LEGISLATIVE COUNCIL

Tuesday 12 November 1991

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

ASSENT TO BILLS

Her Excellency the Governor, by message, intimated her assent to the following Bills:

Appropriation,

Criminal Law Consolidation (Abolition of Year-and-a-day Rule) Amendment,

Dried Fruits (Extension of Term of Office) Amendment,

Evidence Amendment,

Geographical Names,

Maralinga Tjarutja Land Rights (Additional Lands) Amendment,

Wrongs Amendment.

QUESTIONS ON NOTICE

The PRESIDENT: I direct that written answers to the following questions, as detailed in the schedule that I now table, be distributed and printed in *Hansard*: Nos 2, 4 and 12.

PLANNING COMMISSION

2. **The Hon. BERNICE PFITZNER** asked the Minister for the Arts and Cultural Heritage:

1. Does the Government or the South Australian Planning Commission have the power to veto all types of controversial development in the areas where planning powers are proposed to be transferred?

2. Are the councils able to veto:

(a) In the Murray River Flood plain zone—waste transfer station; prescribed mining; intensive animal husbandry; building development with primitive sewage disposal systems; borrow pits; major land filling and excavation?

(b) In the hills face zone (HFZ)—waste transfer stations; intensive horsekeeping; rearrangement of title boundaries in the HFZ resulting in development being located in more conspicuous sites; addition to two storey dwellings?

(c) In the Mount Lofty Ranges watershed—major land filling and excavation; inappropriate development and land use in water sensitive zones; prescribed mining; borrow pits; waste transfer stations?

3. Are these activities considered to be of major significance in these areas and, if not, why not?

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

1. In February 1991 the Governor amended regulations under the Planning Act to change the relative responsibility of the South Australian Planning Commission and councils. The changes principally affected sensitive ares such as the hills face zone; Mount Lofty watershed, Murray River flood zone and conservation zones. The regulations made the relevant councils the planning authority instead of the commission. These changes were made in the light of tough development policies being incorporated in the development plan. The prohibition over generally inappropriate development prevents councils from granting approval unless the Planning Commission agrees the matter is an exceptional case.

2. The prescribed mining, borrow pits and waste disposal operations are matters within the responsibility of the commission and there are no proposals being considered by Government to transfer responsibility for these matters to councils. In the Murray River flood zone all building development other than agricultural buildings, boat landings and alterations to existing dwellings are prohibited. Accordingly, new building development does not generally occur, but exceptional cases can be approved if the council, Planning Commission and the Minister for Environment and Planning agree. Any approval would as a matter of course be subject to appropriate waste disposal facilities. Within the hills face zone and watershed areas outside townships, land division creating additional allotments is prohibited. Accordingly, both the commission and the relevant council has a veto over exceptional cases put forward. In the hills face zone boundary adjustments are the responsibility of the commission. Councils have no veto but the commission takes council's comments into account. Land filling and excavation are not 'development' under the Planning Act within the flood zone and Mount Lofty Ranges (other than hills face zone). Accordingly, councils do not have a veto. However, excavation and land filling is controlled under the Water Resources Act within the Murray River flood zone, and I understand the Mount Lofty Ranges Review is considering whether control over excavation/land filling is warranted throughout the ranges. It should be noted that excavation and land filling is controlled through the rural areas of the State where it affects native vegetation, by virtue of the provisions of the Native Vegetation Management Act.

3. Yes, but this would depend on the location and extent. Applications for the types of development referred to are judged in the light of the policies incorporated in the development plan and, in general, are prohibited in the sensitive areas of the State referred to in the question, thus giving both the commission and the relevant council a veto over exceptional cases put forward.

PLANNING REVIEW COMMITTEE

4. **The Hon. BERNICE PFITZNER** asked the Minister for the Arts and Cultural Heritage:

1. Given that the Planning Review Committee has given no indication in the 2020 Vision report of the types of development which it considers to be of 'State significance', does the Minister for Environment and Planning concede that it would be premature for changes to be made to the 5th and 7th Schedules at this stage?

2. If not, could the Minister please explain why?

The Hon. ANNE LEVY: The Government has established a comprehensive review of the planning system in this State. The Government recognises that the planning system must be efficient, effective and give adequate certainty to the community on what the development rules are to be. The review also recognises the need for community consultation in setting the development rules. One of the key aims set out by the review in its recent report on ideas for metropolitan Adelaide, is the need to ensure that the State Government sets appropriate planning strategy at the regional level, and that councils administer local development controls over matters of local significance, having regard to this regional strategy.

The role of the planning review is to develop an approach to strategy planning, set strategic planning direction, and formulate new models for dealing with development proposals. The Government and the planning review do not consider it premature to make adjustments to the respective roles of the South Australian Planning Commission and councils. I am advised that a detailed proposal has been distributed to all councils in the State and to relevant interest groups. Most councils have now responded to the proposals and are generally supportive. It is intended to put the regulation changes to the Governor only when they can be seen in the context of the detailed administrative procedures proposed by the planning review.

PLAYGROUND EQUIPMENT

12. **The Hon. BERNICE PFITZNER** asked the Minister of Tourism: With respect to the following table of statistics on childhood accidents:

In the four years from the beginning of 1987 to the end of 1990 the Casualty Department at the Adelaide Children's Hospital treated:

- 1 308 children injured on playground equipment
- 1 279 children following bicycle accidents
- 977 children following motor vehicle accidents
- 724 children for burns or scalds
- 418 children following dog bites
- 278 children following skateboard accidents
- 245 children following trampoline accidents
- 104 children following horseriding accidents
- 24 children who nearly drowned, and
- 21 children following electrical accidents.

1. Is the Minister aware of the high rate of injuries on playground equipment?

2. Which department and who is the officer responsible for the inspection of playground equipment to ensure that Australian design construction standards are met?

3. What are the criteria required for the licensing of places that charge for the use of playground-type equipment?

4. It is understood that the Places of Public Entertainment Act is being reviewed and, if the Places of Public Entertainment Act is the relevant Act covering this area, will the Minister take into account as to whether the Act is adequate for the surveillance of playground equipment?

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

1. I was unaware of these statistics until brought to my notice by the Hon. Dr Pfitzner. However, this information would not normally be brought to my attention as inspection of playground equipment is not carried out by officers of departments under my authority.

2. The Places of Public Entertainment Act regulates the safety of the public in places of public entertainment. Although neighbourhood and school playgrounds and the like are not places of public entertainment within the meaning of the Act, a funpark or fairground is generally accepted to fall within that category, although the distinction is not always clear.

The Inspector of Places of Public Entertainment has been advised by the Playgrounds Unit, Department of Recreation and Sport, that compliance with Australian Standards relating to playgrounds and playground equipment is not mandatory. According to the Playgrounds Unit, the generally accepted principle in assessing playground equipment is that it should conform to the standards, but where a departure occurs, additional precautions should be incorporated in the design to minimise any additional hazards that may have been introduced by the departure. Responsibility for playground safety lies with the operators, typically councils and schools. The unit advises on playground safety by invitation or at the request of another agency but it does not have a regulatory role.

3. To obtain or renew a licence under the Places of Public Entertainment Act, the operator must provide a current certificate of safety in respect of equipment available for use by the public. In addition, the Inspector of Places of Public Entertainment may request the advice of Department of Labour inspectors in respect of the assembly of amusement devices or the Playgrounds Unit in respect of playground-type equipment.

4. The Inspector of Places of Public Entertainment is satisfied that adequate attention is given to ensuring that amusement devices that require licensing under the Places of Public Entertainment Act are safe for use by the public and continue to maintain that status. However, the current review of the Act will include an examination of the effectiveness of the current licensing procedure not only in respect of amusement devices but all forms of public entertainment.

PAPERS TABLED

The following papers were laid on the table:

By the Attorney-General (Hon. C.J. Sumner)—
- Reports, 1990-91—
  - Correctional Services Advisory Council;
  - Department of Labour;
  - Listening Devices Act 1972;
  - Department of Marine and Harbors.
- Coroners Act 1975—Rules—Examination Fees.
- Legal Practitioners Act 1981—Regulations—
  - Indemnity Insurance;
  - Practising Certificate Fee.

By the Minister of Tourism (Hon. Barbara Wiese)—
- Reports, 1990-91—
  - Advisory Board of Agriculture;
  - Chiropractors Board of South Australia;
  - Food Act 1985;
  - Occupational Therapists Registration Board of South Australia;
  - South Australian Psychological Board;
  - Soil Conservation Boards.
- Racing Act 1976—Rules—Bookmakers Licensing Board—Bookmaker Betting.
- Regulations under the following Acts—
  - Deer Keepers Act 1987—Registration Fees.
  - Fisheries Act 1982—General Fishery—Recreational Fishing Gear.
  - Seeds Act 1979—Noxious Seeds.

By the Minister of Consumer Affairs (Hon. Barbara Wiese)—
- Reports, 1990-91—
  - Commissioner for Consumer Affairs;
  - Commissioner for Standards;
  - Department of Public and Consumer Affairs.

By the Minister for the Arts and Cultural Heritage (Hon. Anne Levy)—
- Reports, 1990-91—
  - South-Eastern Drainage Board;
  - South-East Cultural Trust;
  - Libraries Board of South Australia.
- Metropolitan Taxi-Cab Act 1956—Applications to Lease.
- Roads (Opening and Closing) Act 1991—Regulations—
  - Public Utilities and Access;
  - Refunds and Fees.

By the Minister for Local Government Relations (Hon. Anne Levy)—
- Reports, 1990-91—
  - Local Government Advisory Commission;

South Australian Local Government Grants Commission;
Local Government Superannuation Board.

QUESTIONS

OPERATION KEEPER

The Hon. R.I. LUCAS: I seek leave to make an explanation before asking the Attorney-General a question about Operation Keeper.

Leave granted.

The Hon. R.I. LUCAS: An *Advertiser* article on 7 November 1991 indicated that Operation Keeper, which has been investigating alleged cases of child abuse in the northern suburbs, was to be downgraded from 28 November. The article stated that at the start of November the Operation Keeper team consisted of eight detectives and a uniformed policewoman, all of whom have experience in dealing with child abuse, and that from 28 November only two detectives would be retained to deal with all investigation and administration work for child abuse cases in the northern suburbs.

The article quoted Detective Chief Inspector Dennis Edmonds as saying that personnel changes were an interim measure in the light of a current review of the team's workload. He was also quoted as saying that the number of notifications received by the team had fallen in the past two months so the workload could now be handled by a reduced number of officers. Curiously, Chief Inspector Edmonds would not provide figures to the *Advertiser* to substantiate his claim that the rate of child abuse notifications at Elizabeth CIB had dropped.

During the past few days the Liberal Party has received information that indicates that the notification rate has not declined but that, if anything, it has risen in recent weeks. I have been told that at the start of October the notification rate for child abuse cases averaged 2.4 cases a day, yet by the start of November it had risen to 2.8 cases daily. The Opposition has also been given information that the former Operation Keeper team leader, Detective Sergeant John Bean, wrote a submission, which was intended to go to the Attorney-General about three months ago, in which he was quite critical of the Crown prosecution's role in the team's work.

This submission argued the need to retain Operation Keeper due to the good work it was achieving, but contained specific criticisms of Crown prosecution. Among a number of criticisms the submission stated that the Crown expected complainants and witnesses to come into the city to be interviewed, thus overlooking the fact that many people reporting cases of child abuse came from low socioeconomic backgrounds. The lack of sensitivity being shown by some Crown staff was also criticised. For example, one child who had been a victim of continual alleged child abuse and who had provided detailed information about the abuses was told by the Crown:

> We are going to lock away your daddy for a million years.

Naturally, to a small child—no matter what they may have been subjected to—this was a horrifying prospect and, as a result, the child did not proceed with the claim of child abuse.

I understand that this submission, which indicated a variety of concerns, was sent about three months ago, and I gather that Senior Sergeant Bean, who has now been shifted from the Operation Keeper team to larceny, has had no response. My questions to the Attorney are:

1. Is he aware of the submission by Senior Seargeant Bean regarding Operation Keeper and his view about the role being played by Crown prosecution?

2. Will he investigate these claims and, in particular, ascertain why there has been no response after three months?

3. Will he seek an explanation from his colleague, the Minister of Emergency Services, as to why Operation Keeper is being wound down when it appears that the number of child abuse notifications is rising, not falling; and also why the announced intention of extending this program to other areas appears to have been abandoned?

The Hon. C.J. SUMNER: As to the last question, that is a matter for the Minister of Emergency Services to respond to. Of course, operationally it is the responsibility of the Police Commissioner, and no doubt the Minister of Emergency Services would seek information from the Police Commissioner as to the operational reasons for any change in priorities in the investigation of allegations of criminal behaviour. I do not recollect having seen the submission to which the honourable member has referred, although I have from time to time had some information about the Operation Keeper program. I note that the honourable member says that there are criticisms in the submission about Crown prosecution—soon to become the DPP, in which case questions on these matters will be referred to the DPP and will not be answered by me. But, that is for the future.

I cannot comment on those criticisms, obviously. If they have been made, I will have them examined. However, I would say—and it is very important that this be emphasised—that the Crown Prosecutor is responsible for prosecuting cases in the higher courts in this State and occasionally in the summary courts, but certainly in all cases in the District Court and the Supreme Court. It is the Crown Prosecutor who must ensure that the evidence which is presented to the court to support the prosecution is adequate and does in fact enhance the case. That is the role that the professional prosecutors have to play.

It may mean that, from time to time, there are differences of opinion between the Crown prosecutors and the police as to whether evidence is in a satisfactory enough state to present to the court. However, that latter remark is by way of general statement. I note that the honourable member has referred to some specific complaints. I will have the matter examined within my department and bring back a reply.

DEREGULATION

The Hon. K.T. GRIFFIN: I seek leave to make an explanation before asking the Attorney-General a question on the subject of deregulation.

Leave granted.

The Hon. K.T. GRIFFIN: On Sunday the Minister of Finance was reported as saying that the Government is proposing to review some 420 licences and permits required by businesses to enable them to carry on business. He is also reported to have said that tradesmen, charity groups and individuals will also benefit from a wide-ranging review of registrations. According to the report, the object of the review is to identify licences which restrict competitiveness or impose other unnecessary costs on business in South Australia. What surprises many people who have seen this report is that this announcement comes 6½ years after a working party reported on the area of deregulation and proposed further work on the concept of a one-stop shop for Government licences and permits.

So far as can be seen, the only thing to come out of the Government's deregulation program is a progressive review

of regulations, but many of the substantial regulations have been exempted from review under that scheme. The announcement by the Minister of Finance comes six years after an election at which the Bannon Government made a big thing about deregulation and promised to cut red tape. My questions to the Attorney-General are:

1. In the light of the history of the Government's lack of significant action over deregulation and its failure to establish a one-stop shop for businesses for State Government licensing, what confidence can business and the public have that the announcement of the Minister of Finance will be any more effective?

2. When will the review of licences and permits be completed?

3. What is the priority for the review?

4. Can the Attorney-General bring back to this place a list of the 420 licences and permits to be reviewed?

The Hon. C.J. SUMNER: I will refer questions 2, 3 and 4 to my colleague the Minister of Finance for a reply, as those questions relate specifically to the review which he has been reported as announcing. As to the one-stop shop proposal, that was dealt with extensively by my colleague the Hon. Ms Wiese in this Chamber some few weeks ago, as I recall it, and I would refer the honourable member to that answer for a response to that question.

As to his first question about the lack of significant action in the area of deregulation, that is something that I would dispute. The fact is that there has been quite significant action in this area. It is always possible to argue, as no doubt members would argue if it suits their purposes, that deregulation has not gone far enough, but one must realise that members opposite have not exactly been at the forefront of deregulation in a number of areas when they have been confronted with Bills to deregulate particular areas of activity. One has only to refer to things like the Egg Board, the citrus industry, the Potato Board and a number of other agricultural marketing areas where members opposite have been very tardy in supporting deregulation.

It is also true to say that members opposite were not particularly enthusiastic about the deregulation of bread baking hours or petrol trading hours. A good number of the members opposite are on the record as opposing the deregulation of petrol trading hours, and they had a somewhat ambivalent attitude to shop trading hours as well, at various times. So—

The Hon. J.F. Stefani interjecting:

The Hon. C.J. SUMNER: The Hon. Mr Stefani interjects 'We are not going to support deregulation if it will send people broke.'

The Hon. J.F. Stefani interjecting:

The Hon. C.J. SUMNER: That's all right; I am just making sure that your comments are on the record.

The Hon. J.F. Stefani: Do you want more businesses to go out of business?

The PRESIDENT: Order!

The Hon. C.J. SUMNER: No, I have not said that.

The Hon. J.F. Stefani: The Attorney-General is in favour of businesses going broke.

The Hon. C.J. SUMNER: That is a peculiar thing for him to say, Mr President. I did not say anything of the kind. What the honourable member said—

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER:—is that he is not in favour of deregulation if it is going to send businesess broke.

The Hon. J.F. Stefani interjecting:

The Hon. C.J. SUMNER: That is what you said. You didn't say anything about union demands; you said you would not support deregulation if it would send any businesses broke.

The Hon. J.F. Stefani: Correct.

The Hon. C.J. SUMNER: The honourable member said 'Correct.' That is on the public record.

The Hon. J.F. Stefani interjecting:

The Hon. C.J. SUMNER: That is all right; the Hon. Mr Stefani has made that statement, and I assume that that is the Liberal Party's position in this area. But, of course, they cannot have it both ways: they cannot make that statement and then also talk about deregulation, as they all do and, indeed, as all their Federal counterparts do, *ad infinitum*. If they want to see deregulation of a number of areas, I suspect with consequences that the Hon. Mr Stefani may not agree with, all he has to do is support the policy—

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER:—of his Federal colleagues—

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER:—which I have no doubt he will do.

Members interjecting:

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

The Hon. C.J. SUMNER: I have merely been concerned to point out to the Council in response to the Hon. Mr Griffin's question that, as I said previously, there are differing views about the pace or, indeed, the desirability of deregulation. We have already heard some of these views here today, from the Hon. Mr Stefani, but the fact of the matter is that the Government has acted decisively in a number of areas concerning business and economic deregulation in this State—a number of areas where the Liberal Party opposed that deregulation.

So, one can argue about the pace of it, but I would dispute the Hon. Mr Griffin's proposition that there has not been significant action. There has been action in those areas, and I think this has generally been applauded by the community and, of course, we have taken quite significant action in the area of the review of legislation and regulations. That will continue. In any event, what we have done has been reported to Parliament in the report of the deregulation adviser.

HAMMERS OVER THE ANVIL

The Hon. DIANA LAIDLAW: I seek leave to make an explanation before asking the Minister for the Arts and Cultural Heritage a question on the subject of the South Australian Film Corporation production *Hammers Over the Anvil*.

Leave granted.

The Hon. DIANA LAIDLAW: *Hammers Over the Anvil*, a joint venture production with Peter Harvey-Wright of Harvest Productions and the S.A. Film Corporation, is the corporation's first feature film for over five years. Based on short stories by Alan Marshall, *Hammers Over the Anvil* is also one of only five films to be fully financed by the Australian Film Finance Corporation Pty Ltd as part of the 1991 film fund. I understand that the funding amounts to about $3 million. I have been informed however, that since pre-production work commenced in September, it now appears that the film will overrun its budget by three quarters of a million dollars. It appears also that this budget blow-out stems essentially from the fact that the film's initial budget was understated in order to enhance the film's chances of gaining support from the film fund ahead of the 178 other applications for funding assistance. I ask the

Minister: is she able to confirm that the costs associated with producing *Hammers Over the Anvil* are anticipated to blowout by up to three quarters of a million dollars and, if so, will the Australian Film Finance Corporation be responsible for meeting the extra costs or will the overages have to be met in full or in part by the South Australian Film Corporation (essentially South Australian taxpayers) in association with its co-venture company, Harvest Productions?

The Hon. ANNE LEVY: At the earliest opportunity, I will seek a report from the Film Corporation on the details of the question asked by the honourable member. As the honourable member indicated, *Hammers Over the Anvil* was awarded to the South Australian Film Corporation in association with the co-producer by the FFC as the result of a very strict competition. There were a very large number of entries for the available finance of which only a very small number were awarded any.

The Hon. Diana Laidlaw interjecting:

The Hon. ANNE LEVY: As the honourable member interjects: five out of 178. The awarding of this film certainly acknowledges the regard held by the FFC for the competence of the Film Corporation under its new leadership. The film is under production at the moment, and I hope to visit one of the filming sites very soon to see it under way. However, as I have indicated, I will refer the details of the question to the Film Corporation for a detailed response.

GOVERNMENT BUSINESS

The Hon. I. GILFILLAN: I seek leave to make an explanation before asking the Attorney a question about Government business in the Council.

Leave granted.

The Hon. I. GILFILLAN: As members will be aware, there are nine sitting days of Parliament left for this year and what could be described as a vast amount of legislation still on the Notice Paper. In this place, we have 19 Government Bills before us on a wide variety of issues, 11 motions before the House as private members' business—some of which have sat on the table for the past four months—17 motions for disallowance, and four private members' bills, at least one of which has been in this place since April. In addition, we are yet to receive another 11 Bills that are currently being debated in the House of Assembly, some of which, such as the highly controversial Privacy Bill, seem destined to occupy many hours of debate in this Council, and I understand there may be additional new legislation introduced into Parliament this week.

The Hon. Anne Levy: Do you support time limits on speeches?

The Hon. I. GILFILLAN: The Minister suggests putting a time limit on speeches.

The Hon. Anne Levy: I asked whether you support putting a time limit on speeches.

The Hon. I. GILFILLAN: If every member spoke as briefly as I do, we would be through in about three days flat.

The Hon. Anne Levy: That's not the question. Would you support it?

The PRESIDENT: Order!

The Hon. I. GILFILLAN: The Minister has persistently interjected asking whether I support a time limit on speeches. I would certainly view favourably legislation to control the amount of time, but until we have a proposal before us it would be inappropriate for me to answer that question by responding to the interjections. However, the problem is still before us. Because of the mismanagement of the Government, we have had to re-introduce a new Bill for the water rates legislation that has been enacted, and we will probably have to deal with WorkCover amending legislation.

Clearly, this Parliament has run into the apparently inevitable problem of having to deal with the Government's propensity for bringing in large amounts of legislation when little time is left in the session. We have the normal bunching. It drives us to distraction each year. In so doing it sees Parliament acting as a legislative sausage machine, rapidly processing goods with minimum quality control and hoping that nobody notices the mistakes. The current debate over the Government's court reform package is a case in point where the Government has been forced on numerous occasions to amend its own amendments and in some cases been forced to rewrite its own legislation three or four times. The court Bills have had in excess of 200 amendments moved, the overwhelming majority coming from the Government.

This happens constantly and I am putting my question quite constructively, as I believe that we have barely nine days sitting left. Is the Government preparing additional legislation to be introduced within the last nine days of sitting and, if so, what? Which Bills currently before this Chamber and the Assembly does the Government want and expect to be passed before the end of the month? Finally, does the Government believe that this expectation can be achieved within the remaining sitting days?

The Hon. C.J. SUMNER: The Hon. Mr Gilfillan is an ingrate. He is astonishing! The Government gives him extraordinary resources—more resources than are available to anyone else in the Parliament—to enable him to deal with the legislative program that the Government introduces, and what does he do? The honourable member uses the research officer given to him to help him get through assessing the Government's legislative program to write stupid questions such as the one that he has just asked today.

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: The man is an ingrate and really needs to examine—

The Hon. L.H. Davis: Take one of his people away and give him to us.

The Hon. C.J. SUMNER: If I could be guaranteed of support from members opposite, I would be quite happy to transfer the research officer that the Hon. Mr Gilfillan has to the Opposition. I am sure that if I did I would not get the sort of silly question from Opposition members that I have had from the Hon. Mr Gilfillan.

The Hon. I. Gilfillan interjecting:

The Hon. C.J. SUMNER: I will get to the question, but it seemed quite pertinent to the question to point out that the honourable member is using his research officer to prepare questions such as the one that he has just asked in this Council. If he used his resources more carefully and to the benefit of the Parliament, he would not have the sort of problems he apparently has.

The Hon. M.J. Elliott: There is two minutes work in that question.

The Hon. C.J. SUMNER: I don't know about that; all I want to know is why the Hon. Mr Gilfillan is using his research officer for questions like this instead of getting on with the legislative program as he should be prepared to do.

As to questions about amendments to the court Bills, the honourable member will be fully aware that when I intro-

duced that legislation in August I did so specifically so that the legislation would be exposed at the earliest opportunity to the public and the Parliament, and I said at the time that I anticipated that there would be a number of amendments from both the Government and Opposition sides and possibly from the Democrats because the Bills were introduced as public exposure Bills and were left to lie on the table for almost two months so that the courts, the Law Society and members of the public could comment on them. Consistent with the Democrats' approach to freedom of information.

I thought that they would be delighted that the Government had put those Bills on the public record at the earliest opportunity instead of dealing with them secretly by correspondence with the interested parties. Apparently they do not approve of that process, so in future I will advise the Government that it should not expose Bills for public comment because, if it does, the Democrats will complain that there will be too many amendments for them to cope with, even with their very, very extensive research resources provided to them by the Government.

I anticipate, as I have said before, that the program, at least in the Legislative Council presently, can be dealt with. I have also indicated to members that there would be an optional sitting of a fourth week in December. Members have been aware of that fact for some considerable time.

The Hon. I. Gilfillan interjecting:

The Hon. C.J. SUMNER: You have been notified informally by the Whip that that is a possibility. If we get through the program, we will not need it. I do not anticipate that every Bill on the Assembly or Council Notice Paper will have to be dealt with before the Christmas recess, but I expect that certainly the matters on the Legislative Council Notice Paper could be dealt with. We have almost completed the courts package, and a number of these other Bills—

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: Yes, with good progress, as the Hon. Mr Griffin says. I appreciate the role that both he and the Hon. Mr Gilfillan have played in ensuring a sensible, rational and constructive debate on those important pieces of legislation. The other Bills on our Notice Paper are not particularly complex, as I understand it. The Workers Liens (Repeal) Bill will be put off until February. The associations incorporation legislation will be introduced, but there is no suggestion that we will want it through. If it can be put through, that is fine. I anticipate that from the other place there will be amendments to the legislation dealing with water rates and the Privacy Bill. I expect that the Government would want both those matters dealt with before we rise for the Christmas recess.

The Hon. I. GILFILLAN: By way of supplementary question, will the Attorney give any indication of whether the Government does or does not have any extra or new legislation to introduce?

The Hon. C.J. SUMNER: As far as I know some new Bills will be introduced. I do not know whether there are any in the House of Assembly (except possibly for some minor pieces of legislation or Bills about which there may have been discussion between the Government and the Opposition) or any substantial new Bills. However, there may be. If we cannot deal with them, we will not deal with them; that is the fact of the matter. The Government would like progress on the legislative program. We believe that it is manageable.

The Council at this time cooperates by sitting on Thursday morning and Thursday evening and I appreciate that cooperation. We have the possibility of an extra week and with that there is absolutely no reason why the program ought not be met. Some Bills will be introduced and will lie on the table until February. There may be some others, but I think very few will be introduced that the Government will want passed. That will obviously be the subject of negotiation and discussion between the Minister handling the Bill, the Opposition and the Hon. Mr Gilfillan.

POLICE RESOURCES

The Hon. J.C. IRWIN: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister of Emergency Services, a question about police resources.

Leave granted.

The Hon. J.C. IRWIN: On Friday 8 November I received a phone call from a person who works in the shopping centre at 349 Brighton Road, Hove. At about 10.15 a.m. she observed two police officers in a police car stop a car, apparently for a roadworthiness check. After some delay and with not much happening, another police car arrived with one officer in it. This officer had a look under the bonnet of the car and generally looked over the car. The registration number of the second police car was noted as VQB-702.

The two officers in the first police car were at least 30 years of age—old enough, one would assume, to have been in the force for some time and to be able to assess whether or not a car was roadworthy. The Hove shopping centre has been the target of thefts, threats and the types of crime that many shopping centres are presently experiencing. A lot of the older people in the area area are fearful of going out by themselves. This year alone, the bank in the shopping centre has been held up twice, the Foodland shopping centre twice, and a boutique twice—one of those last week—and recently two cars were broken into in that area.

The person from whom I received the phone call was very angry when she rang. She felt that two police cars and three police officers taking 20 minutes to stop a person and give him an on-the-spot fine was completely over the top. This is the sort of example—and I am aware of others—that does not give us confidence that valuable police resources are being used to maximum advantage.

While I acknowledge that the Minister of Emergency services is not responsible for the day-to-day operation of the Police Force, will he seek an assurance from the Commissioner of Police that there was a good explanation for the three police officers and two police cars that were needed to consider an on-the-spot fine and that that incident I have outlined is not normal practice?

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

MINISTERIAL STATEMENTS

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking the Minister of Small Business a question about ministerial misstatements.

Leave granted.

The Hon. L.H. DAVIS: Yesterday, I put out a press release about empty Government housing which, in part, stated:

In Port Lincoln there are four houses which have been vacant for a year—21 and 23 Tennant Street and 56A and 56B Cardiff Street. These dwellings are meant to accommodate country students. But they remain empty and the Education Department has been paying rent to the Housing Trust for a year.

In Whyalla there is a similar situation—21 and 23 Sugg Street and 6-8 Aikman Street have also been vacant for a year. Again, the Education Department is paying rent to the Housing Trust for dwellings earmarked for student accommodation.

In Port Lincoln there are at least another six houses managed by the Office of Government Employee Housing which have been vacant for six months or longer . . . One home at 5 Easton Road, Port Lincoln, has been vacant for nine months.

I had checked those facts carefully and ascertained that what I said in the press release was correct. However, the Minister of Housing and Construction, Mr Mayes, said on an ABC radio news service yesterday that I was wrong, and I quote:

We have one house that has been vacant for over 12 months and that is a peculiar and particular situation.

We have none in Whyalla . . . I had the records checked last night so I suggest Mr Davis checks his facts.

I went back to my sources in Port Lincoln and Whyalla and I checked that in fact the houses referred to in Port Lincoln have been vacant for at least 14 months, since September last year, and the houses in Whyalla have been vacant for at least 13 months. So, we have half a million dollars worth of good quality housing sitting vacant for 13 or 14 months in two areas where there is a demand for public housing. Indeed, in Port Lincoln there is a shortage of private rental accommodation. That was one example of ministerial misstatement.

This morning I attended a breakfast of 90 business leaders which was addressed by the Minister of Small Business, Ms Wiese. She said that the Bannon Government had had difficulty in framing the State budget because, for example, 'We have had a reduction in Commonwealth funding.' An examination of the 1991-92 Financial Statement which was provided with the budget papers presented by the Treasurer, Hon. John Bannon, on 29 August 1991, clearly shows that the Minister misled those 90 business leaders. In fact, she told a huge porky, because Commonwealth grants for general purposes increased from $1 469.8 million in 1991-92 to $1 537.9 million, and Commonwealth grants for specific purposes increased from $1 198.3 million last year to an estimated $1 284.8 million this year.

So, after making appropriate adjustments, that represents an increase of 1.8 per cent in real terms for general purpose grants and 4.8 per cent in real terms for specific purpose grants—increases in both money terms and real terms. In the last 24 hours we have had examples that at best would be seen as being blatant ministerial misstatements and, at worst, disgraceful ministerial porkies. My questions are:

1. Will the Minister admit that she misled the 90 business leaders at this morning's breakfast?

2. Will she ensure that the Minister of Housing and Construction immediately issues a public statement correcting his misstatement and confirming that indeed there are eight Housing Trust units worth about $500 000—four in Port Lincoln and four in Whyalla—which have remained empty for at least 13 or 14 months?

The Hon. BARBARA WIESE: I think it is most irregular that a member can stand in this place and ask a question of two Ministers at once. However, Mr President, since you have allowed that to occur here I will undertake to refer the honourable member's question about housing to my colleague the Minister of Housing and Construction, and I am sure that he will be able to provide appropriate information about the matters to which the honourable member has referred.

In relation to the question about Commonwealth funding, I have been informed via briefings that I received from Treasury that the information that I provided and used at a meeting this morning is correct. I assume that if there is some discrepancy it relates to some carry-over funding from one year to another, or something of that sort. I will be happy to seek an explanation of it from the Treasurer.

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: I understand, from the information that has been provided to me, that the information I gave to people at a meeting today is correct.

DEPARTMENT OF MARINE AND HARBORS

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister of Marine, a question about Department of Marine and Harbors' spending.

Leave granted.

The Hon. M.J. ELLIOTT: The *Portside Messenger* recently reported that the Department of Marine and Harbors was planning to spend $340 000 trialling methods to repair cracked banks in Adelaide's prestigious and expensive waterside suburb, West Lakes. The article in the 30 October edition of the paper reads:

A 150 metre section of the stepped concrete walls, deteriorated over the past 15 years by saltwater seepage, will be replaced by DMH workers using diving equipment and a floating crane.

It says that over eight kilometres of bank along the recreation lakes will eventually need to be replaced. Mr President, juxtapose that spending of public money to repair lake frontage in a flashy Adelaide suburb, built by a private developer I might add, with the following situation.

The Southend jetty near Port Macdonnell is used regularly by about 30 fishing boats and the jetty at Cape Jaffa at Kingston by about 60. These jetties are used by people who depend on their boats and jetties for their livelihood. The dinghy mooring facility at Southend was washed away during storms early this season, meaning that boats are now tying up two and three abreast, which is not a safe practice. Fishermen tell me that the Southend and Cape Jaffa jetties are both in a dangerous state of disrepair through age and storm damage, suffering from missing planks and rust. They feel they are risking life and limb using the jetties. It seems that, because they are not in a dress circle suburb of Adelaide, their need is not considered great by the Department of Marine and Harbors because, when the South Australian Fishing Industry Council approached the department about the jetties, it was told that no money was available for repairs or replacement although the department would remove any debris. I understand that last year a $300 000 Fishing Boat Havens Panel Fund was available for minor capital works and that this year the industry has been told that there is no money for that work.

I have given some examples, and there are many others of areas where the Department of Marine and Harbors needs to spend money, including Port Macdonnell where the breakwater has been a failure and is filling very rapidly with sand and work needs to be done, but again there is no money. My questions to the Minister are:

1. Is the Minister aware of the problems at the Cape Jaffa and Southend jetties?

2. How are priorities determined for repair work carried out by the Department of Marine and Harbors?

3. When is work planned for the Southend and Cape Jaffa jetties?

The Hon. C.J. SUMNER: I will refer the questions to the Minister and bring back a reply.

MEDICAL CASE NOTES

The Hon. R.J. RITSON: I seek leave to make a brief explanation before asking the Minister representing the Minister of Health a question on the subject of medical case notes for sale.

Leave granted.

The Hon. R.J. RITSON: It is widely rumoured around the medical profession that some thousands of medical case notes are held by a person or a company, that person or company not being a medical practitioner and not being a company registered pursuant to the Medical Practitioners Act. Apparently, this resulted from the collapse of a non-doctor owned entrepreneurial medical practice, and it is further rumoured that the person in possession of these notes proposes to sell them. The only possible commercial value for medical records would be, of course, if a person proposed to charge for access to them.

It may be commercially acceptable to trade in mailing lists and that sort of thing, but as far as the ethics of medical practise is concerned, ever since I have been practising medicine, to my knowledge everyone considers it a matter of grave and serious ethical duty—not commercial opportunity—to transfer information from case notes to a new treating doctor. I am concerned that, if the holder of these case notes expects in some way to realise a commercial value arising from the fact that the former patients of this clinic will have to go to other doctors who will then have to request information—

The Hon. C.J. Sumner: Has he been paid for all the treatment?

The Hon. R.J. RITSON: I do not know; but I am not concerned here with the law. I am concerned with the ethic, and I am concerned that, if people choose to offer medical services vicariously in the case of non-doctor owned practices, they observe the same sort of ethic as if they were doctors. The Government did something akin to this—admittedly under a different set of circumstances—with the Pharmacists Act. The Hon. Ms Wiese will recall on the occasion of the passage of those amendments that the exempt companies—that is, the companies that would not have been registrable as pharmacists—were brought into the fold and subjected to the same set of constraints as incorporations of registered pharmacists.

It may be necessary to do something like that in this case. I am just a little alarmed, with respect to the question of confidentiality as well as the question of commercialisation of case notes, that they should be in the hands of a company or someone who is not constrained by the same ethics and not subject to the professional and ethical controls of the Medical Board. I ask the Minister to inform the Council as to how much substance may be in these rumours and to consider means to bring non-doctor owned medical businesses, if you like, under the same professional constraints as if the proprietors were in fact doctors.

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

LAWYERS

The Hon. J.C. BURDETT: I seek leave to make a brief explanation before asking the Attorney-General a question on the subject of the productivity of lawyers.

Leave granted.

The Hon. J.C. BURDETT: The following comments were reported in the *Advertiser* of 10 September 1991, in relation to the Australian Legal Convention, which was held in Adelaide:

> The legal profession was 'one of the most unproductive sectors of society', the Attorney-General, Mr Sumner, told a major law conference in Adelaide yesterday.
>
> In a scathing attack over the cost of legal service, Mr Sumner said lawyers made a less important contribution to society than teachers, engineers and scientists.

Further, I refer to an article entitled, 'How productive are our lawyers?' in the *Australian Law News* of October 1991, which states:

> South Australian Attorney-General the Hon. Chris Sumner told lawyers at the 27th Australian Legal Convention that they were one of the most unproductive sectors of society.
>
> He said: 'Lawyers are necessary, but basically produce nothing. Indeed, by encouraging litigation, they may be inhibiting productivity'.
>
> Mr Sumner offered this assessment of the work of lawyers in commenting on a paper by former LCA President Alex Chernov QC, who has consistently urged practitioners to look for the most appropriate method of resolving their clients' disputes, and to see litigation as a last resort.
>
> The Attorney-General dismissed Mr Chernov's paper as largely irrelevant to the debate on the cost of justice because, he said, it ignored the cost of legal representation.
>
> In his prepared paper, and in presenting it at the convention, Mr Chernov concentrated on the need for improved judicial training. He said he did this because the subject had not received enough attention, and added: 'I would like to emphasise that this is only one of the many areas needing attention if the cost of justice is to be contained.'
>
> Mr Chernov has discussed a range of 'cost of justice' issues in submissions to the Senate inquiry into the matter and in other forums over the past two years.
>
> His successor as President of the Law Council, David Miles, noted at the convention closing ceremony that it was 'ironic' that Mr Sumner's provocative challenge had been directed at Alex Chernov, who, more than anyone else, had urged the legal profession to examine its practices and discard those that no longer served a useful purpose, and who had put forward constructive proposals for containing the cost of justice.

In the 10 November 1991 edition of the *Bulletin*, of the Law Society of Australia, the following letter written by Mr A.F. Genders, a senior practitioner was published:

> I am incensed by the Attorney-General's reported remark that lawyers produce nothing.
>
> The law is becoming more and more complex for which Parliament is largely responsible. It is important that members of the public be at all times in a position to seek and obtain correct advice as to their rights, duties and obligations under the law. Only a trained lawyer can provide that advice.
>
> As I see it, the lawyer is a necessary and vital member of the community and provides protection against excesses of the Legislature, bureaucracy and big organisations. Many members of the community establish close relationships with a particular firm or a particular lawyer whom they can contact if necessary out of normal hours to obtain advice on a variety of matters.
>
> In addition to the role as legal adviser the lawyer is very much in demand to serve on boards and companies, charitable bodies and in sports administration. Non-practising lawyers also serve in a variety of ways in academia and as advisers to Government on law reform and in other areas such as Foreign Affairs. Many lawyers serve on Law Society Committees performing functions of great benefit to the community.
>
> The term 'lawyers' presumably also includes the judiciary. The workload of the courts increases year by year.
>
> To say that lawyers produce nothing is ill-considered and incorrect. One might just as well say politicians produce nothing and we would all be better off without them.

That is the end of the quote but, on that subject of the comparison between lawyers and politicians, the *News* of 11 September 1991 puts the salaries of politicians at $1 067 per week and those of lawyers at $805 per week. In the light of that and the discussion there has been since the convention, I would ask the Minister whether he can justify his statement that lawyers are among the least productive members of the community.

The Hon. C.J. SUMNER: I thank the honourable member for his question. I thank him for reading into *Hansard*

the arguments that I put in relation to lawyers' productivity or otherwise. Regrettably, I do not have a great deal of time to respond to this matter. I thank the honourable member. I stand by all those arguments that I put, and I am glad that they are on the record in *Hansard*. It does seem surprising that, under a session entilted, 'The cost of justice' Mr Chernov would deliver a paper which dealt only with judicial training, and that is why I said that his paper was largely irrelevant to the issue. I am quite happy to stand by that. It was not a personal attack on Mr Chernov, and I fully support anything he has done to try to bring the legal profession into the 20th Century. However, the fact of the matter is that I made the comment that his paper was largely irrelevant to the issue of the cost of justice. If we want to talk about the cost of justice, we must talk about legal fees, that is, the cost of legal representation, and I would have thought that should have been obvious to the honourable member.

As to the other point I was making about the role of lawyers in society, I was making what I thought was a very reasonable point, namely, that in our community today we have got our priorities distorted, because the best and brightest of our young people are going to where at university? They are going into law, because they can see the hopeful benefits to them of significant remuneration and financial security. The best and brightest are going into the law, which is, I repeat, basically an unproductive pursuit in our community. However, that is the priority which the community is giving to the profession of law at the present time. The general point I was making is that I think that is a wrong priority.

The PRESIDENT: Order!

The Hon. C.J. SUMNER: Surely we ought to be concentrating on the training of lawyers, teachers and, indeed, the very productive farmers, some of whom we have in this Chamber.

The PRESIDENT: Order! Time for questions having expired, I call on the business of the day.

ASSOCIATIONS INCORPORATION (MISCELLANEOUS) AMENDMENT BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill to amend the Associations Incorporation Act 1985. Read a first time.

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

That this Bill be now read a second time.

The purpose of this Bill is to make amendments to the Associations Incorporation Act 1985 which have been shown to be necessary during the course of administering this Act. The principal Act has not been amended since it was first enacted in 1985. The Associations Incorporation Act 1985 repealed the 1956 Act which had been described as 'recklessly permissive' as there was in that Act a complete absence of any requirement for financial accountability, of any form of control over management and of any power of investigation of complaints by the authority responsible for the administration of the Act. The 1985 legislation sought to remedy these and other deficiencies of the 1956 legislation.

The current Bill recognises the fact that many incorporated associations have a high public profile, possess significant assets and are often funded wholly or in part by public donations and Government grants. There can be no argument that it is in the public interest that there must be adequate regulation of incoporated associations. At the same time, the law should not impose on a small local sporting club, for instance, the same obligations that are imposed on large associations whose operations are, in some cases, comparable with those of public companies. This distinction, which is provided for in the principal Act, has been preserved in this Bill.

Although the principal Act produced such significant reform, it was recognised that amendments would be required in the light of experience. The amendments proposed in this Bill are the product of that experience, the input of persons who responded to a public invitation to make submissions and of the views of persons and organisations to whom drafts of the Bill have been exposed.

Most of the provisions in the Bill are technical in nature, and some of the amendments clarify parts of the principal Act which have been subject to differing interpretations. For example, the re-enactment of the definitions of 'accounts' and 'special resolution' are typical examples of the technical amendments proposed in the Bill. The intent of amendments of that kind is to assist those who are subject to the Act and their professional advisers.

There are, however, other provisions of the Bill which go beyond technical matters and clarification of existing provisions to break new ground. For example, the Bill provides for matters which must be addressed in the rules of associations. This provision is seen as an aid to persons drafting rules or amendments to rules of associations and has been adapted from a recommendation of the New South Wales Law Reform Commission. It is not retrospective and does not abridge in any way the right to include in rules any other provisions which are appropriate to the nature and objects of a particular association. In the Bill it is proposed that alterations to rules be made by a special resolution. This amendment brings about uniformity with other body corporate legislation. Another of these amendments is that, in the future, incorporated associations claiming to be emanations of the Crown will be bound by the legislation.

The principal Act was enacted on the basis that, where appropriate, company law provisions should be applied to incorporated associations. This policy is reflected in these amendments in relation to the winding up of associations, to persons disqualified from being involved in management committees of associations and to the duties and conduct of committee persons. The Bill includes a provision that enables incorporated associations to enter into a scheme of arrangement or compromise with their creditors, a form of insolvency administration which has always been available to companies but which has not previously been an option for associations experiencing financial difficulty.

The application of the accounts and audit provisions of the principal Act continue to be applied only to those associations with gross receipts exceeding $100 000. The account and audit provisions have been strengthened considerably on the suggestion of practising accountants and auditors who have been involved with incorporated associations. Recent events have shown that the concept of independence and of conflict of interest are not always well understood by managers and auditors of bodies corporate. Amendments in relation to committee persons, including a provision that prohibits a committee person also acting as auditor of the association are therefore considered to be timely. These provisions aim for adequate accountability of the persons who have the responsibility for the administration of an association's affairs (which often includes the application of money derived from the taxpayer or from charitable donations by members of the public). Even in associations where there is no charitable object and no Government

funding involved, it is no less appropriate that the affairs of such an association are conducted with due regard to the rights of members and creditors.

At present, the requirement for an audit and for the lodgment of audited accounts with a periodic return applies only to associations with gross receipts in a financial year exceeding $100 000. This threshold figure is calculated in accordance with the definition of 'gross receipts' which, in the principal Act, excludes donations. Some associations have maintained that Government grants are donations for the purposes of this definition. Under the principal Act, some associations could raise vast sums of money from appeals to the public but, as long as the receipts from other sources remained below the $100 000 threshold, those associations are not publicly accountable. This is unacceptable, as it is not in accordance with the public interest. The Bill amends the definition of gross receipts so that it now includes donations and Government grants.

The principal Act limits the general power of exemption of the Corporate Affairs Commission in relation to specific requirements of the Act. To take into account of the scope of this legislation and the diverse nature and activity of associations to which it applies, a general power of exemption is appropriate and it is provided in the Bill. An almost identical power is given to the Corporate Affairs Commission contained in the Co-operatives Act 1983.

The existing provision relating to invitations to non-members to deposit money with an association has been strengthened. It is consistent with the current investment climate that associations seeking such deposits from non-members should have the approval of the Corporate Affairs Commission. This approval will be subject to invitations being made on the basis of a simple disclosure document as provided for in the Bill.

Existing provisions dealing with the securing of pecuniary profits to members of associations have been clarified as has the provision dealing with oppression of members. The latter has been extended to include oppression of former members of an association. This is appropriate as complaints have been made by former members that they have no standing under the present provision to seek the intervention of the court in what they perceive as wrongful expulsion.

The principal Act has also been amended to conform With current drafting style and to include other amendments arising from statute law review.

In summary, the Bill seeks to reach the correct balance between regulation that is necessary for the public interest and regulation that would just impose significant administrative burdens and expense on the State without having any corresponding benefits for members, creditors and the community generally. I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clauses 1 and 2 are formal.

Clause 3 amends section 3 of the principal Act.

The amendment—

(a) inserts definitions of 'authorised person', 'beneficiary', 'body corporate', 'putative spouse' and 'total receipts and payments' (new terms used in provisions inserted into the principal Act by this Bill);

(b) strikes out the definitions of 'accounts' and 'officer' and substitutes new definitions of these words;

(c) strikes out the definition of 'committee' (an unnecessary definition);

(d) amends the definition of 'special resolution'; and

(e) provides for subclause (6) to be inserted that defines an 'associate' of a member or a former member of an incorporated association.

Clause 4 repeals section 4 of the principal Act, the section that contains the repeal and transitional provisions in relation to the principal Act that are now obsolete and substitutes a new provision. This clause provides that the Crown is bound by this Act.

Clause 5 repeals section 7 of the principal Act and substitutes a new provision. While the proposed section 7 is not significantly different from the repealed section, it does provide the commission with power to deal with defaults in complying with requests of the commission in relation to documents submitted to it that are not present in the repealed section.

The proposed section 7 contains 5 subsections. Subsection (1) provides that where the commission is of the opinion that where a document submitted to the commission—contains matter that is contrary to law; matter that is false or misleading in a material particular; has not been duly completed by reason of omission or misdescription; does not comply with the requirements of this Act or contains an error, alteration or erasure, then the commission may refuse to register or may reject the document and may request that the document be appropriately amended or completed and resubmitted, that a fresh document be submitted or, where the document has not been duly completed, that a supplementary document in the prescribed form be submitted.

Subsection (2) provides that the commission may request a person who submits a document to the commission to provide the commission with such other document or information as the commission considers necessary in order to form an opinion whether it should refuse to register or reject the document.

Subsection (3) provides that where a person fails to comply with a request of the commission made pursuant to subsection (1) or (2), a court of summary jurisdiction may, within 14 days after the service on the person of the request, on application of the commission, order the person to comply with the request within a specified time.

Subsection (4) provides that an order made under subsection (3) may provide that all costs of and incidental to the application are to be borne by the person responsible for the non-compliance.

Subsection (5) provides that it is an offence (carrying a division 6 fine ($4 000)) for a person to contravene or fail to comply with an order made under subsection (3).

Clause 6 amends section 13 of the principal Act by upgrading the penalties for offences against this section (dealing with privileged communications) from a fine of $1 000 to a division 6 fine ($4 000).

Clause 7 amends section 14 of the principal Act—

(a) by striking out from subsection (1) 'Subject to this section', a phrase which has no relevance in this instance; and

(b) by upgrading each of the penalties for an offence against this section (dealing with offences against this Division) from a fine of $2 000 to a division 6 fine ($4 000).

Clause 8 amends section 15 of the principal Act by striking out from subsection (2) 'section' (which is incorrect) and substituting 'Division'.

Clause 9 repeals section 17 of the principal Act (which provided a definition of 'authorised person" for this Division) and substitutes a new section which deals with secrecy.

Subsection (1) of the proposed section 17 provides that where an authorised person has, by reason of the authority granted to him or her pursuant to this Act, acquired information, that person must not, except to the extent necessary to perform his or her official duties or to perform a function or to exercise a power authorised by this Act, make a record of, or divulge or make use of in any way, the information acquired. Contravention of this carries a division 6 fine ($4 000).

Subsection (2) lists the circumstances in which, notwithstanding subsection (1), a person is not guilty of an offence—that is, if he or she produces or divulges to a court in the course of any proceedings before the court a document, matter or information that has come under his or her notice due to that person's official position, if it is in the public interest that the document or information be produced or divulged or if another Act requires or permits the production or divulging of the document or information.

Clause 10 amends section 18 of the principal Act by substituting paragraph *(a)* of subsection (6). This provides that an incorporated association is not to be regarded as having as a principal or subsidiary object the securing of a pecuniary profit for its members or engaging in trade or commerce by reason only that the association makes a profit that is divided among or received by the members or any of them otherwise than in accordance with section 55. This clause also strikes out from subsection (6) *(b)* 'the public' and substitutes 'non-members'.

Clause 11 amends section 19 of the principal Act by inserting paragraph *(ca)* after subsection (2) *(c)*. This paragraph makes it a requirement that where a contemplated trust is referred to in the rules of an incorporated association or where any rule of an incorporated association relies on a contemplated trust for its operation, a copy of the settled draft of any instrument prepared for the creation or establishment of the trust of which the association is intended to be the trustee must accompany the application for incorporation.

Clause 12 amends section 21 of the principal Act by striking out subsection (2) and substituting a new subsection (2) which provides that, except as may be provided by the rules of an incorporated association, a member of an association is not liable to contribute towards the payment of the debts and liabilities of the association or the costs, charges and expenses of a winding up of the association.

Clause 13 amends section 22 of the principal Act which deals with the amalgamation of two or more incorporated associations, by striking out from subsection (1) *(b)* ', not later than one month after those resolutions have been passed,'. This amendment will mean that an application to the commission for the amalgamation may be made at any time after such a special resolution has been passed by each association. The section is further amended by inserting paragraph *(da)* after subsection (2) *(d)*. The proposed paragraph *(da)* makes it a requirement that where a contemplated trust is referred to in the rules of an incorporated association proposed to be formed by the amalgamation of two or more incorporated associations or where any rule of an incorporated association proposed to be formed by the amalgamation relies on a contemplated trust for its operation, a copy of the settled draft of any instrument prepared for the creation or establishment of the trust of which the association is intended to be the trustee must accompany the application. (This amendment matches with that made in clause 11.)

Clause 14 amends section 23 of the principal Act by designating its present contents as subsection (1) and by inserting a new subsection (2) which provides that a reference in this section to the rules of an incorporated association extends to rules, by-laws or ordinances of the association relating to any matter.

Clause 15 inserts a section after section 23 of the principal Act. The proposed section 23a provides, in subsection (1), that the rules of an incorporated association must state the name of the association and set out its objects, must not contain any provision that is contrary to or inconsistent with this Act and that certain other matters, including membership, the committee, the auditor, powers of the association must be dealt with adequately in the rules of an association.

Subsection (2) provides that this section only applies to rules or an altered rule submitted to the commission for registration after the commencement of this section.

Clause 16 amends section 24 of the principal Act by striking out and substituting subsections (1) and (2). The proposed subsection (1) provides that an alteration to a rule of an incorporated association may only be made by a special resolution of the association.

The proposed subsection (2) provides that an association must register the altered rule with the commission within 1 month of the making of the alteration.

Clause 17 amends section 29 of the principal Act by inserting after subsection (3) a new subsection (4) which provides that a person is not eligible to be appointed or to act as a member of the committee of an incorporated association unless of or above the age of 18 years.

Clause 18 repeals section 30 of the principal Act and substitutes a new provision. The proposed section 30 provides in subsections (1) and (2) that the following persons may not be members of the committee of an incorporated association or be concerned in any way with the management of an incorporated association—

(a) an insolvent under administration (unless the committee has given that person leave);

(b) a person convicted of certain offences within five years after conviction or within five years of release from prison (unless the commission has given that person leave).

A person convicted of an offence against subsection (1) or (2) is liable to a division 6 fine ($4 000).

Subsection (3) of the proposed section provides that when the Commission is granting leave under this section, it may impose such conditions or limitations as it thinks fit and any person contravening or failing to comply with such a condition or limitation is guilty of an offence that carries a division 6 fine ($4 000).

Under subsection (4) of this section, the commission may revoke leave granted by it under this clause at any time.

Clause 19 amends section 31 of the principal Act which deals with the disclosure of any pecuniary interest that a committee member may have in a contract or proposed contract—

(a) by substituting in subsection (1) 'the association' for 'the committee';

(b) by upgrading the penalty for an offence against subsection (1) from a fine of $1 000 to a division 6 fine ($4 000);

and

(c) by inserting after subsection (2) *(b)* a new paragraph *(c)* that provides that subsection (1) does not apply in respect of a pecuniary interest that exists

only because the member of the committee has the pecuniary interest in common with all or a substantial proportion of the members of the association.

Clause 20 amends section 32 of the principal Act which deals with voting on a contract in which a committee member has an interest—

(a) by substituting in subsection (1) 'the association' for 'the committee';

(b) by upgrading the penalty for an offence against subsection (1) from a fine of $1 000 to a division 6 fine ($4 000);

and

(c) by substituting a new subsection (2) that provides that subsection (1) does not apply in respect of a pecuniary interest that exists only by virtue of the fact that the member of the committee is a member of a class of persons for whose benefit the association is established or that it is a pecuniary interest that the member of the committee has in common with all or a substantial proportion of the members of the association.

Clause 21 repeals section 33 of the principal Act as this section has been substantially re-enacted in clause 27—see the proposed section 39a in clause 27.

Clause 22 repeals section 34 of the principal Act and substitutes a new section 34 which provides for the application of Division II of Part IV of the Act (the accounts and audit provisions for certain incorporated associations).

The proposed subsection (1) provides that this Division applies to an incorporated association in respect of a financial year for which the association has gross receipts in excess of the prescribed amount and to an incorporated association of a class prescribed by regulation.

The proposed subsection (2) provides that the Minister may declare by notice in writing that specified provisions of the Division, and any other provisions of this Act specified in the notice, apply to an unincorporated association and any such notice has effect according to its terms.

The proposed subsection (3) provides that the Minister may, at any time, vary or revoke a notice served on an association under subsection (2).

The proposed subsection (4) defines 'gross receipts' of an incorporated association and 'prescribed amount' (which is $100 000 or such greater amount as may be prescribed by regulation) for the purposes of this Division.

Clause 23 amends section 35 of the principal Act (a section which is also contained in Division II of Part IV)—

(a) by striking out paragraph *(a)* of subsection (1) and substituting a new paragraph *(a)* that provides that an association to which this Division applies must keep accounting records that will allow the preparation from time to time of accounts that present fairly the results of the operations of the association;

and

(b) by striking out subsections (2) to (4) and substituting subsections (2) to (6).

The proposed subsection (2) provides that an incorporated association must, as soon as practicable after the end of the association's financial year, cause—

(a) that year's accounts to be prepared;

(b) the accounts to be audited by an auditor (who must meet certain qualifications);

and

(c) to be attached to the accounts, before the auditor reports on the accounts, a report of the association made in accordance with a resolution of the committee and signed by two or more committee members.

The report of the association must—

(a) state that the accounts present fairly the results of the operations of the association for that year and the state of affairs of the association as at the end of that year;

(b) state that the committee has reasonable grounds to believe that the association will be able to pay its debts as and when they fall due;

and

(c) give particulars of any body corporate that is a subsidiary of the association within the meaning of section 46 of the Corporations Law and of any trust of which the association is a trustee.

The penalty for failing to comply with this subsection is a division 6 fine ($4 000).

The proposed subsection (3) provides that a person who is an officer, a partner, employer or employee of an officer or a partner or employee of an employee of an incorporated association may not be appointed as auditor of the accounts of the association for the purposes of this section.

The proposed subsection (4) provides that the committee of an incorporated association must cause a report of the committee to be made (in accordance with a resolution of the committee and signed by at least two committee members) that states—

(a) whether during the financial year to which the accounts relate, an officer of the association, a firm of which the officer is a member or a body corporate in which the officer has a substantial financial interest, has received or become entitled to receive a benefit as a result of a contract between the officer, firm or body corporate and the association, and if so, the general nature of the benefit;

(b) whether during the financial year to which the accounts relate, an officer of the association has received directly or indirectly from the association any payment or other benefit of a pecuniary value, and if so, the general nature and extent of that benefit.

The proposed subsection (5) provides that the committee of an incorporated association must cause the audited accounts (including the statement prepared by the association in accordance with subsection (2) *(b)*), the auditor's report on those accounts and the committee's report prepared in accordance with subsection (4)) to be laid before the members of the association at the annual general meeting or, if an association is not required by its rules to hold an annual general meeting, within five months of the end of the financial year to which the accounts relate.

The proposed subsection (6) provides that a member of the committee of an association who fails to comply with or secure compliance with this section is guilty of an offence. The penalty, if an offence is committed with intent to deceive or defraud the association, creditors of the association or creditors of any other person or for any fraudulent purpose, is a division 4 fine ($15 000) or division 4 imprisonment (four years). The penalty, in any other case, is a division 6 fine ($4 000).

Clause 24 amends section 36 of the principal Act by striking out subsection (3) and substituting a new subsection (3) which upgrades the penalty for failing to lodge periodic returns with the commission from a fine of $1 000 to a division 6 fine ($4 000).

Clause 25 repeals section 37 of the principal Act and substitutes two new sections relating to auditors acting under this Division (that is, Part IV Division II).

The proposed section 37 contains 8 subsections. Subsection (1) provides that an auditor of an incorporated association has a right of access at all reasonable times to the accounting records and other records of the association and is entitled to require from any officer of the association such information and explanations as he or she desires for the purposes of an audit.

Subsection (2) provides that an officer of an incorporated association must not, without lawful excuse, refuse or fail to allow an auditor of the association access, for the purposes of this Division, to any accounting or other records in his or her custody or control, refuse or fail to give any information or explanation as and when required by the auditor or otherwise hinder, obstruct or delay an auditor in the performance of his or her powers as auditor.

Subsection (3) provides that the auditor must furnish to the committee of the association a report that states—

(a) whether the accounts are drawn up so as to present fairly the results of the association's activities for the association's financial year and the financial state of the association at the end of the association's financial year;

(b) whether the auditor has examined the accounts and auditor's reports of each body corporate that is a subsidiary of the association within the meaning of section 46 of the Corporations Law and each trust of which the association is a trustee and the conclusions drawn from the examination;

(c) where the auditor's report includes qualifications by the auditor, whether the accounts on which the report was prepared are adequate given the nature and scope of the association's activities;

and

(d) whether the auditor has obtained all of the information and explanations that he or she required from the association.

Subsection (4) provides that if, in the course of performing his or her duties, he or she is satisfied that it is likely that there has been a contravention of, or failure to comply with, a provision of this Act or the association's rules or that there is a deficiency in relation to the accounts or information in respect of the activities of the association that will not be adequately dealt with by bringing it to the attention of the committee, the auditor must immediately report the matter in writing to the commission.

Subsection (5) provides that an auditor who is removed or dismissed as auditor of an incorporated association must immediately report the matter of his or her removal or dismissal and the surrounding circumstances in writing to the commission.

Subsection (6) provides that an auditor is not, in the absence of malice on his or her part, liable to any action for defamation in respect of any statement that he or she makes, orally or in writing, in the course of performing his or her duties. The definition of 'auditor', in this subsection, includes a person who has been removed or dismissed as the auditor of an incorporated association (see subsection (7)).

Subsection (8) provides that subsection (6) does not limit or affect any right, privilege or immunity that an auditor has, apart from that subsection, as a defendant in an action for defamation.

The proposed section 37a provides that the reasonable fees and expenses of an auditor of an incorporated association are payable by the association.

Clause 26 strikes out subsection (3) of section 39 of the principal Act as this subsection is now obsolete.

Clause 27 inserts 2 new divisions (each comprising two sections)—'Division IIIA—Duties of Officers, etc.' and 'Division IIIB—Records' after section 39 of the principal Act.

The proposed section 39a provides, in subsection (1), that an officer of an incorporated association must at all times act honestly and with reasonable care and diligence in the exercise of his or her powers and the discharge of the duties of his or her office.

The penalty for an offence against subsection (1) is—

(a) if an offence is committed with intent to deceive or defraud the association, members or creditors of the association or creditors of any other person or for any fraudulent purpose, is a division 4 fine ($15 000) or division 4 imprisonment (four years);

(b) in any other case, is a division 6 fine ($4 000).

The amendment further provides that an officer or employee of an incorporated association (or former officer or employee) must not make improper use of information acquired by virtue of his or her position in the association (see subsection (2)) or make improper use of his or her position with the association (see subsection (3)) so as to gain, directly or indirectly, an advantage for himself or herself or any other person, or so as to cause a detriment to the association. The penalty for an offence against either of these subsections is a division 4 fine ($15 000) or division four imprisonment (four years).

Subsection (4) provides that a person who contravenes a provision of this section is liable to the association for any profit made by him or her and for any damage suffered by the association as a result of that contravention.

The proposed section 39b provides that any provision exempting an officer or auditor of an association from, or indemnifying him or her against, any liability that by law would otherwise attach to him or her in respect of any negligence, default, breach of duty or breach of trust of which he or she may be guilty in relation to the association, is void. This section does not apply in respect of a contract of insurance the premiums in respect of which are paid by the association, nor does it prevent an association from indemnifying an officer or auditor against any liability incurred by him or her in defending any proceedings in which judgment is given in his or her favour or in which he or she is acquitted.

Division IIIB—Records contains two sections. The proposed section 39c provides that an incorporated association must keep such accounting records as correctly record and explain the transactions of the association and the financial position of the association at the place at which the associations is situated or established within the State or in the custody of an officer of the association in accordance with its rules or a resolution of the committee. If an association fails to comply with subclause (1), the association and any officer of the association who is in default are each guilty of an offence that carries a division 7 fine ($2 000).

The proposed section 39d provides that a member of an incorporated association may apply to the District Court which may authorise an inspection of the association's books (on behalf of the member) by a registered company auditor or a legal practitioner who may, at the inspection, make copies of, or take extracts from, the association's books.

The court may, on such an application, make such further or other orders as it thinks fit, including an order for costs.

Clause 28 amends the heading to Part V of the principal Act so that the heading will be 'Compromise, Winding Up, Transfer of Activities and Dissolution'.

Clause 29 repeals section 41 of the principal Act and substitutes four new sections.

The proposed section 40a provides, in subsection (1), that Part 5.1 of the Corporations Law (dealing with arrangements and reconstructions) applies, with such modifications, additions or exclusions as may be necessary for the purpose, or as may be prescribed, as if an incorporated association were a Part 5.1 body and as if that Part were incorporated into this Act. Subsection (2) provides that an incorporated association may not reach a compromise or enter into an arrangement with any member of the association.

The proposed section 41 provides, in subsection (1), that subject to the succeeding provisions of this section, an incorporated association may be wound up by the Supreme Court, voluntarily or on the certificate of the commission issued with the consent of the Minister.

Subsection (2) provides that Parts 5.4 to 5.6 of the Corporations Law (dealing with winding up by the court, voluntary winding up and winding up generally) apply, with such modifications, additions or exclusions as may be necessary for the purpose, or as may be prescribed, as if an incorporated association were a company and as if those Parts were incorporated into this Act.

Subsection (3) sets out the grounds on which an association may be wound up by the Supreme Court. These are—

(a) that the association has by special resolution resolved that it be wound up by the court;

(b) that more than a year has elapsed since the date of the association's incorporation and it has not commenced any activity or function;

(c) that the association is unable to pay its debts;

(d) that members of the committee have acted in their own interests rather than in the interests of the members as a whole or have acted in any other manner that appears to be unjust or unfair to other members;

(e) that affairs of the association are being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members or in a manner that is contrary to the interests of the members as a whole;

(f) that an act or omission (or a proposed act or omission) by or on behalf of the association was or would be oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members or was or would be contrary to the interests of the members as a whole;

or

(g) that the court is of the opinion that it is just and equitable that the association be wound up.

Subsection (4) sets out the circumstances in which an association is to be taken to be unable to pay its debts.

Subsection (5) provides that where an application has been filed with the court for the winding up of an association on the ground that it is unable to pay its debts, the association is not, without the leave of the court, entitled to resolve that it be wound up voluntarily.

Subsection (6) provides that, subject to subsection (5), an association may resolve, by special resolution, that it be wound up voluntarily.

Subsection (7) provides that the commission may issue a certificate for the winding up of an association where the association—

(a) has contravened or failed to comply with a condition imposed on it by the commission;

(b) has been incorporated by means of mistake or fraud;

(c) has, after notice by the commission of any breach of this Act or the rules of the association, failed within the time referred to in the notice to remedy the breach;

(d) has not, within three months of notice being given under section 42, requested the commission to transfer its undertaking to another body corporate;

(e) is defunct.

Subsection (8) provides that for the purposes of this Act, the winding up of an incorporated association on the certificate of the commission commences on application to, and lodgment with, the court by the commission of a copy of the certificate and is to proceed as if the association had by special resolution resolved that it be wound up by the court.

Subsection (9) provides that the court may, on an order being made for any winding up of an association by the court, appoint a person who is not a registered company liquidator to be the liquidator of the association if the commission nominates such a person.

Subsection (10) provides that the commission may, in relation to the voluntary winding up of an association, approve the appointment of a person who is not a registered company liquidator as the liquidator of an association.

Subsection (11) provides that the reasonable costs of a winding up are payable out of the property of the association. The proposed section 41a provides that a person aggrieved by an act, omission or decision of—

(a) a person administering a compromise or arrangement;

(b) a receiver (or a receiver and manager) of property of an incorporated association;

(c) a liquidator (or provisional liquidator) of an incorporated association, may appeal to the Supreme Court which may confirm, reverse or modify the act or decision, or remedy the omission, as the case may be, and make such orders and give such directions as it thinks fit.

The proposed section 41b applies sections 589 to 596 and section 1307 of the Corporations Law (dealing with offences relevant to Part V of the Associations Incorporation Act 1985) with such modifications, additions or exclusions as may be necessary for the purpose, or as may be prescribed, as if an incorporated association were a company and as if those sections were incorporated into this Act.

Clause 30 amends section 42 of the principal Act by striking out from subsection (3) 'On the publication of an order' and substituting 'On the date specified in the order'. This relates to an order by the commission that the undertaking of an association be transferred to a body incorporated under another Act.

Clause 31 amends section 43 of the principal Act by striking out subsection (1) and substituting two new subsections.

The proposed subsection (1) provides that, subject to subsection (1a), it is not lawful to distribute among members, former members or associates of members or former members of an association any surplus assets available for distribution at the completion of the winding up of the association under this Part.

The proposed subsection (1a) provides that the surplus assets of an association may, with the consent of the commission, be distributed among the members of the association if each member of the association is also an incorporated association that has identical or similar aims and objects.

Clause 32 amends section 44 of the principal Act (which deals with the power of the commission in relation to incorporated associations which are, in the opinion of the commission, defunct) by inserting subsection (3) after the section's current contents. The additional subsection provides that where the commission is satisfied that an incorporated association was dissolved as a result of an error on the part of the commission, the commission may reinstate the association as an incorporated association after which the association is to be taken to have continued in existence as if it had not been dissolved.

Clause 33 inserts section 44a after section 44 of the principal Act. The proposed section provides that after an association has been dissolved, where it is proved to the satisfaction of the commission that if the association still existed, it would be bound to carry out, complete or give effect to some dealing, transaction or matter, and that this could be effected by a purely administrative act by the association (if it still existed), then the commission may do, or cause to be done, the act as the representative of the association or its liquidator. Subsection (2) provides that where the commission executes or signs a document or instrument (adding a memorandum that it has done so pursuant to this section) the execution or signature has the same force, validity and effect as if the association, if it still existed, had duly executed the instrument or document.

Clause 34 inserts a new section at the end of Part V of the principal Act. Subsection (1) of the proposed section 49a provides that the commission may, on the application of an incorporated association or a person authorised to make such an application—

(a) extend any limitation of time prescribed by or under this Act whether or not the prescribed period has expired;

or

(b) exempt the association or any officer from any obligation to comply with any provision of this Act.

Subsection (2) provides that an application under subsection (1) may be granted by the commission on such conditions as it thinks fit.

Subsection (3) provides that where an association or an officer of an association contravenes or fails to comply with a condition imposed by the commission under subsection (2), the association or the officer (as the case may be) is guilty of an offence and liable to a division 6 fine ($4 000).

The commission may revoke or vary an extension or exemption under subsection (1) at any time by instrument in writing (see subsection (4)).

Clause 35 amends section 50 of the principal Act by inserting subsection (2a) after subsection (2). The proposed subsection (2a) provides that the court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that an appeal be lodged within the period fixed by this section (see subsection (2) which fixes this time as 21 days after the act or decision being appealed against).

Clause 36 substitutes a new section for section 51 which expired on 1 July 1990. The proposed section 51 provides, in subsection (1), that an incorporated association must cause minutes of all proceedings (signed by the member presiding at that meeting or at the next succeeding meeting) of general and committee meetings to be entered in books kept for that purpose within one month of the holding of the relevant meeting. Subsection (2) provides that if an association fails to comply with this section, the association and any officer who is in default are each guilty of an offence and liable to a division 7 fine ($2 000).

Subsections (3) and (4) are of an evidentiary nature and provide that minutes that are entered and signed in accordance with subsection (1) are to be taken, in the absence of proof to the contrary, as proof—

(a) of the proceedings to which the minutes relate;

(b) that the meeting to which the minutes relate was held;

(c) that the proceedings that are recorded in the minutes as having occurred during the meeting occurred;

and

(d) that all appointments of officers or auditors that are recorded in the minutes as having been made at the meeting were validly made.

The proposed section further provides that the minute books must be kept at the place where the association is situated or established or in the custody of an officer in accordance with the association's rules or a resolution of the committee (see subsection (5)) and the minutes of general meetings must be available for inspection by any member without charge (see subsection (6)).

Subsection (7) provides that if default is made in complying with subsection (5) or (6), the association and any officer in default are each guilty of an offence, the penalty for which is a division 7 fine ($2 000).

Clause 37 repeals section 53 of the principal Act and substitutes a new section. The proposed section 53 provides, in subsection (1), that an incorporated association must not invite a person to invest or deposit money with the association, unless—

(a) prior to or at the time of making any such invitation, the association issues to the person a disclosure statement in accordance with subsection (2);

and

(b) in respect of an invitation that is extended to persons who are not members of the association, the commission has approved the invitation (on such conditions as the commission thinks fit—see subsection (8)).

Subsection (2) sets out that which must be contained in a disclosure statement, including—

(a) the name and principal objects of the association;

(b) the names, addresses and occupations of the committee members;

(c) the total amount of deposits sought and what it will be applied for;

and

(d) details of the association's assets and liabilities.

A transaction made in response to an invitation that is contrary to subsection (1) is void (see subsection (4)).

A person who authorises a disclosure statement that is false or misleading or that omits anything required to be included, is guilty of an offence the penalty for which is a division 6 fine ($4 000) (see subsection (5)).

Subsection (6) provides defences to a charge under the preceding subsection.

For the purposes of subsection (5), a statement is to be regarded as part of a disclosure statement if it is contained in any report or memorandum that appears on the face of, or is issued with, the disclosure statement, or is incorporated

by reference in the disclosure statement, wherever the reference occurs.

Subsection (9) provides that this section does not apply to an invitation by an association to persons who are not members of the association to invest or deposit money in a fund that was being maintained by the association on 1 March 1985.

Clause 38 amends section 54 of the principal Act by upgrading the penalty for an offence against that section (failing to have name of incorporated association printed, stamped or endorsed on every notice, etc.) from a fine of $200 to a division 8 fine ($1 000).

Clause 39 repeals section 55 of the principal Act and substitutes a new section that also deals with the prohibition against securing a profit for members.

Subsection (1) of the proposed section 55 provides that, unless the Minister otherwise approves (on such conditions as the Minister thinks fit—see subsection (5)), an incorporated association must not conduct its affairs in a manner calculated to secure a pecuniary profit for the members, any of the members, or for associates of the members or any of them.

Subsection (2) provides that, unless the Minister otherwise approves (on such conditions as the Minister thinks fit—see subsection (5)), an association must not make a payment from its income or capital or dispose of any of its assets *in specie* to the members, any of the members, or for associates of the members or any of them.

An offence against subsection (1) or (2) carries a division 6 fine ($4 000).

Subsection (2) does not apply to any payments or dispositions that are incidental to activities carried on by the association in accordance or consistently with its objects (see subsection (3)).

Subsection (4) makes it an offence for an officer of an association who is knowingly concerned in, or is a party to, a contravention of subsection (1) or (2). The penalty is a division 6 fine ($4 000) or division 6 imprisonment (one year).

Clause 40 amends section 56 of the principal Act by striking out subsection (4) and substituting a new subsection (4) that provides that where an incorporated association is without a public officer for a period longer than one month, the association is guilty of an offence, the penalty for which is a division 8 fine ($1 000).

Clause 41 repeals section 57 of the principal Act and substitutes a new section 57 which also deals with the penalty for non-compliance with the Act or a condition imposed under it.

Subsection (1) of the proposed section 57 provides that an officer of an incorporated association who fails to take all reasonable steps to secure compliance by the association with its obligations under this Act, is guilty of an offence and liable to a penalty of a division 8 fine ($1 000).

Subsection (2) provides that if an incorporated association or an officer of an incorporated association which contravenes or fails to comply with a condition imposed under this Act by the commission or the Minister in relation to the association, the association or the officer (as the case may be) is guilty of an offence and liable to a penalty of a division 8 fine ($1 000).

Clause 42 repeals section 58 of the principal Act as this section is now encompassed in the new Division IIIA of Part IV—Duties of Officers.

Clause 43 amends section 59 of the principal Act by upgrading the penalty (for failure to notify the commission, within the time required, of a variation or revocation of a trust which is referred to in the rules of an association or on which a rule of the association relies) from a fine of $500 to a division 8 fine ($1 000).

Clause 44 amends section 60 of the principal Act by upgrading the penalty (for misrepresenting that a body is an association incorporated under this Act) from a fine of $1 000 to a division 6 fine ($4 000).

Clause 45 amends section 61 of the principal Act by striking out subsections (1) and (2) and substituting two new subsections. Section 61 deals with oppressive or unreasonable acts.

The proposed subsection (1) provides that a member or former member expelled by an association may apply to the Supreme Court (within six months of the expulsion) for an order under this section, where that person believes—

(a) that the affairs of the association are being conducted in an oppressive, unfairly prejudicial or in an unfairly discriminatory manner, against a member or members, or in a manner that is contrary to the interests of the members as a whole;

(b) that an act or omission or proposed act or omission, by or on behalf of the association, would be oppressive, unfairly prejudicial or unfairly discriminatory against a member or members, or would be contrary to the interests of the members as a whole;

(c) that the rules of the association contain provisions that are oppressive or unreasonable;

or

(d) that the expulsion of the member was unreasonable or oppressive.

The proposed subsection (2) provides that if, on the hearing of such an application, the Supreme Court is satisfied that the affairs of the association have been conducted in such a manner as to bring it within any of the heads of subsection (1), the court may, subject to subsection (3), make such orders as it thinks fit, including an order that the association be wound up, or that the member expelled be reinstated as a member.

This section is further amended by inserting a new subsection (4a) which provides that where an order appointing a receiver or a receiver and manager of the property of the association is made pursuant to subsection (2), the provisions of the Corporations Law relating to receivers or receivers and managers apply, with such modifications, additions or exclusions as may be necessary for the purpose, or as may be prescribed, in relation to the receiver or receiver and manager as if an incorporated association were a company.

Other amendments made to this section—

(a) upgrade the penalty for an offence against subsection (6) from a fine of $200 to a division 9 fine ($500);

and

(b) make subsections (3) and (7) fit in with the proposed amendments to this section.

Clause 46 repeals section 62 of the principal Act and substitutes 6 new sections. The proposed section 62 deals with the examination of persons by the Supreme Court (on the application of the commission or a prescribed person under subsection (2)) where it appears to the commission or prescribed person that a person has been guilty of some negligence or malfeasance in relation to an association or that a person will, on examination, be able to provide information regarding the affairs of an association to the court. Subsection (1) defines a prescribed person for the purposes of this section. On an application under this section, the court may make such orders as it thinks fit in

relation to the examination of such a person (see subsections (3), (4) and (5)).

If a person—

(a) fails to attend for examination whenever ordered to by the court (subsection (6));

(b) on attending for examination, fails to take an oath or make an affirmation or to answer a question that he or she is directed by the court to answer, or refuses or fails to produce a book in his or her control to the court when ordered to do so (see subsections (7), (8) and (9));

or

(c) makes a statement that is false or misleading in a material particular (see subsection (11)),

the person is liable to a division 5 fine ($8 000) or a division 5 imprisonment (two years).

Subsection (12) provides that although a person is not excused under examination from answering a question that may tend to incriminate him or her, where the person claims, before answering the question, that the answer will be incriminating, the answer is not admissible in evidence against him or her in criminal proceedings other than proceedings under this clause or other proceedings in respect of the falsity of the answer.

This section further provides that such an examination may be conducted by putting the questions and answers in writing to be signed by the person being examined (see subsection (13)). Subject to the proviso against self-incrimination in subsection (12), a signed written record of an examination or an authenticated transcript of an examination may be used in evidence against the person (see subsection (14)). A person ordered to attend for an examination under this section may employ a solicitor or solicitor and counsel to appear during the examination on his or her behalf (see subsection (16)).

Subsection (18) provides that where the court that made the order under subsection (3) for an examination is satisfied that the examination was obtained without reasonable cause, the court may order the whole or any part of the costs incurred by the person ordered to be examined to be paid by the applicant or by any other person who, with the consent of the court, took part in the examination.

The proposed section 62a deals with orders against persons concerned with associations and follows on from the previous section. Subsection (1) provides that where the court is satisfied, on an application, that a person is guilty of fraud, negligence, default, breach of trust or breach of duty in relation to an association and that the association has suffered, or is likely to suffer, loss or damage as a result of that, then the court may make such order or orders as it thinks appropriate against, or in relation to, the person, notwithstanding that the person may have committed an offence in respect of the matter to which the order relates.

An order may not be made against a person under the previous subsection, unless the person has had the opportunity to give evidence, to call witnesses, to adduce other evidence and to employ legal counsel (see subsection (3)).

Subsection (4) provides that the orders that may be made against a person include—

(a) an order directing the person to pay money or transfer property to the association;

and

(b) an order directing the person to pay to the association the amount of the loss or damage.

Subsection (5) provides that nothing in this section prevents any person from instituting any other proceedings in relation to matters in respect of which an application may be made under this section.

The proposed section 62b provides that no civil proceeding under this Act may be stayed by reason only that the proceeding discloses, or arises out of, the commission of an offence.

The proposed section 62c provides for the form and evidentiary value of books that are required to be kept or prepared by this Act.

The proposed section 62d provides that where a person is convicted of an offence against this Act and after that conviction the act or omission that constituted the offence continues, the person is guilty of a further offence, and is liable to an additional penalty for each day on which the act or omission continues of an amount not exceeding one-tenth of the maximum penalty for the offence of which the person was convicted. An obligation under this Act to do something is to be regarded as continuing until the act is done, notwithstanding that any period within which, or time before which, the act is required to be done, has expired or passed.

The proposed section 62e provides for proceedings for offences under this Act. An offence against this Act that is—

(a) not punishable by imprisonment is a summary offence (see subsection (1));

(b) punishable by imprisonment is, subject to subsection (3), an indictable offence (see subsection (2)).

Subsection (3) provides that where proceedings for an offence are brought in a court of summary jurisdiction which is to hear and determine the proceedings on the request of the prosecutor, the offence is to be taken to be a summary offence and must be heard and determined as such.

Subsection (4) provides that a court of summary jurisdiction may not impose a period of imprisonment exceeding two years or cumulative periods of imprisonment that will exceed five years. A prosecution for an offence against this Act must be commenced within three years of the date on which the alleged offence took place and may be commenced by the commission, an officer or employee of the commission or by any other person who has the consent of the Minister (see subsection (6)).

Subsections (7) and (8) contain evidentiary provisions in relation to the consent of the Minister to a prosecution and the employment of a complainant by the commission.

Clause 47 amends the evidentiary provision of the principal Act, section 63, by inserting after subsection (6) a new subsection (7). This subsection provides that in any proceedings for an offence against this Act, an allegation in the complaint—

(a) that an association is or was at a specified time incorporated under this Act;

(b) that the defendant is or was at a specified time an officer of an association named in the complaint;

or

(c) that any meeting of the members of an association required by a specified provision of this Act to be held has not been held,

is, in the absence of proof to the contrary, to be accepted as proved.

Clause 48 amends section 67 of the principal Act which deals with the regulation-making power under the Act by striking out paragraph *(e)* of subsection (2) and substituting a new paragraph *(e)* which allows a penalty that does not exceed a division 8 fine ($1 000) to be imposed for contravention of, or non-compliance with, a regulation.

Schedule 1 contains transitional provisions.

Schedule 2 contains amendments to the provisions of the principal Act that are of a statute law revision nature.

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

CORRECTIONAL SERVICES (DRUG TESTING) AMENDMENT BILL

Second reading.

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

The purpose of this Bill is to amend the Correctional Services Act to permit the taking of urine samples from prisoners suspected of consuming non-therapeutic phsychoactive drugs and to permit the taking of urine samples from prisoners for the purpose of a random check of some or all prisoners in an institution.

The use of illicit drugs in the prison system has long been recognised as a serious problem. The Department of Correctional Services has implemented a wide range of measures designed to assist in achieving the goals of reducing the contraband entering the prison system and deterring the use by prisoners of illicit drugs. These measures include:

- the use of searches of prisoners, cells, prisoners' property, and visitors;
- use of dogs to assist in searches;
- use of prison design to maximise security and prisoner observation;
- perimeter security.

Urine analysis will give the Department of Correctional Services another measure to combat drug use. In addition to these measures, therapeutic programs are provided by the Prison Drug Unit to help prisoners reduce their reliance on drugs.

It is proposed that individual prisoners will be able to be tested when correctional staff suspect that a prisoner may have used an illicit drug. Random testing of prisoners will be able to be used to establish accurate indicators of the level of drug use within a prison. Total population testing will be able to be used to give a 'snapshot' of the total drug use in a prison at a given time.

A prisoner who records a positive specimen will be liable to disciplinary action before a Visiting Tribunal. Failure to comply with a request for a test will result in disciplinary action that may be more severe than if the prisoner recorded a positive test result.

The information from positive testing of a prisoner will be considered in the individual case management of the prisoner and will also be utilised for management purposes in relation to the development of drug use strategies.

It is proposed that Correctional Officers will be responsible for the collection of specimens. Procedures will be adopted, in consultation with staff, to cover all occupational health and safety issues. Specialised training will be provided to enable staff to recognise the effects of drug usage, to collect samples, ensure infection control and document to maintain the chain of evidence.

There will be a requirement that officers observing the taking of sample must be of the same sex as the prisoner.

Urine analysis is in operation in both New South Wales and Victoria. Departmental officers have visited both jurisdictions to study the program conducted there.

Problems observed in the NSW system include the practice of swapping samples by prisoners, high level of non-compliance by prisoners, problems with the accuracy of the test results, and lack of understanding of the purpose of the program by staff. The Department of Correctional Services believe that they have now had the opportunity to study interstate and overseas experience and have now determined the most appropriate approach to introducing the scheme into South Australia.

It is proposed to introduce urine analysis into SA in two phases. Phase one would be the testing on suspicion that a prisoner may have used an illicit drug. Phase two would involve adding random sampling and total population testing.

The Government is committed to minimising the use of drugs in out prisons system and the importance of this Bill in the gaol cannot be overstated. I commend the Bill to the House.

Clause 1 is formal.

Clause 2 provides for commencement of the Act on proclamation.

Clause 3 inserts a definition of 'drug' in the interpretation section. A drug is either a drug of dependence or prohibited substance (as defined in the *Controlled Substances Act*) or a prescription drug specified in the regulations.

Clause 4 amends the provision dealing with the power to search prisoners in certain circumstances. It is provided that a prisoner may be searched preparatory to giving a specimen of his or her urine pursuant to the Act.

Clause 5 inserts a new section empowering the manager of a correctional institution to require a prisoner to provide a urine specimen of the prisoner is suspected of unlawfully using a drug or if the manager is carrying out a random check of all or some prisoners in the institution. Subsection (2) spells out a prisoner uses a drug if he or she smokes or consumes the drug or administers it to himself or herself, or permits another person to so administer it. Subsection (3) is an evidentiary aid—an analyst's certificate as to the presence of a drug in a specimen of urine is proof of that fact unless the defendant proves otherwise.

Clause 6 provides that regulations may be made dealing with the collection of urine specimens and the directions that may be given to prisoners for that purpose. Penalties for offences against any such regulation may be prescribed exceeding the maxima already set in the Act for breaches of regulation by prisoners. The penalties cannot exceed by more than three times those maxima.

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

PAY-ROLL TAX (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 10 October. Page 1057.)

The Hon. R.I. LUCAS (Leader of the Opposition): I rise on behalf of the Liberal Party to support the second reading of this Bill. The Liberal Party supports the small token of relief that has been provided to business through some clauses of this legislation. Payroll tax will be reduced marginally from 6.25 per cent to 6.1 per cent from 1 December this year. The Taxation Office has advised that that will

mean relief to South Australian businesses of some $13.5 million in a full year. So, it is a small token of relief, and it certainly will be welcomed by the business community. In addition, the exemption level will be increased, first, from $432 000 to $444 000 and then, from 1 July next year, to $456 000. Again, consistent with the actions of previous Governments and of this Government, there have been relatively regular increases in the exemption level, which means that small business or businesses with payrolls up to the new level of $456 000 will not, from the middle of next year, have to pay payroll tax.

As I said at the outset, it is not much—it is marginal—but those businesses that will benefit will be grateful for small mercies. In making the point that it is not much, I think it is worthwhile noting that the Treasury has advised that there will be an 8 per cent increase in payroll tax collections for this financial year compared with last year. One ought to bear in mind that at least on State Treasury estimates there has been a CPI increase of only 2.5 per cent for this financial year, although that contrasts with the Federal Treasury's estimate of 3.5 per cent. I suppose we are talking about wage increases of that order and certainly not much more than 3 or 4 per cent for this year; yet, we are still talking in terms of an increase of 8 per cent in payroll tax collections. Later in my second reading contribution, I will raise the reasons for this increase and I will address questions on this matter to the Attorney and his advisers during the Committee stage.

As previous Bills have done, this Bill raises the whole question of payroll tax. I and everyone in this Chamber, irrespective of the Party they support, would agree that in an ideal world there would be no tax. We certainly would not have a payroll tax, which is a tax on jobs and employment, particularly at a time when we are experiencing the worst recession that we have had in 60 years, in the words of the Federal Treasurer. It is a major disincentive for employers and businesses to take on an extra employee, and it may well serve to marginally reduce the 10.7 per cent unemployment rate that we are experiencing in South Australia.

However, that is the ideal world and members in this Chamber this afternoon are dealing with the real world. We are dealing with reality. Payroll tax is budgeted to collect some $512 million this financial year for the State Government. It is about 10 per cent of the total State tax revenue base. In terms of expenditure, it would in effect pay for about 50 per cent of all our spending in education—schools and related areas in South Australia—or for about half of the Health Commission budget for this current financial year. The simple fact is that reality says that, because it is worth over $500 million to the State tax base at the moment, certainly in the context of this debate it is a significant revenue item and therefore pays for a significant element of our expenditure in important areas such as education and the Health Commission.

My personal viewpoint is that, sure, if we could get rid of the tax, that would be great. The simple fact is that in relation to this Bill we have to accept the principle that payroll tax will remain in South Australia. Therefore, from a personal viewpoint I accept the need, as enunciated by the Minister and the Government, to try in general terms to protect the tax base to stop the use of artificial contrivances, which seek to prevent the payment of an appropriate level of payroll tax. That is the stated intention of the Government in relation to this Bill. However, my Party does not support the attempt to extend the coverage to a whole range of businesses that are not currently caught by the payroll tax legislation. Again I return to the evidence and to the questions on which I would seek a response from the Government, namely, how the Government can be budgeting for an 8 per cent increase in payroll tax collection in the worst recession we have had for some 60 years when it is also giving, it says, some $13.5 million relief to businesses at the moment.

From my viewpoint it would appear quite logical and rational that the only way the Government could justify or get that 8 per cent increase is if it is extending the payroll tax base to a whole range of businesses and industries that are not currently paying payroll tax to the Government. All the other variables to which I have referred would appear to indicate that at the very best, payroll tax collections would be static or perhaps, at worst from the Government's viewpoint, would be reducing.

In discussions I have had privately with tax officers, I have raised some of those questions. However, I want to raise them formally in Parliament so that my questions and the officer's response, through the appropriate Minister, are placed on the public record. There is the question as to why there is an 8 per cent increase this year in tax collections, given the factors I have mentioned. I will be seeking from the Government an estimate of collections of revenue from payroll tax this year from what I would describe as the extension to previously uncovered industries, for example, the building industry. Will the Government give a ballpark figure of what extra money it believes can be clawed back from that aspect of the legislation? Secondly, what amount of money does the Government believe it can claw back by closing off what it sees as the artificial contrivances which have spread in a whole variety of other industries and which have caused tax officers some concern.

So, my three questions relate to: an indication of the 8 per cent and its justification; some estimate of how much extra tax will be collected by extending it to industries such as building, which is not presently covered; and, thirdly, an estimate of how much the Government will be able to claw back by closing off loopholes.

I know that tax officers have argued that payroll tax has been remarkably inelastic in relation to the amounts of money collected compared with the state of the economy at any one time. The tax office argument is that, even when we go through a recession, for a variety of reasons payroll tax collections have held up. I refer to the most recent recession, I would not ask the tax office to go back to the depression. I do not think that even the tax officers have that level of personal knowledge and experience of the department, although I know that they have had some time in the department. Certainly in relation to the 1982-83 recession, which is the most recent and most significant, I ask that in Committee or during the Attorney's reply he place on the record some evidence of the statement that tax officers made in relation to the way the payroll tax collections have held up.

The only other comment I have in relation to the 1982-83 experience is the contention from some that, whilst we were in a recession, wage and salary costs at that stage were still increasing at a relatively significant rate. I do not have the figures at my fingertips, but if we were in a recession and for a variety of other economic factors wage and salary levels were increasing at a significant rate, one could understand why payroll tax collections might have held up in 1982 and 1983 during the last recession, but it might be a problem in relation to this recession, as it will certainly not be characterised by significant increases in wage and salary costs. There would be a question whether the 1982-83 experience might be directly applicable to the 1990-92 recession.

As I indicated, I can understand and appreciate some of the problems which have arisen for the Government and Treasury in various sections of industry in relation to the payment of payroll tax and which have caused the introduction of this Bill. I am advised that there is an increasing number of companies in an increasing number of industry areas which were previously paying payroll tax but which are now, through various artificial contrivances, avoiding the payment of payroll tax. The advice provided to me is that some companies have had their employees form themselves into companies. The legal advice is quite clearcut that, if the relationship is from an employer to a company rather than to an employee, there is virtually no prospect at all of the tax office being able to apply or levy payroll tax on that form of association between an employer and, formerly, an employee.

We then move to the next category of where an employee may form a partnership or become a sole proprietor, and I am advised that in all likelihood the tax office would not be able to successfully levy payroll tax in those circumstances. We then come to the problematic area of where employers and employees enter into contracts with the specific intention of avoiding the payment of payroll tax. This is a difficult area for me, and therefore I presume for other members, but my advice is that it is not simply the fact of an employer signing a contract with the employee and thereby successfully avoiding the payment of payroll tax; it is more complicated than that.

Much legal advice has been sought to develop specific contracts which are designed to satisfy the courts so that they will rule that it is not now an employer/employee relationship. I have been advised that the critical questions that have to be covered with these sorts of contracts are: whether or not the employer has the right to control the employee in any way; whether the employer has the right to order or direct attendance of the employee at a certain place and at a particular time; and who owns the equipment or material being used by the employee—the employer or the employee.

For the record I will read a Supreme Court of Victoria judgment of May 1989 in the case of *Odco Pty Ltd v Accident Compensation Commission*, commonly known as the 'troubleshooters' case. I will cite the contract that was entered into between the employers and employees on that occasion to give an indication of the types of contracts that I believe are presently being signed in an attempt to avoid the payment of payroll tax. The judgment states in part:

> Before a contractor's name is listed on its books, the contractor is required to sign a document entitled 'Agreement to Contract' (the T.S.A./Tradesman Contract). That document reads:
>
> 1. I (the undersigned) acknowledge and agree that there is no relationship of employer-employee with Troubleshooters Available and that Troubleshooters Available does not guarantee me any work. I (the undersigned) am self-employed and as such I am not bound to accept any work through Troubleshooters Available.
>
> 2. I (the undersigned) hereby agree to work for $ . . . per hour for actual on-site hours or job price to be agreed.
>
> 3. I (the undersigned) hereby acknowledge, and agree, that Troubleshooters Available does not cover me in respect of workers' compensation, the onus of responsibility and liability in respect of insurance (workers' compensation) is mine only. Further, I have no claim on Troubleshooters Available in respect of workers' compensation.
>
> 4. I (the undersigned) expressly forbid Troubleshooters Available to make deductions in respect of income taxation.
>
> 5. I (the undersigned) hereby agree that I have no claims on Troubleshooters Available in respect of holiday pay, sick pay, superannuation, long service leave or any similar payment.
>
> 6. I (the undersigned) hereby agree that Troubleshooters Available has no responsibility or liability to me except that I am guaranteed to be paid agreed hourly rate for actual on-site hours or agreed job price for work done.
>
> 7. It is agreed that I (the undersigned) must carry out all work that I agree to do through the agency of Troubleshooters Available in a workmanlike manner and is hereby guaranteed against faulty workmanship. All work must be made good. Further, I agree to cover the work (where necessary) for public liability, workers' compensation, long service leave, holiday pay, sick pay, superannuation and have no claims on Troubleshooters Available in respect of the above.
>
> 8. I (the undersigned) agree that I must belong to the respective trade union covering my trade.
>
> 9. I (the undersigned) hereby agree to supply my own plant and equipment, safety gear, boots, gloves or any necessary ancillary equipment required and that I (the undersigned) have no claim on Troubleshooters Available in respect of the above.

That is the type of contract that is currently causing concern for tax offices in maintaining the payroll tax collection base in South Australia.

The advice provided to me is that contracts similar to this are now being entered into by employers and employees in a whole range of industries. I am aware that this is occurring in some used car yards, manufacturing companies and the retail industry. I have been advised that an employer/employee relationship can exist on a Friday whereby the employee works on a machine owned by the employer but that on the Monday that employee will have formed a company or perhaps signed a contract in an attempt to avoid the payment of payroll tax even though, for all intents and purposes, exactly the same working relationship of employer/employee exists.

I have been advised that in some retail shops there is an increasing tendency for long serving employees to become small companies or sign contracts whereby they become almost the franchisee of that particular square meterage of floor space, thereby seeking to avoid the payment of payroll tax. I have also been advised that some shearing contractors have recently used contracts similar to the one I cited to avoid the payment of payroll tax, when most other shearing contractors continue to pay payroll tax in the normal way. I understand that a lot of contracts are used in the cleaning industry, abattoirs and the oil and gas industry.

If an increasing number of employers managed to avoid the payment of payroll tax and if the Government has to collect, say, $500 million a year in payroll tax, someone else has to take on the increased burden. As I said, today we are not entering the argument about whether or not we should have payroll tax; the fact is that at the moment we do have payroll tax and it brings in $500 million a year.

If increasing numbers of employers through perhaps highly paid legal advice or whatever are avoiding the payment of payroll tax, then the burden inequitably falls on all remaining employers, and of course that inequity flows through to the price of goods that those industries have to sell, vis-a-vis those other industries that are able to avoid the payment of payroll tax. So, the inequity can then flow all the way through.

In my discussions with what were described to me as some of the more reputable and well known employment agencies in South Australia, they indicated that they paid payroll tax as they believe was required by the law. They had not resorted to these forms of artificial contrivance to avoid it. The point they made was that there was now the tendency for one or two smaller firms in the area—and I guess 'smaller' is relative in that they would have to be greater than $400 000 in salary payments—to be entering the area, and if they were to continue to take a larger part of the market share, it was unfair for the larger, more established employment agencies who were paying payroll tax. They felt that some of these other firms may well have an unfair advantage when compared with some of these larger and more established employment agencies.

Further in relation to this matter, given the way the whole industrial relations context is heading in the late 1980s and early 1990s, even under the current Labor Administration federally, certainly the pace will be much hastened should there be a Federal Liberal Government after the next election. With this tendency towards employment contracts in this Bill, anyway, the Government is preparing itself for the inevitable changes of the 1990s with respect to industrial relations. Certainly, I would not want any of the comments I have made this afternoon to be interpreted incorrectly as being an argument against employment contracts or arrangements between employers and employees. I believe that to be a separate question that we can debate on another occasion. It is a question of, when you do have what we know to be an employer-employee relationship, whether payroll tax should continue to be levied on that particular form of relationship. As I said, it is the Liberal Party's view currently that, if we have a payroll tax base that needs to be protected, we can understand the Government's argument for that.

Finally, I want to raise one of the problem areas that has arisen since the debate in another place. I guess there have been a number which we will pursue in the Committee stage. I am not sure of the intentions of the Attorney-General in relation to this. I know that my colleague is to speak as, I presume, will the Australian Democrats. I know that we are trying to pass this Bill as soon as we can but, it might be worthwhile if we were to complete the second reading stage this afternoon and put the Committee stage on motion and perhaps do it later tonight. I know that the Hon. Mr Gilfillan—and maybe the Hon. Mr Elliott as well—is considering one of my proposed amendments. I thought it was relatively simple, but that may not be the case. I guess the Democrats can address my suggestion during their second reading contributions.

In relation to the building industry, as I indicated, we in the Liberal Party are quite prepared to consider what we saw as a protection of the tax base, given the fact that we have a payroll tax, but that we are not supporting and do not intend to support an extension of the payroll tax base to a whole range of businesses and industries that currently do not pay payroll tax. It is our advice, from both legal and building industry representatives, that one significant result of the Government's Bill as introduced would be to extend the payment of payroll tax to a whole range of businesses in the building and construction industry that currently do not pay payroll tax. Therefore, we see this as possibly one of the reasons why there has been a projected 8 per cent increase in payroll tax collections, when $13.5 million of relief has been given and we are in the midst of the worst recession in 60 years.

It is clear from our viewpoint that the only way one can get that is if there is in some way an extension of the payroll tax base into previously unexplored areas, and we believe that the building and construction industry is the area from which the Government may well be recouping significant increases in payroll tax this year as compared with previous years.

Under clause 4 of the Bill, the Government exempts three particular industries as a matter of policy—the courier or trucking industry, the insurance industry and the door-to-door sales industry. We will be asking the Government why it has chosen to exempt those three industries. I know that it argued that these were the exemptions in the other three States, but that does not answer the question. The question is: why have the Governments in the other States and why has this Government chosen to exempt those three industries? There must be reasons why the Government has decided to say that these three industries, out of all the industries that exist in South Australia, are either so important or so special, or their circumstances so particular and peculiar, that they deserve to be exempted from the payroll tax legislation presently before us.

The Government can answer for itself, but I suspect the reason is that, in these industries, there is already a very large acceptance of this indepedent subcontractor principle, a single person working for himself or herself in an independent subcontracting arrangement with the principal contractor or employer. If that is the case, we would submit that the building and construction industry is in exactly the same position. With his considerable experience in the building and construction industry, my colleague the Hon. Mr Stefani, who will speak after me, will be able to provide much more detail than I am able in my second reading speech about what goes on in the building industry at the moment and how this particular legislation will affect it.

The Government has decided that three industries are to be exempted, but the Liberal Party believes that a fourth, the building industry, ought to be included. My advice from the very efficient Parliamentary Counsel is that what I am seeking to do through my amendment is to not allow the extension of the payment of payroll tax to businesses in the building area which currently do not pay payroll tax. Certainly, that is the intention of the amendment. We do not believe that this Bill should be used to extend the ambit of the Pay-roll Tax Act to a whole variety of businesses and areas that have not so far been covered.

During the Committee stage I will welcome comment from the Government and the Australian Democrats about that. I am not necessarily locked into an exact form of wording for my amendment. If there is more precise advice from either members or Parliamentary Counsel that would indicate the wording ought to be changed slightly, I will be more than amenable to that sort of debate during the Committee stage.

Simply, I indicate that it is our intention to not allow the extension of payroll tax to businesses in the building industry at the moment, which are already suffering and laying off workers left, right and centre. The last thing we want to do in times of recession when Governments are just obviously looking to the housing and construction industry to help (to use the terrible phrase) 'kick start' the South Australian economy, we do not want at this time to add extra imposts onto that beleaguered sector which may well prevent their employing extra persons and helping in the economic recovery that is needed in South Australia. I will refer to only one submission, although I have received a number of submissions from the Housing Industry Association and others. The submission I shall quote from is from the Building Industry Specialist Contractors Association of South Australia Incorporated, and it states:

> This association represents the interests of subcontractors involved in, and associated with, the building and construction industry.
>
> The association supports any move against those who seek to avoid their legal liability to pay payroll tax, however we are concerned that the proposed amendments in fact seek to extend the coverage of payroll tax, rather than reduce avoidance.
>
> The Bill purports to extend payroll tax to, essentially, labour only subcontractors. The manner in which this is done is confusing and will, we believe, impose an administrative burden.
>
> The Workers Rehabilitation and Compensation Act sought to extend its operation via the 'deemed worker' provisions to labour only subcontractors engaged in the building and construction industry. It would be fair to say that this extension resulted in two years of confusion regarding the circumstances in which those provisions operated. In view of the experience we are concerned that this legislation and its potential consequences should be detailed by the Government before its introduction.

I think it is fair to say that, in the discussions we have had only in the past week or two with the building and construc-

tion industry, when asked to comment on the Bill, most of them have said that it is all pretty difficult to understand. It is an awfully technical and complex area. The bottom line of all of them, even after their written submissions, has been, 'Look, if we are not paying payroll tax, we certainly do not want to be in a situation at the end of the day, however the legislation is drafted, where we have the additional impost imposed on us by Government.'

Some of the submissions I have received indicate that it is very difficult for them to understand this legislation but the bottom line, certainly from the discussions I have had with industry representatives, is quite clearly that they cannot afford and do not want in this time of the worst economic recession in Australia for 60 years an additional impost. I would urge members to support the amendment that I will move in Committee or, perhaps, some variation of it, to enable that goal to be reached. I support the second reading.

The Hon. M.J. ELLIOTT: I rise to support the second reading of the Bill. The Democrats' policy supports the abolition of payroll tax and, quite plainly, that is not something that will happen overnight, nor do I expect it to happen terribly quickly in the current climate. As the Hon. Mr Lucas noted, it does supply a significant part of the current State budget—$511 million—and that sort of money will not easily be found elsewhere. Nor would I suggest for a moment that there are any Government departments which can tolerate cuts in consequence of an abolition. In other words, the Government has started what I hope will be a continual process of cutting back the level of payroll tax. At this stage it is a very small cut from 6.25 per cent to 6.1 per cent.

The Hon. Mr Lucas noted that, despite that, the take for payroll tax this year will increase by about 8 per cent, and the reason for that is fairly easy to understand. Last year, the increase was much greater than this year's decrease, and the changes in each case happened on 1 January. So, what has happened, if we compare the current financial year with the previous financial year, is that the average rate of payroll tax for this 12-month period is far greater than the average rate of payroll tax for the previous 12 months, and that is why payroll tax has managed to increase by 8 per cent, despite the cut in payroll tax.

It is a job done with mirrors, and we are looking to see whether or not this cut continues or is increased in future financial years. It is only at that point that we will see the benefit in financial year terms rather than a benefit that applies for half the year but does not compensate for the much greater increase suffered in the first half of the year. It is also pleasing to see that exemption levels have been increased, but whether or not the rise in exemption level is sufficient depends upon the rate of inflation. If the rate of inflation remains below a couple of per cent then the indexation is a positive move, but if inflation picks up again, which could easily occur, then the indexation may be nowhere near enough. Nevertheless, there is some indexation. That at least has to be applauded.

Clearly, in this Bill there is a move against two payroll tax avoidance devices and to bring those employers back into the taxation base. The first device is the use of service contracts. These have been used to circumvent the legal definition of employer-employee relationship. Apparently, a large number of employers have put their whole work force on these contracts to avoid the tax although the employees continue in the same tasks, and so on, as before. The Bill provides for exemptions where that has traditionally been the case.

The second payroll tax avoidance device is payments to a third party for services of an employee and liability imposed in such payments. Such provisions already exist in New South Wales, Victoria, Tasmania and the ACT. The amendments include a provision for the Commissioner to recommend a regulation to exclude any group inadvertently caught up in these amendments where it can be established that contracts had been part of that group's traditional operations and were not used to avoid tax. As I understand it, it is expected that many employers will own up to having employees in contracts and begin paying payroll tax. It is worth noting that it is not retrospective, otherwise the compliance branch will catch up with them. The Bill also clarifies the payroll tax liability in relation to arrangements involving employment agents. In such situations the agency will be deemed to employ the person and be liable for payroll tax.

It was only today that I became aware that the Liberal Party intended moving amendments to this Bill. To this stage there had been no indication of such an intention. I intend to seek an adjournment either at the end of the second reading stage or early in the Committee stage, when concerns have been raised, but not necessarily taken to the vote. The bottom line as far as I am concerned is that we expect no expansion of payroll tax, and that is the intention of the Bill. We do not expect the payroll tax to be expanded into areas where it did not apply previously. If it can be established—and I believe that is what the Liberals were seeking to do—that there are other areas which have been quite clearly and legitimately not paying payroll tax in the past, that would have my support.

I think it needs to be noted that taxation avoidance is not to be tolerated and that we must have a piece of legislation which, when it leaves this place, does not create new liabilities that people did not previously have in the payroll tax area, but also that loopholes which have been exploited at the expense of all other honest taxpayers need to be closed.

The Hon. J.F. STEFANI: I rise to support the Bill. As already indicated by my colleague the Hon. Rob Lucas, the Liberal Party has some concerns in relation to provisions contained in the Bill as they apply to self-employed tradespersons operating mainly in the housing and construction industry.

From discussing this measure with officers of the State Taxation Department, I gained the clear impression that, whilst it may not be the deliberate intention of the Government to cast a very wide net, this legislation will, in fact, increase the take from payroll tax, and this will be achieved by extending the base for the payment of payroll tax and reducing the incidence of artificial gearing to reduce the payroll tax liability of various employers.

It is important to recognise that payroll tax forms a significant part of the revenue base of the State budget. However, we are also aware that it is a disincentive to employment, and the Liberal Party is conscious of the need to reduce the rate of payroll tax. At the same time, we support any effort to ensure the appropriate collection of payroll tax from employers who have an obligation under law to meet this liability. Equally, legitimate self-employed workers who have formed a genuine business structure and are operating as independent enterprises should not be penalised in any way by the provisions of a system that is far reaching and has wide application so as to affect the genuine contractual relationships between two parties.

The Liberal Opposition supports the general thrust of the legislation. However, we believe that self-employed trades-

persons engaged in the building and construction industry should clearly be exempt from the provisions of this tax measure. By way of example, I have discussed with officers of the tax office the implication that such a measure has on tiling contractors who are employed to lay tiles for so much a square metre but do not provide substantial materials—they just provide their own tools. A good number of people employed in the building industry are engaged in such a way. They perform their work very efficiently—particularly in the housing industry—and it would be a disaster if these people became so-called employees and were caught by the provisions of this measure. We strongly believe that at the moment the building industry is in a decline and that many people are employed under the arrangements that I have mentioned. They operate very successfully, they are self-employed contractors in the true meaning of that term, and we need to safeguard their employment prospects.

Accordingly, the Hon. Rob Lucas will move an amendment to ensure that companies that engage independent sub-contractors within the building and construction industry are not required to declare payments made to sub-contractors as wages and, therefore, will not be required to pay the payroll tax levied on such payments. We strongly believe that such a measure should be considered, and we will seek the support of the Democrats to ensure that we safeguard the future employment prospects of many people who are operating in the industry in this way. I support the Bill with the pending amendments.

The Hon. L.H. DAVIS: I support the second reading of the amendment to the payroll tax legislation. One of the difficulties that all States of Australia have faced over recent years has been the anomaly of a tax on employment because, ultimately, that is what payroll tax is. Although the threshold level is being raised from $432 000 to $456 000 on 1 July 1992, on average, any small business with 15 or more full-time employees will be trapped into paying payroll tax. So, it is a positive disincentive to employers, particularly in these difficult economic times. One can imagine a situation of someone paying workers compensation at the high end of the scale, say 7.5 per cent, being faced with a payroll tax of 6.1 per cent, suddenly having to pay 13 or 14 per cent on salaries for just those two taxes alone.

The measure that is before us is uncontroversial in the sense that it has been a longstanding practice to make an adjustment to the payroll tax scale to take into account the fact that it is a tax on employment. It discriminates against employers with a workforce in excess of 15 employees. It also recognises the movement in salary and wage rates over a period of time. Although the exemption level increase from $432 000 to $456 000 represents, effectively, a 5½ per cent increase in the threshold level, it is arguable that salaries and wages will rise by at least that amount. So, in real terms, the Government is offering no relief, as such, in the movement of the threshold level. Certainly, minimal relief has been offered in the downward adjustment of the rate from 6.25 per cent to 6.1 per cent.

With the meagre resources that the Opposition has at its disposal, as was noted by the Leader of the Government in Question Time earlier today, it might be appropriate if the officers assisting the Minister could—not necessarily immediately—make available to the Opposition the payroll rates and schedules of other States. I would be interested to see those figures. If the Attorney-General could take that request on notice, it may be possible for the taxation officers to provide the Council with a schedule of payroll tax levels in other States following their recent State budgets. I would be interested to see where South Australia now stands in relation to the other States and Territories.

It is difficult to argue against the measure that the Government has put forward in terms of the schedule. Obviously, small business would see it as simply not enough. This Government, of course, has no room to move, given the demise of the State Bank and the ongoing commitment to at least $225 million in interest payments each year. It certainly cramps the Government's ability to be generous when it comes to giving taxation relief from the many State taxes and charges.

Certainly, there has been a very significant increase in payroll tax collections in recent years. Since the Bannon Government came into power just nine years ago, there has been an increase of more than 100 per cent in payroll tax collections from $221 million in 1982-83 to $473 million in 1990-91. So, it has outstripped inflation in that period of time by a hefty margin. I support the amendments proposed by the Hon. Robert Lucas that will, obviously, be debated in Committee.

The Hon. C.J. SUMNER (Attorney-General): I thank members for their support of the Bill. I agree with the proposition of the Leader of the Opposition that the Committee stage be adjourned and taken into consideration later today or tomorrow to enable consideration of the amendments that he has placed on file. However, I will reply to the second reading debate now.

The first question raised by the Hon. Mr Lucas concerns how the Government is budgeting for an increase of 8 per cent when it is giving concessions. Payroll tax receipts in aggregate are estimated to grow by 8.2 per cent in 1991-92, notwithstanding the decision to reduce the tax rate from 6.25 per cent to 6.1 per cent with effect from 1 December 1991 and to increase the exemption level to $444 000 from 1 January 1992.

In fact, most of the 8.2 per cent growth reflects the full year effect of the tax measures which were taken in the 1990-91 budget. The Leader asked what revenue was expected to be derived from particular industry sectors affected by the Bill, and what was the total revenue effect of the Bill. In answer to the first part of the question, it is not possible to give estimates in particular industry sectors, as relevant data to make such estimates is not available. In answer to the second part of the question, in respect of the overall effect of the Bill in revenue terms, it is also difficult to arrive at any precise estimate of the revenue likely to be recouped by the Bill. However, a ballpark figure is between $2 million and $5 million. I will have to take on notice the leaders third question, relating to the experience of the 1982-83 recession and what evidence is there during that period that payroll tax receipts held up, because that information is not available to me at this time.

In relation to the Hon. Mr Lucas' first proposed amendments (and obviously these will be subject to further consideration during the adjournment period and in the Committee stage), section 4 (2) *(c)* of the proposed new provisions already provides for the exclusion of a service contract where the services are of a kind not ordinarily required by the person to whom they are supplied and, secondly, are supplied by a person who renders services of that kind to the public generally. It is the view of the Government that the proposed section 4 (2) *(c)* in the Government's Bill provide an adequate exclusion of the particular circumstances intended to be covered by the Hon. Mr Lucas's proposed amendment.

Acceptance of this amendment will lead to unnecessary further difficulties in interpretation and provide opportu-

nity for continued avoidance. Should particular anomalies arise with respect to any classes of contracts, the Bill provides in section 4 (2) *(g)* for the exclusion of further classes of contracts by way of regulation. This regulatory power can be used to ensure that, should any inequities arise, they can be dealt with promptly and fairly.

Similar legislation was recently enacted in the Australian Capital Territory, and the Commissioner of Stamps advises that the Australian Capital Territory did not include such a provision because it causes unnecessary complications.

As to the honourable member's second proposed amendment and his related question, 'Why has exclusion from the service contracts provisions been provided for carriers, insurance agents and door to door sales persons and not for the building industry?', the response is that the exclusion of the occupations mentioned is consistent with the provisions of those States which have enacted similar provisions to the service contract provisions of this Bill, namely, New South Wales, Victoria, Tasmania and the Australian Capital Territory. No other jurisdiction has provided for the blanket exclusion of an entire industry classification.

The incidence of avoidance in the building industry is a feature of that industry, mainly facilitated through the use of interposed entities to ensure that the necessary subcontract relationship cannot be challenged at law. The incidence of avoidance in the building industry has been a feature of that industry over several years and, through the activities of certain employment agents and the continued move away from traditional employer/employee relationships to subcontractors, avoidance is becoming more entrenched. Should particular anomalies arise with respect to certain classes of contracts within this or any other industry group, the Bill, as I have already said, provides in section 4 (2) *(g)* for the exclusion of further classes of contracts by way of regulation. This regulatory power can be used to ensure that, should any inequities arise, they can be dealt with promptly and fairly.

Bill read a second time.

JUSTICES AMENDMENT BILL

In Committee.

(Continued from 31 October. Page 1609).

Clause 45—'Substitution of Part V.'

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

Page 12, lines 35 to 41—Leave out subsections (2) and (3) and insert:

(2) The defendant must be provided with a copy of the information and, if the defendant is charged with a minor indictable offence, the appropriate form for electing for trial in the Magistrates Court.

(3) If before the commencement of a preliminary examination the defendant returns the election duly completed, and the prosecution intimates that is does not object to a summary trial of the charge, the preliminary examination will not proceed and the charge will be dealt with in the same way as a charge of a summary offence.

My amendment seeks to do two things: first, to ensure that the defendant is provided with a copy of the information and, secondly, if the defendant is charged with a minor indictable offence, the appropriate form for electing for trial in the Magistrates Court. To deal with this issue of an election before the commencement of the preliminary examination, the Bill seeks to provide that, if a defendant is charged with a minor indictable offence and does not, at least three days before the date appointed for his or her appearance, file a notice of election for trial in a superior court, the charge will be dealt with in the same way as a charge for a summary offence.

In my second reading contribution I made the point that I thought that that was somewhat harsh and that some compromise ought to be reached. I am not wedded to the requirement in my proposed new subsection (3) that the prosecution should intimate that it does not object to a summary trial, but it does seem to me that there is some value in providing that because otherwise the whole process is undertaken without the involvement of the prosecution. I know that the Attorney-General has a number of amendments that make some significant changes to the Bill in relation to the right of election, but what I am proposing, along with the Attorney-General's amendments, gives more flexibility, which is desirable in all the circumstances of a committal proceeding, without compromising the desire of the Attorney-General to see whether an earlier intimation of a defendant's position can be achieved thereby, to some extent, reducing some of the uncertainty about committal proceedings.

The Bill provides that if there is no election three days before the date appointed for the appearance the charge is to be dealt with in the same way as a charge of a summary offence. In my view that is harsh and ought not to be the criterion by which determination is made whether or not there should be a summary proceeding.

The Hon. C.J. SUMNER: The amendment is not acceptable to the Government. We have an amendment on file which I think improves this provision and overcomes some of the honourable member's concerns. The problem with the honourable member's amendment is that it would allow the accused to elect right up to the start of the preliminary examination without having to elect beforehand, and that is one of the major difficulties with the current system. One of the worst aspects of the current system, which requires reform, is the fact that an accused can elect at any time, and that is clearly wasteful of time and resources.

The purpose of this Bill is to overcome that situation by requiring an election at some reasonable time in circumstances which would not be prejudicial to the accused. The presumption in the honourable member's amendment—that the accused requires jury trial—is also not satisfactory. The Government's changes have the support of the Chief Magistrate and are designed to ensure that time and resources can be planned in advance without prejudice to the accused—and I emphasise 'without prejudice to the accused'. Clearly, the accused has to have all the information that is available in order to make the election. But, to have a situation where the accused can elect right up to the conclusion of the committal or preliminary hearing is, in our view, unacceptable and is one of the worst aspects of the current system that this Bill is designed to reform.

The Hon. K.T. GRIFFIN: I would like the Attorney-General to address this question: what is the disadvantage if the accused is allowed to elect during the course of or up to the end of the committal proceeding, particularly in view of the Attorney-General's amendment, which we have not yet discussed but which appears to me to give to a person who pleads at the preliminary hearing and is committed for trial in a superior court a right in the superior court to change the plea from guilty to not guilty, and there is to be no comment to the jury on that change of plea? As I understand it, even during the course of a hearing in the Magistrates Court it is now proposed, by the Attorney-General's amendment, that there will be a right to change pleas. I would like an explanation of what that will achieve by way of so-called savings and increased efficiency compared with my proposal, because there is an element of

uncertainty in each position, and the accused having a right to change a plea, or even election at a late stage in the proceedings, is counter-productive to the objective to which the Attorney-General has referred.

The Hon. C.J. SUMNER: Obviously, it is of significance to the court in terms of the organisation of its workload whether it is dealing with a committal or a full hearing at the time that it embarks on the proceeding. The disadvantage, where the accused is not required to elect, is that it has to be assumed that what is going on is a committal that will lead to a subsequent trial in a superior court. For example, there has to be a running transcript. If the election is to the superior court then the hand-up committal is satisfactory.

We need to leave the election to a point where the court can plan what it is doing, that is, whether there is a trial or a committal. What we are trying to overcome is the fact that that cannot be done at present. It is not only the question of whether, from a practical point of view, you have to keep a running transcript but also there is the question of how long the case will take because obviously, if it is a committal, that is, if the accused elects to be tried in the District Court, it will be a hand-up committal which may take a very short time and may be dealt with in half an hour.

On the other hand, if it is not a committal but in fact a trial, the matter may take one or two days and there may be defence witnesses and the like. So, from the point of view of court administration and, therefore, costs ultimately to the litigants, the public, it is important that that election be made at a time which is early enough for the court to organise its business.

The Hon. K.T. Griffin: Even though it may be changed later?

The Hon. C.J. SUMNER: It may be changed later, but one would expect that to be the exception rather than the rule. An election having been made, one would assume that that would be held in the great majority of cases. Obviously, if that does not happen—in other words, if an accused person is using it as a subterfuge (that is, making an election without any real intention of going ahead with it)—that would have to be dealt with subsequently, but we do not want to anticipate the worst. We feel that this is essential to the reforms that we are introducing, and that is certainly the view of the Chief Magistrate who proposed in his report this particular reform, which was taken up by the Government. The report was made available to the honourable member and to the public. His experience in the magistracy now over many years indicates that this is an important reform and will assist the courts considerably in the organisation of their business.

The Hon. I. GILFILLAN: We will oppose the amendment moved by the Hon. Trevor Griffin.

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

Page 12, lines 38 to 40—Leave out ', at least three days before the date appointed for his or her appearance, file a notice of election for trial in a superior court' and substitute 'elect, in accordance with the rules, for trial in a superior court'.

As we know and have heard, concern has been raised by the Law Society, repeated by the Opposition, that the Bill requires the accused to elect summary trial or trial by jury at too early a stage, that is, before he or she has access to sufficient information on which to base a meaningful decision. In response to those criticisms, this amendment seeks to amend the Bill to provide the time by which the accused should be required to elect should be affixed by the rules of court. This amendment is made in accordance with the wishes of the Chief Magistrate.

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

The Hon. K.T. GRIFFIN: In relation to my amendment to page 13, after line 14, I indicate that I prefer the drafting of the amendment of the Attorney-General. I have sought to ensure that any other material in the prosecutor's possession that may be relevant to the charge, even material which might be prejudicial to the prosecution case or, on the other hand, which might be advantageous to the defendant, should be made available. My amendment is somewhat narrower than the Attorney's because I refer to material in the prosecutor's possession, whereas his amendment refers to material relevant to the charge that is available to the prosecution. For that reason, I prefer his amendment and do not propose to move mine.

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

Page 13, after line 14—Insert paragraph as follows:

and

(iv) any other material relevant to the charge that is available to the prosecution;

This principle raised by the honourable member is accepted by the Government. Concern was expressed by the honourable member and the Law Society that the provisions of the Bill requiring disclosure of the Crown's case could be read as not requiring a disclosure of information held by the prosecution or available to the prosecution on which the prosecution did not seek to rely for conviction. That was certainly not the intention of the Bill and represented a change to the current law which would significantly disadvantage accused persons. Therefore, this amendment seeks to insert into the disclosure provisions an obligation on the prosecution to file in court and disclose to the accused all relevant information available to it, whether or not the prosecution will rely on it in the proceedings.

Amendment carried.

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

Page 13, after line 18—Insert paragraph as follows:

(1a) If material of the kind referred to above comes into the prosecutor's possession after the time appointed for filing in the court and giving copies to the defendant or the defendant's legal representative, the material must be filed and copies given as soon as practicable after it comes into the prosecutor's possession.

As with the previous amendment, concerns have been expressed that the current wording of the Bill would set an arbitrary limit on disclosure by the prosecution of 14 days. Again, that was not the intention of the Bill. Therefore, this amendment seeks to introduce a provision into the Bill to ensure that the duty on the prosecution to disclose is a continuing one and applies to relevant information made available to the Crown after the 14-day deadline has passed.

The Hon. K.T. GRIFFIN: I indicate support for that amendment. It is important to have that provision in the Bill.

Amendment carried.

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

Page 13, lines 34 to 37—Leave out subclause (3) and insert:

(3) Where a videotape or audiotape is filed in the court, the prosecutor must—

(a) provide the defendant with a copy of the tape at least 14 days before the date appointed for the preliminary examination;

or

(b) provide the defendant with a copy of the verified written transcript of the tape at least 14 days before the date appointed for the preliminary examination and make the tape available to be played over to the defendant or his or her legal representative at a time and place mutually convenient.

The principal Act provides that, where a statement has been taken by videotape or audiotape not less than 14 days before the submission of the statement or the affidavit, a copy of

the tape and the transcript, or a copy of the transcript together with a statement of a time and place at which the tape and facilities to play it back will be made available to the defendant and his or her legal representative must be made. The Bill seeks to provide that, where a videotape or audiotape is filed in the court, the prosecutor must either provide the defendant with a copy of the tape or notify the defendant of a time and place at which the prosecutor is prepared to have the tape played over to the defendant or his or her legal representative.

That is much more restrictive than what is in the present Act. The present Act acknowledges that it is hardly satisfactory for a tape to be played over to the defendant or his or her legal representative and then not to receive either a copy of the tape or a transcript of the tape. It is certainly not an aid to the preparation of a defendant's case only to be given the opportunity to view or listen to the tape. I propose that the prosecutor must provide the defendant with a copy of the tape at least 14 days before the date appointed for the preliminary examination. There is no reference there to the transcript because, if there is a copy of the tape, that is all that should be required of the prosecution to produce. Alternatively, the defendants should be provided with a copy of written—

The Hon. C.J. Sumner: Aren't we in agreement?

The Hon. K.T. GRIFFIN: I did not think we were, because what I am providing is that if a copy of the tape is not available there must be a transcript and an opportunity to view it. As I understand the Attorney's amendment, he is merely providing a time for playing the tape, and I wanted to make sure that a copy of the tape is available but, if it is not, then there is an opportunity to listen to it and have a transcript so the defendant or defendant's counsel is able to take away the substance of what is on the tape and consider it, rather than just listening to it and trying to commit it to memory.

The Hon. I. Gilfillan: There is no transcript in the Attorney-General's amendment.

The Hon. K.T. GRIFFIN: That is right; there is no transcript provision.

The Hon. C.J. SUMNER: I do not think there is any disagreement on the principle in relation to this matter. There is some concern about making a tape available in all cases in that the police are worried that the defendant will get access to the tape and may use it in an improper way by showing it to his mates, using the tape in a pub, or something of that kind. I do not know to what extent that is a realistic possibility, but one presumes that if the tape is given to the defendant, then some abuse could be made of it. Generally, however, we would agree.

The Hon. K.T. Griffin: What about the transcript?

The Hon. C.J. SUMNER: I am coming to that. I think it is reasonable to make the transcript available. My only query here is whether or not a transcript of the tape will be available in all cases. I would expect that generally a transcript should be available, in which case it is probably picked up earlier in the section where the prosecution has to provide all documents in relation to the case and, no doubt, if there is a transcript of the tape, that would be a document and it would already be covered by the clause. However, what I propose to do is to accept the honourable member's amendment at this point. I do not see any problems with it in principle. However, we would like to check with the prosecution authorities and police to see that this does not cause any difficulties. If it does, during the review period we will have to look at it again and talk to the honourable member but, for the moment, I indicate that I accept the amendment.

The Hon. K.T. GRIFFIN: I appreciate the Attorney-General's acceptance upon those conditions. I can understand his hesitation if the tape were to be used by a defendant in the circumstances which he outlined, but one could say the same thing about the statements of witnesses which are to be made available by the prosecution. Rather than the tape being viewed and access being gained to information on the tape, we will have a statement of a witness and that information will be available and the statement can be flashed around the pub to mates. Whilst it may not be as vivid as a videotape, nevertheless, the substance of it will be the same. In terms of the preparation of a defendant's case, the mere viewing of a tape or listening to it and then for counsel to go away and try to remember what is on the tape is, I think, an inadequate facility. All I do is refer the Attorney-General back to section 106 (5) *(a)* of the principal Act, which does in fact provide for a copy of the tape and of the transcript or a copy of the transcript and an opportunity to view. I appreciate that the Attorney-General will look at it in the period in which it is to be left on the table.

The Hon. I. GILFILLAN: There appears to be very little dispute about it. My personal feeling is that, as long as a transcript is made available, that is by far the most important aspect of it. There may be some question as to whether in every case the tape, especially a videotape, should be made available, but I want to put on the record that, provided the transcript is available without dispute (and that appears to be accepted by the Attorney-General) the other matter of the tape always being available can be reviewed and reconsidered. I do not have a firm position on that.

Amendment carried.

The Hon. C.J. SUMNER: I do not intend to proceed with my proposed amendment to page 13, after line 37. I now move:

Page 14, line 5—Leave out '(without previously issuing a summons)'.

This deletes words which have been rendered unnecessary by a previous amendment. As under the previous amendment the summons will already have been issued, there is no need to refer to it here.

Amendment carried.

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

Page 14—
Line 10—Leave out 'be' and substitute 'is'.
Line 22—Leave out ')'.

These are typographical amendments.

Amendments carried.

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

Page 14, after line 35—Insert—

(4) A defendant who has elected for trial on a minor indictable offence by a superior court may at any time before the conclusion of the preliminary examination withdraw the election and in that event—

(a) the charge will be dealt with in the same way as a charge of a summary offence;

and

(b) the court may, if the defendant agrees, admit evidence given or tendered at the preliminary examination.

(5) A defendant who has pleaded to a charge at or before a preliminary examination may withdraw the plea and substitute some other plea before the conclusion of the preliminary examination.

The provisions of the Bill as drafted assume that once a defendant has elected for a trial in a superior court that election cannot be subsequently reversed or withdrawn. It should be possible in the name of economy and justice, if the accused decides during the course of a preliminary hearing that he or she wants to be tried summarily after all, for that to be done. This amendment seeks to provide for that eventuality. There was some concern expressed that the Bill did not provide for a change of plea at any time.

In particular, it should be possible for the accused to change a plea of not guilty to guilty during the committal hearing. This amendment seeks to provide that the conclusion of the preliminary examination is the last chance for the accused.

The Hon. K.T. GRIFFIN: I support the amendment. Obviously, it provides more flexibility. It is part of the package of the Attorney-General's amendments to which I referred earlier when addressing the question of the point at which an accused must elect to be tried by a superior court, by judge and jury. This amendment allows the defendant to change a plea, to elect for a summary trial and also to withdraw a plea and substitute some other plea before the conclusion of the preliminary examination.

Amendment carried.

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

Page 14, after line 38—Insert—

(aa) the prosecutor will tender the statements and other material filed in the court and the court will, subject to any objections as to admissibility upheld by the court, admit them in evidence;.

Proposed section 106 sets out the procedure that is to apply where a charge is not admitted by a defendant at a preliminary examination. My amendment, which I think is only procedural, seeks to provide that the prosecutor shall tender the statements and other material filed in the court and that the court will admit them in evidence subject to any objection as to admissibility. Otherwise, there does not seem to be a formal procedure by which the statements that are filed can actually become part of the record of the proceedings.

The Hon. C.J. SUMNER: This amendment is acceptable; it is a good idea.

Amendment carried.

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

Page 15—

Line 6—Leave out '*(a)*'.

Lines 6 to 8—Leave out all words in subclause (2) after 'for doing so' in line 6.

The encouragement of paper committals is central to the reform of the committal system which is the principal focus of this Bill. These amendments will make it clear that the case for the prosecution can only be made by the adducing of oral evidence. The defence can only call a prosecution witness for cross-examination in cases where there are special reasons for doing so. The wording of the Bill as it stands without this amendment does not make it clear that the obligation rests on the prosecution as well as on the defence, and it must do so.

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

Page 15, lines 5 to 8—Leave out subclause (2) and insert:

(2) The court will not grant leave to call a witness who is the alleged victim of a sexual offence or a child under the age of 12 years for oral examination under subsection (1) *(a)* unless it is satisfied that there are special reasons for doing so.

This amendment seeks to allow greater flexibility to the court in deciding to allow witnesses to be called for oral examination. I propose to delete subclause (2) and to limit the special reasons criterion to those circumstances where a witness who is the alleged victim of a sexual offence or a child under the age of 12 years is the subject of an application for oral examination. It seems to me that, to some extent, that maintains the *status quo* and allows reasonable scope for a defendant to have available for examination a witness whose statement has been handed up. It is all very well to opt for paper committals, but I think one has to also be sure that that will not create an injustice. I am concerned that, if there is a hurdle in the way of a witness being made available for oral examination and that hurdle is 'special reasons', that may well amount to a denial of justice. So, I prefer my amendment.

The Hon. C.J. SUMNER: This amendment is definitely not acceptable and is strongly opposed. The power of the prosecution to call oral evidence and the power of the defence to call Crown witnesses for cross-examination would remain unrestricted. The even-handed restrictions on the powers of both the prosecution and the defence to call witnesses to give oral evidence is fundamental to the reforms proposed to the committal system, for all the reasons that have been given in the second reading debate. These restrictions are in line with and similar to reforms to the committal system that have taken place interstate and overseas. Further, both the reports of the Coldrey committee and the Australian Institute for Judicial Administration into committals recommend that these powers must be curtailed. Not to do so flies in the face of all this and is not defensible. Accordingly, the honourable member's amendment is strongly opposed.

The Hon. I. GILFILLAN: I do not claim to understand the 'substantial difference' between the two amendments, but I will not hold up the Committee stage. The briefing in respect of this area would probably need to be quite extensive for me to get on top of it, but it seems to me that the two amendments share the intention of protecting a witness who had been subject to some form of sexual offence or who was a child under the age of 12 years. Can the Attorney indicate where there is substantial diversion between his and the Hon. Trevor Griffin's amendment?

The Hon. C.J. SUMNER: Would the honourable member repeat the question?

The Hon. I. GILFILLAN: I quite simply asked the Attorney-General to spell out the substantial difference between his amendment and that of the Hon. Trevor Griffin. It is interesting to observe that the Law Society considered the words 'special reasons' to be so restrictive as to possibly exclude entirely leave to cross-examine the alleged victim of a sexual offence or a child under the age of 12 years. I notice that the Hon. Trevor Griffin's amendment still has the phrase 'special reasons' in it, whereas the Attorney's amendment has avoided those words. Certainly, I did not pick up the Attorney's comments whether that was the reason for the two amendments. I would ask him to explain to me the substantial difference between the two amendments.

The Hon. K.T. GRIFFIN: I can do that, and the Attorney-General can correct me if I am wrong. The Attorney-General's amendment is to subsection (2) so that the court will not grant leave to call a witness for oral examination under subsection (1) unless it is satisfied that there are special reasons for doing so. There is a subsequent amendment which identifies those matters to which the court must have regard in determining whether special reasons exist. The Attorney-General is proposing to leave in the requirement for special reasons to be the determining factor as to whether or not a witness will be available in the court for cross-examination on that evidence. In effect, my amendment seeks to maintain the *status quo* in the sense that, under the present law, where a witness is the alleged victim of a sexual offence or a child under the age of 12 years, the witness is not to be called for oral examination unless the court is satisfied that there are special reasons for doing so. It is in that context that the Law Society has said that the principles concerning what constitutes special reasons are well settled. The society says:

It is extremely difficult—well near impossible—to succeed in a special reasons application: they are very rare. If this new section is interpreted in the same way, it will be extremely rare to be granted leave to cross-examine witnesses at a preliminary hearing.

That was written before the Attorney-General's amendment to proposed new subsection (2) *(a)* appeared on file, so that tends to qualify the matter a bit. The point I make is that, notwithstanding that subsequent amendment to include a subsection (2) *(a)*, special reasons will be more restrictive than the present position, and a court will have to determine specifically that there are special reasons before a defendant's request for a witness to be available for oral examination will be granted.

The Hon. I. Gilfillan: You've got special reasons in your amendment.

The Hon. K.T. GRIFFIN: I have special reasons, but only in limited circumstances. My amendment deals with an alleged victim of a sexual offence or a child under the age of 12 years, and that is the present law. Unless the defendant shows that there are special reasons for calling such an alleged victim or a child under the age of 12 years, the request for the witness to be produced for oral examination in the committal proceeding will not be granted. My amendment limits the special reasons to two categories of witnesses; the Attorney-General's amendment relates to witnesses at large.

The Australian Institute of Judicial Administration report on committal in Australia, in dealing with South Australia, makes a number of propositions, some of which have been accepted by the Government and some of which have not. It is important to note, as the Attorney-General has indicated, that it recommended that paper committal procedures should be mandatory, except in special circumstances. However, the report goes on to say that consideration should be given to the repeal of section 106 (7) of the Justices Act, which limits the right of the defence to cross-examine alleged victims of sexual assault, that is, the special reasons provision which I have in my amendment. The report also goes on to say:

> Magistrates should have power to disallow a defence request for witnesses to attend for cross-examination if satisfied that the request is frivolous, vexatious or oppressive. Magistrates should be given specific statutory power to restrain oppressive, irrelevant and repetitious cross-examination. Evidence-in-chief of witnesses required to attend for cross-examination should normally be given by tender of written statements.

So, although the focus is on paper committal procedures, it seems, from those few recommendations of the Australian Institute of Judicial Administration report, that it envisages that in South Australia magistrates should have the power to disallow a defence request for witnesses to attend for cross-examination if satisfied that the request is frivolous, vexatious or oppressive. That does not equate, in my view, to the special reasons provision which the Attorney-General seeks to apply as a criterion to the calling of all witnesses for oral examination, not just those who are alleged victims of a sexual offence or a child under the age of 12 years. Also, we must remember that the court has to grant leave to both the defendant and the prosecutor to call evidence under proposed section 106 (1) *(a)* so that there is already some control over that situation.

The Hon. C.J. SUMNER: I agree with the Hon. Mr Griffin's explanation of the difference between the two, but not with the rest of his argumentation. Essentially, the honourable member wants to retain the *status quo* in relation to committals, where it is generally at large for prosecution and defence in relation to most cases, except sexual cases where special reasons are necessary. The Government's proposition is that special reasons are necessary in all cases, subject to certain guidelines which are now being set out in my amendment, and the special protection for sex offences or children under the age of 12 years is still contained in my amendment.

I repeat what I said in initially opposing the Hon. Mr Griffin's amendment: this is central to the changes that we are trying to bring about to encourage paper committals, that is, hand-up transcript committals, and not to have what we currently have in a lot of cases, that is, an abuse of the committal proceeding where defence counsel go on fishing expeditions and call witnesses for cross-examination. Now there will need to be special reasons, and those special reasons will have to be determined in relation to certain criteria, including the interests of justice, which is specified in my amendment.

If we do not accept my amendment and accept that of the Hon. Mr Griffin, we will have done nothing to reform committals. There is little doubt that this is a major area of reform. The only question I have—and I will not go back to it now because it is too late—is whether my amendment will open the gates too wide in relation to oral committal proceedings, but we will just have to see how it works. Quite possibly I think we are going too far with the amendment, but I will not retract it now.

The Hon. K.T. GRIFFIN: My position is not the *status quo*; it is something less than that. Section 106 (6) of the principal Act provides that where a written statement or affidavit has been submitted to a justice in committal proceedings and the defendant, before completion of the case for the prosecution, requests that the witness appear for the purpose of oral examination, and the defendant is given notice of intention to seek the personal attendance of the witness or the justice is satisfied that there is good reason for excusing the defendant for failure to give notice, the witness will be called or summoned to appear for oral examination. There is no discretion in the magistrate or the justice of the peace: it is a mandatory provision.

However, subsection (1) *(a)* of the Bill provides that, in relation to the prosecutor, the court has to grant leave to call the witness for oral examination and the prosecutor may, by leave of the court, call oral evidence in support of the case for the prosecution. It is correct that the defendant may give or call evidence, but apart from that, I agree, and I think the Attorney-General would agree, as to the differences, without acknowledging the force of our respective arguments.

The Hon. I. GILFILLAN: Light has been shed on the issue. I realise that there is a difference between the two amendments, and I indicate my support for the Attorney-General's amendments. I was influenced, and still am to an extent, by the Law Society's concerns about the restriction of special reasons. I was interested to hear the Attorney say that he felt paragraphs *(a)*, *(b)*, *(c)* and *(d)* of his amendment would open the gate too wide. I am more relaxed that that may be the case. Perhaps the gate can be closed a little later if it is shown that there is still abuse or overuse in relation to calling a witness for oral examination. At this stage I think it would be better to err that way rather than to be too restrictive. I support the Attorney-General's amendments.

The Hon. Mr Griffin's amendment negatived; the Hon. Mr Sumner's amendments carried.

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

Page 15, after line 8—Insert the following subclause:

(2a) In determining whether special reasons exist for granting leave to call a witness for oral examination, the court must have regard to—

(a) the need to ensure that the case for the prosecution is adequately disclosed;

(b) the need to ensure that the issues for trial are adequately defined;

(c) the court's need to ensure (subject to this Act) that the evidence is sufficient to put the defendant on trial; and

(d) the interests of justice,

but if the witness is the victim of an alleged sexual offence or a child under the age of 12 years, the court must not grant leave unless satisfied that the interests of justice cannot be adequately served except by doing so.

I have already explained this amendment.

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

Amendment carried.

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

Page 15, lines 16 and 17—Leave out 'if it is, in the opinion of the court, sufficient to support a conviction' and insert 'if, in the opinion of the court, a jury would be likely to convict on the basis of that evidence'.

I think it is important to explore the basis upon which a person will be committed for trial. The Bill provides that evidence will be regarded as sufficient to put the defendant on trial for an offence if it is, in the opinion of the court, sufficient to support a conviction. As I recollect, the present provision is that there is a case to answer. The Law Society proposed an alternative, which to some extent is reflected in my amendment. I am proposing that the evidence should be, in the opinion of the court, sufficient for a jury to be likely to convict on the basis of that evidence. That does raise the ante quite considerably, I suggest, but it is important that the issue be explored in the course of this debate.

If we are looking to try to streamline proceedings, quite obviously, if the magistrate is of the view that the Crown has not satisfied the burden of proof and established, on the evidence that was presented to the committal, that a jury would be likely to convict, the defendant would not be committed for trial. I think the weight is very much heavier on the prosecution in that respect than it is under either the existing provisions or in the Bill.

The Hon. C.J. SUMNER: The Government will not oppose the amendment. It is arguable whether or not the formula proposed by the amendment strengthens the test for committal. I am not sure whether the honourable member is trying to strengthen it or weaken it.

The Hon. K.T. Griffin: Strengthen it.

The Hon. C.J. SUMNER: I think it is arguable whether or not it does that. The evidence from New South Wales, where this formula is used, is that it probably does not, but that, I guess, is a matter of opinion. Only time will tell. At the moment the Government will not oppose the amendment.

Amendment carried.

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

Page 15, line 38—Leave out 'for the information' and substitute 'to the information'.

This is a typographical correction.

Amendment carried.

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

Page 15, line 40—Leave out 'charge' and substitute 'charges'.

Amendment carried.

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

Page 15, line 44—After 'the court will' insert ', if the defendant has not previously elected for trial by a superior court on that charge,'.

The right of the accused to re-elect should be confined to cases in which the accused has not already elected. This amendment seeks to amend the Bill so to provide. In general, the accused should have only one opportunity to elect in relation to each new charge.

The Hon. I. GILFILLAN: Does this election cover the election to choose trial by jury?

The Hon. C.J. SUMNER: No, it actually means election to the superior court. Once they get to the superior court, the accused has the option to determine whether to be tried by judge alone or by judge and jury.

The Hon. K.T. GRIFFIN: I have some reservations about this because it seems to be limiting the opportunity to elect, and that is inconsistent with my previous position. Therefore, I do not support the amendment.

Amendment carried.

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

Page 15, lines 45 and 46—Leave out 'to elect for trial by a superior court and, if the defendant does so elect,' and substitute 'to do so and, if the defendant does so elect (or has previously so elected),'.

This amendment is consequential.

Amendment carried.

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

Page 16, after line 7—Insert subsections as follows:

(4) Where the court commits a defendant for trial the court must inform the defendant of his or her obligation to give notice of evidence of alibi that the defendant may desire to adduce at the trial and provide the defendant with a written statement explaining that obligation.

(5) If in any legal proceedings the question arises whether a defendant has been provided with the information and statement required by subsection (4), it will be presumed, in the absence of proof to the contrary, that the defendant has been provided with that information and statement.

This amendment seeks to ensure that the accused is informed of his or her obligations in relation to alibi evidence. The amendments of the Government are almost precisely the same as the proposed new subsections (5) and (6) which the honourable member will seek to move. We accept his proposed subsection (4). Therefore, I withdraw my amendment, and we will support the Hon. Mr Griffin's amendment.

Amendment withdrawn.

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

Page 16, after line 7—Insert subsections as follows:

(4) The court will not proceed to deal with a charge of a minor indictable offence in the same way as a charge of a summary offence unless it has satisfied itself that the defendant fully understands that he or she is entitled to elect for trial by jury.

(5) Where the court commits a defendant for trial the court must inform the defendant of his or her obligation to give notice of evidence of alibi that the defendant may desire to adduce at the trial and provide the defendant with a written statement explaining that obligation.

(6) If in any legal proceedings the question arises whether a defendant has been provided with the information and statement required by subsection (5), it will be presumed, in the absence of proof to the contrary, that the defendant has been provided with that information and statement.

The Hon. I. GILFILLAN: Because the amendment has this issue of 'he or she is entitled to elect for trial by jury', I am not precisely clear what changes this bracket of legislation has made. I know there is a restriction in the availability of that choice in certain offences in this legislation. Has the Attorney-General received, either on request or gratuitously, an opinion from the Chief Justice on these alternations of the availability to choose trial by jury? Does the Chief Justice or any other Supreme Court judge have an opinion on that?

The Hon. C.J. SUMNER: There are two different issues here. We are now talking whether there should be a committal for trial to the superior court. The question whether, once in the superior court, you have an option to elect to be tried by judge alone or by judge and jury is another issue. It is not dealt with in this Bill. The section to which the honourable member refers provides an entitlement to trial by jury so, when you are in the superior courts, you are entitled to trial by jury. There is absolutely no question of duplication about that at all. That is currently the law and will be the law after the passage of this Bill.

The Hon. I. Gilfillan: What is defined as a superior court?

The Hon. C.J. SUMNER: Either the District Court or the Supreme Court. However, if one is an accused person in the superior courts where one is entitled to trial by judge and jury, one can elect to be tried by judge alone. That was introduced into our law in 1983 or 1984, when we amended the Juries Act substantially, as a result of a Bill introduced by the Government. So, that is the position.

The Hon. I. Gilfillan: Do you have an opinion from the Chief Justice on the alteration of availability to choose trial by jury in this legislation?

The Hon. C.J. SUMNER: Yes; the Chief Justice is opposed to some of the provisions in this Bill in so far as they restrict the rights to be tried in the District Court in relation to certain categories of offences. They relate to some of the matters that were dealt with in the provision in the Justices Act. However, as the honourable member would recall, in the debate there we decided that some of the more minor offences should be dealt with summarily and the option, for instance, to have simple larceny offences and common assault tried in the District Court should be removed. That is what we have already done in the passage of this legislation, but it is true to say, as the honourable member has probably found out from one of his exercise partners, it is true that the Chief Justice has expressed a view probably similar to that expressed by the Law Society in its submission.

The Hon. I. GILFILLAN: Is the Chief Justice's opinion on the record elsewhere in other debate?

The Hon. C.J. SUMNER: I do not know. I think he has said something about it publicly from time to time, but it is certainly in correspondence and is basically the same position as taken by the Law Society, but the Government does not agree with it. I should say that neither do the judges of the District Court agree with it and it is an issue about which there is a legitimate difference of opinion.

Amendment carried.

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

Page 17, after line 3—Insert new subclause as follows:

(2a) Where the District Court is of the opinion that a defendant committed for trial or sentence in the District Court should be tried or sentenced in the Supreme Court, the court may order that the case be referred to the Supreme Court.

This amendment allows the District Court to refer a matter up to the Supreme Court. Presently, the Supreme Court can remove a case from the District Court to the Supreme Court, but it is appropriate to give that power also to the District Court to refer on to the Supreme Court.

The Hon. C.J. SUMNER: We do not have any difficulty with what is proposed by the honourable member, but we believe it is unnecessary, because the amendment to the District Court Bill (clause 24, 'Enactment of new subsection 1 *(a)*') in fact gives the District Court this power.

The Hon. K.T. GRIFFIN: It just seemed to me that we have a provision about change of forum which does refer to the Supreme Court's power to remove from the District Court, and I must confess I had overlooked that other provision, but it would be useful for people who have to look at this, outside those who have actually been considering the amendments, if the code was specifically in one section rather than in various pieces of legislation which have to be researched a bit here and a bit there. I would still move this amendment. In light of what the Attorney-General says, I accept that perhaps it is not necessary but, for the sake of completeness, it ought to be here.

Amendment carried.

The Hon. I. GILFILLAN: I did not hear an argument against it; I agree it was included in another Bill.

The Hon. C.J. SUMNER: That was the argument; it is unnecessary in this Bill, but if you think it is necessary—

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

Page 17, line 4—Insert 'or referred' after 'removed'.

Amendment carried.

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

Page 17, after line 14—Insert new section:

Change of plea following committal for sentence

110a. (1) A person who has been committed to a superior court for sentence may, on appearing before that court, withdraw the admission of guilt and plead not guilty to the charge.

(2) In such a case, the superior court may, if satisfied that the interests of justice require it to do so, remit the case to the Magistrates Court for preliminary examination of the charge.

(3) The change of plea must not be made the subject of any comment to the jury at a subsequent trial of the charge.

A defendant who has pleaded guilty before the taking of evidence at a preliminary hearing may, for good reason, want to change his or her plea when brought before a superior court. The Bill does not currently allow for this. It should be obvious that this course of action is warranted, and the amendment seeks to ensure that it can be done. The amendment further provides that, where the accused withdraws a plea of guilty and pleads not guilty, the court may, if it is in the interests of justice to do so, remit the plea of not guilty back to the Magistrate Court for a preliminary hearing in the normal course of events. The provision in relation to comment about this is in accordance with currently accepted rules.

The Hon. K.T. GRIFFIN: I certainly support the amendment, because it does give the sort of flexibility I have been seeking to achieve right through the course of this debate.

Amendment carried.

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

Page 17, after line 15—Insert new section as follows:

Remand of defendant

110b. Where the court commits a defendant to a superior court for trial or sentence, the court will remand the defendant in custody or release the defendant on bail to await trial or sentence.

This is a procedural matter.

Amendment carried.

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

Page 17, lines 28 to 34—Leave out proposed new section 113.

Since the original draft was submitted, the view has been taken that the enactment of a new section 113 is not needed because the ground is covered by section 19 of the Criminal Law (Sentencing) Act in a superior format. Under section 3 of that Act, a cumulative sentence may be imposed and this will continue under the Bill. It is appropriate that matters of sentence should, so far as is possible, be left in the sentencing Act.

Amendment carried; clause as amended passed.

Clause 46 passed.

Clause 47—'Substitution of ss. 181 to 187.'

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

Page 18, lines 14 and 15—Leave out subsection (2) and substitute—

(2) The court may—

(a) amend an order, summons, warrant or other process of the court in order to correct a defect of substance or form;

or

(b) if the person against whom an order, summons, warrant or other process has been made or issued has been, or may be, substantially prejudiced by the defect—revoke the order, summons, warrant or other process.

The purpose of this redrafting amendment to section 182 (2) is to provide the protection of the same substantial prejudice provision as occurs in section 181 (2).

Amendment carried; clause as amended passed.

Clause 48 passed.

Clause 49—'Substitution of ss. 187ab to 203.'

The Hon. C.J. SUMNER: I understand that the Hon. Mr Griffin will move amendments to this clause in slightly different form from the amendments that I have on file, so I will not move mine. However, I will explain them as follows. A number of concerns were raised about the provision of the Bill that deals with costs. These amendments are the result of reconsideration of the Bill's provisions in relation to costs. The first two amendments are of a drafting nature only.

The third amendment seeks to insert in the Bill quite detailed provisions in relation to costs. This substantive amendment does three major things: first, it details what the court may do rather than leaving it to rules or a decision so that more and better guidance can be given to courts and practitioners about what is contemplated; secondly, it makes clear that the provision in relation to the awarding of costs is even-handed and applies in relation to unreasonable behaviour by both the prosecution and the defence; and, thirdly, the Bill will be amended to make it clear that the costs awarded to the Crown will be paid into the Consolidated Account. I am happy to accept the Hon. Mr Griffin's proposed amendments.

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

Page 19—

Line 5—Leave out 'in relation' and substitute 'against a party'.

Lines 6 and 7—Leave out 'against whom the costs are awarded'.

After line 7—Insert subsection as follows:

(3) If proceedings are delayed through the neglect or incompetence of a legal practitioner, the court may—

(a) disallow the whole or part of the costs as between the legal practitioner and his or her client (and, where appropriate, order the legal practitioner to repay costs already paid);

(b) order the legal practitioner to indemnify his or her client or any other party to the proceedings for costs resulting from the delay;

(c) order the legal practitioner to pay to the Principal Registrar for the credit of the Consolidated Account an amount fixed by the court as compensation for time wasted.

(4) If proceedings are delayed through the neglect or incompetence of a prosecutor who is not a legal practitioner, the court may order the Crown, or, where the prosecution is brought on behalf of a body that does not represent the Crown, that body, to indemnify any party to the proceedings for costs resulting from the delay.

(5) If a person who is summoned to appear as a witness in any proceedings fails, without reasonable excuse, to appear in obedience to the summons, the court may order that person—

(a) to indemnify the parties to the proceedings for costs resulting from failure to obey the summons;

(b) to pay to the Principal Registrar for the credit of the Consolidated Account an amount fixed by the court as compensation for time wasted in consequence of the witness's failure to obey the summons.

(6) Before making an order under subsection (3), (4) or (5), the court must inform the person against whom the order is proposed of the nature of the proposed order and allow that person a reasonable opportunity to give or call evidence and make representations on the matter.

(7) A person against whom an order for costs is made under subsection (3), (4) or (5) has the same rights of appeal as a party to a civil action.

My amendments pick up a couple of provisions that we accepted during the course of the debate on the Magistrates Court Bill and on the District Court Bill that, where costs are ordered against someone such as a legal practitioner, information must be given by the court to that person of the order that is proposed to be made by the court, a reasonable opportunity has to be allowed for the person to give or call evidence and to make representations, and there has to be a right of appeal. I think my amendments make the position consistent. If upon review the Attorney-General has some difficulty with them, I am open to persuasion for some change to be made as part of that review, but I think it is consistent with what has been accepted in relation to the Magistrates Court Bill and the District Court Bill.

Amendments carried; clause as amended passed.

Title passed.

Bill recommitted.

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

STATUTES REPEAL AND AMENDMENT (COURTS) BILL

In Committee.

Clauses 1 to 7 passed.

Clause 8—'Non-application of certain Imperial Acts.'

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

Page 2, line 5—Leave out 'Hume' and insert 'Anne'.

This amendment corrects a typographical error.

Amendment carried; clause as amended passed.

New clause 8a—'Amendment of Supreme Court Act 1935.'

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

The Supreme Court Act 1935 is amended—

(aa) by inserting the following subsection in section 7:

(4) A Master is, while holding that office, also a District Court judge;.

This new subclause provides that a Master is, while holding that office, also a District Court judge. This introduces more flexibility into the system and at the same time confirms that Masters of the Supreme Court have the status of District Court judges. This has been inserted at the request of the Chief Justice.

The Hon. K.T. Griffin: What is the position currently?

The Hon. C.J. SUMNER: It is currently the position that they can hold both offices, but not all of them do.

The Hon. K.T. GRIFFIN: I support the amendment. I must say that I had thought that Masters were at the same time District Court judges but, upon reflection, following the Attorney's observation, I think it was that they were of equal status to District Court judges, with equal salary, leave and other entitlements and, as a result, were equivalent to District Court judges—

The Hon. C.J. Sumner: And could hold two commissions.

The Hon. K.T. GRIFFIN: And could hold two commissions. However, the difficulty was that if they held two commissions there was no provision that they would have to resign the commission of a District Court judge if they also resigned as Master. As I understand it, this overcomes the problems of dual commissions which are not contingent upon each other; it overcomes that technical difficulty that, if they were holding a commission as a District Court judge as well as a Master, resigning from one meant they resigned from the other. That is what I understood the position to be. If that is the case, I am happy to support the amendment.

The Hon. C.J. SUMNER: That is what the Government intends.

Amendment carried.

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

(a) by striking out section 35;.

Section 35 of the Supreme Court Act provides for the arrest of debtors about to leave the State. Provision for this has now been made in the Enforcement of Judgments Bill, and section 35 can and should be repealed.

The Hon. K.T. GRIFFIN: I support that.

Amendment carried.

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

(b) by inserting at the end of section 40 the following subsection:

(2) If—

(a) an action for the recovery of damages or any other monetary sum is brought in the court;

(b) the action might have been brought in the District Court;

and

(c) the plaintiff recovers less than an amount fixed by the rules for the purposes of this paragraph,

no order for costs will be made in favour of the plaintiff unless the court is of the opinion that it is just, in the circumstances of the case, that the plaintiff should recover the whole or part of the costs of action;.

This clause amends the Supreme Court Act to provide that, where a plaintiff who elects to proceed in the Supreme Court recovers less than the amount fixed by the rules, no order for costs will be made in favour of the plaintiff unless the court is of the opinion that it is just in the circumstances of the case that the plaintiff should recover the whole or part of the costs of the action. This amendment was foreshadowed in the second reading explanation of the District Court Bill.

Section 42 of the Local and District Criminal Courts Act presently provides, similarly, that costs may be lost where the plaintiff has brought an action in the Supreme Court and does not in an action founded on contract or quasi contract recover a sum that exceeds the amount of the Local Court jurisdictional limit or, in an action founded on tort, an amount that exceeds one-half of the Local Court jurisdictional limit. Clause 42 of the District Court Bill contains provisions similar to clause 8a in relation to proceedings that have been commenced in the Magistrates Court.

The Hon. K.T. GRIFFIN: I will not oppose this amendment. I generally lost the debate on the principle in the other Bills that we have considered. In the District Court Bill I sought to move a fixed amount so it was not left to the rules of court, but I was not successful, I therefore have no option but to let this one go along without opposing it. Has there been any discussion as to what the amount might be?

The Hon. C.J. SUMNER: No, Mr Acting Chairman.

Amendment carried.

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

(c) by inserting after section 72 (1) V the following paragraph:

VI. For conferring on the Registrar or other member of the non-judicial staff of the court the power to tax costs;.

This amendment to section 72 (1) of the Supreme Court Act allows the court to make rules conferring on the Registrar or other member of the non-judicial staff the power to tax costs. There is some limited scope for relieving the Master of some of the burden of taxing costs, thereby making additional time available for additional duties. This amendment is necessary to allow for this to happen.

Amendment carried.

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

(d) by striking out from section 82 (2) 'The Registrar shall be appointed and shall hold office subject to, and in accordance with, the Public Service Act 1967-1978, but no' and substitute 'No';

(e) by inserting the following sections after section 110:

Administrative and ancillary staff

110a. (1) The court's administrative and ancillary staff consists of—

(a) the Registrar;

(b) persons appointed to the non-judicial staff of the court under this Act;

and

(c) any other persons appointed to the non-judicial staff of the court.

(2) The court's administrative and ancillary staff will be employed under the Government Management and Employment Act 1985.

Responsibilities of non-judicial staff

110b. A member of the court's administrative or ancillary staff is responsible to the Chief Justice (through any properly constituted administrative superior) for the proper and efficient discharge of his or her duties.

The District Court Bill and the Magistrates Court Bill both set out who are the courts' administrative and ancillary staff, and the responsibilities of non-judicial staff. The only administrative staff mentioned in the Supreme Court Act is the Registrar. This amendment makes provision for the Supreme Court administrative and ancillary staff and their responsibilities similar to that in the other two Bills constituting the courts.

Amendment carried.

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

(f) by inserting at the end of section 114 (2) *(b)* 'or an earlier date specified by the taxing officer in the certificate';.

Section 114 (2) *(b)* of the Supreme Court Act provides that interest on taxed costs runs from the date of the certificate of the taxing officer. This amendment will allow the taxing officer to direct in appropriate cases that taxed costs bear interest from an earlier date. This is to provide a remedy where a party is unreasonably insistent on taxation or has used the procedure to delay.

The Hon. K.T. GRIFFIN: I do not have any difficulty with that. Only one question comes to mind, and I have not had time to research it. Can the Attorney indicate what provisions there are for review of the Registrar's decision in relation to taxation if the Registrar were to be given authority to tax?

The Hon. C.J. SUMNER: There does not seem to be a provision for an appeal, and I think that is probably something that we should sort out, or at least clarify. I undertake to do that and to deal with the matter in another place if we do not have time to do it in this Chamber.

The Hon. K.T. GRIFFIN: I think it is important to deal with the question of at least review of the Registrar's decision. I think there are important issues in the question of costs, and to allow or disallow costs quite substantial amounts could be involved. Also, the question of interest just compounds that issue. So, I would appreciate the Attorney-General's looking at it with a view to trying to incorporate some provision which allows for review of the Registrar's decision. If we do not deal with a couple of the other Bills finally tonight, it may be possible to look at it before we resume tomorrow and do them all at once, rather than leaving them very much to be resolved by the House of Assembly. If the Attorney-General undertakes to look at it and try to address the issue one way or another, that would be acceptable.

Amendment carried.

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

(g) by inserting after section 130 the following section:

Accessibility of evidence, etc.

131. (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 transcript of evidence taken by the court in any proceedings;

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

(c) any judgment or order given or made by the court.

(2) Evidentiary material will not be made available for inspection under this section if—

(a) the evidence was not taken or received in open court;

(b) the court has suppressed it from publication; or

(c) the court has determined that it is not to be available for inspection under this section.

(3) On payment of the appropriate fee fixed under the regulations, the court must provide a copy of any material that is available for inspection under this section.

This is similar to the provision that has now been included in the District Court Bill and the Magistrates Court Bill, providing for public access to court documents.

The Hon. K.T. GRIFFIN: If I could follow on from what the Attorney-General is indicating, it does do so in an amended form, which addresses the issue I raised about copies being made available to somebody who applies for those copies. That was particularly relevant to the transcript and also details of any judgment. I would expect (although I have not looked at the subsequent amendments which are now on file in relation to District Courts and Magistrates Courts Bills) that they also would be consistent with this in due course. It is an issue which my colleague, the Hon. John Burdett, has raised in the debate on the Enforcement of Judgments Bill. It is an issue that I have addressed and, now that we have reached an appropriate form for inspection and availability of copies of any material that might be available for inspection, I am happy to support it.

The Hon. C.J. SUMNER: That is now a common provision in the Supreme Court Act, the District Court Act and the Magistrates Court Act.

The Hon. I. GILFILLAN: Did we deal with them in this session?

The Hon. C.J. SUMNER: This is one of the issues that I intend to reconsider. My amendment is a draft in the reconsidered form, which we are now inserting by means of this amendment, into the Supreme Court Act. Similar amendments will be moved when we recommence the District Court and the Magistrates Court legislation. An amendment in the same form will be moved for those two Acts, so the provision will be consistent throughout.

Amendment carried.

New clause 8b—'Amendment of Children's Protection and Young Offenders Act 1979.'

The Hon. C.J. SUMNER: I move to insert the following new clause:

8b. The Children's Protection and Young Offenders Act 1979 is amended—

(a) by striking out from section 4 the definitions of 'group I offence', 'group II offence' and 'group III offence';

(b) by striking out from section 4 the definition of 'simple offence':

(ba) by striking out from section 9 (5) 'the Children's Court sits as a court of summary jurisdiction' and substituting 'the Children's Court has all the powers of the Magistrates Court';;

(c) by striking out from section 51 (5a) 'simple offence' and substituting 'summary offence';

(d) by striking out from section 51 (12) 'a group I or group II offence' wherever it occurs and substituting, in each case, 'a major indictable offence';

(e) by striking out from section 54 (1) 'a group I or group II offence' and substituting 'a major indictable offence';

(f) by striking out from section 54 (3) 'any group III offence' and substituting 'a minor indictable offence';.

The amendments in clause 8b to the Children's Protection and Young Offenders Act are consequential on the amendments to the Justices Act and the new classification of offences. Offences are no longer classified as group 1, group 2 and group 3 offences, and simple offences are now summary offences.

Classification of offences in groups is relevant under section 51 (12) of the Children's Protection and Young Offenders Act when a conviction must be recorded—section 54 (1) offences that must be dealt with by a judge and section 77, where appeals lie. Under the new classification of offences, minor indictable offences correspond closely to group 3 offences, and group 1 and 2 to major indictable offences. These amendments seek to amend the Children's Protection and Young Offenders Act accordingly, as well as replacing a reference to a simple offence with a reference to a summary offence. Furthermore, the amendments to insert the new subclause *(ba)* are moved for the following purposes. Section 9 (5) of that Act provides that the provisions of the Justices Act apply, subject to the Act and necessary modifications to proceedings upon a complaint against a child. Some provisions have been taken out of the Justices Act (for example, power to adjourn and to summon witnesses) and put in the Magistrates Court Bill. This amendment will ensure that the Children's Court continues to have all the powers it previously had.

The Hon. K.T. GRIFFIN: I have no difficulty; I support the amendments.

New clause inserted.

New clause 8c—'Amendment of Criminal Injuries Compensation Act 1978.'

The Hon. C.J. SUMNER: I move to insert the following new clause:

8c. The Criminal Injuries Compensation Act 1978 is amended by striking out from section 4 the definition of 'the court' and substituting the following definition:

'court' means the District Court:.

Section 4 of the Criminal Injuries Compensation Act refers to the District Criminal Court. This amendment changes the reference to the District Court.

New clause inserted.

New clause 8d—'Amendment of the Fences Act 1975.'

The Hon. C.J. SUMNER: I move to insert the following new clause:

8d. The Fences Act 1975 is amended—

(a) by striking out from section 4 (1) the definition of 'court' and substituting:

'court' means the Magistrates Court;

and

(b) by striking out section 13.

These amendments are consequential upon the enactment of clause 3 (2) of the Magistrates Court Bill which makes fencing disputes minor civil actions.

New clause inserted.

New clause 8e—'Amendment of Criminal Law (Sentencing) Act 1988.'

The Hon. C.J. SUMNER: I move to insert the following new clause:

8e. The Criminal Law (Sentencing) Act 1988 is amended—

(a) by striking out from section 19 (4) 'but is, by virtue of subsection (3) unable to impose a sentence of imprisonment for an appropriate term or a fine of an appropriate amount' and substituting 'and there are, in the court's opinion, special reasons for imposing a penalty in excess of the limits imposed by subsection (3),';

and

(b) by striking out subsection (1) of section 55.

Section 19 (3) of the Criminal Law (Sentencing) Act provides that a court of summary jurisdiction cannot impose a sentence of imprisonment or fine that exceeds a division 5 penalty for a minor indictable offence, that is, a penalty greater than two years or $5 000. Section 19 (4) provides that, where the court is unable by virtue of subsection (3) to impose an appropriate sentence, the court must remand a defendant for sentence before a District Criminal Court. This amendment provides that the court will only remand a defendant for sentence in the District Court where in the court's opinion there are special reasons for imposing a penalty in excess of the division 5 penalty.

The idea behind this amendment is to discourage defendants from electing to be tried in the District Court for reasons other than the real merits of a jury trial. If cases

could be routinely remanded up for sentence, defendants may well take the view that, if they are going to be remanded for sentence in the District Court anyway, they may as well have the benefit of a jury trial there.

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

In paragraph *(a)* to leave out 'are in the court's opinion, special reasons' and insert 'is, in the court's opinion, sufficient reason'.

I do not agree that a defendant can only be transferred to the District Court where the Magistrates Court is of the opinion that there are special reasons for transferring and for the imposition of a longer term of imprisonment or a higher fine. One of the difficulties I see with this new clause is that, if there is a minor indictable offence, an accused may elect to be dealt with summarily. If a five year maximum penalty can be imposed, the accused virtually has control of the situation in the sense that the accused can elect to be tried summarily knowing that he or she will not be open to a penalty higher than two years imprisonment even if the case is a serious one. There is nothing that the prosecutor or the court can do about it because the accused has elected to be tried in a Magistrates Court and to be dealt with summarily.

'Special reasons' has already been discussed in the context of committal proceedings and the calling of witnesses, so that an attitude has already been developed towards 'special reasons' and a meaning given to that by the courts. It seems to me that there would be a difficulty, for example, for the prosecutor to argue in many cases that there might be special reasons even though the court and the prosecutor believe that the matter ought to be dealt with by the District Court where a tougher penalty than two years might be imposed.

I was merely seeking to provide, instead of special reasons, a sufficient reason in the view of the Magistrates Court for referring to the matter to the District Court so that there is an ability to reduce the amount of control that an accused person has over his or her maximum sentence. That is what I find objectionable about the concept of 'special reasons'. That is not a personal objection to the Attorney-General, but it is an objection to the principle that, to a very large extent, the accused should have the control of the penalty because the accused can elect to be tried summarily and avoid the potential threat of perhaps a four or five year gaol sentence and get nothing more than two years.

The Hon. I. Gilfillan: Hasn't the magistrate got a discretion?

The Hon. K.T. GRIFFIN: No. Under this amendment the magistrate would have to find that there are special reasons for referring the case to the District Court. As we have already debated, 'special reasons' has some significance. It is difficult to achieve a decision that there are special reasons, certainly in the evidentiary sense; therefore, what we have is a situation where an accused person faced with the potential of a five-year sentence will elect immediately to be tried summarily knowing that there is no risk of getting any more than two years, and the court cannot do a thing about it unless it finds there are special reasons. I move this amendment to the Attorney-General's amendment to overcome that difficulty.

The Hon. C.J. SUMNER: The amendment is acceptable.

Amendment carried; new clause as amended inserted.

New clause 8f—'Amendment of Residential Tenancies Act 1978.'

The Hon. C.J. SUMNER: I move to insert the following new clause:

8f. The Residential Tenancies Act 1978 is amended by striking out from section 21 (2) 'two thousand five hundred dollars' and substituting '$25 000'.

Section 21 (2) of the Residential Tenancies Act provides that the Residential Tenancies Tribunal has jurisdiction to hear and determine any monetary claim where the amount does not exceed $2 500. That amount has not been altered since it was enacted in 1978. At that time, the limit to the small claims jurisdiction was only $500. My amendment brings the two jurisdictions back into parity. The Local Court magistrates have noticed a leakage of cases from the Residential Tenancies Tribunal to the Local Court. This is undesirable. The tribunal is a specialist tribunal equipped to deal with tenancy disputes.

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

To strike out '$25 000' and insert '$5 000'.

I want to keep it at a much lower amount. I appreciate that it may not have been amended for some time and that, compared with the small claims jurisdiction, it ought to be increased, but I think that $5 000 is enough. My recollection of the Residential Tenancies Tribunal appeal provisions is that they are limited and, where an amount of $25 000 is involved, it seems to me that the sort of appeal which ought to be available ought to be at least that which is available in the courts. So the amount of $5 000 is, in my view, an adequate increase.

There are a lot of complaints about the Residential Tenancies Tribunal. I think all members get a steady stream of them, and they are probably more in relation to residential tenancies than the small claims jurisdiction. Therefore, we must be cautious about giving it the power to award fairly large amounts of money against parties where appeals are limited.

The Hon. I. GILFILLAN: I am not persuaded by the Hon. Trevor Griffin's argument, and I support the position of the Government of $25 000.

The Hon. K.T. GRIFFIN: I am disappointed, because the larger amount will only aggravate the concerns that many people have about the Residential Tenancies Tribunal. Whilst I may lose it on the voice, and I am inclined to divide, I will indicate that, because of the way in which we have been dealing with these sorts of Bills, I will record my concern about it and persist with the amendment.

Amendment negatived; new clause inserted.

Clause 9—'Amendment of Criminal Law Consolidation Act 1935.'

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

Page 2, line 8—Leave out paragraph *(a)*.

Paragraph *(a)* deals with section 39 of the Criminal Law Consolidation Act which deals with common assault. I have already spoken about the concern that I and the Liberal Party have about the reduction in the penalty for common assault which, under the principal Act, carries a maximum imprisonment of three years. I express the concern that there is a reduction proposed in paragraph *(a)* to two years imprisonment, which is designed to accommodate the structure which is being implemented by the legislation where summary offences become those which have a maximum penalty of two years imprisonment.

Notwithstanding the fact that there are other assaults which attract a penalty of two years imprisonment (some aggravated assaults attract much higher penalties), I resist the proposition that, in relation to common assault, which is a serious offence, the penalty should be reduced to three years imprisonment.

The Hon. C.J. SUMNER: The Government strongly opposes this amendment. The Hon. Mr Griffin's amendment would have the effect of preserving the status of common assault as a minor indictable offence with a maximum of three years imprisonment. For the reasons given in my response to the second reading, I do not accept the view that common assault should remain a minor indictable offence. In brief, those reasons are that making common

assault a summary offence will give the prosecution an option for dealing with an assault in a summary fashion, which it does not now have. There is an ample range of more serious offences available for use where the assault actually causes harm, including assault causing bodily harm.

The offence of common assault is limited to situations in which there is no infliction of actual bodily harm and where there is no serious threat at all. Comparability to the offence of assaulting police reveals a serious minor indictable offence in the Criminal Law Consolidation Act for serious offences, and a summary offence in the Summary Offences Act for less serious offences. I point out that in Victoria the offence of common assault is summary, attracting a maximum of two years imprisonment; in Queensland it is summary and attracts one year; in New South Wales it attracts a maximum of two years and is triable by jury only where the prosecution elects to do so; and in the Western Australian code common assault is a summary offence with a maximum of 18 months' imprisonment.

I suggest that the reforms that the Government is suggesting are in the mainstream of criminal law reform in this country. If it remains minor indictable, the court system faces the prospect of any number of trivial assaults being elected up for trial by jury. This is not really justifiable, given that a common assault is just that: there may in fact be no actual physical damage or, indeed, physical contact between the parties, because an assault can be a threat. It is fair to note that the other offence of assault occasioning actual bodily harm can be charged as a minor indictable offence where some physical harm is caused to the victim or, of course, there is the more serious offence of assault occasioning grievous bodily harm which, again, is a step up in the assault category. There is a series of categories of assault. In the Government's view, the least serious should be dealt with as a summary offence, which seems to be the situation in virtually every other State of Australia.

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

Amendment negatived.

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

Page 2, lines 9 and 10—Leave out paragraph *(b)* and insert:

(b) by striking out from the penalty provision at the foot of section 85 (1) and substituting the following penalty provision:

Penalty—

(a) for a completed offence—

(i) where the damage exceeds $25 000—imprisonment for life;

(ii) where the damage exceeds $2 000 but does not exceeds $25 000—imprisonment for five years;

(iii) where the damage does not exceed $2 000—imprisonment for two years;

(b) for an attempt—

(i) where the damage would, if the offence had been completed, have exceeded $25 000—imprisonment for 12 years;

(ii) where the damage would, if the offence had been completed, have exceeded $2 000 but would not have exceeded $25 000—imprisonment for three years;

(iii) where the damage would not, if the offence had been completed, have exceeded $2 000—imprisonment for three years.;

(ba) by striking out the penalty provision at the foot of subsection (3) and substituting the following penalty provision:

Penalty—

(a) for a completed offence—

(i) where the damage exceeds $25 000—imprisonment for 10 years;

(ii) where the damage exceeds $2 000 but does not exceed $25 000—imprisonment for three years;

(iii) where the damage does not exceed $2 000—imprisonment for two years;

(b) for an attempt—

(i) where the damage would, if the offence had been completed, have exceeded $25 000—imprisonment for six years;

(ii) where the damage would, if the offence had been completed, have exceeded $2 000 but would not have exceeded $25 000—imprisonment for two years;

(iii) where the damage would not, if the offence had been completed, have exceeded $2 000—imprisonment for one year.;.

Section 85 of the principal Act deals with damaging property. Basically, I have no disagreement with the general principle in the Government's amendments that the penalties should be increased for the damage that is referred to in that section. To give an example, where a person intending to damage property and without lawful authority to do so damages or attempts to damage, for a completed offence where the damage exceeds $2 000 the penalty is imprisonment for life. That $2 000 is to be increased to $25 000. Where the damage does not exceed $2 000 the penalty is imprisonment for five years. Then there is a gradation of offences.

I seek to provide three tiers: for a completed offence where the damage exceeds $25 000, imprisonment for life; where the damage exceeds $2 000 but does not exceed $25 000, imprisonment for five years (which makes it a minor indictable offence); where the damage does not exceed $2 000, imprisonment for two years (which makes that a summary offence). Then there are other gradations for an attempt, also under subsection (3), which relate to other forms of damage. Again, what I have sought to do in relation to that is provide a gradation so that it goes from summary to minor indictable to indictable with appropriate levels of maximum damage identified rather than the two-stage penalty system, which the Attorney-General was proposing.

The Hon. I. GILFILLAN: What is the difference between the penalty provision *(a)* (i) relating to subsection (1) and the penalty provision *(a)* (i) relating to subsection (3)?

The Hon. K.T. GRIFFIN: There is a distinction between the two offences. Subsection (1) provides that where a person intending to damage the property of another, or being recklessly indifferent as to whether the property of another is damaged and, without lawful authority to do so and knowing that no such lawful authority exists, damages or attempts to damage property of another by fire or explosives, the person shall be guilty of an offence; and then there is the penalty. Subsection (3) provides that where a person intending to damage property of another or being recklessly indifferent as to whether the property of another is damaged and, without lawful authority to do so and knowing that no such lawful authority exists, damages or attempts to damage property of another, the person shall be guilty of an offence. The first subsection deals with damage by fire or explosives; the second deals with damage in some other way. There is a seriousness about fire or explosives that is recognised by the relevant penalties.

The Hon. C.J. SUMNER: The Government believes that this is a significant amendment, which does improve the Bill, and we are happy to accept it.

Amendment carried.

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

Page 2, after line 10—Insert paragraph as follows:
(ba) by striking out from section 86 (1) 'three years' and substituting 'two years';.

This amendment is consequential.

Amendment carried.

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

Page 2, line 11—Leave out paragraph *(c)* and substitute:
(c) by striking out section 87;.

This amendment removes a provision which classifies offences against this part of the Criminal Law Consolidation Act which has become anomalous and which has been made redundant by the Bill.

Amendment carried; clause as amended passed.

Clause 10—'Amendment of Controlled Substances Act 1984.'

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

Page 2—
Line 20—Leave out 'one-half' and insert 'one-fifth'.
Line 24—Leave out 'one-half' and insert 'one-fifth of'.
Line 31—Leave out 'one-half' and insert 'one-fifth'.
Line 35—Leave out 'one-half' and insert 'one-fifth of'.

This clause specifically addresses amendments to section 32 of the Controlled Substances Act, which prohibits the manufacture, production, sale or supply of drugs of dependence or prohibited substances. As I recollect, that section was amended in April last year, but was proclaimed to come into operation only on 26 September this year: so those substantial changes came into operation after approximately 18 months.

The legislation that came into operation in September provided that a person who contravened the section was guilty of an offence. For the offence of sale, supply or administration, or taking part in the sale, supply or administration of a drug of dependence or a prohibitive substance to a child, or being in possession within a school zone of a drug of dependence or a prohibitive substance for the purpose of the sale, supply or administration of the drug or substance to another person, a maximum penalty in relation to a certain quantity of cannabis of $1 million and 30 years imprisonment and, for a lesser amount, a fine not exceeding $100 000 or imprisonment for 15 years. Where the drug was of another description, a fine of $1 million and imprisonment for life, with a lower penalty for a lesser quantity.

This Bill relates to 'any other offences' and provides that where the substance, the subject of the offence, is cannabis or cannabis resin, if the quantity of the cannabis or cannabis resin involved in the commission of the offence equals or exceeds the amount prescribed in respect of cannabis or cannabis resin for the purposes of this subsection, a penalty of both a fine not exceeding $500 000 and imprisonment for a term not exceeding 25 years. In any other case (that is, relating to cannabis or cannabis resin), a penalty not exceeding $50 000 or imprisonment for 10 years or both.

The first part of that is not affected by the amendment. In relation to cannabis, the Bill seeks to provide a gradation in any other case, so if the quantity of cannabis or cannabis resin is less than the amount prescribed for the purposes of the subsection, but one-half or more of that amount, then the penalty is not to exceed $50 000 or imprisonment for 10 years or both. If the quantity of cannabis or cannabis resin involved in the commission of the offence is less than one-half the amount prescribed for the purposes of this subsection, the penalty is a fine not exceeding $2 000 or imprisonment for two years or both. The amount of cannabis which is prescribed, if it relates to the cultivation of cannabis plants, is 100 plants, 10 kilograms of cannabis or 2.5 kilograms of cannabis resin.

My concern is that, in attempting to accommodate the structure of the new scheme of summary offences, minor indictable offences and indictable offences, the Government has taken a very substantial leap backwards rather than accommodating what I see as an important public requirement that someone who has 4.9 kilograms of cannabis should attract something more than a penalty of $2 000 or imprisonment for two years or both. With an amount up to 1.2 kilograms, the offence would be summary. I am proposing that the figure be one-fifth rather than one-half, so if the quantity of cannabis is less than, say, 10 kilograms, or 2.5 kilograms of cannabis resin, but is one-fifth or more of that amount, then the penalty is $50 000 or imprisonment for 10 years or both. If the quantity is less than one-fifth, that is, less than two kilograms of cannabis or .5 kilograms of cannabis resin, it will be a summary offence. It seems to me to be a more appropriate gradation than that which the Government has proposed in the Bill.

The same argument applies in relation to other drugs. In the principal Act, where the substance that is the subject of the offence is a drug of dependence not being cannabis or cannabis resin, and if the quantity of the substance equals or exceeds a prescribed amount, then the penalty is a fine not exceeding $500 000 and imprisonment for life. That is not affected by either the Government's amendment or mine, and relates to quantities referred to in the regulations. As far as I can see, a variety of substances are prescribed. I could give a couple of examples, but they relate to drugs such as heroin, amphetamines, LSD and such things. In any other case involving less than the prescribed quantity the penalty is a fine not exceeding $200 000 or imprisonment for 25 years or both.

Instead of the Government's proposed penalty, a fine of $200 000 or imprisonment for 25 years ought to apply to those substances where the amount prescribed is one-fifth or more of the amount prescribed for the purposes of the section, and a minor indictable offence would be possession and supply etc., of one-fifth of the amount. That fits in with what the Government proposes, but reduces the levels, consistent with other approaches we have taken in relation to both controlled substances and other penalties.

The Hon. C.J. SUMNER: The Government is prepared to accept this amendment. I think that the reasons given by the honourable member are valid.

The Hon. I. GILFILLAN: I find myself at odds with both the eminent honourable members. This sort of salubrious delight that increased penalties will be the desirable goal seems to be a very futile aim.

The Hon. C.J. Sumner: It is not increasing the penalties.

The Hon. I. GILFILLAN: No, it is not, but it is lowering the quantity, above which a more severe penalty applies. I can see that the numbers are against me, so if I lose on the voices I will not call for a division on the amendments.

The Hon. C.J. Sumner: You won't be able to; you haven't got any support!

The Hon. I. GILFILLAN: That is all right. There are other members in this Chamber. You don't speak for everyone, Attorney. You might speak for some, but not for everybody. However, I want to put on the record that I regret this move; I think the original draft of the Bill was more appropriate. I oppose the amendment. I would like to make plain that my comments apply to all these amendments; I oppose them all.

The Hon. K.T. GRIFFIN: The only point I make in response to the Hon. Mr Gilfillan is that, if he is happy that possession of 150 grams of heroin should be a summary offence, I think he stands alone in the community and in the Parliament.

Amendments carried; clause as amended passed.

Clauses 11 to 15 passed.

New clauses 16 and 17.

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

Page 4, after clause 15—Insert new clauses as follow:

Transitional provisions—general

16. (1) This section applies to amendments made by this Act or the Justices Amendment Act 1991.

(2) The following transitional provisions apply in relation to those amendments:

(a) if the effect of the amendment is to reduce the penalty for an offence, the amendment applies whether the offence was committed before or after the amendment takes effect;

(b) if the effect of the amendment is to increase the penalty for an offence, the amendment applies only to offences committed after it takes effect;

(c) if the effect of the amendment is to increase or remove a time limit for commencing proceedings for an offence, the previous limit applies in respect of an offence committed before the amendment takes effect;

(d) an amendment affecting the classification of an offence as summary or indictable does not apply in relation to an offence committed before the amendment takes effect.

Interpretation of Acts and instruments

17. The following provisions apply to the interpretation of Acts and instruments (whether of a legislative character or not):

(a) a reference to a District Court, a District Criminal Court or a Local Court of Full Jurisdiction will be construed as a reference to the District Court;

(b) a reference to a court of summary jurisdiction or a local court of limited or special jurisdiction will be construed as a reference to the Magistrates Court;

(c) a reference to an officer of a District Court, a District Criminal Court or a Local Court of Full Jurisdiction will be construed as a reference to an officer with corresponding functions and responsibilities in relation to the District Court;

(d) a reference to an officer of a court of summary jurisdiction or a local court of limited or special jurisdiction will be construed as a reference to an officer with corresponding functions and responsibilities in relation to the Magistrates Court.

These amendments deal with transitional matters. The amendments seek to introduce general and specific transitional provisions in relation to the package of reforms now before the Council. During consultation, the view was expressed that to leave the interpretation of the possible retrospectivity of these procedural reforms to the general law would be conducive to complex and unproductive litigation.

This package in general does a number of things. It reduces the maximum penalty in relation to some offences; it removes a right to trial by jury for some offences; and it reduces the time for instituting proceedings for some offences, for instance, where a minor indictable offence has become summary. The general principle is that the law, especially the criminal law, should not be retrospective, with one exception, and the transitional provisions follow that principle.

The exception is in relation to the reduction of maxima. This will apply to all offences after the legislation comes into effect. The reason for that is that article 15 (1) of the International Covenant of Civil and Political Rights requires that, if subsequent to the commission of an offence, provision is by law for the imposition of a lighter penalty, the offender should benefit from that; this amendment so provides. The transitional provisions contained in proposed new clause 17 of the Bill are purely formal.

The Hon. K.T. GRIFFIN: It is that last matter that I want to raise with the Attorney-General, namely, proposed section 16 (2) *(a)*. What concerns me is that some accused persons might already have been dealt with whose offences occurred after someone else's offences, which have not yet been dealt with but which have been spun out with adjournments or whatever. When the Act comes into operation, the person who committed the offence earlier but who has not yet had his or her sentence imposed will benefit, whereas a person who may have been quick off the mark and wanted to get it over with, will not. Perhaps that is just the luck of the game, and it may not apply to very many cases. However, I wonder whether the Attorney-General sees some sort of unfairness in that, and whether he sees the possibility that, in anticipation of this Bill being proclaimed to come into operation, accused persons who might be charged with offences where the maximum penalty is reduced might seek a variety of innovative reasons why they should seek adjournments or remands, as the case may be, so that they keep postponing the date of imposition of sentence in anticipation of this coming into operation.

The Hon. C.J. SUMNER: That is a possibility, I suppose, but I think that is a problem that one can always be faced with when legislation is being changed and, in particular, when changes are made to penalties, as we are doing to some extent here. I do not think it is a major practical problem. I would also point out that if there was some evidence that that was deliberately occurring, I suspect the court would take a dim view of it in any event, when sentencing. It is important to realise that all we are doing is reducing the maxima in certain areas. It is certainly not by any means an across the board reduction in maximum penalties. We are dealing only with maxima, and generally the actual penalties imposed would in many cases be well below those maxima in any event, so I do not see it as being a major practical problem.

New clauses inserted.

Title passed.

Bill recommitted.

JUSTICES AMENDMENT BILL

In Committee.

Clauses 1 to 5 passed.

Consideration of clause 6 deferred.

Clause 7 passed.

Clause 8—'Categorisation of offences.'

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

Leave out section 5 (2) *(c)* and insert—

(c) an offence of dishonesty involving $2 000 or less not being—

(i) an offence of violence;

or

(ii) an offence that is one of a series of offences of the same or a similar character involving more than $2 000 in aggregate;.

The purpose of this amendment is to ensure that, where an accused person is charged with one or more of a number of offences that involve a sequence of offending, the classification proceeds on the basis of the total offending involved rather than each single offence individually. An example might be a person who is charged with stealing, say, $1 000 a week on a regular basis for a year. Each offence of stealing is below the $2 000 threshold, but the amendment provides that the classification of the offence must proceed on the basis that the total offending involved is $52 000.

This is done for the summary classification and not for the minor indictable classification because, whatever the period of limitation for summary offences adopted by the Parliament, the application of the limitation period to cases such as the one referred to raises problems. That is not so with indictable offences. There is, therefore, no need for this provision in that instance.

This amendment also picks up on the debate contributed to by the Opposition and the Australian Democrats about the appropriate level of classification where the offence is

punishable by fine only. There was some discussion about the figure of $100 000 and whether or not there ought to be one limit for corporations and another for individuals. The amendment picks up the amendment moved by the Hon. Mr Griffin.

On reflection, the position taken changes the honourable member's amendment so that, first, divisional penalties are used for reasons of flexibility, and the nearest amount is twice that in division 1, which is $120 000 and, secondly, it is thought unwise to distinguish between companies and individuals for the reason that most offences do not distinguish at all but just set a common maximum. To make the distinction here for all offences would be unduly complex, and there are simply not enough offences which do distinguish to make the exercise worthwhile.

The Hon. K.T. GRIFFIN: I have already lost the battle on the principle. Members will recall that I sought to delete paragraphs *(c)* and *(d)* to ensure that the right of an accused person to elect for trial by judge with jury was not further eroded. However, neither the Government nor the Australian Democrats supported me on that issue. Of course, it is pertinent to the matter raised by the Hon. Mr Gilfillan just before dinner about the attitudes of some of the judges on that issue, a matter to which the Attorney-General responded. So, I have lost the issue of principle.

I agree that the drafting is preferable to that which was previously in the Bill and also that some monetary limit in relation to summary offences where no imprisonment is involved is also appropriate. I appreciate that the Attorney-General is relating the limit to twice the division 1 fine, and I have no difficulty with that. I think that then covers the full range of offences and puts them into various appropriate classifications. We do not have a situation where very large monetary fines are able to be imposed by the Magistrates Court without limit. So, I acknowledge that the drafting is preferable, and it modifies the amendment that I moved in the earlier Committee stage.

Amendment carried.

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

In section 5 (2), leave out 'but an offence for which a maximum fine exceeding $100 000 is prescribed is not a summary offence' and insert 'but an offence for which a maximum fine exceeding twice a division 1 fine is prescribed is not a summary offence'.

Amendment carried.

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

In section 5 (3) *(ai)* leave out paragraph *(ai)* and insert—

(ai) those not punishable by imprisonment but for which a maximum fine exceeding twice a division 1 fine is prescribed;.

Amendment carried; clause as amended passed.

Clauses 9 to 34 passed.

Clause 35—'Power to adjourn.'

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

Omit clause 35 and insert new clause as follows:

Repeal of s. 65

Section 65 of the principal Act is repealed.

The amendments to section 65 contained in the Bill are rendered unnecessary given that there is a general power to adjourn contained in the Magistrates Court Act. Section 65 therefore has no work to do and can be repealed.

Clause negatived; new clause inserted.

Clauses 36 to 40 passed.

Clause 41—'Substitution of section 76a.'

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

Page 10, lines 2 to 17—Leave out subsections (1), (2) and (3) and substitute—

(1) The court may, on its own initiative or on the application of any party, set aside a conviction or order.

(2) An application to set aside a conviction or order under this section must be made within 14 days after the applicant receives notice of the conviction or order.

(3) The court may set aside a conviction or order under this section if satisfied—

(a) that the parties consent to have it set aside;

(b) that the conviction or order was made in error; or

(c) that it is in the interests of justice to set aside the conviction or order.

This amendment picks up a suggestion made during the course of debate in Committee that a court ought to be able to set aside its own order or conviction in certain circumstances.

Amendment carried.

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

Page 10, after line 23—Insert new section as follows:

Correction of conviction or order

76b. The court may, on its own initiative or on the application of any party, correct an error in a conviction or order.

Amendment carried.

The Hon. K.T. GRIFFIN: Under proposed section 76b, does the Attorney-General envisage any notice being given of the correction of a conviction or order, particularly where it is on its own initiative? I ask because it seems to me that, if the court is going to do this on its own initiative, perhaps there ought to be some provision that requires notice to be given of the correction of what the court regards as an error.

The Hon. C.J. SUMNER: I do not think that there is a need for specific provision; obviously I would expect the parties to be advised of the order. All I can do is undertake, when the rules are being prepared, to note this point and draw it to the attention of the judges.

Clause as amended passed.

Clauses 42 and 43 passed.

Clause 44—'Orders to keep the peace.'

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

Page 11, lines 8 and 9—Leave out subsection (4a) and insert—

(4a) The court may make an order under subsection (4) on the basis of evidence received in the form of an affidavit but, in that case—

(a) the deponent must, if the defendant so requires, appear personally at the proceedings for confirmation of the order to give oral evidence of the matters referred to in the affidavit; and

(b) if the deponent does not appear personally to give evidence in pursuance of such a requirement, the court may not rely on the evidence contained in the affidavit for the purpose of confirming the order.

An application for an *ex parte* restraining order could not be used as the basis for a confirming order unless there were certain safeguards. The spirit of his amendment was accepted. This amendment represents Parliamentary Counsel's considered view on the best way to do what the honourable member indicated that he wanted to do.

The Hon. K.T. GRIFFIN: I agree that this is a preferable form of drafting and reflects what I intended when moving the amendment initially. I support it.

Amendment carried; clause as amended passed.

Clauses 45 to 49 passed.

New clause 50—'Insertion of third schedule.'

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

After clause 49 insert:

50. The following schedule is inserted after the second schedule of the principal Act:

THIRD SCHEDULE

Offences of Dishonesty

(Section 4 (1))

For the purposes of this Act, an offence against any of the sections of the Criminal Law Consolidation Act 1934 listed below is an offence of dishonesty.

The description of the offence is given for ease of reference only.

Section of Criminal Law Consolidation Act 1934	Description
131	Simple larceny
132	Larceny by bailee
134	Larceny after a previous conviction for felony
135	Larceny after a previous conviction for misdemeanour
136	Stealing cattle
137	Killing animals with intent to steal the carcass
138	Stealing deer, llama or alpaca in enclosed land
144	Stealing or fraudulently destroying, cancelling or obliterating valuable security
145	Stealing or fraudently destroying, cancelling, obliterating or concealing title to land or a will
146	Stealing or fraudently taking or unlawfully and maliciously cancelling, obliterating, injuring or destroying a court record
147	Stealing or attempting to steal fixtures or parts of a building
148	Stealing or attempting to steal vegetation in any pleasure ground, garden or other enclosed land
152a	Stealing or attempting to steal precious stones
153	Fraudently removing or concealing precious stones or ore from mine
154	Stealing electricity
173	Larceny in dwelling houses
174	Stealing goods in process of manufacture
175	Stealing from ships or docks
176	Larceny and embezzlement by clerks and servants
177	Larceny and embezzlement in the Public Service
178	Falsification of accounts
182	Larceny by partners
183	Larceny by tenants and lodgers
184	Fraudulent misappropriation
185	Fraudulent sales under powers of attorney
186	Fraud by factors or agents
187	Fraud by trustees
188	Promoters of companies making untrue statements
189	Fraudulent appropriation of company property
190	Fraudulent company accounts
191	Fraudulent destruction or alteration of company books, etc.
192	Director, public officer or manager publishing fraudulent statements
195	False pretences
196	Receiving where principal guilty of felony
197	Receiving where principal guilty of misdemeanour
197a	Receiving goods stolen outside the State
202	Corruptly taking reward for recovery of stolen property
204	Impersonation in order to obtain property
205	Impersonating the owner of stock
214	Forgery of deeds, wills, bills of exchange, etc.
215	Forgery in relation to transfer of stock
216	Forgery of power of attorney in relation to transfer of stock
234	Demanding property under forged instruments
235	Forgery of other instrument or matter

The Hon. I. GILFILLAN: I realise that the Committee is possibly going to seek leave to report progress, but I would like to make a couple of observations. The third schedule, just with a glance through, certainly appears to me to be a very interesting document, given its origin. Number 154 in the schedule listing dishonesty refers to stealing electricity. I raise the question of stealing gas, for the sake of consistency. Number 205 refers to impersonating the owner of stock. That strikes me as being interesting. If that is dishonest, it would really mean that impersonating anybody who has a dog or cat—

The Hon. C.J. Sumner: Stocks and shares.

The Hon. I. GILFILLAN: Stocks and shares—well, maybe we need to have a schedule defining the meaning of the words in the schedule.

The Hon. C.J. SUMNER: The honourable member may consider some of the offences specified in the schedule to be anomalous, antiquated, anachronistic, etc., but that is not the purpose. The purpose of the schedule is not to amend the substantive law; it is only to determine where a particular offence will be charged. If we want to deal with the substantive criminal law, that is another exercise altogether. The offences mentioned in the schedule are already offences against the law of the land. All we are determining is where they should be tried, that is, summarily or as minor indictable offences. If the honourable member wants to complain about the nature of some of these offences—

The Hon. I. GILFILLAN: No, I am only making a reasonable observation.

The Hon. C.J. SUMNER: And I am responding. I was going to agree with you. If you want to complain about some of the offences and the fact that they seem antiquated or odd, I would agree with you. The question whether these offences should be changed and amended in some way is a separate exercise that we are currently doing in the Attorney-General's Department with Mr Matthew Goode. I have reported on previous occasions on proposals to reform the criminal law, and I will shortly be giving another report on what is happening to that process. Therefore, the reform of the substantive criminal law is still an issue that will have to be dealt with by the Parliament in future.

The Hon. I. Gilfillan: Why are we delaying dealing with this now?

The Hon. C.J. SUMNER: I will explain it. We are not actually changing the substantive law; we are determining how a matter will be dealt with, whether in the summary court or as a minor indictable offence. The Hon. Mr Griffin did not see this specific list until dinner time. It was done in this way to try to meet the concerns that were raised by the Hon. Mr Gilfillan and the Hon. Mr Griffin about some potential ambiguity in the words 'offence of dishonesty'. To make this crystal clear and to get over the arguments that could have occurred about what was an offence of dishonesty, we have now decided to put all those offences in a schedule. That is what I thought was the view of members opposite. The Hon. Mr Griffin wants time to check the schedule, and that is reasonable.

The Hon. K.T. GRIFFIN: What appears in front of us is consistent with what we were debating on the last occasion. We wanted to get some definition of 'offence of dishonesty', and this deals with it. As the Attorney-General has said, as a result of asking a question just before the dinner break I received it later in the dinner break. I want an opportunity to check the provisions so that I can most likely agree to it without any difficulty. However, I need a little bit of time to do that, as I do not have research facilities.

The Hon. I. GILFILLAN: I make quite plain that I am not criticising the Hon. Trevor Griffin's wish to consider this matter before it is dealt with in Committee. Having looked at it, I think it is reasonable to make some observations as that may save time later. I still feel very uneasy that we are using the schedule and its contents in an attempt to describe the offence of dishonesty. It is a very interesting bending of the common usage of 'dishonesty' to have it include the killing of animals with intent to steal the carcass. That may well be an offence. If someone killed one of my sheep and wanted to take the carcass I would be displeased, but it would hardly be an offence that I would see automatically fitting into the category 'offence of dishonesty'. Similarly, stealing deer, llama or alpaca in enclosed land

implies that, if it is not in enclosed land, it may well be an offence but not an offence of dishonesty. It becomes dishonest if those animals happen to be enclosed; if they are not enclosed, it is not dishonest. It may still be an offence but it will not be dishonest.

Progress reported; Committee to sit again.

DIRECTOR OF PUBLIC PROSECUTIONS BILL

Returned from the House of Assembly with amendments.

STATE EMERGENCY SERVICE (IMMUNITY FOR MEMBERS) AMENDMENT BILL

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

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

That this Bill be now read a second time.

As this matter has been considered in the other place, I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

This Bill has been introduced to amend the State Emergency Service Act 1987 to provide the State Emergency Service with sufficient authority when dealing with emergency situations and to provide accompanying immunity from civil and criminal liability in the exercise of duties, associated with such situations. The purpose of the amendment is to bring the call out system operated by the service for many years, within the framework of the Act.

The Bill also provides for the repeal of section 18 of the State Emergency Service Act. Section 18 is now obsolete, in view of the replacement provisions relating to volunteer workers, under the Workers Compensation and Rehabilitation Act 1986.

The State Emergency Service Act 1987 and regulations came into operation on 1 January 1988. The Act provides for the exercise of powers by emergency officers, pursuant to section 12 of the Act, when an emergency order is in force pursuant to section 11 of the Act. Under section 15 of the Act, an emergency officer may on the request of an authority specified thereunder, assist in dealing with an emergency. Section 12 (2) *(i)* permits the emergency officer to direct any person to assist in the exercise of powers, under that section.

The Act therefore currently provides for the exercise of powers by emergency officers and contemplates that such powers will be exercised with the assistance of other volunteers. The emergency officer is empowered to act only when an emergency order is in force, or when assisting certain authorities in dealing with an emergency.

Section 17 of the Act provides immunity from liability in the exercise or discharge of these powers and duties and transfers any liability incurred, to the Crown. Whilst volunteer members and volunteers assisting the State Emergency Service, are therefore protected from liability in the exercise of powers pursuant to the Act, such immunity does not extend to members and volunteers, in circumstances occurring outside the bounds of sections 12 and 15 of the Act.

It has been normal practice for many years that a State Emergency Service unit responds to an emergency call for assistance direct from a member of the public. It may be the case that a home may be threatened or damaged by storm or flood activity. In this instance neither an emergency order is in force nor have the police, fire service or any authority described under section 15 specifically requested such assistance. It is not intended that this method of response be discontinued.

Accordingly, emergency officers and volunteers may be performing a function which is outside the Act only because of a different method of activation. Upon proclamation of the Act, all Unit Controllers and Deputy Unit Controllers were appointed emergency officers under section 10 of the Act. No other volunteer members of the service have been appointed emergency officers nor is it envisaged that such appointments will be made in the future. The service comprises some 2 700 volunteer members, operating out of some 66 registered State Emergency Service units, spread across both metropolitan and country areas. In all, approximately 130 of the membership of 2 700 are emergency officers.

It has become apparent since the inception of the State Emergency Service Act that the service requires greater authority and accompanying immunity from liability in respect of its call out procedure. Prior to the proclamation of the Act, a public liability insurance policy was in place to cover volunteer members of the service. The Government now self-insures and it is questionable that complete indemnity can be provided, given that the Act does not provide complete authority and immunity, in respect of all activities undertaken by the State Emergency Service.

Clause 4 of the Bill amends section 8 of the Act, by providing that it is a function of the service to respond to emergency calls and where appropriate, provide assistance in any situation of need whether or not the situation constitutes an emergency.

Clause 5 amends section 15 to permit members of the service who are not emergency officers to assist as 'assistant emergency officers', when requested to do so, pursuant to section 15.

These amendments extend the scope of the Act, in so far as members of the service can now respond to calls for assistance received directly from the public in the absence of an emergency order and/or assist when requested to do so, in the absence of an emergency officer.

Whilst the amendments increase the scope of authority capable of being exercised under the Act, it must be pointed out that there is no intention to move control away from emergency officers in respect of call out activation.

It is envisaged, that when a call for assistance is received directly from the public or another agency, the emergency officer will be able to respond to that call and deal with the emergency, even though there is no emergency order in force. It will be the emergency officer who will decide whether to respond, assess the nature of the response and give the direction for volunteers to attend and perform such duties as are consistent with those contained in section 12 of the Act.

It is not intended that volunteers will automatically assume the powers exercisable by emergency officers. Volunteers will still be acting at the direction of an emergency officer. Emergency officers, however, will not be bound by an emergency order. Volunteers will therefore be able to continue their involvement in the routine tasks they already perform on call out.

Scope exists for performing certain duties as prescribed by section 12, in the absence of an emergency order. Those activities which might be engaged in by volunteers at the initial direction, but in the absence of an emergency officer, include search or cliff rescue and vehicle accident rescue

and assistance, normally in the event of storm, flood or building damage. These are associated with those powers exercisable under section 12 (2) *(c)*, *(e)*, *(f)*, *(g)* and *(i)*. Those powers exercisable pursuant to section 12 *(a)*, *(b)*, *(d)* and *(h)*, that is, assuming control of real and personal property, directing evacuation, controlling buildings, structures and vehicles and removal of obstructing personnel, would generally only be used in extraordinary circumstances such as disaster or major emergency and would require an emergency order, if other emergency organisations were not able to deal with the emergency. It is necessary for such control to be maintained given that liability will attach to the Crown.

In regard to the question of liability, clause 6 of the Bill amends section 17 of the Act, by substituting a new subsection (1) which now includes reference to 'an assistant emergency officer' and also now refers to the exercise, performance or discharge of a 'function' under the Act. Immunity is therefore provided for members now falling into the category of 'assistant emergency officers' and for all those who are exercising the call out function, contemplated by the amendment to section 8.

Finally, clause 7 repeals section 18 of the Act, which was suspended when the Act was proclaimed. With the proclamation of the Workers Compensation and Rehabilitation Act, section 18 became redundant. Section 18 applies the now repealed Workers Compensation Act 1971 to volunteer emergency officers. State Emergency Service volunteers presently receive full WorkCover benefits by arrangement with the Government. Consideration is being given to formalising this arrangement by making a regulation under section 103a of the Workers Compensation and Rehabilitation Act, declaring State Emergency Service volunteers to be a prescribed class of volunteers performing work of a prescribed class that is of benefit to the State and therefore whose presumptive employee is the Crown. This has occurred in relation to Country Fire Service volunteers.

Clause 1 is formal.

Clause 2 provides for the measure to be brought into operation by proclamation.

Clause 3 amends section 3 of the principal Act, the interpretation section, by adding a definition of 'assistant emergency officer'. This term is defined as a member of an SES unit who has not been appointed under the Act as an emergency officer.

Clause 4 amends section 8 of the principal Act which sets out the function of the State Emergency Service. The clause adds a new function designed to make it clear that SES units may respond to emergency calls and, where appropriate, render assistance in any situation of need whether or not the situation constitutes an emergency as such.

Clause 5 amends section 15 of the principal Act. This section presently provides that an emergency officer may, on request by an appropriate officer of the other authority concerned, provide assistance to deal with an emergency that is being dealt with by the police or under the State Disaster Act 1980, the South Australian Metropolitan Fire Service Act 1936 or the Country Fires Act 1989, or an emergency that has occurred outside the State. The clause amends this section so that the power to provide such assistance also extends to assistant emergency officers, that is, those members of SES units not appointed to be emergency officers.

Clause 6 amends section 17 of the principal Act which presently provides an immunity from personal liability for emergency officers and persons assisting at the direction of emergency officers in respect of acts or omissions in good faith in the exercise or discharge, or purported exercise or discharge, of powers or duties under the Act. This immunity is extended to assistant emergency officers under the clause and made to relate expressly to the performance of functions under the Act. The effect of this is to make it clear that all members of SES units are protected when rendering assistance whether or not an emergency exists (see the amendment proposed by clause 4 to section 8 of the Act) and that assistant emergency officers are protected whether or not it is clear that they are acting at the direction of an emergency officer at the particular time that a question of civil or criminal liability arises.

Clause 7 provides for the repeal of section 18 of the principal Act relating to workers compensation for volunteer members of SES units. This matter is now provided for by provisions of the Workers Compensation and Rehabilitation Act 1986.

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

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (NMRB) BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

In 1990, the National Mutual Royal Trading Bank and the National Mutual Royal Savings Bank became wholly owned subsidiaries of the ANZ following the acquisition by ANZ of the whole of the issued share capital of the National Mutual Royal Trading Bank from the Australian subsidiary of the Royal Bank of Canada (RBC Australia Holdings Ltd) and the National Mutual Life Association of Australasia Ltd.

The Reserve Bank of Australia has required that steps be taken as soon as possible to integrate the operations of the two groups and for the National Mutual Royal Trading Bank and the National Mutual Royal Savings Bank then to cease carrying on banking business and surrender their banking authorities under the Banking Act 1959. It has been agreed between the ANZ and the Reserve Bank that these banking authorities will be surrendered on 15 November 1991. It is therefore necessary to integrate at least some of the businesses, assets and liabilities of the National Mutual Royal Trading Bank and the National Mutual Royal Savings Bank into the ANZ and the ANZ Savings Bank by that date.

The merger could be effected without legislation by means of separate transactions with each customer or other person with whom the National Mutual Royal Trading Bank and the National Mutual Royal Savings Bank have contractual or other business relationships. The time and effort involved in carrying out the transfer by means of separate transactions would be very onerous.

In the absence of legislation it would be necessary to contact every customer of the National Mutual Royal Trading Bank and the National Mutual Royal Savings Bank to obtain an authority to transfer accounts from one bank to the other, new mandates for the operation of a variety of types of accounts, new authorities for periodical payments

and new indemnities for various purposes connected with the accounts.

In addition, mortgage securities held from customers and guarantors would have to be transferred from the National Mutual Royal Trading Bank to the ANZ and from the National Mutual Royal Savings Bank to the ANZ or the ANZ Savings Bank. In some cases it would be necessary to obtain fresh security documents from the customers and their sureties.

This would necessitate a great deal of unproductive work by individual customers, businesses, the banks and the Government. The proposed legislation will minimise the volume of paperwork required and the time, cost and effort expended in achieving integration, while ensuring the protection of the interests of customers and other persons with whom the banks have dealings.

Although slightly different in form, the proposed legislation is similar in concept to previous merger Acts passed by the South Australian Parliament. The Bill contains provisions dealing with the vesting of assets and liabilities in ANZ and ANZ Savings Bank, the transfer of bank and customer relationships, contracts and other instruments, the continuity of legal proceedings and causes of action and other matters.

The legislation differs in one important respect from the previous comparable legislation. In the past, the contracts of employment of bank staff have been transferred from one bank to another pursuant to the merger legislation and Parliament and the banks themselves have been careful to ensure that all accrued rights of employees were fully protected by the legislation. In this case, however, all employees of the National Mutual Royal Trading Bank transferred to ANZ in April 1991. Entitlements to superannuation and other accrued rights such as long service leave and holiday leave have been fully protected by private arrangements between ANZ and the employees. Accordingly, the Bill contains no provisions dealing with employment.

In another respect the Bill is more complicated than previous comparable legislation to the extent that there is not a transfer of all the undertakings of one savings bank to another as usually occurs in this situation. It is proposed instead that specified assets and liabilities of the National Mutual Royal Savings Bank are to be transferred to the ANZ Savings Bank with all the remaining assets and liabilities of the National Mutual Savings Bank to be transferred to the ANZ. The transfer of all the assets and liabilities of the National Mutual Royal Trading Bank to ANZ will occur in the usual manner. This variation in approach is considered necessary by the ANZ because the National Mutual Royal Savings Bank offers many trading bank-type products which are similar to those offered by the ANZ trading bank.

The Bill provides that no taxes, duties or fees are payable upon any documents or transactions arising out of the Act. In the past similar provisions have been included in merger Acts and the banks have agreed to make payments to the Government in lieu of the stamp duty which would otherwise be unavoidable. A similar approach will be followed in this case.

Clause 1 is formal.

Clause 2 is the interpretation clause and contains definitions of terms used in the Bill. Included in these terms are:

'category A undertaking of NMR Savings Bank' comprising all of the property and liabilities of NMR Savings Bank described in the Schedule to the Bill.

'category B undertaking of NMR Savings Bank' comprising the business and all of the property of NMR Savings Bank (except any category A property and any excluded asset and any related right or power) and all liabilities of NMR Savings Bank (except category A liabilities).

'excluded assets' being the assets (primarily land held otherwise than by way of security and shares) which are to be excluded from the transfer of assets to be effected under the proposed Act.

'undertaking of NMRB' including all of the business, property and liabilities of NMRB with the exception of excluded assets and rights or powers relating to the excluded assets.

Clause 3 declares that the Act binds the Crown.

Part II deals with the vesting of the undertaking of NMRB in ANZ.

Clause 4 provides for the vesting of the undertaking of NMRB in ANZ on an appointed day, that the Act provides evidence of such vesting and obliges NMRB to take steps to secure the transfer of any portion of its undertaking not vested under the Act.

Clause 5 provides that contracts and other legal arrangements with NMRB (not relating to excluded assets or superannuation or similar funds) are to be binding on or are enforceable by or against ANZ.

Clause 6 provides for the continuation after the appointed day of the relationships between NMRB and its customers as relationships between ANZ and those customers, the transfer of securities and bailment arrangements from NMRB to ANZ and for negotiable and other instruments to be effective as if relating to ANZ.

Clause 7 provides for the preservation of legal proceedings commenced by or against NMRB before the appointed day or which relate to contracts entered or matters done or omitted to be done by or before the appointed day except in relation to excluded assets and provides for the continuation of such proceedings by or against the ANZ.

Clause 8 enables the amendment, without cost, of references in documents in proceedings relating to excluded assets from ANZ to NMRB and for the continuation of such proceedings against NMRB.

Clause 9 provides that evidence which could have been used for or against NMRB can be used for or against ANZ.

Clause 10 provides, from the appointed day, for references to NMRB in Acts (other than the Act), registers or documents to be construed as references to ANZ except in relation to excluded assets or where the context otherwise requires.

Part III deals with vesting of the undertaking of NMR Savings Bank in ANZ Savings Bank and ANZ.

Clause 11 provides for the respective vesting of categories A and B of the undertakings of NMR Savings Bank in ANZ Savings Bank and ANZ, that the Act provides evidence of such vesting, and obliges NMR Savings Bank to take steps to secure the transfer of any portion of the categories A and B undertakings not vested under the Act.

Clause 12 provides that contracts and other legal arrangements with NMR Savings Bank relating to categories A and B undertakings (and not relating to excluded assets) are to be binding on and enforceable by or against ANZ Savings Bank and ANZ respectively.

Clause 13 provides for the continuation in respect of categories A and B undertakings, after the appointed day, of the relationships between NMR Savings Bank and its customers as relationships between ANZ Savings Bank and ANZ respectively and those customers, the transfer of securities and bailment arrangements to those banks respectively and for negotiable or other instruments relating to categories A and B undertakings to be effective as if relating to ANZ Savings Bank or ANZ respectively. There are also specific

provisions enabling ANZ and ANZ Savings Bank to share securities in certain circumstances.

Clause 14 provides, in respect of the category A undertaking, for the preservation of legal proceedings commenced by or against NMR Savings Bank before the appointed day or which relate to contracts entered or matters done or omitted to be done before the appointed day (except in relation to excluded assets) and for the continuation of such proceedings by or against ANZ Savings Bank.

Clause 15 provides, in respect of the category B undertaking, for the preservation of legal proceedings commenced by or against NMR Savings Bank before the appointed day or which relate to contracts entered or matters done or omitted to be done before the appointed day (except in relation to excluded assets) and for the continuation of such proceedings by or against ANZ.

Clause 16 enables the amendment, without cost, of references in documents in proceedings relating to excluded assets from ANZ or ANZ Savings Bank to NMR Savings Bank.

Clause 17 provides, in respect of the category A undertaking, that evidence that could have been used for or against NMR Savings Bank can be used for or against ANZ Savings Bank.

Clause 18 provides, in respect of the category B undertaking, that evidence that could have been used for or against NMR Savings Bank can be used for or against ANZ.

Clause 19 provides, from the appointed day, for references to NMR Savings Bank in Acts (other than the Act), registers or documents to be construed as references to ANZ Savings Bank (to the extent they relate to the category A undertaking) or to ANZ (in all other cases), except in relation to excluded assets or where the context otherwise requires.

Part IV contains general provisions.

Clause 20 provides that nothing effected by the proposed Act or done or suffered by NMRB, NMR Savings Bank, ANZ or ANZ Savings Bank under the proposed Act is to be regarded as placing them in breach, making them guilty of a wrong, or enabling termination or release of any agreement with them.

Clause 21 provides that service of a document within the meaning of section 109X of the Corporations Law on one bank may be deemed, in specified instances, to be service on another and that the clause ceases to have any effect on NMRB or NMR Savings Bank (as the case may be) ceasing to be a subsidiary of ANZ within the meaning of section 9 of the Corporations Law.

Clause 22 provides protection for persons who deal with ANZ and ANZ Savings Bank in relation to excluded assets.

Clause 23 provides that the Chief Executive Officer of ANZ may certify whether specified property or liabilities formed or did not form part of the category A undertaking of NMR Savings Bank or the category B undertaking of NMR Savings Bank.

Clause 24 provides that where any land of which NMRB or NMR Savings Bank is the registered proprietor is by virtue of the proposed Act vested in ANZ or ANZ Savings Bank that bank is deemed to be the registered proprietor of the land for the purposes of the Real Property Act 1886 and the land may be dealt with accordingly.

Clause 25 requires the Registrar-General on request to make amendments to the register book and title documents to reflect the operation of the proposed Act.

Clause 26 is designed to avoid the need for a form to be lodged under the Corporations Law in relation to each registered charge which, by virtue of the Act, is vested in ANZ or ANZ Savings Bank.

Clause 27 has a similar effect to clause 26 (except that it relates to property other than that to which clauses 24, 25 or 26 apply) in that it avoids the need for certificates or forms to be lodged in relation to each asset transferred. This clause would have effect, for example, in relation to the Goods Securities Act 1986.

Clause 28 provides that certificates given or purported to be given under the Act are to be conclusive unless the contrary is established.

Clause 29 provides that nothing in the Act exempts ANZ or ANZ Savings Bank from the provisions of any Act relating to companies carrying on the business of banking.

Clause 30 exempts all transactions arising out of the Act from stamp duty and other levies.

Part 1 of the Schedule contains a list of those liabilities of NMR Savings Bank which constitute the category A liabilities of NMR Savings Bank and which by virtue of the Act will be vested in ANZ Savings Bank.

Part 2 of the Schedule contains a list of those assets of NMR Savings Bank which constitute the category A property of NMR Savings Bank and which by virtue of the Act will be vested in ANZ Savings Bank.

The Hon. R.J. RITSON secured the adjournment of the debate.

HOUSING CO-OPERATIVES BILL

Adjourned debate on second reading.

(Continued from 24 October. Page 1392.)

The Hon. I. GILFILLAN: The Democrats support the Bill. It is a very worthwhile area of developing and expanding housing for, in many cases, those who are less well off in our community. It provides a very satisfying structure under which communities can work together and share responsibility thereby enriching their life as a result of their involvement in these cooperatives.

It is without any hesitation that I indicate the Democrats' support for the Bill. I refreshed my memory and read the contributions by both the Minister of Tourism and her counterpart from the other side of the Chamber. After the Government had stopped patting itself on the back in the second reading explanation and got down to the contents of the Bill, we found ourselves in substantial agreement with it. The Democrats believe it is reasonable for the manager of the Housing Trust to be the Chair of the authority. I notice there is some opposition from the Opposition on the authority's being detached from the Housing Trust, and that will obviously be a major part of consideration of the Bill in the Committee stage.

I do not share that concern. I believe that the description of how it will operate is such that it will not substantially increase the so-called bureaucracy, and it does justify being detached from the Housing Trust as a separate entity. I see no objection to the manager of the Housing Trust being the Chair *pro tem*. I do have some misgivings that that would be a mandatory position, and I hope that the Bill will not attempt to impose that. It is an area which is separate in its approach and management from the Housing Trust itself, and I have no reason to believe that the Housing Trust has a great appetite or enthusiasm to continue to have an authority dealing with housing co-ops under its purview.

The Hon. L.H. Davis: They still look after community housing authorities.

The Hon. I. GILFILLAN: Yes. They are—

The Hon. L.H. Davis interjecting:

The Hon. I. GILFILLAN: —as I think the incessantly interjecting member will agree, a separate entity. It is a separate creature and does require separate degrees of supervision and organisation. Certainly, in the Committee stage the honourable member may put up some persuasive argument to change my view. From what I understand of it, I am convinced that it is reasonable to separate the associations from the cooperatives.

The Hon. L.H. Davis: It is a giant leap in logic.

The Hon. I. GILFILLAN: Yes, unlike some other members, I often take giant leaps in logic. The share equity possibilities offered by the cooperatives is a valuable option and allows, as I have already indicated, a desirable alternative to the general provision of public housing.

Finally, as an observation which was made by the Minister, it is principally designed to provide housing to low income people, many of whom will be families who will have the opportunity to live in, purchase and eventually own completely their own home. The shadow Minister for many portfolios, the Hon. Mr Legh Davis, when he had ceased lecturing, hectoring and instructing the Council, did deliver quite an informative dissentation on the whole panorama of co-operative housing, for which I congratulate him. It stands as a testament—

The Hon. L.H. Davis interjecting:

The Hon. I. GILFILLAN: Once again over the incessant interjections from the indominable member, it stands as a testament to his diligence in research. I believe that it stands as a very substantial support for housing cooperatives as a major arm of the provision of housing to lower income people in South Australia. It is only fair to mention to the Chamber that I was also present at the AGM of CHASSA. For the benefit of members, that stands for Community Housing Assistance Service of South Australia and, by its own description, is a voluntary federation of housing associations commonly referred to as housing co-operatives. CHASSA provides a range of services to housing cooperatives including education and information, administrative support, and extensive education programs, and technical advice for newly forming and established cooperatives, and it will go on at anyone's request to provide more information and more detail.

Unfortunately, the honourable member had impugned the reputation of a housing group in the northern suburbs. I must admit that it is a much appreciated gesture by busy politicans to present themselves at AGMs of these worthy organisations, and I want to acknowledge that it did enhance the general reputation and status of this function to have the shadow Minister there.

Members interjecting:

The Hon. I. GILFILLAN: Indeed. I think it is only fair. Unfortunately, life is not always kind to those who deserve it, and a Mr Ernie Matthews of the Northern Suburbs Community Aged Housing Group, who had felt that he personally and other groups had been aggrieved by this imputation by the Hon. Legh Davis that something was shoddy in the management of some of these groups, invited Mr Davis in a very public fashion at this AGM to publicly apologise. He turned around and made it quite plain that he was magnanimously giving Mr Davis the opportunity to apologise for this indiscretion.

The Hon. L.H. Davis: He was a bit late for the Oscars!

The Hon. I. GILFILLAN: Uncharacteristically, the Hon. Mr Davis remained silent.

Members interjecting:

The PRESIDENT: Order!

The Hon. I. GILFILLAN: I have to indicate to the Chamber that there are times when the honourable member does not interject and, in fact, becomes almost invisible! However, I am sure that the Hon. Mr Davis has communicated with Mr Ernie Matthews, and Mr Matthews is now satisfied and honour rests where it should, with a proper apology for maybe an indiscreet remark.

It is important in this second reading speech to recognise a distinction between cooperatives and housing associations, such as the Bedford community and housing associations for the disabled, aged and single women for example. They do not fit necessarily into the same organisation which is helping to establish and then maintain the housing cooperatives, so I have no difficulty in supporting a Bill which sees the associations separated from the cooperatives, and the associations remaining under the administration surveillance of the Housing Trust.

The Hon. Legh Davis trenchantly questions the economics of the cooperatives compared with the trust, but acknowledges the value of the Bill, and this is where he shows his magnanimity and, perhaps one could say, statespersonship! But maybe he is inconsistent—it depends on the reading. Now that the honourable member has left the Chamber, there is not much point continuing with that. In his second reading speech, he pointed out that the authority protects the taxpayer and establishes an administrative and financial model for housing cooperatives, and he congratulated the Government. The Government may not have remembered that, but he did congratulate it on this Bill. We are dealing with legislation which, to a wide degree, is supported unanimously by this Chamber. The other comments of the Hon. Legh Davis about whether the authority should be with or separate from the trust will be considered in Committee.

One further issue that should be pursued concerns the possibility of having a representation from another aspect of the industry, and that would be someone who has been involved with real estate. I am pursuing the possibility of having on the authority either someone from the Real Estate Institute or someone who has been suggested as a suitable member by the Housing Industry Advisory Committee. I would like to indicate to the Chamber that I certainly have not made up my mind about it, but I would like to read a letter into *Hansard* that I received from the Real Estate Institute's Chief Executive Officer, Mr John Munchenberg, dated 6 November, as follows:

> Thank you for your letter of 5 November, concerning the Housing Co-operatives Bill 1991.
>
> REISA feels that a practising agent could make a valuable contribution to the operations of the South Australian Co-operatives Housing Authority to be established under the Act.
>
> The Authority has no guarantee of private sector or business input as presently constituted. A practising agent, with up to date knowledge of the private real estate market and business expertise could provide a valuable perspective and balance in many areas of the authority's proposed responsibilities.
>
> In particular, the following proposed functions and powers of the Authority as set out in section 16 are ones where a real estate agent could contribute:
>
> | Section | Powers and Functions |
> |---|---|
> | 16 *(e)* | Promotion of the development of housing co-operatives |
> | 16 *(g)* | Administrative, managerial, educational and other services to co-operatives |
> | 16 *(i)* | Research, educational and training programs for co-operatives |
> | 16 *(j)* | Publicise the activities of co-operatives and disseminate information and statistics. |

REISA enjoys a good relationship with CHASSA and I emphasise that; I believe that this initiative is based on mutual goodwill and that my move is not based on an attempt to be critical or aggressive to the composition of the authority but to look at ways of enhancing its capacity. The letter continues:

... and would not want the inclusion of an REISA representative on the authority to sour that relationship. CHASSA regularly runs purchasing real estate workshops and REISA contributes to these by providing a speaker on how to deal with real estate agents and the role of agents.

One way in which REISA could be involved in the authority would be to amend the Bill to provide for a REISA representative specifically. Another way would be for a REISA representative to be one the three nominated by the Minister.

While REISA sees considerable merit in having a representative on the authority, it is not a matter we would want to make a particlar issue of.

Thank you for the opportunity to comment on this legislation.

In concluding, I would like to say that I will be pursuing this matter in the Committee stage as I am having discussions with officers in the office of the Minister of Housing and Construction as to possibilities that might accommodate what I have in mind and what is possible. So, with those remarks, I would like to repeat that the Democrats strongly support the housing cooperative initiative. We recognise the value of the work of the select committee in the other place in preparing ground for this Bill and we wish the housing cooperative movement in South Australia all the best in its goal of providing low-cost, effective, satisfactory housing for the people of South Australia.

Bill read a second time.

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Interpretation.'

The Hon. L.H. DAVIS: I move:

Page 2, lines 11 and 12—Leave out the definition of 'the authority'.

Whilst the amendments of the Opposition total 20 pages, they really turn very much on the proposition that the South Australian Cooperative Housing Authority as defined in clause 3 should be excised from the Bill. So, I accept quite readily that if this amendment is defeated, all the other amendments to other clauses fall away. Perhaps this is an opportunity just to reflect briefly on the legislation. As the Hon. Ian Gilfillan said, and I readily accepted, much of the spade work has been done in the exhaustive consultative process over a period of some years. The select committee in another place has also added its weight to the Bill.

I cannot help thinking that it is hammer cracking a walnut territory when we have 6 pages of Bill to manage rather less than 1 000 cooperative houses at this stage—about 600 or 700 houses under this authority. The South Australian Housing Trust Act covers a mere 11 pages and with that small amount of legislation the Housing Trust can place an umbrella very effectively over 63 500 public houses. If one does the calculation, I think it would suggest that, if we had as many pages of legislation for the South Australian Housing Trust, indeed, we would have a Bill of about 3 200 or 3 300 pages, but that is an aside. I do not want to quibble about that point.

Obviously, a lot of work and effort has gone into this measure and, as the Hon. Ian Gilfillan has rightly stated, I have supported the Bill because of my underlying concerns about administrative and financial practices in the legislation. If this legislation is implemented, those concerns should largely be addressed, although I must reiterate that I have a continuing awkwardness about the economics of tenant-based cooperatives and their effectiveness as against other forms of housing, which are in practice in other States and other countries.

In the face of some concerns expressed to the select committee and in another place, the authority has been modified from what was originally proposed and so the cooperative will have its own policy framework, but the administration of the cooperative will be under the aegis of the Housing Trust. It is a rather curious creature that we have here and it leads me to restate the Liberal Party's position and why we oppose the authority. We are against bureaucracy; we are against waste. We see endless examples of it day after day, and we see it in the housing area. Indeed, the Australian Democrats, who have already stated their position, should be reminded of an opportunity they had to cut Government waste or to minimise Government waste when we debated a Bill in 1987 to establish an office of Government employee housing.

That office took over from the Teacher Housing Authority, which had been severely criticised for many years, and also from departmental management of public housing. An Office of Government Employee Housing was created in this brave new world, which this Labor Government continually strives for, quite separate from the Housing Trust and under the banner of the Department of Housing and Construction. The Office of Government Employee Housing had as its sole purpose the management of some 3 000 plus Government employee houses, the bulk of which were situated in the country. The Housing Trust continued to manage 63 500 public houses, and we are now debating the management—or, if that is seen as a strong word, the supervision—of some 600 or 700 tenant based housing cooperatives. We are creating another authority.

If the Australian Democrats had bothered to look at the performance of the Office of Government Employee Housing using their multi-talented staff, which they are fortunate to have at their disposal, they would have seen that the track record of that organisation was about as good as the Oodnadatta football B team against Hawthorn in a league football match.

An honourable member interjecting:

The Hon. L.H. DAVIS: The winning team would have gone home by the time its opposition got on the field. The Office of Government Employee Housing has been mentioned continually in dispatches by the Auditor-General's Department. In fact, the most blistering page of all in the 1991 Auditor-General's Report was devoted to the Office of Government Employee Housing and SACON generally. It said effectively that the Auditor-General's staff had to hold the hand of the Office of Government Employee Housing to help it prepare the financial statements for the year.

So, in a nutshell that is what our concern is about. We are creating yet another authority, another layer of bureaucracy, when we already have the Housing Trust which has demonstrated the capacity to manage the largest public housing stock on a *per capita* basis in Australia and which, in fact, will continue to manage the community housing association stock which comprises about the same number as the tenant based housing stock. The huge leaps of logic that are a continual feature of the Australian Democrats' performance in this Chamber are about to be seen again. It is going to be a broad jump of some proportion, because the only difference between tenant based housing cooperatives, which are of course the subject of this legislation, and community based housing associations, which after all are the original cooperatives that were established a decade ago by the then Tonkin Liberal Government, is the fact that tenant based housing cooperatives are just that: they are run by the tenants themselves.

However, with community based housing associations the model is not dissimilar. In some cases, it is very similar. For instance, aged pensioners have a very active involvement in one cooperative. However, in some other cases, such as the Bedford Park Cooperative for the Disabled and women's shelters, community management is in place. But the notion of the cooperative is the same, and the legislation

could easily have brought community based housing associations under the same umbrella.

The Liberal Party has chosen not to go against the arguments of the select committee, which said that we should segregate tenant based housing cooperatives. I express publicly my bemusement with the fact that community housing associations are not part of this legislation and that these housing cooperatives remain under the aegis of the Housing Trust. But, is that not a very strong argument for the Liberal Party's amendment? Of course it is. In this brave new world, which the Hon. Kym Mayes is creating with this headlong rush into tenant based housing cooperatives, we will reach the point where they will represent 30 per cent of the public housing stock in this current year. I feel that a separate authority is simply not necessary, and I have put forward my position in the second reading debate. The Liberal Party in another place has argued that matter strongly and coherently; I know where the numbers lie; and I will not pursue the issue.

The Hon. BARBARA WIESE: As the Hon. Mr Davis has indicated, this amendment, which is the first of his amendments, will decide whether or not we proceed with the majority of the remainder of his amendments, as they all refer to the structure of the management of housing cooperatives. The Government opposes the proposal put forward by the Hon. Mr Davis in relation to this matter. It believes that the proposal contained in the Bill to establish an authority to overlook the work of housing cooperatives is the most appropriate structure with which to proceed. The Government believes that the authority will provide appropriate accountability and control over the housing cooperatives program and that it will strengthen the relationship between the trust and the people involved with housing cooperatives.

Considerable overlapping and intertwining of interests will be brought about by this structure, as the staff of the authority will comprise officers of the South Australian Housing Trust who will be responsible to the management of the trust on administrative issues. In respect of policy matters, the staff will be responsible to the authority which, in turn, will be responsible to the Minister. So, there is considerable accountability and control and strong links with the Housing Trust. At the same time, however, this structure recognises that the culture of the two forms of housing authority is very different. Cooperatives are very small while the Housing Trust is a large organisation. They, therefore have a very different way of going about things. It is considered appropriate by the Government that this authority provide the necessary accountability and expertise that people in housing cooperatives will need, but at the same time that it provide the flexibility and ability for cooperatives to function in the way in which they were designed to operate.

I would like to make a couple of comments based on the contribution by the Hon. Mr Davis this evening. First, he referred to his concerns about the economics of housing cooperatives. I remind the Committee that earlier this year an economic independent evaluation of housing cooperatives was undertaken by the South Australian Centre for Economic Studies. That evaluation found that housing cooperatives are at least as efficient as public rental housing and are probably more efficient, depending on certain assumptions. So, I believe that real efforts have been made to assess these matters, and that information is available.

Secondly, the honourable member referred to the Teacher Housing Authority and expressed concern that an authority of this sort for housing cooperatives might end up being an organisation which runs into difficulty, based on his assessment of the Teacher Housing Authority. But it is not appropriate to compare this proposed authority with the Teacher Housing Authority because, as I understand it, it was an autonomous body, and the organisational structures and systems were very different.

The last point that I want to make relates to community housing associations. I believe the honourable member was suggesting that they should have been incorporated in this legislation. The Government believes that it would be totally inappropriate to include community housing associations within the scope of this legislation, because many community housing associations operate in a very different way. Some of them are not cooperatives. In some cases, the tenants are not members of the association, and they are not managed by tenants, so the underlying philosophy and structure of some of those associations are very different from the sort of thing with which this legislation is dealing. Therefore, it is the view of the Government that it would be inappropriate for those community housing associations to be included within this legislation.

To return to the original point about the authority itself, as I indicated, the Government opposes the Hon. Mr Davis's amendment, and I urge the Committee to do likewise.

The Hon. I. GILFILLAN: The Democrats oppose the amendment. I think it is reasonable to acknowledge that there is an argument to look at this issue as to whether it is better to have a separate authority or whether it should remain as part of the structure and under the aegis of the Housing Trust. I do not see the scope for an increase in cost from the authority structure other than would have been the case with an expanding area of community housing organised and conducted by the trust itself. Section 18 provides:

> The authority will have such staff (comprised of persons who are members of the staff of the South Australian Housing Trust) as is necessary for the purposes of this Act.

Therefore, the actual staff involved with the work of the authority will be people who have been working on the project, whether it remained in or out of the Housing Trust.

I think the Housing Trust has, by its ethos, a challenging and broad ranging area of responsibility which is separate from the particular and peculiar psychological, personal issues which are involved with groups sharing together the responsibility of developing housing cooperatives, and I certainly feel that it is quite appropriate for this to be reflected in a separate authority. I think that, to a degree, the quality of the authority will depend on those members who are appointed by the Minister. The fact that the General Manager of the Housing Trust will be on the authority is, I think, an assurance that there will be a person of considerable skill and responsibility on the authority. Also, I think it is reasonable to expect that the two people who are elected by the members of the registered housing cooperatives themselves will be people who are known and trusted and who have proved their competence before being elected to the authority.

Therefore, I am not persuaded that there is any advantage (in fact, there may well be some very substantial disadvantages) in keeping the authority managing the housing cooperative movement within the Housing Trust, and I oppose the amendment.

The Hon. L.H. DAVIS: Briefly, the Minister really has relied solely on the argument that the culture of the housing cooperative is different, and that it is not fair to have it under the Housing Trust umbrella. That is the nub of the argument. If we take that argument, we can look at mining, for example, and say, 'Well, you know, we have little boutique mining operations, maybe one prospector up in the

Flinders Ranges, a small mining group, prospecting and fossicking away and different when compared with Western Mining and BHP. There are quite different cultures between the big and the small mines. It is not fair: we really should have a different authority to look after the small boutique miners, because they have a different culture from the big ones. They should not be under the aegis of the Department of Mines.' That is about the extent of the sophistry that we have with this argument. It is very precious; in fact, I think it is damned elitist, quite frankly, and I find it quite extraordinary. I know the numbers are against me, but I do indicate that I will call for a division.

The Committee divided on the amendment:

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

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

Majority of 1 for the Noes.

Amendment thus negatived; clause passed.

Clauses 4 to 8 passed.

Clause 9—'Membership of the authority.'

The Hon. L.H. DAVIS: It would be remiss of the Opposition not to mention the extraordinary cheekiness of the Government in actually advertising positions on the authority before this Bill had been debated in this Parliament. I find that an extraordinary move. It is an example of the arrogance of this Government to actually advertise positions on an authority that had not yet been created and well before the select committee had been established. I think that that is quite an unusual procedure, as I am sure the Attorney-General would accept. I move:

Page 6—

Line 15—Leave out 'seven' and substitute 'nine'.

Lines 16 to 20—Leave out paragraph *(a)* and substitute:

(a) six will be appointed by the Governor—

(i) three being nominated by the Minister;

(ii) one being chosen from a panel of three submitted by the Community Housing Assistance Service of South Australia Inc.;

(iii) one being chosen from a panel of three submitted by the Housing Industry Association Inc.;

(iv) one being chosen from a panel of three submitted by the Real Estate Institute of South Australia Inc.;.

This amendment accepts the fact that the authority is a *fait accompli*, as instanced by the rejection of my amendment to clause 3. Therefore, the Opposition believes that the Real Estate Institute and the housing industry should be able to have input into an authority which establishes policy and which has a supervisory role. We are talking about tens of millions of dollars of taxpayers' money over a period of time. It is important that people with hands-on, practical experience have a chance for input.

I welcome what the Hon. Ian Gilfillan said. He took the trouble to actually consult the Real Estate Institute of South Australia. From the tone of the letter he read to the Committee, it was quite clearly willing to participate because it felt that it could make a worthwhile contribution. That is also surely true of the Housing Industry Association, which quite clearly can have input in relation to giving advice and help in the use of materials. Both bodies have an eye for value for money, location and trends in the industry.

I would have thought that one person being chosen from a panel of three people submitted by those highly respected, professional organisations would enhance and strengthen the authority. No-one can deny that. If the Hon. Ian Gilfillan wants to support that, I would welcome it. It seemed as if he was half way over the bridge in his enthusiasm for the Real Estate Institute. I hope that he will put both feet on the bridge, come across and support the amendment because it will not detract from the authority. The amendment can only strengthen the authority and ensure that it is run properly. That must be the case if the housing cooperative movement is to have strong leadership. There is a commercial element in this which must not escape the notice of the Australian Democrats. Both of those associations having indicated a willingness to serve, I think that they should be given that opportunity.

The Hon. I. GILFILLAN: Through the good grace of the Minister, I think that we can organise that this clause be recommitted. At this stage I have not had adequate discussion either to support the amendment or move an appropriate amendment. The Democrats are very sensitive to the economic consequences of legislation which sets up authorities. I think the point is well made that, in a housing cooperative structure, there need to be some feet on the real estate ground. How that is introduced into the authority is the issue we are considering in this Committee stage.

Since he bemoaned that the enterprise should actually be established, I am a little bemused by the fact that cut, slash and diminish Davis is now recommending an expansion of it. His amendment is to increase substantially the membership of the authority. I have some sympathy with the motive for increasing the membership of the authority to include people of experience in the real estate world. I am not sure what the Minister will recommend, but I will be expecting the reconsideration of this clause, and I believe that that is the undertaking she gave to the Chamber. Under those circumstances, I oppose the amendment. When this clause is recommitted I will either move an amendment or consider an amendment that may come from other members.

The Hon. L.H. DAVIS: Throughout this year the Liberal Party has consistently demonstrated, in its exposé of the State Bank, SGIC, SATCO and other rorts, the waste of this Government and is yet again demonstrating coherence and logic in the argument that we now have before us—we reject entirely an authority run by the people who are part of it. That is what the Hon. Ian Gilfillan is half supporting at this stage. Surely that is the danger that he can see. If he does the numbers—and I think the Democrats can count up to seven—

The Hon. C.J. Sumner: There's no need for that.

The Hon. L.H. DAVIS: If we look at clause 9 and consider the seven members—no, this is good, solid stuff—four will be nominated by the Governor, three can be nominated by the Minister, one is chosen from a panel of CHASSA, one will be the General Manager of the South Australian Housing Trust, and two will be elected by members of the registered housing cooperatives. With a quorum of four, there could quite easily be a situation where the cooperative organisation at meetings will have control of its own operation. If the Hon. Ian Gilfillan is happy with that, I cannot do anything to dissuade him from that belief.

I certainly want to put on record for the readers of *Hansard* that the Liberal Party rejects outright that proposal. With such a heavy element of Government subsidy, that is totally untenable and unacceptable. Admittedly, we have increased the membership of the authority, and I am quite happy to say publicly that it is not a Liberal practice to make bodies bigger, but we did not want to disturb the existing balance. In the interests of trying to get the Democrats to agree to something proposed by the Liberal Party, we put up this amendment. It can only strengthen the authority because, as the Hon. Ian Gilfillan admitted in a very colourful turn of phrase which I rather liked, 'it is

important to have real estate feet on the ground', and that is exactly what the amendment proposes. However, he is hovering around saying that it is too hard and he needs to get more advice. That is disappointing.

This amendment has been on file for two weeks. The Democrats are extraordinarily inconsistent when it comes to their ability to grasp something. Only yesterday the Minister of Water Resources announced new proposals which the Democrats embraced overnight, when only a few days ago the Hon. Mike Elliott said that 10 days was not long enough for him to think about an important amendment to the land tax legislation. As a result, the Australian Democrats did not support our amendment, so the hapless taxpayers of South Australia pay another $10 million. In this instance, with an amendment on file for what must have been two weeks at least, the Hon. Ian Gilfillan, with all his staff—far more staff than I have ever seen in my parliamentary life—is unable to make a decision. Well, I just find that fairly unacceptable.

The Hon. I. Gilfillan: I made a very clear decision. You did not listen. You were chattering so much, you did not listen to my speech.

The Hon. L.H. DAVIS: No. I find it disappointing that the Democrats demonstrate so much inconsistency in their approach. It is an important principle that an authority establised by a Government, whether it is a Liberal or Labor Government, does not allow the authority to be run by the vested interests. That is the starting point in this debate, and I hope that the Hon. Ian Gilfillan, in considering what I think is a most important amendment, takes that on board.

The Hon. BARBARA WIESE: In framing this part of the Bill, the Government has clearly spelt out what is expected of the authority. The major role of the authority is to engage in promotion, regulation, program management and support. I do not think we are very far apart on the issues that have been raised here tonight because I do not think it is the Government's intention that the Housing Cooperatives Authority should not have access to professional advice and expertise when that is required.

In framing this Bill, it was the intention and expectation of the Government that advice required from experts in real estate, or whatever the appropriate field, would be available to the authority on an 'as needs' basis and for specific projects. So, for example, it is intended that appropriate people would be engaged when compulsory training and purchasing procedures for cooperatives are being undertaken, and other particular needs may have to be met from time to time. However, I take the point raised by the Hon. Mr Gilfillan in particular with respect to this matter. I understand he has already had some discussions with the Minister or his officers about making that arrangement more formal.

I think the Minister would agree that, if there is to be that sort of involvement, the proposal that the Hon. Mr Gilfillan is considering, whereby one of the Minister's nominees would be a person with those skills, would be a proposal that the Minister would find more acceptable than the proposal put forward by the Hon. Mr Davis, if only because it would keep that management team at an appropriate size to do the job required of it. So, I thank the Hon. Mr Gilfillan for agreeing to support the Government's Bill on this matter at this point, and I give the assurance that this clause will be recommitted at a later time, once he has had an opportunity to have further discussions with the Minister and his officers.

Amendments negatived; clause passed.

Clauses 10 and 11 passed.

Clause 12—'Procedure at meetings.'

The Hon. L.H. DAVIS: It is appropriate not to proceed with this amendment at this time, subject to what occurs when clause 9 is recommitted.

Clause passed.

Clauses 13 to 27 passed.

Clause 28—'Powers of a registered housing cooperative.'

The Hon. L.H. DAVIS: Subclause (4) provides that a registered housing cooperative must not allow its borrowings at any time to exceed, in total, an amount equal to the current market value of all of its properties. It occurs to me that that is fairly extravagant and prudence would suggest that, in normal circumstances, one would expect they would not get too close to 100 per cent. I know it is not all that uncommon to see borrowings at 85 per cent, 90 per cent or perhaps even 95 per cent, and certainly when one takes into account that current market values can fluctuate and even drop at times such as we are currently experiencing, borrowings can approach the current market value. I want to flag some concern about that clause. I will not go so far as to suggest an amendment, but wonder whether there is any idea of what is the current level of borrowings as a proportion of the current market values.

I also take this opportunity to ask two questions which can be taken on notice. First, what is the proposal for the financing of registered housing cooperatives? There has been a lot of discussion about that, but it seems to have fallen away in recent debates. I would be interested to know how tenant-based housing cooperatives will be financed in the future. What changes are proposed in their financing? That is obviously an important consideration in properly understanding tenant-based housing cooperatives. Also, what is the proposal for financing community-based housing, if the Minister could be so gracious to look at something actually outside the ambit of this Bill?

The other point that is pertinent to this Bill is whether the Cooperatives Act impinges on this Bill in any way. Are there any limitations in the Cooperatives Act which may run contrary to some of the clauses of this Bill?

The Hon. BARBARA WIESE: As to the first three questions relating to the borrowings as a proportion of current market value, the issues relating to financing of housing cooperatives and the question on community based housing, I will have to take those questions on notice and bring back replies at a later time. As to the last question, where I understand the honourable member was asking whether any clauses in this Bill would run contrary to the legislation relating to community based housing, as I understand the question, I would have to suggest that it is not a relevant question, because they are very different. There certainly are differences in the pieces of legislation, and the reason that this is a new piece of legislation is that particular issues had to be taken into account. So, there would not be any conflict in the two pieces of legislation, because they are dealing with different subjects.

The Hon. L.H. DAVIS: Is the Minister actually suggesting that housing cooperatives are excluded from the operation of the Cooperatives Act?

The Hon. BARBARA WIESE: The answer is yes; they are excluded. Some time ago the possibility of incorporating housing cooperatives in the Cooperatives Act was examined with the assistance of the Corporate Affairs Commission and it was determined that it was inappropriate for housing cooperatives to be included in the same piece of legislation, largely because the Cooperatives Act covers business enterprises. It covers such organisations as agricultural cooperatives and other trading enterprises. Housing cooperatives, on the other hand, are non-profit, community services organisations and, therefore, when the matter was examined

in some detail, it was determined that a separate piece of legislation was desirable.

The Hon. L.H. DAVIS: I accept the Minister's explanation.

Clause passed.

Clauses 29 to 31 passed.

Clause 32—'Application for membership.'

The Hon. L.H. DAVIS: One of the concerns that members on both sides of politics have had about the housing cooperative movement is the ambiguity of membership. More than anecdotal evidence has been given to me of people with quite high incomes—some of them have had property—who have become members of cooperatives. Given the shortage of public housing accommodation, the ability to queue-jump public housing—particularly by people with quite good income levels, perhaps with existing property—it is something which the community in South Australia would find hard to accept. As I reiterate, there are members on both sides of politics who have concerns about this point. Whilst it is not addressed precisely in the framework of the Bill, it seems that clause 32 provides an appropriate opportunity to ask the question whether the Government intends strictly to means test entry into cooperatives.

The Hon. BARBARA WIESE: The Government has no intention of means testing entry into housing cooperatives. As the honourable member would be fully aware, this question of access to housing cooperatives and allegations that have been made from time to time about people who are much better off than low income applicants gaining access to housing cooperatives was dealt with at some length by the select committee. Although numerous allegations have been made from time to time, as I understand it neither the select committee nor anyone else who has had the opportunity to investigate these allegations has been able to find evidence of the practices to which the honourable member refers. Having said that, the matter of access to cooperatives will be dealt with in the regulations, the drafting of which the Housing Trust is currently working on with Parliamentary Counsel.

Part of the proposed arrangements will be a funding agreement between the authority and the individual cooperatives, and guidelines for access will be a feature of that agreement. Matters relating to the targeting of low income people will be amongst the criteria that will form part of the funding agreement. So, if the terms of the agreement are not met in this area or in any other area, that could be treated as a breach of the agreement and there would be grounds on which action could be taken if evidence along the lines suggested by the honourable member could be produced and proven. So, steps will be taken to ensure that funding for housing cooperatives is targeted to low income people through the sorts of methods that I have talked about, but there will not be specific means testing as means testing is not applied to housing provided by the South Australian Housing Trust.

The Hon. L.H. DAVIS: From that answer, I take it that no specific income limit will necessarily be placed on applications although, as the Minister has said, there may be an overall criterion that has to be observed by a particular cooperative. Is that a fair summary?

The Hon. BARBARA WIESE: That is correct.

The Hon. L.H. DAVIS: Another concern, which is more than anecdotal, concerns several examples that have been provided to me where persons have been denied membership of a housing cooperative because they were not of the right philosophical persuasion. These complaints come from people in the northern and western areas, who indeed were in the wrong faction in the Labor Party, people who were worthy applicants for housing cooperatives. Given that the Government is committing itself to 300 housing units a year, we are looking at arguably 15 new housing cooperatives of 20 houses each (and allocating roughly $1 million for 15 houses—that is the sort of round sum that one could argue) and with leaders coming forward from various areas saying that they want to set up a new housing cooperative under this program, then, clearly, people who are close to the leadership group are in an advantageous position. It is a concern of housing cooperatives throughout the world that this particular model is wide open to abuse. Human nature is a wonderfully constant thing.

The Hon. T.G. Roberts: They might be Democrats.

The Hon. L.H. DAVIS: I would not say that. The Hon. Terry Roberts says rather cuttingly that they could be Democrats. I think that is rather hurtful. I ask the Minister directly: what safeguards will be in the program to stop this problem recurring?

The Hon. T.G. Roberts: A philosophical filter.

The Hon. L.H. DAVIS: It has been a philosophical filter: that says it very well.

The Hon. BARBARA WIESE: The honourable member has made these allegations—

The Hon. L.H. Davis interjecting:

The ACTING CHAIRPERSON (Hon. Carolyn Pickles): The Hon. Mr Davis was heard in silence. I ask him to extend the same courtesy to the Minister.

The Hon. BARBARA WIESE: A select committee was established that enabled anyone to bring forward any information that might have been useful or relevant to this matter. So, if the Hon. Mr Davis has names—and I believe he says he has—he had the opportunity to bring that evidence before the select committee, as did anyone else who thought they had information about individuals that would enable these allegations to be investigated. That information could have been brought before the select committee, but no-one came forward. So, I do not think there is much point in pursuing that matter.

What are more relevant are the arrangements that will be made in the future for selecting tenants for housing cooperatives. As part of the proposed financial agreements, proper processes will be required to be developed for the selection of tenants and an appropriate appeals system will have to be established. This information, the criteria upon which these things will be based, will have to be publicly available, and if people are not satisfied with the selection procedure they will be able to appeal to the cooperative. If they do not like the reply they get, they will have access, under clause 84 of the Bill, to an independent appeals process where they can receive fair and impartial adjudication on the matter. So, should this ever have been a problem, it ought to be a problem that no longer exists under the new arrangements.

Clause passed.

Clauses 33 to 50 passed.

Clause 51—'Issue of investment shares.'

The Hon. L.H. DAVIS: Investment shares are proposed under part (6) of the Bill. Clause 51, which is lengthy, outlines a provision for investment shares. Is the Minister in a position to enlarge on this provision? Clause 51 (6) provides:

> An investment share must, according to the rules of the cooperative, be issued in relation to:
>
> *(a)* a particular residential property of the cooperative; or
>
> *(b)* the real property of the cooperative generally.

Can the Minister explain exactly that point and, in order to facilitate the proceedings of the Committee (and she may

take this on notice) can she discuss any provisions that may exist for tenants to have equity in the dwelling?

The Hon. BARBARA WIESE: As to the second question, which related to whether there were any provisions in the Bill to provide for tenants to have an equity in a dwelling, in fact, part (6) is designed to provide the conditions under which tenants might take an equity holding. When this part was being drawn up, extensive legal advice was sought on the possible options for providing equity, and it was decided that this current arrangement that has been settled on was the simplest and speediest way to provide such equity.

As to the first question, which related to clause 51 (6), the Hon. Mr Davis has asked for an explanation of paragraphs *(a)* and *(b)*. As I understand it, this provision was inserted at the request of the cooperatives. They wished to have a choice in the manner in which their shares could be valued so that, if they wanted to have them valued on an individual property basis, they could do so or, if they wished to have them valued as a proportion of the value of all properties within the cooperative, they could choose to do that also. Therefore, both methods have been included in the Bill, and the wishes of cooperative members to have the option to exercise that choice have been accommodated.

Clause passed.

Remaining clauses (52 to 107), schedule and title passed.

Bill recommitted.

DANGEROUS SUBSTANCES (COST RECOVERY) AMENDMENT BILL

Bill taken through its remaining stages.

ADJOURNMENT

At 11.11 p.m. the Council adjourned until Wednesday 13 November at 2.15 p.m.