A party to an action may, subject to the rules of the appellate court, appeal against any judgment given in the action. I want to remove the words 'subject to the rules of the appellate court' to put it beyond doubt that there is that right of appeal. Under subclause (2), the appeal lies in the case of an interlocutory judgment given by a Master to the court constituted of a judge, and in any other case to the Full Court of the Supreme Court. Whatever the position might be at present, it seems important that we establish right from the beginning of this new era for the District Court a right of appeal without strings attached.

Several years ago there was a lot of controversy when the judges of the Supreme Court made rules which sought to limit the right of appeal in some criminal matters and to have those matters heard in Chambers rather than in open court. There was a very strong feeling in the legal profession that the rights of citizens had been compromised as a result of that limitation on the right of appeal.

The Hon. C.J. Sumner: What right of appeal?

The Hon. K.T. GRIFFIN: It was leave to appeal against sentence in the criminal jurisdiction, as I recollect. I do not have the detail at my fingertips, but the Supreme Court judges made rules which I think provided that all applications for leave were to be heard in Chambers and not in open court.

The Hon. C.J. Sumner: They did not remove the right of appeal.

The Hon. K.T. GRIFFIN: No, they did not remove it, but they limited the right of appeal. I think that they also provided that there had to be leave when previously there had not been. I cannot recollect the detail, but it was a problem at the time. The concern I have about subclause (1) is that leaving the words 'subject to the rules of the appellate court' in that provision would enable the appellate court to modify substantially the right to appeal and even to deny the right of appeal. I do not believe that any court by its own rules ought to be able to deny a right of appeal. We must remember that the District Court will now have unlimited civil jurisdiction and almost unlimited criminal jurisdiction with a couple of exceptions, namely, murder, treason, and several related offences. It is important that

we say, as a Parliament, that there will be rights of appeal against any judgment given in an action, which is why I want to remove the words 'subject to the rules of an appellate court'.

The Hon. C.J. SUMNER: I think that there might be some misunderstanding about the point being made by the honourable member or about the provisions to which he is addressing his remarks. If in clause 43 (1) he is saying that the words, 'subject to the rules of the appellate court' means that the appellate court can limit appeals, I would disagree with him because that would simply allow the appellate court to make rules to determine the method of an appeal, time limits and the like. I do not think that it would be valid for the appellate court to make rules which restricted the appeal. On the other hand, clause 43 (3) *(b)* might well be a problem for the honourable member because it provides that in any other case the rules of the Supreme Court may provide that an appeal lies to the Full Court only by leave.

Again, I am not sure why an appellate court ought not to be able to provide that leave needs to be obtained for certain categories of appeals. It does not mean very much. In the real world, they would always grant leave if there is a legitimate case. It would enable a filtering process to occur, which I think is essential, and it would stop unmeritorious appeals being taken.

However, I do not agree with the honourable member's analysis of the first point. It may be that it can be overcome possibly by a change in the wording. But, there does need to be some power in the appellate court to make rules. My advice is that, unless we include something of this kind in the Bill, then there may be doubt as to the power of the appellate court to make the rules. Perhaps that would be overcome if the wording of the clause were: 'A party to an action may, in accordance with the rules of the appellate court, appeal against any judgment given in the action.' I think that that preserves what we want; namely, to give the power to the appellate court to make the rules. I suggest that it removes any doubt that the appeal could be thwarted by the rules of the court.

The Hon. K.T. GRIFFIN: I have two difficulties with the clause. First, something along the lines that the Attorney-General is suggesting would probably be appropriate. I have no difficulty with a court's making rules about procedure leading to an appeal. It may be that a party to an action may appeal against any judgment given in the action and such an appeal shall be made in accordance with the rules of the court or the rules of the appellate court, or something along those lines. So, it is clear that the right of appeal is not subject to the rules in such a way that it can be removed or varied. That is my concern. I think that it is open to interpretation, even though it might not be meant to be taken that way. It is open to the interpretation of the rules of court that the right of action is subject to the rules of the appellate court. My second concern relates to a later amendment. However, perhaps we can address that at that time.

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

Page 11, line 30—Leave out 'subject to' and insert 'in accordance with'.

The honourable member may be prepared to withdraw his amendment in favour of mine.

The Hon. K.T. GRIFFIN: What the Attorney-General is suggesting meets my objection to the problem with subclause (1) and I therefore seek leave to withdraw my amendment.

Leave granted; amendment withdrawn.

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

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

Page 11, after line 34—Insert paragraph as follows:

(ab) in the case of an interlocutory judgment given by a judge—to the Supreme Court constituted of a single judge;.

This amendment provides that appeals in the case of an interlocutory judgment given by a judge will lie to the Supreme Court, consisting of a single judge. As a matter of principle, appeals from the District Court should be to the Full Supreme Court; that is, appeals from the District Court in so far as they are final judgments. However, it is far more expeditious and far less expensive for interlocutory orders of judges of the District Court to be heard by a single judge of the Supreme Court, and I believe that the amendment is appropriate.

Amendment carried.

The Hon. K.T. GRIFFIN: My next amendment on file seeks to ensure that the rules of the Supreme Court may not provide that an appeal lies only by leave. In the light of the earlier discussion, this may not be exactly what I want at this stage. However, I wish to explore the issue.

Subclause (3) *(a)* deals with a judgment of the court in its Administrative Appeals Division. It expresses clearly that there is a right of appeal on a question of law and an appeal by leave of the Supreme Court on a question of fact. That is unequivocal. Of course, that can be altered or modified by the provisions of the special Act under which the jurisdiction is conferred. However, in any other case, which one would presume is in the criminal jurisdiction and the civil jurisdiction, the rules of the Supreme Court may provide that an appeal lies to the Full Court only by leave, but subject to any such rule the appeal will lie as of right.

I have some difficulty with this question of leave. As the Attorney-General said earlier, although it does not stifle the right to at least try, in real life it limits the opportunity for a person to argue an appeal before the Supreme Court. So, I would like to ensure that in any other case the appeal will lie as of right to the Full Court.

The Hon. C.J. Sumner: Are you deleting the whole of subclause (3) or subclause (3) *(b)*?

The Hon. K.T. GRIFFIN: I have not moved that amendment yet. However, as a result of earlier discussions, my attention was focused on the real issue of concern. I suppose that if one were just to delete paragraph *(b)*, that would certainly solve my problem; it would leave the appeal open.

The CHAIRMAN: Do I take it that you are not proceeding with your other amendment?

The Hon. K.T. GRIFFIN: No, I have not moved that. Rather, I move:

Page 11, lines 41 to 43—Leave out paragraph *(b)*.

Amendment carried.

The Hon. K.T. GRIFFIN: The next amendment relates to the question we debated yesterday about legal practitioners and the power of the court to order them to pay costs where the court is of the view that delay has been caused by the neglect or incompetence of a legal practitioner. We have already established a procedure which will be followed in those circumstances. It is important to allow a right of appeal to be extended to the legal practitioner against whom an order for costs is made, otherwise the court making the order is not subject to any review at all.

The Hon. C.J. Sumner: It is subject to review. There is a case on it.

The Hon. K.T. GRIFFIN: If the Attorney-General says it is subject to review by virtue of the common law or practice, I would still like to put it beyond doubt and I move:

Page 11, after line 43—Insert:

(4) A right of appeal conferred by this section extends to a legal practitioner against whom an order for costs is made.

The Hon. C.J. Sumner: Accepted.

Amendment carried; clause as amended passed.

Clauses 44 and 45 passed.

Clause 46—'Immunities.'

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

Page 12, line 16—Leave out 'or Master' and substitute ', Master or assessor'.

This amendment extends the immunity from civil liability to assessors.

The Hon. K.T. GRIFFIN: I do not have any objection on the basis that we have earlier referred to assessors but, of course, it is subject to that final review of what an assessor is and who appoints.

Amendment carried; clause as amended passed.

Clause 47—'Contempt in face of court.'

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

Page 12, line 23—Leave out 'or officer' and substitute ', assessor or other officer'.

This amendment extends the contempt provisions to assessors.

Amendment carried.

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

Page 12, lines 24 and 25—Leave out 'or proceeding to or from a place at which the court is to sit or has been sitting'.

The point I made in my second reading contribution was that that provision seemed to be extraordinarily wide. It does not relate necessarily to the performance of functions by the judge, master, officer or assessor. It could be that the judge is travelling down to Mount Gambier or to Berri in the Riverland for a circuit and has an accident and is abused by a motorist whom the judge has offended by the judge's own driving. The accident may occur when travelling to and from work, from home in the metropolitan area to the court.

It seems to me that in those circumstances it is much too wide. I do not believe any judicial officer ought to have the power to punish for contempt for matters which are totally unrelated to judicial functions.

The Hon. C.J. SUMNER: I undertook to look at this clause in light of the honourable member's concerns. I find that section 300 of the Local and District Criminal Courts Act has the same effect as this clause 47. I would have been happy if an attempt could have been made to narrow it in some way, but that, I suspect, would not be easy. The form in which it is worded gives rise to some real concern. One, for instance, could imagine a judge being insulted in the corridor on the way to court and action needing to be taken. On the other hand, I suppose, as the honourable member points out, if the judge got into an argument with someone at a football match, it may be that the circumstances should not give rise to contempt proceedings.

However, I am sure commonsense would prevail in those circumstances and, if a judge decided to take proceedings for contempt in circumstances that really had nothing whatsoever to do with his or her work, then I think, first, that would not appear in a good light as far as the public is concerned and, secondly, I suspect that an appeal court would not view it very favourably.

The Hon. I. GILFILLAN: I rather like the amendment. There are difficulties with the wording if it is just taken literally. One can inadvertently insult a person without having any idea who that person is, so that from a layman's point of view that obviously would have to be knowingly insulting a judge. I would also expect that the interpretation of the wording 'acting in the exercise of official functions' could embrace the moving around in corridors or within the precincts of the court, but 'proceeding to or from a place at which the court is to sit or has been sitting' has no timeframe. It could be a fortnight after and, as in the Attorney-General's analogy of a football match, it could quite easily be in that context. In that situation, one could say that it is a place being proceeded to or from. It appears to me the clause is improved by accepting the amendment.

Amendment carried; clause as amended passed.

Clause 48—'Punishment of contempts.'

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

Page 12, line 29—Leave out 'The court' and substitute 'Subject to subsection (2), the court'.

This amendment really relates to my next amendment, which is to add a subclause (2). The point was made by the Law Society, and I think there is some substance in it, that with both the District Court and the Magistrates Court questions of contempt, particularly by legal practitioners, ought to be looked at in a different light from those relating to persons who are not legal practitioners. The argument has some validity, even though I note in the present Act there is no distinction.

From a practical and legal point of view, legal practitioners are officers of the Supreme Court. As such, they are subject to the jurisdiction of that court, so the contempt provisions may well apply at the Supreme Court level, but in terms of the District Court and the Magistrates Court, where there is already a mechanism for dealing with legal practitioners through the Legal Practitioners Disciplinary Committee and ultimately something which can go up to the Supreme Court, it is important to distinguish between the two. I propose that, if the contempt is committed by a legal practitioner in the course of carrying out professional duties, the matter is referred to the Legal Practitioners Disciplinary Committee and is dealt with there before it is dealt with by the court. This is an appropriate procedure in light of the fact that the practitioner, as I said earlier, is an officer of the Supreme Court and already subject to disciplinary provisions of the Legal Practitioners Act.

The Hon. C.J. SUMNER: The Government opposes this amendment. It is really totally unacceptable to us. The court must be able to control the proceedings before it and take what action it deems necessary to do this as and when it sees fit. The cases make clear that it is a power to be used sparingly and only in serious cases. Its usefulness depends on the wisdom and restraint with which it is exercised. However, I can see absolutely no basis for separating out legal practitioners as a class of persons who would be dealt with for contempt in a different way from anyone else. It might be argued why a medical practitioner would not have a right to go to the Medical Practitioners Disciplinary Tribunal before he or she was dealt with for contempt.

I will give one practical example. In the case of *ex parte* Belanto, 1963 NSW Reports, 1556, a barrister attempted by misconducting himself during the trial to bring about a situation where the court would be constrained to order him out of court and thus compel the court to discharge the jury and order a re-trial. In those circumstances, it is obvious that the court really has to have the power to deal with that legal practitioner immediately; otherwise, under the honourable member's amendment, the judge would have to discharge the jury or stop the trial, send the practitioner off to the Legal Practitioners Disciplinary Tribunal and then deal with him subsequently. In the meantime, all the costs of the jury and the trial have been thrown away. I see very little merit in this amendment.

The Hon. I. GILFILLAN: I oppose the amendment. It appears to me that the court must have a totally untramelled right to deal with matters which it sees as an infringement and contempt of itself. What the Legal Practitioners Disciplinary Committee gets up to after that is its business. It

may see fit to modify its discipline or punishment as a result of what the court has done, but that in my opinion is the right priority.

Amendment negatived.

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

Page 12, after line 32—Insert new subclause as follows:

(2) This section applies both to contempts committed in the face of the court and contempts arising from non-compliance with an order, direction, summons or other process of the court.

New subclause (2) is designed to make clear that contempt may be punished as a contempt constituted by clause 47 or otherwise.

Amendment carried; clause as amended passed.

Clause 49—'Custody of litigant's funds and securities.'

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

Clause 50 passed.

Clause 51—'Rules of court.'

The Hon. K.T. GRIFFIN: My first amendment to this clause has been overtaken by earlier events and is no longer appropriate to move. It was related to an earlier amendment that sought to limit the jurisdiction of masters. As I was not successful on that, this amendment is no longer appropriate.

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

Page 13, lines 17 and 18—Leave out all words in paragraph *(d)* after 'may be taken' in line 17.

This amendment removes the power of the court to make rules of court modifying the rules of evidence and creating evidentiary presumptions. It is obviously useful for the court to be able to modify the rules of evidence at times but, on reflection, this provision is too wide. Consideration is being given to an amendment to the Evidence Act.

The Hon. K.T. GRIFFIN: I support the amendment. This issue was raised during the course of the second reading debate and it is inappropriate to allow rules to modify the rules of evidence in broad terms permitted by that paragraph.

Amendment carried.

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

Page 13, after line 18—Insert:

(da) giving law clerks limited rights of appearance before the court;.

This amendment inserts a new rule-making power, namely a power giving law clerks limited rights of appearance before the court. I hope that this power will encourage the court to allow law clerks to appear before it where appropriate. I suggest one area where this would be appropriate is the callover of the criminal injuries compensation list. There may be other areas as well.

Amendment carried.

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

Page 13, lines 23 and 24—Leave out subclause (2) and insert:

(2) Subject to this section, rules of the court may be made by the Chief Judge and a majority of the other judges.

I have already expressed concern about the way in which rules of court may be made. In the Supreme Court, all the judges concur in the Supreme Court rules. We are now giving to the District Court by this Bill a very wide jurisdiction. In civil matters it is concurrent jurisdiction with the Supreme Court for trials of civil actions. In criminal matters, it is almost identical with the jurisdiction of the Supreme Court.

That requires a broader involvement of the judges of the District Court in the making of rules, because the rules govern the procedures as well as deal with substantive issues such as the jurisdiction which is to be exercised by masters. The rules regulate the business of the court, the form in which evidence may be taken, costs and a whole range of other matters all necessary to ensure the proper conduct of the court and affairs of the litigants.

It seems to me not unreasonable that we require at least the Chief Judge and the majority of the judges to concur in the making of the rules. There are more District Court judges than Supreme Court judges, but that is taken into consideration by suggesting in my amendment that a majority of the judges can make those rules along with the Chief Judge. In that way there is a better prospect of a representative view of the judges being brought to bear on the issue of the rules and a much wider consideration of the rules which are made and the significance of them as well as an awareness of the impact upon litigants and those who represent them in court.

The Hon. C.J. SUMNER: The Government opposes the amendment. This is an extension of the existing situation where the rules of the District Court are made by the Senior Judge. This extends it to the Chief Judge under the new Act and two or more other judges. Obviously in this area the Senior Judge would consult. Whether we need the formal approval of a majority of the 27 judges is debatable and, accordingly, I oppose the amendment.

The Hon. I. GILFILLAN: It is difficult to see the practical possibility of rules being determined by a judge and a majority of judges. There are about 24 judges.

The Hon. C.J. Sumner: There are 27.

The Hon. I. GILFILLAN: Although I have sympathy with the idea that a wider canvass of opinion is desirable, my sense of the practical nature of this aspect fills me with some foreboding. I indicate opposition to the amendment.

The Hon. K.T. GRIFFIN: There does not need to be any foreboding about the majority of judges having to concur formally in the making of these rules. It happens at the Supreme Court level now. We have to recognise that they are making what is effectively subordinate legislation that can affect litigants' rights and it is necessary to have a broadly based body making those rules. I note what the Hon. Mr Gilfillan has indicated, and I am disappointed by it.

Amendment negatived.

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

Page 13, after line 24—Insert new subclause as follows:

(3) The rules take effect as from the date of publication in the *Gazette* or a later date specified in the rules.

Without the provision that I am seeking to insert in the Bill, section 10 (2) of the Subordinate Legislation Act 1978 will have the effect that rules of court will come into effect on the day they are signed. Obviously, this is undesirable as practitioners would have no access to them. My amendment makes it clear that they come into effect on the day they are published in the *Gazette* or alternatively another date specified in the rules themselves.

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

The Hon. I. GILFILLAN: What effect would a motion of disallowance have on that timing?

The Hon. K.T. Griffin: The same as for regulations.

The Hon. C.J. SUMNER: They would come into effect until they were disallowed in the same way as applies to regulations.

The Hon. K.T. Griffin: There is a special provision for rules of court where you have to disallow them within 14 sitting days, rather than under regulations—one gives notice of motion for disallowance and then one can take the whole session to do it.

The Hon. C.J. SUMNER: The rules come into effect and, if they are disallowed, it applies from that time.

The Hon. K.T. GRIFFIN: I am happy to support the amendment because there needs to be flexibility. I would envisage that, if there were problems with any rules so that disallowance might be threatened, it could be resolved by the Joint Committee on Subordinate Legislation consulting with the Senior Judge in the hope that an amending rule might be made that would overcome the concern of at least the joint standing committee and maybe other members of Parliament.

Amendment carried.

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

Page 13, after line 24—Insert new subclauses as follows:

(4) Before rules of the court are made, the judges must consult a committee constituted (from time to time) of the following persons:

(a) two persons nominated by the Law Society of South Australia;

(b) two persons nominated by the South Australian Bar Association;

(c) one person (who must not be a member of Parliament) nominated by the Attorney-General;

(d) one person (who must not be a member of Parliament) nominated by the Leader of the Opposition.

(5) The committee constituted under subsection (3) must submit a report to the Joint Standing Committee on Subordinate Legislation on any rules of court made under this section as soon as practicable after the making of those rules.

The concern I expressed in the second reading debate is that it is not necessary for the judges to consult with anyone about the making of the rules. Normally there is some consultation but, in recent times, rules have been promulgated that have not been the subject of consultation with the legal profession. That is unfortuate, because the profession has to work with the rules, and the judges themselves would benefit from the consultation.

That does not mean to say that the judges have to agree with the views presented to them, but at least if they are made that would be better than not having them made at all. I am seeking to establish a committee of persons as set out in the amendment. Paragraphs *(c)* and *(d)* would give an opportunity for lay representatives if it was deemed appropriate or for other legal practitioners who might be able to report back to the respective Government and Opposition on the rules, and it may actually short circuit some of the discussion before the Subordinate Legislation Committee.

It would be appropriate for judges to be required to consult with that committee on each occasions that rules are to be made and for the committee to submit a report on any rules of court changes so that, as a Parliament, we have the assurance that there has been consultation and a view from that committee as to the rules that will not necessary override the submission by the registrar or master to the Subordinate Legislation Committee; it will just ensure that there is a formal view from that consultative committee. I think it will assist in the development of rules and their promulgation and will ensure that any disagreement at the political level is kept to a minimum, if not eliminated.

The Hon. C.J. SUMNER: There is in fact very rarely any political difficulty in relation to rules of court, but apart from that this amendment cannot be supported. In fact, it is strongly opposed by the Government. It is unnecessary bureaucracy and establishes by statute yet another committee and one which is unnecessary. It is the court's responsibility to ensure that the business of the court is conducted in the best possible way.

The amendment could certainly put the court in a difficult position. Its rule-making power could be delayed while the committee got around to meeting, and often rules of court have to be dealt with quickly. The proposition does not deal with whether members of the committee are to be paid, whether they will have any support staff, and so on. Apart from that, it is an unnecessarily bureaucratic approach—enforced consultation. The Senior Judge, the Chief Justice and other judicial officers are happy to work with the profession in the informal way that they have done to date.

I know that the Senior Judge has established a number of committees in which the profession has been involved to advise and use as a consultative mechanism, but I do not believe that it ought to be formalised in this way. In fact, the Law Society is always consulted and informed and aware of changes to be made. To formalise the consultation process could lead to unacceptable delays. It is totally unnecessary and opposed by the Government.

The Hon. I. GILFILLAN: It seems that if concern exists with the Law Society it is perfectly able to constitute its own committee and to look at rules and make submissions to the Subordinate Legislation Committee or whatever committee deals with these matters. I have some sympathy with subclause (5), in that it certainly would be reasonable for some report on rules to be given to the Subordinate Legislation Committee for its proper consideration of the rules of court. It does not concern me too much if it is not in the Act, because it seems that it is within the power of the Subordinate Legislation Committee to ask for a report from the responsible judges—on the very real possibility that, if they are not satisfied with it, they will not approve the rules.

That is my understanding of the options from those bodies as a second stop or reviewing capacity of the rules as made by the judges. The Law Society can have its own *ad hoc* informal committee making reports to whomever it likes—the Parliament, the Subordinate Legislation Committee or to the judges themselves—and the Subordinate Legislation Committee can, if it feels uneasy about the rules, ask for a report. It may be, as a matter of courtesy, that the determining judge and his or her colleagues should provide explanations and justification as a courtesy for the Subordinate Legislation Committee when the rules come before it.

The Hon. C.J. Sumner: They do.

The Hon. I. GILFILLAN: If they do, that requirement is already covered.

The Hon. K.T. GRIFFIN: The judges would make the rules, and my understanding is that when rules, as with regulations, are presented to the Joint Standing Committee on Subordinate Legislation, it has a covering report—not in the case of rules of court from the judges but from the registrar (the administrative officer)—which identifies the rules and the reasons for them. Anyone can appear before the Subordinate Legislation Committee to put a viewpoint.

The concern I have expressed is that they will be gazetted and laid on the table of both Houses. Certainly interested bodies, such as the Law Society, will have an opportunity to present evidence, but that will have to be done very quickly, and it may overcome a problem if there is a consultative process before the rules are promulgated. That is what I was endeavouring to formalise and to ensure happens in light of the fact that in recent times there has been at least one instance where there was no prior consultation by the judges with the profession and there was a problem with the rules that had been promulgated. The judges would not take any notice of the point of view that was subsequently made by the legal profession. That was my concern, and the mechanism was an attempt to overcome that potential problem.

Amendment negatived; clause as amended passed.

Clauses 52 and 53 passed.

New clause 54—'Accessibility of evidence.'

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

Page 14, after clause 53—Insert new clause as follows:

54 (1) Subject to subsection (2), the Court must, on application by any member of the public and payment of the appropriate fee (if any) fixed by the regulations make available for inspection by the applicant—

(a) a copy of a transcript of evidence taken by the Court in any proceedings;

(b) any documentary material admitted into evidence in any proceedings;

(c) a copy of any judgment or order given or made by the Court.

(2) Evidentiary material will not be made available for inspection under this section if it has been suppressed from publication by order of the Court.

The scheme in the Act, which has agreed with the judiciary, is that the Executive Government should have the power to make regulations relating to fees, as is the current practice and, indeed, the current law. So, to have had this category of fee dealt with by rules would have been anomalous. The amendment that I have made to my amendment produces consistency.

The substance of the amendment is that this new clause provides for public access to court documents. Over the years there has been a constant complaint, particularly from the media, that material on court files cannot be looked at, whereas if a person had been sitting in court, the material would have been accessible. I have taken the view for some time that whatever material was available in open court should be available to the public.

That position is not supported by the judiciary, and I have correspondence from the Chief Justice to that effect. Nevertheless Cabinet has endorsed that general policy. It is consistent with modern concepts of freedom of information and accessibility to publicly available material. Judges, of course, point out that it might cause some hardship in cases if journalists access transcripts and attempt to write up stories that really have no public interest benefit and are only attempts at prurient inquiries into a witness's activities, as displayed through evidence that might be given in court.

It is also fair to say that people in various cases in court often have to give evidence that may be relatively private and, of course, it may be able to be distorted in the hands of the media, which wish to use it in that way. I think the judge took the view that that may be okay if the journalists were in the court during the particular hearing; but to allow journalists, or any member of the public, for that matter, to search *carte blanche* through all the court files, transcripts and documents was over the top and could lead to unfairness in certain circumstances for some individuals.

That is a summary of the arguments. On balance, the Government has come down on the side of saying that if the information was given publicly in court as evidence or in a document publicly tendered in the court, then it ought to be publicly available. I suppose that it is somewhat similar to the situation in Parliament. If one happens to be here, one hears what the parliamentarians say; but if one is not here one can certainly get a copy of *Hansard* and read it, if one's enthusiasm carries one that far. Admittedly, there are some distinctions between Parliament and the courts, but the general concept of public availability of this material does take precedence in this area. That is why, on balance, I have decided to move this amendment. It will also provide that copies of default judgments that are not made in open court will also be able to be accessed by members of the public.

The Hon. K.T. GRIFFIN: I support the amendment. It is always a difficult question as to whether a person who was not present in court should gain access to the record of proceedings. However, like the Attorney-General, I have the view that if it is there on the public record, why should not someone be entitled to see it? If one had been sitting in the court, one could have listened to it. If one were not in the court, it is nevertheless a public court, unless the evidence had been suppressed or the proceedings had been closed to the public. So, in those circumstances, I think it is fair and reasonable.

The problem to which the Attorney-General referred as having been raised by judges about inaccurate reporting after the event is, to some extent, covered by the law of defamation: the reporter has qualified privilege and the reporting must be made as a fair and accurate report of proceedings. So, if something is taken out of context and distorted, I would have thought that the qualified privilege would not apply. So, I see that this is a step forward in putting firmly into the statute books the right of a citizen to have access to material that occurs in public.

I have two questions to raise with the Attorney-General about this clause. First, this material is available for inspection, which I presume means one can go to the court office and look at it, but one cannot take away a copy of it. However, paragraph *(a)* refers to a copy of the transcript of evidence and paragraph *(c)* refers to a copy of a judgment or order. It may be appropriate to allow copies to be taken. A person inspecting the material can, after all, sit down in the court and copy it out. However, I want to know whether this is envisaged or whether it is to be specifically limited to inspection only.

My second concern is whether in subclause (2) the circumstances of court hearings *in camera* would be covered. I suppose that that would be covered under the suppression of publication of evidentiary material; but is there a particular difficulty with courts that have been closed to the public and proceedings heard *in camera*, where there is certainly evidentiary material and possibly other material that may not be of an evidentiary nature? I am thinking about those possibilities and wondering whether the Attorney-General can address those issues.

The Hon. C.J. SUMNER: My answer to the Hon. Mr Griffin is that I think that in this day and age people would be entitled to take copies. That could at least be dealt with by rules of court. The notion of having someone sitting down and writing it out longhand for two or three weeks is not in accordance with modern communications needs. If we allow that measure, I think copies should be permitted to be taken.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: We will have a look at that. As to the question of *in camera* evidence, that must surely be covered by subclause (2), because if it is *in camera* it must be evidence that is suppressed from publication.

The Hon. K.T. GRIFFIN: I was thinking partly about *in camera* proceedings but also about the Children's Court where, of course, publication is not suppressed by order of the court but just by the law itself. I simply raise it and hope that it can be considered.

The Hon. C.J. SUMNER: We will examine both those points. They are both well taken and, if need be, we will make the necessary amendments.

The Hon. I. GILFILLAN: What is the current situation in relation to access to this material? Is access totally prohibited?

The Hon. C.J. SUMNER: It is not totally prohibited, but one has to show an interest in getting the material. I think most legal practitioners would be able to get it. So, if a member of the public knew their way, they could probably go to a lawyer and get the material, because I do not think

a lawyer's getting the material would be queried by the court. However, if a member of the public asked the court for access to the material, that person would have to show some interest in the matter.

The Hon. I. Gilfillan: What about journalists?

The Hon. C.J. SUMNER: No, journalists have complained that they have not been able to get access to the material. There are some circumstances in which journalists might be able to get access if they can establish to the court that they are writing a story, what it is about and why they need the transcript. However, at present, a journalist cannot just walk in off the street, pay his money and get access to any transcript he feels like getting. It is a practice of the court; it is not something that is laid down in legislation. However, the court takes the view—and quite correctly—that it has control over the court files. Executive Government does not have control over court files. Even though the Government adopts a policy—as it has—that does not mean the access should be granted. Ultimately, it is a decision for the court, unless the Parliament expresses its view, which is what we are now doing through this amendment.

New clause inserted.

Title passed.

DISTINGUISHED VISITOR

The PRESIDENT: I acknowledge in the gallery the presence of Professor Sakalas, a member of the Parliament and Chairman of the Social Democratic Party of the Republic of Lithuania. If any member wishes to make his acquaintance, he is at the back of the Chamber and we welcome him here.

MAGISTRATES COURT BILL

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

The Hon. K.T. GRIFFIN: Yesterday, in relation to the commencement of the District Court Bill, I did raise the question of resources that might be needed to ensure that the administration of the legislation was effective. The Attorney-General said then that he would look at that and, hopefully, would have some information a little later, which I took to mean a little later in the Committee stage. Has he been able to gain some more detail about the administrative costs, the extra workload and what effect the implementation of both the District Court Bill and the Magistrates Court Bill will have on delays, etc.?

The Hon. C.J. SUMNER: A considerable amount of work has been done on this but, unfortunately, to a considerable extent one is in the area of speculation. Nevertheless, there is a consensus, and one would hope that that is the case, because the partial intention of the legislation in any event is that there will be a substantial shift in jurisdiction from the District Court to the Magistrates Court and that, in the end, this initiative should result in reasonable savings.

Of course, savings will be not only to the taxpayer through the Government, which is important, but also to litigants, because litigating in the Local Court and the Magistrates Court is much less expensive for the individual litigant, particularly as far as legal fees are concerned.

So, there are two areas in which there will be savings to the public: first, as taxpayers; and, secondly, as direct litigants. I might be able to obtain some more precise figures before the matter is finally resolved, but to some extent it is a matter of speculation. First, we do not know in what form the Bills will pass and, secondly, there is obviously room for legitimate differences of opinion as to how much of the workload will be shifted from the District Court to the Local Court, but we believe that it will be a substantial shift if the full package is passed and that there will, therefore, be quite significant savings to Government and, also, to litigants.

Clause passed.

Clause 3—'Interpretation.'

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

Page 2, lines 1 and 2—Leave out the definition of 'jurisdiction'.

After consideration, we believe that the definition really complicates the situation rather than assists and, from a drafting point of view, it is better that it be deleted from the Bill.

Amendment carried.

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

Page 2, line 8—After 'nuisance' insert 'but not involving a claim for damages exceeding $3 000'.

I have sought to limit the description of a neighbourhood dispute, which will be dealt with by the Small Claims Division, to one where the monetary claim might not exceed $3 000 where it is based on allegations of trespass or nuisance.

I suppose this is an opportunity to discuss whether the limit for the small claims jurisdiction ought to be $5 000 or $3 000, or some other figure. I have picked the figure of $3 000, because that is a reasonable advance on the present jurisdictional limit of $2 000. The sum of $5 000 is a fairly large amount of money for many ordinary citizens, particularly when they might go into a jurisdiction where they are not permitted to have any legal representation and where the proceedings can be just as overwhelming as if they were in a jurisdiction involving larger sums.

It seems to me that only a limited number of neighbourhood disputes ought to go to the Small Claims Division. I suppose that most claims would be no more than that sum, particularly where they relate to allegations of nuisance. Some more substantial disputes can occur between neighbours or the occupiers of properties in close proximity which ought not be taken in the small claims jurisdiction but ought to be very much dealt with in the Magistrates Court in its general claims jurisdiction. One can think of encroachments—flood water or drainage water from an adjoining property flowing through the neighbouring property which in itself can cause considerable damage and can result in extensive litigation if it cannot be resolved amicably.

Even with the Attorney-General's alternative amendment which is to leave out subclause (2) and substitute a new subclause (2), it seems to me that there is a qualifying factor which is not in the present Bill. It is limited in his amendment to $5 000 in the small claims division if a party elects to have an action removed to the civil general claims division of the court. That is an improvement, but a reasonable increase in the jurisdictional limit to $3 000 is appropriate, and that allegations of trespass or nuisance ought to be limited where damages do not exceed that sum.

The Hon. C.J. SUMNER: I treat this as a test case on the jurisdictional limits of the small claims court. The Government's proposition is that it should be $5 000, whereas the Hon. Mr Griffin says $3 000. I point out that there is considerable community support for the limit to be $5 000. The Legal Services Commission, SACOSS, the Consumers Association and Adelaide Central Mission all support it. They are concerned that justice should be accessible, and this is a way of ensuring that it is. To my way of thinking,

the Law Society's arguments are not convincing. It says that, to many in the community, $5 000 is a significant sum. That is acknowledged, but it is better to be able to bring an action in the small claims area than not to be able to afford to bring one at all. That is the dilemma facing many people today. Reference was made during the second reading debate that interstate bodies have a $5 000 limit. It would seem that that is now the most common in the equivalent of small claims jurisdictions in other States.

The Hon. I. GILFILLAN: I am not persuaded that there is great merit in having a specific cap. I imagine there is some concern that access to the small claims court is considered to be at risk of being abused by the legal profession. Probably grossly unfairly, I suspect that some of the concern of the legal profession is that it may diminish their area of occupation if much of the business is dropped from superior to lower courts, and the small claims jurisdiction is at the bottom of that tree. If the Attorney-General is correct and this is the sort of test case to discuss the whole matter, I believe that the debate ought to embrace the next series of Government amendments for which we have not yet heard the full argument, I assume. In relation to the amendment currently before us, I indicate my opposition to it.

The Hon. K.T. GRIFFIN: It is unfair to suggest that the view of the Law Society, that the small claims limit ought to be $3 000 rather than $5 000, is predicated on a loss of work.

The Hon. I. Gilfillian interjecting:

The Hon. K.T. GRIFFIN: It is looking at it in terms of justice for the litigants.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: No, the Attorney-General ought to know that it is totally uneconomic for a legal practitioner to handle a claim, whether it is $3 000 or $5 000. There is just no profit in it at all, and they would have to do it for very much less than cost if they did it. They were concerned about the extent to which a litigant will not be able to be represented if the litigant wants to be. We have all had reports of claims being dealt with in the small claims jurisdiction where parties have been quite disenchanted with the approach of a magistrate. In some respects it has been indicated to me that there has been a bullying approach to settle or else. Maybe that is appropriate; I do not think it is.

Some people, other than legal practitioners, have put to me that they are intimidated in whatever court they appear, and would prefer to have someone who knows his or her way around to assist them in overcoming that intimidating atmosphere than to have to fight a claim. They would probably forget it if they had to overcome their intimidation to face up to a magistrate in a somewhat forbidding court context, unrepresented. It is a matter of judgment, and I acknowledge that bodies such as the Central Mission and others would prefer to see the figure at $5 000. I note the way the Hon. Mr Gilfillan is addressing the issue, and I say that the figure will be whatever the majority decides. I put the view which I and others in the community hold. That is all I can really do.

Amendment negatived.

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

Page 2, lines 11 to 15—Leave out definition of 'small claim'.

My amendment removes the definition of 'small claim' because the Bill has been drafted in a way which means what were formerly small claims will be called minor civil actions. I am not sure that I am overly happy with that approach because, for many years—in fact, since the institution of small claims some 20 years ago—people have become used to what small claims are. They are no longer to be small claims but minor civil actions. It has been a drafting matter, and I am not sure that we should remove the definition of 'small claim'. Everyone knows what it means.

The Hon. I. Gilfillan: I think you're right.

The Hon. C.J. SUMNER: I am, but I will explain what I want to do. I would like to move my amendment because the whole Bill is cast in these terms and there will be some policy decisions that have to be picked up on the way through. I give notice that, depending on how those policy decisions fall, I would probably look at redrafting it to reinclude the notion of a small claim because that makes sense. Everyone knows what it means and to suddenly introduce completely new terminology into this area is unfortunate.

Subject to what the Committee might suggest to me, the proposition is that I move the amendments as they are. As we go through, we will resolve a number of policy issues, such as the jurisdictional limits and other powers that the court will have, and it can then be redrafted with those policy decisions having been taken to accommodate this definitional problem.

The Hon. K.T. GRIFFIN: Having resolved the jurisdictional limit of $5 000, I am much more comfortable with this amendment for two reasons. One is that it embraces more than the small monetary claim, and also that it allows a party to elect in accordance with the rules to have an action removed to the civil general claims division of the court if a claim in a neighbourhood dispute or the Fences Act involves a monetary claim exceeding $5 000. It contains that flexibility.

I suggest to the Attorney-General that there is much merit, notwithstanding the usage since 1974 of the description of 'small claim', in referring to it as the 'minor civil claim'. The Strata Titles Act has just been amended, and that refers what could be substantial claims within a strata corporation to this jurisdiction. Other areas that will be referred to this jurisdiction, which whilst they might be minor, may not be aptly described as small claims.

Perhaps it is time to think of a new description and 'minor civil claim' may be the appropriate one, rather than the limited description of 'small claim', because one is starting to get to a point where some of the jurisdiction exercised in this division is not so small and the consequences are not to be described necessarily in monetary terms and are more aptly described as a civil claim. I suggest that the Attorney-General does not rush into the change in the description back to something that has been in existence since 1974, only because there is common usage about it in an environment where there is a much broader jurisdiction being given to this division.

The Hon. I. GILFILLAN: If I understand the Attorney correctly, he is pondering on the actual word change of 'small claim' to 'minor civil action'. Basically his intention is to carry on with the actual text of the amendment. Really, it relates only to terminology. The Attorney is on the right track. To many of the general public all the jargon of and access to the courts are obscure and remote enough as it is.

'Small claim' is a term to which the public relate—they understand these words. They have appropriate conotations and, although the Hon. Mr Griffin may be right in analysing what may be a fuller and more accurate verbatim interpretation of some of the matters covered by 'small claim', having established its recognition and acceptance over a period of time, it is a pity to lose it.

The Hon. C.J. SUMNER: I understand the point raised by the Hon. Mr Gilfillan. I suggest that we proceed through the Bill and recommit if we decide to go down that track.

The amendment is consequential on amendments made subsequently to subclause (2) and the insertion of a new subclause (4). I will explain the reasons for the amendment to subclause (2) so the whole thing can be seen in context. In my second reading response I acknowledged that some neighbourhood disputes will be too large and complex to deal with as minor civil disputes.

However, I wrongly informed the Council that parties could choose the forum that they consideed most appropriate to deal with the dispute, that parties could apply to have the dispute referred out of the jurisdiction. This was certainly my intention, but the Bill did not so provide. A minor civil action is, by virtue of the new subclause (2), founded on a monetary claim for $5 000 or less; a claim for relief in relation to a neighbourhood dispute or an application under the Fences Act 1974.

New subclause (4) provides that, if an action founded on a claim for relief in relation to a neighbourhood dispute or an application under the Fences Act involves a monetary claim exceeding $5 000, a party may elect to have the action removed to the civil general claims division and, in that event, the action ceases to be a minor civil action.

The small claim previously included a claim for injunctive or declaratory relief in a neighbourhood dispute. The reference to injunctive or declaratory relief has been removed, because these are to be part of the court's general powers under other amendments that we will come to later.

Applications under the Fences Act are now included as a minor civil action. Once again, if the application involves a monetary claim of more than $5 000, it can be taken out of the jurisdiction if the parties want this. I think that gives effect to the intention that I had and would meet the difficulties raised by the Hon. Mr Griffin in his second reading contribution.

Amendment carried.

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

Page 2, lines 16 to 18—Leave out subclause (2) and substitute:

(2) Subject to subsections (3) and (4), a minor civil action is an action founded on—

(a) a monetary claim for $5 000 or less;

(b) a claim for relief in relation to a neighbourhood dispute;

or

(c) an application under the Fences Act 1975.

(3) If a claim that is not within one of the classes referred to in subsection (2) is introduced into a minor civil action, the action ceases to be a minor civil action unless the Court orders that the subsequent claim be tried separately.

(4) If an action founded on a claim for relief in relation to a neighbourhood dispute, or an application under the Fences Act 1975, involves a monetary claim exceeding $5 000, a party may elect, in accordance with the rules, to have the action removed to the Civil (General Claims) Division of the Court and, in that event, the action ceases to be a minor civil action.

(5) Proceedings for a contempt of the Court will be regarded as a civil action or a criminal action according to whether the contempt relates to proceedings in a civil division or the criminal division of the Court and where the contempt is unrelated to proceedings in the Court, the proceedings for contempt will be regarded as a criminal action.

I have already explained new subclauses (2) and (4). Subclause (3) repeats the existing subclause (2). New subclause (5) makes it clear that there is an appeal from a contempt ruling. Under clauses 35 and 37, parties to civil or criminal actions may appeal. It is not clear that these would provide for an appeal from a contempt finding. This new provision makes clear that there is an appeal.

Amendment carried; clause as amended passed.

Clauses 4 to 6 passed.

Clause 7—'Divisions of court.'

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

Page 2, line 34—Leave out 'small' and insert 'minor'.

This is a consequential amendment.

Amendment carried; clause as amended passed.

Clause 8—'Civil jurisdiction.'

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

Page 3—

Line 7—Leave out '$60 000' and insert '$50 000';

Line 8—Leave out '$30 000' and insert '$25 000'.

This is the substantive issue where we ought to resolve the jurisdictional limit. The present limit of the local court of limited jurisdiction is $20 000 for all claims. There is a proposition to give to the magistrates jurisdiction power to deal with motor vehicle injury or damages claims up to $60 000. I am proposing that that be $50 000 and in any other case $25 000, I think they are reasonable increases on what has been the limit for the past three years or so.

It is again a matter of judgment as to what is the appropriate jurisdictional limit. It was interesting that the second reading explanation, which apparently was sent to the Law Society, included the figures that I am now moving, rather than the figures that are now in the Bill. I suggest that the Attorney-General had some second thoughts about it. To be realistic, $50 000 and $25 000 respectively are more appropriate levels.

The Hon. C.J. SUMNER: The Government opposes the amendment. There is really no good reason for reducing the amounts. In the area of motor vehicle accidents the issues and the law will certainly not be any different, and I ask the Committee to support the original proposition.

The Hon. I. GILFILLAN: The Democrats oppose the amendment.

Amendment negatived.

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

Page 3, line 9—After 'action' insert '(at law or in equity)'.

This amendment extends the equitable jurisdiction of the court by providing that the court has jurisdiction to hear and determine an action in equity to obtain or recover title to or possession of real personal property where the value of the property does not exceed $60 000. This brings the magistrates jurisdiction under this heading into line with its jurisdiction to hear and determine actions for a sum of money. As I said earlier, rules of equity have lost their mystique, and equitable rules are part of the body of law applied in day-to-day situations. There is no good reason why magistrates should not deal with equitable actions.

Amendment carried.

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

Page 3, lines 13 and 14—Leave out paragraph *(d)*.

This amendment is consequential.

Amendment carried.

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

Page 3, line 15—Leave out paragraph *(e)* and substitute:

(e) to grant any form of relief necessary to resolve a minor civil action.

This amendment is also consequential.

Amendment carried; clause as amended passed.

Clause 9—'Criminal jurisdiction.'

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

Page 3, line 20—Leave out 'The court' and substitute 'Subject to the Summary Procedure Act 1926, the court'.

By making the court's jurisdiction subject to the Summary Procedure Act 1926, this amendment makes clear that paragraph *(b)*, which gives the court jurisdiction to hear and determine a charge of a minor indictable offence, is not intended to vary the proceedings of the Summary Procedure Act as to when the court can try a minor indictable offence. Of course we will be dealing with the amendments to that Act later.

The Hon. K.T. GRIFFIN: I do not have any difficulty with that, but I draw the Attorney-General's attention to

the reference in paragraph *(a)* to the charge of an indictable offence and suggest that, as part of the review of all Bills once they have been through Committee, he might look to see whether any attention needs to be given to that in the light of the fact that major indictable offences and minor indictable offences are referred to in amendments to the Justices Act. It may be necessary to amplify that description of 'indictable offence' so that it includes both major and minor indictable offences. It may not be necessary, but I mention it for noting for review in the course of the overall examination of the Bills when they have been through Committee.

The Hon. C.J. SUMNER: We will certainly look at it.

Amendment carried; clause as amended passed.

Clause 10—'Statutory jurisdiction.'

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

Page 3, lines 26 and 27—Leave out subclause (2) and insert:

(2) A statutory jurisdiction will be assigned to the Criminal Division of the Court if the jurisdiction is predicated on the commission or the alleged commission of an offence, but otherwise a statutory jurisdiction will be assigned to the Civil (General Claims) Division of the Court.

I have a concern with subclause (2). Clause 10 deals with the statutory jurisdiction of the court, and subclause (2) provides that the rules may assign a particular statutory jurisdiction to a particular division of the court. I presume from that that, by referring a statutory jurisdiction to a particular division of the court, that it can influence the rules, practice and procedure which apply to that particular matter. I do not think the rules ought to make that decision; the statute which establishes the jurisdiction ought to. However, if it does not, there ought to be a provision in this Bill which provides, as does my amendment, that if the jurisdiction is predicated on the alleged commission of an offence it goes to the criminal division, but otherwise a statutory jurisdiction will be assigned to the civil general claims division of the court. That is much clearer than giving the magistrates a right to determine by rules where a particular statutory jurisdiction goes.

The Hon. C.J. SUMNER: This amendment is opposed in its current form, but I may propose an alternative. The amendment prevents a particular statutory jurisiction from being assigned to a particular division of the court by the rules. It requies that anything predicated on the commission of an offence will be assigned to the criminal division and everything else will be assigned to the civil general claims division. This ignores the existing division of work between the courts of summary jurisdiction and the local courts.

Under the proposed classification from the Hon. Mr Griffin, restraining orders, for example, would be dealt with in the civil division. There are many anomalies in the existing division of work. For example, family law matters are heard in the summary courts. They are assigned there by the Commonwealth Acts, so they will be unaffected by this amendment.

I think the honourable member's fears about a statutory jurisdiction being allocated to the small claims division when it is not a small claim can be met in a way that is less disruptive to the existing division of work than by this amendment. I suggest that a provision to the effect that no matter may be transferred by the rules to the civil small claims division would suffice. Whether or not it is necessary may be debatable, but if that is something the honourable member would find acceptable, I would prepare an amendment to that effect.

The Hon. K.T. GRIFFIN: That does meet my objection. As I said when I was speaking to the amendment, my concern is that the rules can assign a jurisdiction to the minor civil jurisdiction, or the small claims jurisdiction—whichever it is to be called—which would then deprive the persons involved in that action or matter of the benefits of the civil general claims division procedures and entitlements. So, if the Attorney-General, as part of this review at the end of the Committee stage, does prepare an amendment in the terms that he has indicated, I am comfortable with that. On the basis of what the Attorney has indicated, I seek leave to withdraw my amendment.

Leave granted; amendment withdrawn.

Clause passed.

Clause 11 passed.

Clause 12—'Administrative and ancillary staff.'

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

Page 4, after line 5—Insert:

(ba) the Deputy Registrars;.

This amendment includes deputy registrars in the list of the court administrative and ancillary staff. This reflects the existing administrative structure, which includes two deputy registrars.

The Hon. K.T. GRIFFIN: I have no difficulty with that. I was just trying to recollect the District Courts Bill, in which we talked about a definition of 'deputy master', and it might be that this also has to be examined in the course of the review.

Amendment carried.

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

Page 4, line 8—Leave out paragraph *(e)*.

This amendment deletes the court orderlies from the court administrative and ancillary staff. The court orderlies are not employed under the Government Management and Employment Act 1988. They are casual employees employed under the Law Courts (Maintenance of Orders) Act and, as such, the Sheriff assigns the orderlies to the various courts and supervises their work.

Amendment carried; clause as amended passed.

Clause 13 passed.

Clause 14—'Responsibilities of non-judicial staff.'

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

Page 4, after line 20—Insert subclause as follows:

(2) The court orderlies are subject to direction by the Chief Mangistrate.

While the court orderlies are, by virtue of the previous amendment, no longer part of the court administrative and ancillary staff, it is proper that the Chief Magistrate should be able to direct them in the course of their duties. They do, after all, perform functions in court, such as handling exhibits.

Amendment carried; clause as amended passed.

Clause 15—'The court, now constituted.'

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

Page 4, lines 25 and 26—Leave out all words after 'Justice' in line 25 and insert:

—

(a) if all parties consent in writing;

(b) if no Magistrate is available to proceed with the matter, but in such a case if a party requests that the matter be adjourned for hearing by a Magistrate or if, in a criminal case, the defendant disputes allegations made against him or her, the matter must be adjourned for hearing by a Magistrate;

or

(c) in any other case of a class prescribed by the rules.

This amendment is substantially the same as the provisions in the Justices Act in relation to the work of justices. It seems to me appropriate to endeavour to recognise that work, but also to allow other business to be conducted by justices where prescribed by the rules. I think justices of the peace play an important role in the justice system in minor cases. There was certainly no indication as to the cases where justices might be involved under the new scheme.

To ensure that they maintain a role, I thought it was important at least to put in those two provisions (paragraphs *(a)* and *(b)*), which are already in legislation.

The Hon. C.J. SUMNER: I accept the amendment. A close examination of the existing Act has indicated that the Hon. Mr Griffin's amendment, although it is worded differently, does, in effect, pick up the existing law.

The Hon. K.T. GRIFFIN: I certainly do not want to reduce the jurisdiction of justices. All that I was concerned about was that by the rules it will be the magistrates who will make the policy decision as to the matters on which a special justice or two justices may sit. It is all very well to have the Government reviewing the role of justices, and I think that is a proper function of Government, but, on the other hand, the Government may have no control over it if the magistrates make rules that say the court will not be constituted in a particular way. I do not want to spend a lot of time on this matter.

The Hon. I. Gilfillan: Can't those rules be disallowed?

The Hon. K.T. GRIFFIN: They can be, but the real problem with disallowance of rules of court is that you may well have a very large bundle of rules that cover a whole range of procedures and other matters and it is very embarrassing and difficult to disallow the lot just because one is wrong. If the amendment is carried, I imagine that it is an issue that the Attorney-General will look at before we finally pass this legislation, only because I want to ensure that the Government does have some role in determining when justices can sit. They do play a very valuable role in the administration of justice and I do not want to see the role diminished, but it seemed to me that there was a very real risk if it was left to the rules of court.

The Hon. C.J. SUMNER: I will accept the amendment for the time being. I am advised that we might need to consult with the magistrates to ensure that we are not getting ourselves into trouble, but for the time being we accept the amendment.

Amendment carried.

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

Page 4, line 29—Insert 'relating to practice or procedure' after 'matter'.

The concern I have about clause 15 (4) is that a registrar may exercise the jurisdiction of the court in any matter prescribed by the rules whether civil or criminal. I must say that that causes me concern, because I would expect the registrar not to be a person necessarily with any legal training and, if a registrar is to be able to sit, even on interlocutory matters, undoubtedly litigants will express concern, because someone who is untrained will make decisions about interlocutories and even substantive issues.

So, on the basis that there is a very real risk that the rules can confer any of the jurisdiction of the court on registrars, I think that that power ought to be removed from the magistrates in the making of rules and that we ought to say that registrars can exercise jurisdiction insofar as it relates to practice or procedure, and that might be setting down cases for hearing or doing all those sorts of procedural matters but not dealing with substantive issues.

The Hon. C.J. SUMNER: Perhaps there is some misunderstanding about this matter. The amendment moved by the honourable member will allow registrars to be authorised by the rules to exercise the jurisdiction of the court only in matters relating to practice or procedure. I cannot accept this amendment. It would prevent registrars doing many of the things which, as justices, they can now do but which, as justices, they will not be able to do once this Bill is passed, and that may be where the misunderstanding arises.

Under section 44 of the Justices Act, a single justice (clerks of court have always been justices, and registrars are now all justices) may do the following things: receive the complaint, grant a summons or warrant thereon, issue a summons or warrant to compel the attendance of any witness, by consent of the parties expedite the date of the hearing, either upon the return of the summons or at any other time before the completion of the hearing, adjourn the hearing, do all other acts and matters preliminary to the hearing, and issue any warrant of distress or commitment upon any conviction or order.

Some of those matters will be able to be done under the Hon. Mr Griffin's amendment, but others would not be able to be done and, accordingly, I do not think the clause should be amended.

The Hon. K.T. GRIFFIN: It may be that this problem can be overcome by ensuring that a registrar as a justice can continue to do the things that justices are permitted to do by the rules of court, which then places the registrar in no different a position from justices in that respect.

However, what I want to guard against is the possibility that registrars will be given more substantive matters to deal with under the rules of court. It may be possible, if the Bill is recommitted and this amendment does not pass, to propose some alternative that will overcome the problem that I foreshadow. I do not want to remove those sorts of procedural matters which the registrars or the clerks of court presently undertake, or to prevent them as justices from undertaking the functions that other justices might undertake. So, it is an issue to which I would like some thought given and perhaps, after the break, we might be able to recommit.

The Hon. C.J. SUMNER: We will accept it for the moment.

Amendment carried; clause as amended passed.

Clause 16 passed.

Clause 17—'Adjournment from time to time and place to place'.

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

Page 4, lines 38 and 39—Leave out all words in these lines after 'may' in line 38 and substiture—

(a) adjourn proceedings from time to time and from place to place;

(b) adjourn proceedings to a time and place to be fixed; or

(c) order the transfer of proceedings from place to place.

This clause has been redrafted to make it clear that the court has the power to adjourn *sine die.*

The Hon. K.T. GRIFFIN: We support it.

Amendment carried; clause as amended passed.

Clause 18—'Sittings in open court.'

The Hon. K.T. GRIFFIN: This is an issue that was debated in the District Court Bill and, on the basis of the decision we took on that occasion, I do not wish to proceed with my amendment.

Clause passed.

Clause 19—'Transfer of proceedings between courts.'

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

Page 5, after line 7—Insert:

(1a) A magistrate may order that civil proceedings commenced in the Magistrates Court be transferred to the District Court.

This amendment provides that a magistrate may order that civil proceedings in the Magistrates Court can be transferred to the District Court. This will enable the proceedings to be transferred to the District Court where the magistrate considers it appropriate. A similar amendment, relating to the District Court and the Supreme Court, was agreed to in the District Court Bill which we have just concluded.

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

Amendment carried; clause as amended passed.

Clause 20—'Power to require attendance of witnesses and production of evidentiary material.'

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

Page 5, line 23—Leave out 'suspecting' and substitute 'believing'.

This amendment provides for the issue of a warrant if there are grounds for suspecting that a person would not comply with a subpoena. The provision is amended to raise the level of doubt to one of 'believing' that a person would not comply with a subpoena. This is the same test to which we agreed in the District Court Bill.

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

Amendment carried.

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

Page 5, after line 25—Insert:

(3a) If a person is arrested in pursuance of a warrant under subsection (3) and it appears that the warrant was issued without proper grounds, that person is entitled to damages against the Crown for false arrest.

This picks up a point made by the Law Society. It says that the clause is too wide and open to abuse. It allows a person to be arrested and brought before the court on the suspicion—that is now changed to belief—that that person may not comply with a subpoena to give evidence. It is a very wide power that is sought to be given and the Law Society suggests that specific restrictions on its availability should be considered together with rights being provided to a person who has been inappropriately arrested to obtain suitable compensation or redress in respect of the inappropriate arrest.

The Hon. C.J. SUMNER: This amendment is unacceptable. The amendment which I have already moved, and which has been carried by the Committee, transfers the precondition from suspicion to belief. In those circumstances, this amendment is unnecessary.

The Hon. I. GILFILLAN: I oppose the amendment.

Amendment negatived.

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

Page 5, lines 26 and 27—Leave out subclause (4).

Subclause (4) is deleted because, on further examination, the provision is not workable. The Bail Act, which is directed at criminal proceedings, cannot be adapted to civil proceedings. Common law bail can be called into play if necessary.

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

Amendment carried; clause as amended passed.

Clauses 21 and 22 passed.

Clause 23—'Production of persons held in custody.'

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

Page 6, line 14—After 'sheriff' insert ', or a member of the Police Force,'.

This clause provides that the court may issue a warrant authorising the sheriff to bring a person before the court. In the Magistrates Court, use is made of local police to bring persons before the court. This amendment reflects the practice in that court.

Amendment carried; clause as amended passed.

Clause 24 passed.

New clauses 24a and 24b.

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

Page 6, after line 25—Insert new clauses as follow:

Interim injunctions, etc.

24a. The court may, on such terms as appear just, grant an injunction or make any other order that may be necessary to preserve the subject-matter of an action intact until the questions arising in the action have been finally determined.

Restraining orders

24b. (1) A court may make an order (a 'restraining order') preventing or restricting dealing with property of a defendant to an action if—

(a) the action appears to have been brought on reasonable grounds;

(b) the property may be required to satisfy a judgment that has been, or may be, given in the action;

and

(c) there is a substantial risk that the defendant will dispose of the property before judgment is given, or before it can be enforced.

(2) A restraining order must be served as directed by the court.

(3) A person who deals with property subject to a restraining order except as permitted by the order commits a contempt of court.

(4) The court may vary or revoke a restraining order at any time.

(5) If it appears to the court that grounds for making a restraining order exist but the court requires further evidence to identify property in relation to which the order could be effectively made, the court may summons the defendant, or issue a warrant to have the defendant arrested and brought before the court, for examination on that subject.

These clauses relate to interim injunctions and restraining orders. They are similar to the amendments included in the District Court Bill and I believe they are necessary in this Bill also.

The Hon. K.T. GRIFFIN: I have no objection.

New clauses inserted.

Clause 25—'Court may conciliate.'

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

Page 6, lines 26 to 40—Insert the following new clause in place of clause 25:

Mediation and conciliation

25. (1) If it appears to the court at or before the trial of an action that there is a reasonable possibility of settling the action, the court may—

(a) appoint, with the consent of the parties, a mediator to endeavour to achieve a negotiated settlement of the action;

or

(b) itself endeavour to achieve a negotiated settlement of the action.

(2) A mediator appointed under this section has the privileges and immunities of a magistrate and such of the powers of the court as the court may delegate.

(3) Evidence of anything said or done in an attempt to settle an action under this section is not subsequently admissible in the proceedings or in related proceedings.

(4) A magistrate or other judicial officer who takes part in an attempt to settle an action is not disqualified from continuing to sit for the purpose of hearing and determining the action.

(5) Where a case is settled under this section, the terms of the settlement may be embodied in a judgment.

This amendment is similar to an amendment accepted by the Committee to the District Court Bill. It deals with mediation and conciliation.

The Hon. K.T. GRIFFIN: I support the amendment because the issue has been decided in relation to the District Court Bill. I have made all the points I need to make about the Conciliation Act 1929 and its application. Because that has been decided already in the District Court Bill, I believe it is appropriate to ensure that the Magistrates Court procedure is similar.

Existing clause struck out; new clause inserted.

New clauses 25a and 25b.

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

Page 7—Before clause 26 insert new clauses as follow:

Trial of issues by arbitrator

25a. (1) The court may refer an action or any issues arising in an action for trial by an arbitrator.

(2) The arbitrator may be appointed either by the parties to the action or by the court.

(3) The arbitrator becomes for the purposes of the reference an officer of the court and may exercise such of the powers of the court as the court delegates to the arbitrator.

(4) The court will, unless good reason is shown to the contrary, adopt the award of the arbitrator as its judgment on the action or issues referred.

Expert reports

25b. (1) The court may refer any question of a technical nature arising in an action for investigation and report by an expert in the relevant field.

(2) A person to whom a question is referred under this section becomes for the purposes of the investigation an officer of the court and may exercise such of the powers of the Court as the court delegates.

(3) The court may adopt a report obtained under this section in whole or part.

These new clauses deal with reference to arbitrators and expert reports and are similar to those included in the District Court Bill. We dealt with the issue of who pays for these people in the District Court Bill debate. In our review, I suggest that we probably should include a similar clause in this Bill.

The Hon. K.T. GRIFFIN: I support the new clauses and accept the assurance from the Attorney-General that the amendment which I moved to each of the two clauses in the District Court Bill will be examined and there will be consistency between the two Bills in relation to these two matters. I believe that the question of costs has to be dealt with and the formula which was finally included in the District Court Bill is an appropriate formula.

New clauses inserted.

Clause 26 passed.

Clause 27—'Alternative forms of relief.'

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

Page 7, after line 9—Insert:

(2) In particular—

(a) where a party seeks relief by way of injunction or specific performance, the court may award damages in addition to or in substitution for such relief;

(b) where a party seeks foreclosure of the equity of redemption in mortgaged property, the court may, instead of ordering foreclosure—

(i) direct the sale of the mortgaged property; or

(ii) direct a transfer of the mortgage debt and security to a person who agrees to assume the debt.

(This subsection is not exhaustive.)

The amendment sets out some of the alternative forms of relief that the court may grant. It logically follows from granting the court an equitable jurisdiction.

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

Amendment carried; clause as amended passed.

New clause 27a—'Declaratory judgments.'

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

Page 7—After clause 27 insert new clause as follows:

27a. The court may, on matters within its jurisdiction, make binding declarations of right whether or not any consequential relief is or could be claimed.

This new clause deals with the power of the court to make binding declarations of right whether or not any consequential relief is or could be claimed. It is similar to what we agreed last night in the District Court Bill.

The Hon. K.T. GRIFFIN: I go along with that. I raised in the District Court Bill questions about the declarations of right and, as I recollect, they were to be looked at in due course. On the basis of what happened last night, I go along with this new clause.

New clause inserted.

Clause 28 passed.

Clause 29—'Pre-judgment interest.'

The Hon. K.T. GRIFFIN: This issue was debated in relation to the District Court Bill. I was not successful then and I do not intend to move the amendment on file.

Clause passed.

Clause 30—'Interest on judgment debts.'

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

Page 8, line 37—Leave out paragraph *(a)* and substitute:

(a) in the case of taxed costs—from the date the costs are taxed or an earlier date fixed by the taxing officer;.

This amendment deals with the question of when interest runs on taxed costs. My amendment is similar to the one I moved last night in the District Court Bill that was agreed to by the Committee.

The Hon. K.T. GRIFFIN: I have no objection.

Amendment carried; clause as amended passed.

Clause 31—'Payment to child.'

The Hon. K.T. GRIFFIN: Again, this issue was raised in the District Court Bill. I made my point about the potential problems of making payments to a child, but I accepted then that there was in relation to the District Court a provision similar to that which exists in the Local and District Criminal Courts Act and that there is a desire for flexibility. In those circumstances, I do not want to oppose this clause.

Clause passed.

Clause 32—'Costs.'

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

Page 9, line 10—Insert ', at the conclusion of those proceedings' after 'may'.

This amendment relates to orders against legal practitioners. It is identical to that moved and accepted in the District Court Bill.

The Hon. C.J. SUMNER: It is accepted.

Amendment carried.

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

Page 9, lines 17 and 18—Leave out 'wasting the court's time' and insert 'time wasted'.

This is a drafting amendment.

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

Amendment carried.

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

Page 9, after line 18—Insert new subclause as follows:

(3) The court may not make an order against a legal practitioner under subsection (2) unless the court has informed the practitioner of the nature of the order proposed and allowed the practitioner a reasonable opportunity to make representations, and call evidence, in relation to the matter.

I will not move for the inclusion of new subclauses (4) and (5) as set out on the file, because they relate to issues debated last night on the District Court Bill on which I was not successful.

Amendment carried; clause as amended passed.

Clause 33—'Minor civil actions.'

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

Page 9, line 29—Insert 'but must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms' after 'evidence'.

This amendment relates to minor civil actions and the provisions applicable to the trial of a minor civil action. Paragraph *(e)* provides that the court is not bound by the rules of evidence and my amendment was an appropriate description of its role.

The Hon. I. GILFILLAN: At this stage I inquire about my amendment to insert subclause (3), after line 18 in clause 32.

The Hon. C.J. SUMNER: The Government has no objection.

Amendment carried

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

Page 9, line 32—Insert new paragraph as follows:

(al) should advise the judgment debtor of his or her right to apply for review of the proceedings by the District Court;.

The obligation should be on the magistrate to advise the judgment debtor of his or her right to apply for a review of the proceedings by the District Court.

The Hon. C.J. SUMNER: The Government agrees.

Amendment carried.

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

Page 10, after line 9—Insert paragraph as follows:

(d) the court will permit a party, or a person subrogated to the rights of a party, to be assisted by a person who is not a legal practitioner but only if that person is not acting for fee or reward.

New subclause *(d)* allows a party to be assisted by a person who is not a legal practitioner at a small claims hearing. The person must not be acting for fee or reward. It is similar to the existing provision of section 152 *(b)* (ii) of the Local and District Criminal Courts Act. The provision is of assistance to litigants who feel intimated by being required to present their case alone at a small claims hearing.

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

Page 10, after line 9—Insert new subclause as follows:

(4a) A party to a minor civil action may be accompanied during the trial of the action by any person (including a legal practitioner) and must be given opportunity to consult that person during the trial, but that person is subject to direction by the court.

I have an alternative amendment. I take a broader view, particularly as one gets into the larger amounts of $5 000, or claims under the Fences Act or neighbourhood disputes where perhaps no monetary claim is involved. A party to a minor civil action may be accompanied during the trial of the action by any person, including a legal practitioner, and may be given opportunity to consult that person during the trial. However, that person is subject to direction by the court so that the court has final control over the way in which the consultation may occur. If it is necessary to insert 'only if that person is not acting for fee or reward', I am happy to insert it. It seems unduly harsh that a person appearing before the court in a minor civil action does not have the opportunity to consult someone who has some understanding of what the procedures and the law might be, particularly in circumstances where one of the parties may be acting as the formal party, but the insurance company might be the person subrogated to the rights of that party. It is likely that with an insurance company the person who appears will be fairly articulate and will have a knowledge of the law, if not a legal practitioner, and in those circumstances it would be unfair for a person not to be able to be accompanied by some person, even a legal practitioner, during the course of these proceedings.

One must remember that, in the way in which these minor civil claims are heard, the magistrate does have control of the proceedings, the parties are usually brought forward before the magistrate and anyone accompanying them sits in the body of the court anyway. I do not see any harm being done by this and it may give reassurance to the inexperienced litigant, and some comfort to the timid, particularly when faced by claims from bodies such as insurance companies and those who have much more experience of the real world than litigants appearing in court for the first time. I prefer my amendment and indicate I will not support the Attorney-General's amendment because of the preference I have for mine.

The Hon. C.J. SUMNER: I oppose the Hon. Mr Griffin's amendment. It really cannot be supported as it allows legal practitioners in by the back door. It does not make clear that the legal practitioner or other person is not being paid. The whole notion of readmitting legal practitioners to the small claims court is unacceptable and could lead to total defeat of the small claims provisions. The *status quo* has worked well, and that is what my amendment provides. I ask the Committee to support it.

The Hon. I. GILFILLAN: I invite the shadow Attorney to correct me if I am wrong, but I believe that he indicated that he would accept that no fee should be paid as part of a modification of his amendment. That seems to me to be putting the two amendments reasonably close together except for the issue of whether a legal practitioner should be able to come in as the companion of one of the people involved in the action. I ask the Attorney to indicate what, if any, difference there is in his amendment to the situation that currently applies. Is there a use of a casual companion, other than a legal practitioner? A legal practitioner is currently prohibited. What is the situation currently in the small claims area?

The Hon. C.J. SUMNER: The situation is currently what I am attempting to insert into the Bill—it was left out. The practice is that the small claims jurisdiction permits companions.

The Hon. I. GILFILLAN: It is filling a gap that should have been there?

The Hon. C.J. Sumner: Yes.

The Hon. I. GILFILLAN: It looks as though there was an omission in the drafting of the legislation and I am inclined to support the Attorney-General's amendment. It may be unfair discrimination, if a family of a legal practitioner is not able to take a father, husband or immediate relation into the court. However, on balance, because I believe that it is essential that the small claims jurisdiction is kept free of professional legal involvement, I must prefer the Attorney's amendment. In some ways I feel that it could act unfairly on the family of a legal practitioner.

The C.J. Sumner's amendment carried; the Hon. K.T. Griffin's amendement negatived.

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

Page 10, lines 18 and 19—Leave out all words in these lines.

The effect of this amendment is to require the District Court, which reviews a small claim determination, to dispose of the matter once and for all. Paragraph *(b)* would allow a District Court judge to refer the matter back to the Magistrates Court for further hearing or for rehearing. This is contrary to the notion that small claims should be disposed of once and for all, cheaply and expeditiously. Where a matter is referred back to a magistrate it can take about a year for the matter to be finally disposed of. The next amendment I will move will allow the District Court to hear evidence if it is felt this is necessary for the proper determination of the matter.

The Hon. K.T. GRIFFIN: I am comforable with that. The only difficulty, I suppose, is that the District Court may decide that it does not want to go to the trouble of hearing further evidence, or rehearing evidence, given before the Magistrates Court, and in those circumstances a person may be denied the opportunity of fully exploring the issue on review. I just wonder whether it might be appropriate for the District Court to hear further evidence, or to rehear evidence, or even to refer the matter back to the Magistrates Court, or whether the Attorney-General feels that that would be too much of a temptation for the District Court as a way out of dealing with the issue there and then.

The Hon. C.J. SUMNER: It is important that the District Court deal with the matter. If it goes up on appeal, particularly in a small claims court, to then have the District Court determine the appeal and send it back to the magistrate for determination is really defeating the whole purpose of the small claims procedure. What has been put to us is that that currently happens: the matters go back to the magistrates on appeal and the magistrates do not always know why the appeal was allowed, or what the circumstances are. If an appeal to the District Court from small claims is permitted, as it is under our legislation, and the District Court feels that the appeal is warranted, it should deal with it and make orders without having to refer it back.

The Hon. I. GILFILLAN: That is the point of the footnote.

The Hon. C.J. Sumner: Yes.

The Hon. I. GILFILLAN: I was going to raise this point. It seems somewhat irregular; it is the first footnote I have seen in my nine years in Parliament.

Amendment carried.

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

Page 10, line 19—Insert:

(7) On a review the District Court may hear further evidence or rehear evidence given before the Magistrates Court.

I have just explained this amendment.

Amendment carried.

The Hon. C.J. SUMNER: The only other point I would make in relation to clause 33 is that when a District Court does hear evidence, it ought to be able to hear and take evidence in the same way as the small claims court can hear and take evidence if it is going to rehear the matter. I will prepare an amendment to give effect to that as well.

The Hon. K.T. GRIFFIN: You will give a discretion to the District Court to make a decision on that, I presume. Surely there must be a discretion.

The Hon. C.J. SUMNER: Yes, that is the effect; that is what we will do.

The Hon. K.T. GRIFFIN: I have no difficulty with that. I wonder whether it is the Attorney's intention to move the inclusion of a footnote.

The Hon. C.J. SUMNER: Yes; that is a very good idea.

The Hon. K.T. GRIFFIN: I am curious to know why we have a footnote and why it is not in the amendment. Subclause (7) provides that on a review the District Court may hear further evidence or rehear evidence given before the magistrates court. Why could it not be included there, rather than as a footnote? I suggest that the existence of a footnote will raise all sorts of questions about whether or not it is part of the Bill.

The Hon. I. Gilfillan: It is a wondrous thing to behold.

The Hon. C.J. Sumner: We should do a lot more of it.

The Hon. K.T. GRIFFIN: One has to raise the question whether it is part of the statute. There are lots of footnotes; there is a footnote on page 89 of the Local and District Criminal Courts Act which gives some explanation of section 22 of Act No. 50 of 1956. We have to be very careful about embarking upon all these footnotes, which will be confused with other footnotes which are merely footnotes added by Parliamentary Counsel or the Government Printer to assist in the understanding of the legislation and which are not part of the legislation. I am quite unhappy about that because it introduces a new concept that I think will open up areas of debate when the Bill becomes an Act.

The Hon. I. GILFILLAN: There may very well be good precedent and argument for using a footnote but, looking at the content of this particular footnote, it would appear to me that it could easily be a subclause to the clause that we are dealing with. It is just that the District Court shall or may give a final judgment. It needs only a very minor rewording and it would read quite neatly as a clause in the Bill.

The Hon. K.T. GRIFFIN: With the intention that the District Court shall give a final judgment on the review and not send the matter back to the Magistrates Court for further hearing or rehearing.

The Hon. C.J. SUMNER: I do not want to get bogged down in a footnote. We will not proceed with the footnote. We will consider the matter and bring back a clarification or an amendment, if need be; or we will just leave it as it is. The problem was that the District Court made rules to say that after an appeal was successful the matter had to be referred back to the small claims court for determination. That is overly bureaucratic and it is what we wanted to avoid. We will try to avoid it in another way. In the interests of saving time, we will avoid this exercise in creative drafting for the moment.

Clause as amended passed.

Clause 34—'Determination in minor civil action creates no issue estoppel.'

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

Page 10, line 22—Leave out 'a different action' and substitute 'different proceedings based on a different claim'.

Concern has been expressed that the wording of clause 34 could allow the same parties to relitigate the same matter, notwithstanding that it had been determined in an earlier minor civil action. This amendment restores the wording used in section 152e of the Local and District Criminal Courts Act; that is, the parties are not prevented from again litigating the same issues in different proceedings based on a different claim.

Amendment carried; clause as amended passed.

Clause 35—'Right of appeal.'

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

Page 10—

Lines 27 and 28—Leave out ', in accordance with the rules of the Supreme Court,'.

After line 33—Insert:

(4) A right of appeal conferred by this section extends to a legal practitioner against whom an order for costs is made.

We debated this point earlier this evening, and I think the Attorney-General agreed that he would move an amendment to delete the words 'subject to' and insert 'in accordance with'.

Amendment carried.

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

Page 10, after line 33—Insert subclause as follows:

(4) If jurisdiction to try the civil action is created by statute and the terms of the statute as such as to indicate that Parliament did not intend that there should be an appeal from a decision made in the exercise of that jurisdiction, that intention prevails.

New subclause (4) is designed to preserve the *status quo* in relation to appeals from many matters heard by the Local Court. The Local Court hears appeals from administrative decisions under various Acts, for example, Firearms Act, Motor Vehicles Act (probationary licence and points demerits), and the Births, Deaths and Marriages Registration Act (refusal to register the name of a child). The court also has some original jurisdiction in which its decisions are not now appealable, for example, under the Births, Deaths and Marriages Registration Act—child's surname, late registration of birth or death. There are now no appeals form these decisions and there should not be, unless, of course, the particular Act that is dealing with the topic provides for an appeal.

The Hon. K.T. GRIFFIN: I do not object.

Amendment carried.

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

Page 10, after line 33—Insert the following new subclause—

(5) A right of appeal conferred by this section extends to a legal practitioner against whom an order for costs is made.

Amendment carried; clause as amended passed.

Clause 36 passed.

Clause 37—'Appeals.'

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

Page 11, line 3—After 'party to' insert 'a'.

This is typographical.

Amendment carried.

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

Page 11, line 3—After 'and' insert 'in accordance with'.

pellate This is really the same point that I dealt with in relation to clause 35, except that it is in a slightly different form. I want to try to avoid the right of appeal in a criminal action being subject to the rules of the appellate court.

The Hon. C.J. SUMNER: That is accepted.

Amendment carried.

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

Page 11—

Lines 11 to 13—Leave out the passage in parenthesis.

After line 13—Insert subclauses as follows:

(2a) If an appeal to the Supreme Court arises from proceedings related to a minor indictable offence, the appeal will be to the Full Court unless the appellant elects to have it heard by a single Judge, but, even though such an election is made, a Judge may refer the appeal to the Full Court.

(2b) On an appeal, the appellate court may, if the interests of justice so require, rehear any witnesses or receive fresh evidence.

These amendments go together. New subclause (2b) will allow the appellate court, if the interests of justice so require, to rehear any witnesses or receive fresh evidence. This gives the appellate court powers to scrutinise magistrates' findings as they can now do under section 176 of the Justices Act.

The Hon. K.T. GRIFFIN: I indicate, to make it easier, that the Attorney-General's amendments do address the issue which I have sought to cover in my amendment, which is to insert a new subclause (2a) to ensure that the appeal is by way of rehearing. I therefore indicate that I do not intend to move that amendment.

Amendments carried; clause as amended passed.

Clauses 38 and 39 passed.

Clause 40—'Contempt in face of court.'

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

Page 12, lines 5 and 6—Leave out 'or proceeding to or from a place at which the Court is to sit or has been sitting'.

This amendment relates to the issue of contempt.

The Hon. C.J. SUMNER: I accept the amendment.

Amendment carried; clause as amended passed.

Clause 41—'Punishment of contempts.'

The Hon. K.T. GRIFFIN: I have lost the debate on this issue, which relates to contempt. I lost it in the District Courts Bill. It seeks to distinguish contempt by a legal practitioner from other contempts, so I do not propose to proceed with my amendments.

Clause passed.

Clause 42—'Custody of litigant's funds and securities.'

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

Clause 43 passed.

Clause 44—'Rules of court.'

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

Page 12, after line 37—Insert:

(ca) regulating the form in which evidence is taken or received by the court;.

This will enable rules of court to be made regulating the form in which evidence is taken or received by the court. The same provision was included in the District Court Bill. It is an important power in that it will allow rules to be made in relation to receipt of affidavit evidence.

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

Amendment carried.

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

Page 13, lines 3 and 4—Leave out subclause (2) and insert:

(2) Subject to this section, rules of the court may be made by the Chief Magistrate, the Deputy Chief Magistrate and not less than one quarter of the total number of remaining Magistrates.

This provides that the rules of court may be made by the Chief Magistrate, the Deputy Chief Magistrate and not less than one quarter of the total number of remaining magistrates. That is an arbitrary figure but not such a large number as to make it prohibitive. I just take the very strong view that rules of court, which can have a significant impact on litigants, ought to be made by more than just four members of the magistracy.

The Hon. C.J. SUMNER: I oppose the amendment for the same reasons relating to the District Court Bill.

The Hon. I. GILFILLAN: I oppose the amendment.

Amendment negatived.

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

Page 13, after line 4—Insert:

(3) Rules of the court take effect from the date of publication in the *Gazette* or some later date specified in the rules.

This makes it clear that rules of court come into effect on the day they are gazetted or, alternatively, on some other date specified in the rules. The amendment is moved for the same reasons as a similar amendment was moved to the District Court Bill.

Amendment carried.

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

After line 4—Insert new subclauses as follows:

(4) Before rules of the court are made, the Judges must consult a committee constituted (from time to time) of the following persons:

(a) two persons nominated by the Law Society of South Australia;

(b) two persons nominated by the South Australian Bar Association;

(c) one person (who must not be a member of Parliament) nominated by the Attorney-General;

(d) one persn (who must not be a member of Parliament) nominated by the Leader of the Opposition.

(5) The committee constituted under subsection (3) must submit a report to the Joint Standing Committee on Subordinate Legislation on any rules of court made under this section as soon as practicable after the making of those rules.

I move to insert these subclauses with a somewhat forelorn hope that it might attract greater support than when I moved a similar amendment in relation to the District Court Bill. I feel strongly about the making of rules of court, particularly with respect to the Magistrates Court. There ought to be adequate consultation with the legal profession who have to work with the rules. I want to see the consultative process formalised in the same manner as I indicated in relation to the District Court Bill.

The Hon. C.J. SUMNER: I oppose this amendment for the same reasons as I opposed a similar amendment moved by the honourable member to the District Court Bill.

The Hon. I. GILFILLAN: I intend to oppose it but indicate that, to date, I have not seen any evidence or received any communcation from anyone complaining about the method in which the rules apply to the court. That is not surprising as I do not have a lot of contact with them. As these Bills come into effect, if we have evidence that the procedure is the cause of problems and dissatisfaction, I indicate to the Hon. Mr Griffin that I would be very sympathetic in an attempt to persuade the Attorney-General to have another look at it.

Amendment negatived; clause as amended passed.

Clause 45 passed.

New clause 46—'Accessibility of evidence.'

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

Page 13—After clause 45 insert new clause as follows:

Accessibility of evidence

46. (1) Subject to subsection (2), the court must, on application by any member of the public and payment of the appropriate fee (if any) fixed by the regulations make available for inspection by the applicant—

(a) a copy of a transcript of evidence taken by the court in any proceedings;

(b) any documentary material admitted into evidence in any proceedings;

(c) a copy of any judgment or order given or made by the court.

(2) Evidentiary material will not be made available for inspection under this section if it has been suppressed from publication by order of the court.

This amendment is in the same terms as a similar amendment to the District Court Bill, giving access by the public to public documents held by the courts.

The Hon. K.T. GRIFFIN: Will the Attorney-General look at it in the same terms as he undertook with the similar amendment to the District Court Bill?

The Hon. C.J. SUMNER: Yes, I undertake to consider its drafting with respect to those matters raised by the Hon. Mr Griffin in relation to the District Court Bill.

New clause inserted.

Title passed.

ADJOURNMENT

At 10.55 p.m. the Council adjourned until Thursday 31 October at 11 a.m.