LEGISLATIVE COUNCIL

Wednesday 13 November 1991

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

OMBUDSMAN'S REPORT

The PRESIDENT laid on the table the report of the Ombudsman for 1990-91.

MINISTERIAL STATEMENT: NATIONAL CRIME AUTHORITY

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

Leave granted.

The Hon. C.J. SUMNER: The National Crime Authority's South Australian reference No. 2 was issued on 24 November 1988 to look into allegations involving bribery and corruption of or by police officers and others, illegal gambling, extortion and prostitution, cultivation, manufacture, preparation or supply of drugs of addiction, and murder or attempted murder. Since that time the National Crime Authority has produced a number of reports dealing with these allegations. Reports on Operations Ark, Hound and Hydra have been tabled in the Parliament. In June this year I announced the winding up of the NCA's reference No. 2 investigations. At that stage, it still had a number of allegations left to investigate and report on.

It was anticipated that those reports, plus a final report which provided an overview of the NCA's operations in South Australia, would be completed in time for them to be tabled in this House before the Christmas recess. This week I received information from Mr Cusack QC, the member of the NCA responsible for the South Australian reference, that the final report had been delayed by the fact that hearings in Reference No. 2 were not completed until September this year. Further investigations have had to be undertaken as a result of those hearings and the fact that further information had been supplied to the NCA. These investigations were not completed until the end of last week.

The NCA is now endeavouring to complete its final report as soon as possible, but given the relatively short time left in which the reports can be tabled, I anticipate that they will not be available for tabling until the parliamentary sittings next year.

MINISTERIAL STATEMENT: SOUTH AUSTRALIAN FILM CORPORATION

The Hon. ANNE LEVY (Minister for the Arts and Culture Heritage): I seek leave to make a statement.

Leave granted.

The Hon. ANNE LEVY: Yesterday, an honourable member opposite made some allegations about the production *Hammers Over the Anvil* which is currently being made by the South Australian Film Corporation. The film is currently five and a half weeks into a seven week shoot and is both on schedule and on budget. The total budget for *Hammers Over the Anvil* is $4 million and it is one of five films being fully financed by the Film Finance Corporation.

During the production, the Film Corporation has been producing weekly cost reports for both the FFC and the completion guarantor. These reports are being scrutinised by those agencies and no problems have been raised. The budget for the film includes a completion guarantor, and any budget problems have been identified. There are no other identified difficulties with the production. It is anticipated the remainder of the production will be completed on budget and on schedule.

Mr President, the question that was asked yesterday was a crude attempt at political point scoring using the South Australian Film Corporation. This is not the first time the honourable member opposite has used the Film Corporation in this way. It is extremely disappointing that these fallacious and completely unsubstantiated rumours were raised in Parliament yesterday. Their only purpose could have been to damage the credibility of the South Australian Film Corporation at a time when it is out in the marketplace seeking to raise investment finance for productions. The production of *Hammers Over the Anvil* is employing 300 people, and is filming all over South Australia. It is extremely irresponsible that these rumours should be raised in Parliament, when one simple phone call could have dispelled them.

QUESTIONS

CHILD ABUSE

The Hon. R.I. LUCAS: I seek leave to make an explanation before asking the Attorney-General a question on the subject of child abuse victims.

Leave granted.

The Hon. R.I. LUCAS: Recently my office has been contacted by a policeman who has been part of the Operation Keeper team in the northern suburbs that has been investigating alleged cases of child abuse. The police officer voiced the concern that in certain cases victims of alleged child abuse—some, girls aged as young as nine years—were having to endure up to five separate interviews prior to their cases going to court. Naturally, this can be a very traumatic exercise for young victims who have to recount repeatedly, to total strangers, events that have left them devastated and confused. The police officer said a victim would ordinarily undergo an initial interview with an Operation Keeper officer, following the notification of alleged child abuse.

The Hon. M.J. Elliott: You should have read the select committee's report.

The Hon. R.I. LUCAS: I have read the select committee's report. This would be followed up with yet another interview coinciding with a medical examination. The victim would then be subjected to another interview at the committal hearing stage, then to a Crown Law pre-trial proofing and, finally, to examination at the trial proper. The former head of the Operation Keeper team, Detective Sergeant John Bean, in a paper presented to the select committee on child protection policies last year, highlighted the problems that victims faced in this regard. He summarises his view by saying that the system of prosecution falls down badly in South Australia and was frowned upon by prosecutors and police officers in other States. Detective Bean said in part:

> On the day that a trial commences in South Australia the victim of the crime may have been proofed on at least three to four occasions by various Crown solicitors.

I might add that he indicates how that come about because of the procedures in administration within Crown prosecution. He then indicated some of the feelings victims experienced as a result of this process, as follows:

[They feel] they are not believed by police or prosecutors. The victim has to for-go (sic) school or work commitments at the whim of Crown prosecutors. This especially wears thin after two or three proofings. The victim feels uncomfortable and oppressed by having to be 'cross-examined' on these proofings in unfamiliar surroundings . . . The female victims are embarrassed discussing intimate details of the offences with male prosecutors.

The report of the Legislative Council Select Committee on Child Protection Policies, Practices and Procedures in South Australia also noted similar problems with interviewing victims, and it recommended:

The select committee notes the criticisms of interviewing techniques and that the Child Protection Council has prepared interagency guidelines aimed at ensuring that children are interviewed as sensitively and efficiently as possible . . . It recommends that the guidelines are finalised as soon as possible (recommendation 7).

The select committee also examined views about recording evidence from victims of alleged child abuse, both on videotape and audiotape. It recommended that:

. . . the abused child victim does not have to face the accused in court and that this is circumvented by the use of screens and video and audio equipment (recommendation 13).

In relation to this I note that the Attorney-General stated in debate in this place on the Justices Amendment Bill that there were 10 audio-video units already operating in police stations in South Australia. My questions to the Attorney are:

1. Does he agree with Detective Bean and other officers in the Operation Keeper team that child abuse victims are subjected to excessive interviewing by various agencies and that this poses a potential danger in the victim withdrawing the charge, or could possibly lead to contamination of the victim's evidence, and what action is he taking to correct this unacceptable situation?

2. If 10 audio-video units are operating in police stations why are they not being used in these child abuse cases?

3. What steps have been taken by him or the Government to ensure that the interagency guidelines on interviewing are finalised and introduced?

The Hon. C.J. SUMNER: I will check what has happened with the interagency guidelines referred to in the select committee's report and bring back a reply for the honourable member. I should say that the report of the Select Committee on Child Abuse is under consideration by the Government at the present time; it has been considered by the Justice and Consumer Affairs Committee of Cabinet; and a small working group from the Departments of Police, Attorney-General's and Family and Community Services has been set up to analyse, assess and recommend any action that is needed in relation to the recommendations of the Child Abuse Select Committee. That was the answer to the third question.

As to the second question, the audio-video units in police stations are used for interviews with suspects and, as I understand it, they are not used by police officers for interviews with child witnesses or victims of child abuse who may be witnesses in cases. I think the area of audio and video recording of suspects and the audio and video recording of child abuse victims is an area that undoubtedly will expand considerably over the coming years. Additions have been made to police resources in recent times to allow an expansion of audio-video units in police stations for the purposes of interviewing suspects, and shortly legislation which is being prepared will be introduced into the Parliament dealing with that topic and providing that audio and video recording of suspects should occur as a matter of course.

The Hon. Diana Laidlaw: Is that to complement the Federal initiative?

The Hon. C.J. SUMNER: No; in relation to suspects, that arises out of a High Court decision which in effect said that, given the modern technology that is available now to interview suspects, *prima facie* those interviews should be carried out by video or audio means. If they are not, the interview that the suspect gives can be called into question. However, that is a separate issue from the one raised by the honourable member. Nevertheless, it is related to the question of the use of audio or video means in the criminal justice system. Over the next few years I think we will see a significant increase in the use of audio and video equipment.

With respect to suspects, of course, it is generally considered to be important for the effective functioning of the criminal justice system because, if there is a verified audio or video tape of a suspect's statement to the police, there can be less argument about whether the suspect has said the words or made the admissions alleged by the police.

I think more can probably be done about videoing child abuse victims, although this area is not entirely clear. As the honourable member knows, we have provided in the Evidence Act in South Australia that a video interview of a child victim can be tendered in evidence in committal proceedings. However, the proposition that evidence can be tendered in substitution of the child appearing in court is, of course, much more controversial. For instance, the Chief Justice of this State believes that, even if a child is involved, an accused person is entitled to be confronted directly by his or her accuser, and that means directly in court with the child present.

The Hon. R.I. Lucas: That could be a separate question to reduce the number of pre-trail procedures.

The Hon. C.J. SUMNER: I will get back to that. However, the honourable member raised in his second reading explanation the question of screens and videos, and that is why I am addressing that matter. Two propositions have generally been put up as a compromise with respect to this situation: first, that a screen be introduced into the court to screen the child from the accused; and, secondly, that there be a video link from the courtroom to a separate room in the court structure, and that the child give evidence from that separate room. Those matters are being examined by the Government at present.

We are monitoring a trial that was conducted on these procedures in the Australian Capital Territory, and I think this issue has also been raised by the select committee. So, obviously it is a matter to which we will give attention. However, it is not an issue about which there is unanimity. I have already expressed the Chief Justice's view.

Some Crown Prosecutors believe that the creation of a favourable impression on a jury would be more effective if the child was actually there, speaking directly to the jury rather than through a video. So, Crown Prosecutors have raised queries about this sort of a system. On the other hand, the Children's Interest Bureau—people concerned with the welfare of child victims—believes that screens or a video link system should be introduced. This matter is being considered and will be addressed.

As to the question of the number of interviews, it is possible that early audio or video statements from a child victim would remove the need for some of the interviews mentioned by the honourable member. However, I think it is fair to say that there would need to be an initial interview, because if the police are investigating the matter they would want to interview the child at least in a preliminary way.

Quite clearly, a medical interview is necessary if medical evidence is needed to corroborate any accusations of abuse and, without that corroboration, the chances of getting the

case established in court would lessen greatly. Again, it is difficult to see how that can be avoided. There would not normally be an interview before committal proceedings, because legislation which the Parliament has approved and which has been in place in South Australia for many years means that child victims do not have to give evidence in committal hearings, just as victims of sexual assaults and rape do not have to give evidence in committal proceedings unless special reasons are established as to why the victims should be cross-examined by the defence.

Therefore, I do not see in what circumstances there would be a committal interview, but there may be in some circumstances. Obviously, pre-trial proofing, in whatever system is adopted, would continue to be necessary and, again, it is hard to see how that can be avoided.

The Hon. R.I. Lucas: Sometimes three separate officers do pre-trial proofs.

The Hon. C.J. SUMNER: Well, I do not know exactly what the honourable member is referring to there. That may happen on some occasions; pre-trial proofing of some kind is necessary. Certainly, at some point in this procedure the Crown prosecutors must be involved, and there are a number of occasions where they proof the witnesses, look at the case, look at whether the evidence is sufficient and decide that the matter cannot proceed, because there is insufficient evidence. What we have tried to do with these cases, procedurally within the Crown Prosecutor's Office, is to have that decision made at the earliest possible moment. That may involve an extra interview, but I can assure you—and I would check these statements by Mr Bean—that the prosecutors in the Crown Prosecutor's Office are very sensitive to the needs of victims. As is everyone else in Government, they are obliged to comply with the statement of rights of victims of crime, which were promulgated by the State Cabinet, and I think they use their best endeavours to ensure that those rights are complied with.

There are people within the Crown Solicitor's Office who have expertise in dealing with child victims, and they tend to deal with these matters, but it must also be pointed out that these cases are not particularly easy; they are stressful, and it is not an area in which a prosecutor usually wants to stay for many years. Obviously, you develop a bit of expertise, but you then must move on to other cases.

I know that the position of victims feeling that they are not believed by police and prosecutors is a common feeling, but I think that feeling comes about because, before they can put someone up as a witness in court, the police and prosecutors must establish that they themselves are convinced that the witness is telling the truth as a witness of credibility, and that sometimes gives the impression to the victims that they are not being believed, if you like, by prosecution authorities. But it would clearly be a lot worse if they did not get full and accurate statements, and the matter went to court with all the trauma of cross-examination and then, after all that, the case failed.

I will look at the specific queries raised by the honourable member, as I said I would, in relation to yesterday's issues, but I can assure him that, in recent years, the Crown prosecutors have done whatever they can within their own procedures (and, obviously, to some extent, the best use must be made of resources within the Crown Prosecutor's Office) and within the policies laid down by me and by the Government to ensure that victims are treated properly.

SOUTH AUSTRALIAN GOVERNMENT FINANCING AUTHORITY

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

Leave granted.

The Hon. K.T. GRIFFIN: A front page story in this morning's *Advertiser* reveals that the South Australian Government Financing Authority, through the then acting Under Treasurer, Mr Peter Emery, requested the State Bank to set up eight to 10 companies as part of a scheme to take advantage of the bank's tax exempt status in arranging financing through the private sector. Such involvement of the South Australian Government Financing Authority and the requested involvement of the State Bank was, according to the report, designed to provide substantial tax benefits to third parties by a scheme described in the report as a 'scam', even though it may have been within the letter of the law.

Does the Attorney-General regard the involvement of the South Australian Government Financing Authority financing schemes to give Federal tax benefits to third parties and its encouragement of other Government agencies, such as the State Bank, to be involved as part of such schemes, as a proper role for a State Government, the South Australian Government Financing Authority and its other agencies?

The Hon. C.J. SUMNER: As I understand it, the State Bank was not involved in these matters, as it turned out. However, it is on the public record, as the honourable member would know, and has been debated in another place on a number of occasions, that SAFA has been involved in a number of structured finance arrangements.

The Hon. M.J. Elliott: Tax scams.

The Hon. C.J. SUMNER: That, I think, is a totally wrong—

The Hon. M.J. Elliott interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: —statement of what has been involved. What has been involved are arrangements which, as I understand it, have been accepted by Federal taxation authorities. If that is the case, if they are done within the laws of this country, including the Federal tax laws or others, I do not see that there is any difficulty with them. The specifics of this matter have been dealt with in another place. In answer to the honourable member's question, as I understand it the State Bank was not involved; but SAFA has been involved in these transactions, and that is on the public record. In so far as it has been involved in them within the tax laws of Australia, I see no objection.

TAXI DRIVER TRAINING SCHEME

The Hon. DIANA LAIDLAW: I seek leave to make an explanation before asking the Minister representing the Minister of Transport a question about the taxi driver training scheme.

Leave granted.

The Hon. DIANA LAIDLAW: When the Minister of Employment and Further Education launched a new compulsory taxi driver training scheme on 1 September this year, it was envisaged that completion of the training course would be one of the conditions a new applicant would have to meet before being issued with a licence to drive either a taxicab or a hire car vehicle of up to eight seat capacity. Under the Metropolitan Taxi-Cab Act and regulations there is no distinction between licences for hire cars or taxicabs.

However, all this changed a month ago after the Minister wrote to the board requesting—in effect, ordering—it not to include prospective hire car drivers in the compulsory driver training scheme. A letter from the Minister of Transport to Mr Michael Wilson, the Chairperson of the board, dated 15 October is as follows:

I write in reference to the compulsory taxi driver training scheme. I have noted the progress you have made in this area and can see the benefits of training in the taxi industry, as a way of ensuring quality service.

However, I am concerned that the scheme has now widened in its scope to include all prospective general hire vehicle and specific purpose hire vehicle drivers. I do not approve of this change to the scheme. I am satisfied that market forces in the hire vehicle industry will more than adequately provide for an appropriate quality of service to be provided. Whilst 'let the buyer beware' is not appropriate in the taxi industry, it is appropriate in the competitive hire vehicle industry.

It is clear that the Minister's easy-going 'let the buyer beware' attitude is totally at odds with the standards that the Hire Car Operators Association seeks to achieve within its industry. In fact, the association's submission to the Government's futures paper on the taxicab and hire vehicle industry recommends under the section 'safety measures' that licences be issued only to those who are considered fit and proper persons and who have successfully completed an accredited driver training program. As I understand it, it is unusual for the board to receive specific instructions or requests from the Minister on matters of policy and practice. Therefore, I ask the Minister:

1. What circumstances influenced the Minister to ask the board to exempt prospective drivers of hire vehicles from undertaking compulsory training as a condition for gaining a licence to drive?

2. Why did he make such a request six weeks after the training scheme had commenced without any consultation with the Hire Car Operators Association or any consideration for the association's endorsed policy favouring compulsory training?

3. Why, at a time when he professes to want to deregulate the industry, is he prepared to complicate and confuse the licence issue by endorsing two standards of licence depending on whether or not a driver has successfully completed an accredited training course?

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

COORONG

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister representing the Minister for Environment and Planning a question about the Coorong.

Leave granted.

The Hon. M.J. ELLIOTT: In November 1990, I asked a question about a proposal to dig interception drains that will intercept saline groundwater in the vicinity of the Coorong, carry that water through what used to be wetlands, fill those again, and then eventually carry it into the southern end of the Coorong. The proposal has two benefits. First, it may protect farmland (rising watertables because of native vegetation removal is bringing salt to the surface) and, secondly, if the waters are controlled it may be possible to mimic the natural conditions that occur in the Coorong in terms of the variability of salinity. At present little fresh water is finding its way into the Coorong, affecting species of plants and fish which had evolved to tolerate both hyper and hypo saline conditions. Those conditions are now almost entirely hyper saline. The response to my question last year was that officers of the Department of Fisheries, the Department of Environment and Planning and the Department of Lands had been discussing the proposal with proponents and other interested parties. I point out that the longer it takes for something to be done the greater the damage that will occur to the Coorong, the fisheries and the various species that live there. My questions are:

1. How far have the discussions progressed?

2. Are we looking at work starting in the very near future?

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

ITALIAN OVERSEAS DELEGATION

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Minister representing the Minister of Industry, Trade and Technology a question about the costs incurred for overseas travel.

Leave granted.

The Hon. J.F. STEFANI: Earlier this year the Minister of Industry, Trade and Technology, Mr Arnold, travelled to Naples accompanied by a delegation from South Australia. My questions are:

1. Who were the people accompanying the Minister in an official capacity at Government expense?

2. In what capacity did each of these people travel to Italy?

3. What were the travel costs associated with each member of the Government's delegation?

4. What Italian regions did the Minister and those accompanying him at Government expense visit?

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

POWERLINES

The Hon. BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Minister representing the Minister of Mines and Energy a question on the subject of the undergrounding of overhead powerlines.

Leave granted.

The Hon. BERNICE PFITZNER: Residents in local councils, particularly those in the scenic Adelaide Hills and foothills areas, are becoming more aware that the overhead powerlines supported by stobie poles are an eyesore and a fire hazard in these areas. There appear to be two options for improving this situation: either put the powerlines underground or aerial bundle them—that is, bundling the individual parallel lines into what is known as aerial bundle cable, or ABC. Many residents prefer the undergrounding method, since a thick overhead cable is still just as unsightly.

Some two years ago, ETSA had agreed to charge $640 as a contribution to the cost of undergrounding, but recently the price for this same project was quoted at $9 500. Further, ETSA is considered a 'closed shop' as its charges for undergrounding are not subject to public scrutiny. They do not allow other contractors to do the installation. Also, the costs of specific standard equipment are inconsistent. For example, a transformer for an underground system costs $10 000, whilst a transformer for an above-ground system is appreciably less. My questions are:

1. Does ETSA have a policy of full cost recovery where previously the cost of the job was reduced by the difference in the cost of installing the alternative ABC work? If so,

what is the logic behind this policy, especially when ABC work was due to be done, anyway?

2. Will the Government inquire into the use of private contractors so that ETSA's costs are more competitive?

3. Why are the costs of certain specified standard equipment so significantly different for the two different systems?

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

SHACKS

The Hon. PETER DUNN: I seek leave to make a brief explanation before asking the Minister representing the Minister for Environment and Planning a question on shack site tenure.

Leave granted.

The Hon. PETER DUNN: It has been brought to my attention that officers of the Department of Environment and Planning have been travelling around the country following a survey that has been done for the department by Maunsell and Partners on the tenure of shacks in different areas. South Australia has a very large coastline, and a number of coastal areas have modest shacks built on them. There is not a large number of shacks on Eyre Peninsula, but the owners are under great pressure from the department to have their tenure shortened, or to have only what is called life tenure—that is, the people who own them now cannot sell them and, at their demise, the shacks must be removed.

I have a report from those who surveyed the area around Arno Bay, a small township between Port Lincoln and Whyalla, which has a number of shack sites servicing the people who live inland from that area. When one reads the report, it is interesting to note the criteria set out for Maunsell and Partners to observe when surveying the area. There is no way that those shacks could ever become freehold or, for that matter, have a longer tenure than was originally planned some few years ago. Even though a lot of money was spent on the report, it comes down with the same conclusion as that of a few years ago.

The shacks are behind sandhills and are subject to flooding probably once in 20 or 30 years. However, as was pointed out to me, those who built the shacks were aware of the flood risk situation, and I do not know whether it is the role of the department to determine whether or not they should be there. However, it was stated that the septic systems were unsuitable, and that they had to be sealed and therefore pumped out. That seems wrong to those who own the shacks because the area has very good drainage. Each shack has water, power and telephone cables supplied, and they have reasonable access to the foreshore. So, they seem to meet all the criteria that would normally be expected of a shack site. As to his reasons for owning a shack, one constituent writes:

> 1. The majority of these shacks were built by farming families. The District Council of Cleve recognised that there was and is a need in this area for somewhere for people from inland farms to take their children during the summer. They were aware that farming people are reluctant to travel too far from their properties at that time of year. There are stock that must be checked every few days and the ever-present fire danger makes it essential that they are no more than an hour or two drive away from home. There are not the leisure facilities available over here in small towns that city people can enjoy. We have to make the best of what is closely available, and it was with this foresight that the council prepared and made available the sites at Arno Bay and that people took up in good faith.
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> 2. These shacks have become a non-asset, particularly to those people whose shack is their only home. They have lost the right of re-sale if it should become necessary to provide for their old age. There were no conditions laid on their tenancy in the first place and no attempts made to discourage them from taking up permanent residence, and any such statement such as 'Well, you've no business to be there anyway' is quite offensive.

Will the Minister give consideration to people in the less wealthy parts of the State and consider those whose modest summer holiday homes are a long way from Adelaide so that they may have some surety of tenure in the future? Secondly, does the Minister give any consideration to the small populations in the area and, therefore, the low impact on the environment from these shack sites? Finally, and bearing in mind that the foreshore of Adelaide has shacks from Brighton to Outer Harbor, closer to the water than is the case in many of these country places, will the Minister say whether the same criteria that are applied to the country areas will be applied to the foreshore shacks from Brighton to Outer Harbor?

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

RADIOACTIVE WASTE

The Hon. I. GILFILLAN: I seek leave to make an explanation before asking the Minister representing the Minister for Environment and Planning a question about the proposed dumping of radioactive waste from Port Pirie at Roxby Downs.

Leave granted.

The Hon. I. GILFILLAN: The Port Pirie rare earths processing plant, to be run by SX Holdings, will produce an estimated 4 630 tonnes of radioactive slurry waste annually. In the supplement to the draft environmental impact statement, published in August this year by the South Australian Department of Environment and Planning, there exists a proposal to dump Port Pirie's radioactive wastes at the Olympic Dam uranium mine site at Roxby Downs.

A week ago, on 5 November, spokesman for the Conservation Council of South Australia, Marcus Beresford, stated publicly that the Port Pirie radioactive waste plan represents a major change of intention, which:

> . . . would effectively establish Roxby Downs as a nuclear waste dump to all comers.

Section 55 of the Roxby Downs Indenture Ratification Act 1982, with which many members would be familiar, states that the joint venturers must:

> . . . consult with and keep the State informed . . . concerning any action that they or an associated company propose to take with any third party—

and obviously SX Holdings fits into that category—

> . . . which might significantly affect the overall interest of the State under this indenture.

There is, therefore, no provision for Roxby Management Services to enter into agreements with other companies to accept radioactive wastes from elsewhere, as proposed by SX Holdings and the Port Pirie rare earths processing plant, unless the Government has been consulted. If this proposal goes ahead then Roxby Downs will, in effect, become a national or, possibly, international, repository for low-level radioactive waste—a *de facto* radioactive dump site.

Section 56 of the indenture allows for variation of the agreement from time to time, but under section 56 (2) and (3) any variation must be laid before both Houses of the Parliament within 12 sitting days of the agreement and the Parliament will decide if the variation is acceptable. So far this has not occurred. In addition, the Commonwealth Government shares some responsibilities in this matter due to

overlapping legislation, such as the Australian Code for the Transport of Dangerous Goods by Road and Rail and the Environment Protection (Nuclear Codes) Act.

Basically, though, the South Australian Government and this Parliament, through the indenture, have the bulk of responsibility for dealing with any matters relating to Roxby Downs. These issues, I believe, beg the following questions of the Minister:

1. Has the Government been consulted by the Roxby joint venturers, as required by section 55 of the indenture Act, regarding any proposal to store radioactive waste from Port Pirie at Roxby Downs?

2. If so, does the Government believe that such a proposal requires approval by the Parliament as provided under section 56 (2) and (3) of the indenture Act?

3. If not, does the Government agree that such a proposal would be illegal?

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

GOVERNMENT AGENCY REPORTS

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking the Attorney-General, as Leader of the Government in the Council, a question about Government agency annual reports.

Leave granted.

The Hon. L.H. DAVIS: The Attorney-General has heard this before, but the fact is that the Government Management and Employment Act requires each Government agency to present an annual report to the responsible Minister within three months after the end of the financial year and the Minister must table that report in each House of Parliament within 12 sitting days. In other words, the maximum time that is given for any Government agency to table the report in this Parliament is 12 sitting days after 30 September, and that final date for tabling annual reports in the Parliament in both Houses was yesterday Tuesday 12 November. The fact is that at least a dozen Government agencies have not tabled annual reports in the Parliament and they include—

The Hon. C.J. Sumner: Name them.

The Hon. L.H. DAVIS: The Attorney-General asks me to name them; I will name them. The first is the Department of Premier and Cabinet. I find it extraordinary that the Premier himself has not as yet tabled the annual report from the Department of Premier and Cabinet and that the department has thumbed its nose at this important requirement. As I have said, there are at least a dozen Government agencies that have not complied with the annual report deadline.

The Hon. Anne Levy interjecting:

The Hon. L.H. DAVIS: The Minister of State Services will be particularly interested that State Services has yet to report, according to the information supplied by both Houses.

The Hon. Anne Levy: I do not have it yet.

The Hon. L.H. DAVIS: That is an interesting admission. The Minister of State Services says that she has not even received a report, and she has 12 sitting days to table that report after she has received it. That is extraordinary; in other words, she has not received a report, and that is 4½ months after the end of the financial year, which is obviously a disgraceful state of affairs.

Members interjecting:

The Hon. L.H. DAVIS: The Government wants me to name them; I will name them: the South Australian Timber Corporation—now there is an example of an agency in some trouble, which has admitted losses of $44 million just in this year, $14 million on Greymouth and $30 million on the scrimber fiasco, and it cannot even table its annual report on time. We have talked about State Services; the Minister has not even seen the report, 4½ months after the due date.

Members interjecting:

The PRESIDENT: Order!

The Hon. L.H. DAVIS: The Commissioner for Equal Opportunity, the Parole Board of South Australia, the Senior Secondary Assessment Board of South Australia and the South Australian Planning Commission are amongst other Government agencies that have failed to meet the deadline.

The Hon. Anne Levy: You have five more to go.

The Hon. L.H. DAVIS: If members opposite want more, I will go on: the Aboriginal Lands Trust, the Chiropractors Board of South Australia, the Controlled Substances Advisory Council, the Ombudsman and the Planning Appeal Tribunal, plus several of the cultural trusts. So there is easily a dozen.

Members interjecting:

The PRESIDENT: Order!

The Hon. L.H. DAVIS: The Leader of the Government in the Council treats this in a fairly jocular fashion.

The Hon. C.J. Sumner: It is not jocular; I just want a list of them.

The Hon. L.H. DAVIS: I have listed them, and had the Minister fulfilled his half promise of some years ago we would now have a schedule of Government agencies that are required to report, and indeed that would be an advantage for both the public of South Australia and the Parliament. The point is that, quite clearly, having been hoisted on its own very vocal petard, the Government has failed to meet the requirements of its own legislation and, in the private sector, as the Attorney-General would well know, public companies much bigger than those Government agencies are listed on the stock exchange and are sending out detailed annual reports to shareholders, invariably by the end of October.

My questions to the Attorney-General are, first, will the Government provide a list of all the Government agencies that have failed to comply with the reporting deadline, and, in particular, will the Government explain why the Department of Premier and Cabinet and the South Australian Timber Corporation are unable to meet this deadline? Secondly, will the Attorney-General, who has had some passing interest in this matter over the years, again undertake to examine the feasibility of establishing a schedule of Government agencies which will be available for both the Parliament and the public, because it is a matter of some public importance?

The Hon. C.J. SUMNER: I thank the honourable member for his question and for the list of agencies which he has provided to the Council that did not report, he says, within the time required by the legislation. I note that in several cases he repeated the names of them twice and also obviously he was not listening earlier this afternoon when the Ombudsman's report was tabled in Parliament. However, I will refer his question to the appropriate Minister and bring back a reply.

BETTER CITIES PROGRAM

The Hon. J.C. IRWIN: Has the Minister for Local Government Relations an answer to my question of 17 October about the Better Cities Program?

The Hon. ANNE LEVY: A State level coordination committee comprising representation of all levels of Government has made recommendations to the Premier, Deputy Premier, Minister of Housing and Construction and the Minister for Environment and Planning on a number of exciting projects. An announcement on these projects will be made shortly. Local government is represented on the State Coordination Committee for the Better Cities Program by the Secretary-General of the Local Government Association, Mr Jim Hullick. Local government will be given the maximum opportunity to participate in projects which involve their areas of operation.

REPLIES TO QUESTIONS

The Hon. ANNE LEVY: I seek leave to have the following answers to questions inserted in *Hansard.*

Leave granted.

ENTERTAINMENT CENTRE

In reply to **Hon. I. GILFILLAN** (22 August).

The Hon. ANNE LEVY: The reply is as follows:

1. The Entertainment Centre will hold a variety of events—theatrical, sporting, general entertainment, etc. The centre is being managed by the Grand Prix Board and is therefore under the provisions of the Australian Formula One Grand Prix Act. This Act is committed to the Premier.

2. Corporate suites are an increasingly frequent feature of entertainment centres. The honourable member's question contained some inaccuracies.

There are 41 suites at corporate level. Of these:

- four are house boxes and not available for long-term leasing. These are used for 'trouble' seating and the promoter's requirements;
- two are disposed of on a night-by-night basis (the 'club suites') since their position does not always provide first class viewing;
- 35 are available for annual leasing to corporate clients.

The number of seats in the 35 suites available for annual licensing is 560, not 770.

Of the 35 suites available for leasing to clients on an annual basis the majority have been sold and interest in the remaining suites is high.

3. The centre is unaware of any show that has bypassed the centre because of the Centre having corporate suites. Indeed, to the contrary, there is a strong calendar of bookings for the centre.

ADELAIDE TO MOUNT GAMBIER RAIL SERVICE

In reply to **Hon. I. GILFILLAN** (24 October).

The Hon. ANNE LEVY: The State Government was fully committed to initiating the arbitration clause in the Railway Transfer Agreement as soon as it became evident that the Blue Lake service was to be withdrawn.

The Minister of Transport has indicated that it is not correct to say that the Mayor of Mount Gambier has been appointed to a steering committee to oversee the reinstatement of passenger rail services to Mount Gambier. The Mount Gambier council suggested the Mayor as a representative on the committee that was the subject of one of the arbitrator's recommendations. The Mount Gambier council was advised that the Mayor would be an appropriate representative if the steering committee was established.

It is also my colleague's understanding that the proposed charter train to Mount Gambier was for the Australian Road Transport Expo, not a music festival, as the honourable member claims. He would also be aware that the steam train operated with severe speed restrictions along parts of the line between Wolseley and Mount Gambier.

It can only be reiterated that the Commonwealth Minister for Land Transport indicated that he would accept the arbitrator's decision that the Blue Lake service be restored. The Minister of Transport has and will continue to seek assurances that he will honour that undertaking, that the service be restored expeditiously, that passenger services to Whyalla and Broken Hill be resumed and that the Overland service between Adelaide and Melbourne not be subjected to any reduction in frequency.

GRAFFITI

In reply to **Hon. I. GILFILLAN** (23 October).

The Hon. ANNE LEVY: My colleague, the Minister of Transport, has advised that the State Transport Authority officers responsible for the removal of graffiti are unsure as to the location of the shed to which the honourable member refers. However, on each occasion where private property is concerned there is care taken to gain the owner's permission before any graffiti removal is undertaken. Wholehearted support has been received from all private property owners including those who have previously given permission for the graffiti. The State Transport Authority is not aware of any occasion where graffiti has been removed from public or private property without the express consent of the owner of the property.

BAROSSA VALLEY HEAVY ROAD TRAFFIC

In reply to **Hon. I. GILFILLAN** (22 October).

The Hon. ANNE LEVY: My colleague, the Minister of Transport, has advised that both the State Government and AN are unable to confirm that the Penrice limestone traffic will be carried by road rather than rail next year. However, it is common knowledge that in today's economic climate the majority of manufacturing and business enterprises are attempting to minimise all costs. This includes transport costs. Any such decisions would be made by ICI on commercial grounds.

From AN figures the total tonnage of limestone carried between Penrice and Osborne was 478 190 tonnes in 1990-91. There can be no doubt that if this traffic was conveyed by road there would be some additional road damage.

The councils in the Barossa area will not be responsible for paying any additional road maintenance costs because the roads that the road hauliers will use are the responsibility of the State Government.

It is not the intention of the State Government to direct ICI to use rail freight in preference to road, nor is it the State Government's intention to direct AN to carry the limestone traffic at unprofitable rates.

Accordingly, there is not a need to call a conference as a matter of urgency to discuss the impact this change would have on the road system.

COMMERCIAL AND PRIVATE AGENTS ACT

The Hon. J.C. BURDETT: I seek leave to make a brief explanation before asking the Minister of Consumer Affairs a question about the Commercial and Private Agents Act.

Leave granted.

The Hon. J.C. BURDETT: The Commercial and Private Agents Act Amendment Act 1986 was proclaimed to commence on 19 February 1989 with the exceptions of sections 38 and 40. Today I ascertained that those sections have still not been proclaimed. Section 38 deals with the question of a commercial agent seeking to recover a fee when demanding payment on behalf of a creditor. Section 40 sets out the form of document or letter of demand that a commercial or private agent could use.

The Bill was a Government Bill, and while these two sections may well be controversial and relate to policy issues, on several occasions I have raised the fact that the non-proclamation of provisions that are passed by Government is a matter of the Executive Government overtaking the job of Parliament. I am not too happy about either of those provisions being in the Bill but, rightly or wrongly, Parliament passed the Bill with those two sections in it, and five years down the track they have not been proclaimed. My questions are: when is it intended to proclaim these sections in the Act, and for what reason have they not been proclaimed so far?

The Hon. BARBARA WIESE: I will seek a report for the honourable member from officers of the department on the progress that is being made on matters relating to those two provisions that would affect the proposed date for proclamation.

REPLIES TO QUESTIONS

The Hon. ANNE LEVY: I seek leave to have the following answers to questions inserted in *Hansard.*

Leave granted.

TAXI DRIVER TRAINING

In reply to **Hon. DIANA LAIDLAW** (17 October).

The Hon. ANNE LEVY: My colleague, the Minister of Transport, has advised that there appear to be varying levels of standard within the taxi industry. These range from poorly presented driver and vehicle to the operator who obviously takes a great deal of pride in him/herself and the vehicle. However, from the number of complaints received by the Metropolitan Taxi-Cab Board there appears to be a decline in the standard.

The training applies only to new entrants wishing to drive taxicabs. The Minister of Transport has not requested the expansion of the scheme to include current drivers.

ACCESS CABS

In reply to **Hon. DIANA LAIDLAW** (30 October).

The Hon. ANNE LEVY: My colleague, the Minister of Transport, has advised that whilst the Government may owe the taxi companies up to $250 000 at any one time the majority of taxicab owners are not having to wait up to 60 days for payment. Transport Subsidy Scheme vouchers used in part payment of taxi fares are lodged with the taxi radio companies by the owners, and the company credits the owner's account on a monthly basis with the value of vouchers submitted. The taxi radio company then sends the vouchers to Access Cabs where they are recorded on computer so as to provide statistics, etc., on scheme usage. They are then lodged with Office of Transport Policy and Planning for payment.

If taxi owners are experiencing delays in receiving payment for Transport Subsidy Scheme vouchers, then that delay in most instances is a matter to be resolved between the owner and taxi radio company. Any delays in the Government paying the company will not impact on payments to individual cab owners.

STA TICKET VENDING MACHINES

In reply to **Hon. DIANA LAIDLAW** (13 August).

The Hon. ANNE LEVY: My colleague, the Minister of Transport, has provided the following responses:

1. In 1990 a trial was conducted on a ticket vending machine at Modbury Interchange, with a view to installing similar machines elsewhere in the transport system. However, within three weeks the machine had been effectively destroyed by thieves intent on gaining access to its contents. Subsequently, the STA embarked on a program of increasing substantially its ticket outlets while better methods of securing ticket vending machines were being developed.

As at 15 August 1991 the STA had established 444 licensed ticket vendors in the metropolitan area and near country towns. Including post offices, there is a total of 658 off-board ticket outlets available to STA customers, and that number continues to grow.

In addition, the STA has provided a 'Pay Later Rail Card' for use by tourists or visitors to Adelaide and other people who, for one reason or another, have been unable to purchase a ticket or are unaware of the need to purchase a ticket prior to travelling by train. No person with a legitimate reason for being on a railway platform and found without a ticket in his/her possession will be penalised.

2. The STA has taken advantage of the matter of the provision included in the 4 per cent second tier wage increase, whereby the union agreed to accept the sale of tickets by external agencies and the acceptance of selected sites for ticket vending machines.

However, with respect to ticket vending machines it was agreed not to install them in the Adelaide inner city area.

As mentioned earlier, the vending machine was installed at Modbury Interchange.

In recent times negotiations have been undertaken and concluded whereby the original agreement not to install ticket vending machines in the city area has been overcome.

3. The cost of the four ticket vending machines in April 1990 was $320 000.

4. Subject to testing of ticket vending machines by the manufacturer, the STA will install two ticket vending machines by mid September 1991, one at the corner of Currie and King William Streets and the other at Adelaide Railway Station.

The STA is monitoring the present system of ticket outlets and has deferred any installation of ticket vending machines at suburban railway stations, on-board railcars or along the busway until the present system, which is far more cost effective, has had a chance to demonstrate its effectiveness.

TRANSFER OF PLANNING POWERS

In reply to **Hon. BERNICE PFITZNER** (29 August).

The Hon. ANNE LEVY: My colleague, the Minister for Environment and Planning, has advised that 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 areas 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. Councils would have had clear guidelines, and inappropriate developments were prohibited. The prohibition over generally inappropriate development prevents councils from granting approval unless the Planning Commission agrees the matter is an exceptional case.

In April 1991 the Legislative Council disallowed the regulation changes due to concerns about adequate consultation, and concerns about whether councils were willing to accept the new responsibilities, and had the appropriate expertise.

Following disallowance, an alternative strategy was put to all affected councils and to relevant interest groups. This proposal retains major developments with the commission, and only seeks transfer of the more minor proposals to councils, and in this case only to those councils willing to accept the additional responsibilities.

Substantial feedback has been received and general support has been shown for the proposal. The planning review is proposing to release its report in 1992 and the proposed regulation changes would only be put to the Governor when they can be seen in the context of the detailed administrative procedures proposed by the planning review.

The proposed regulation changes will only devolve planning controls to those councils willing to accept them for minor developments in the hills face zone, Murray River Flood Zone, Mount Lofty watershed and conservation zones. This approach will ensure that major developments that have wider regional impacts are still determined by the South Australian Planning Commission and enable more staff in the Department of Environment and Planning to be allocated to preparing regional policies for these areas of State significance.

COOPER CREEK CROSSING

In reply to **Hon. PETER DUNN** (9 October).

The Hon. ANNE LEVY: My colleague, the Minister of Transport, has advised that in view of current economic restraints and demands on the limited funds available for roadworks, it is not proposed to construct a crossing over Cooper Creek on the Birdsville Track for use by road trains in the event of a flood. Such a crossing would entail construction of a causeway approximately 3.5 km in length and at least .6m high with numerous culvert installations. In addition, the flood that has occurred over the past few years is a comparatively rare occurrence (approximately one such flood every 15 years), and any investment in such an improvement would lie idle in the periods between flooding.

However, following an approach in May of this year from the Hon. Ron Roberts and also some lessees along the Birdsville Track concerning the floodwaters at that time, the Department of Road Transport strengthened the Cooper Creek road crossing with local stone. This proved successful and allowed the passage of semi-trailers through the crossing, even with the depth of water being in the vicinity of some 200 mm. The level of floodwater is now dropping and thus the crossing will soon be passable to road trains and all other vehicles.

With regard to the remainder of the Birdsville Track, the department has a patrol gang continually grading and patching the worst sections of the track. However, many areas on the track have not received any substantial rain for some two years, which has had considerable impact on the road surface.

Work has recently been completed on resheeting of the road surface from Marree to Clayton Homestead and will be continued to Dulkaninna Homestead. Resheeting of the sections from Mulka to Mungerannie is scheduled for the current financial year and the section from Clifton Hills to Moongara Channel in 1992-93, subject to the availability of resources.

The department has considerable resources allocated to the maintenance of the Birdsville Track and it is considered that the condition of the road surface is reasonable given the extreme weather and flooding conditions that have recently been experienced.

SCHOOL WORKSHOPS

In reply to **Hon. M.J. ELLIOTT** (10 October).

The Hon. ANNE LEVY: My colleague, the Minister of Education, has provided the following responses:

1. The potential risks to health from machining treated timber have been evaluated medically and scientifically by officers of the South Australian Health Commission and the Department of Labour, The advice given was that no significant exposure to injury occurred and that medical follow up of staff and students was not warranted. The department acted upon the professional medical and scientific advice it received.

2. The recommendations of Dr Fraser were implemented.

3. The Executive Officer for Occupational Health and Safety in the Education Department is the Director of Personnel. In relation to the issue raised by the honourable member, departmental officers sought specialist medical and scientific advice. Educational administrators are not expected to hold medical or scientific qualifications and would in all cases seek specialist advice when it was indicated.

4. The department will continue to address health and safety issues in a reasoned, well researched and cost effective manner targeting health risks as they are identified. Issues will be addressed in priority of the assessed risk. The Director of Personnel has the task of resolving competing demands for such funds.

GENETICALLY MANIPULATED ORGANISMS

In reply to **Hon. M.J. ELLIOTT** (17 October).

The Hon. ANNE LEVY: My colleague, the Minister of Environment and Planning, has advised that the Commonwealth Government is waiting for the report on the 'Enquiry into Genetically Modified Organisms' by the Standing Committee on Science, Industry and Technology due later this year before considering the need for legislation in the area of genetically manipulated organisms. At present the research into and use of such organisms is adequately administered through the Commonwealth Department of Administrative Services via the Genetic Manipulation Advisory Committee.

The need for any possible legislative controls over the use of genetically manipulated organisms in South Australia will be considered after the recommendations of the report, the 'Enquiry into Genetically Modified Organisms', can be given full consideration.

The Hon. C.J. SUMNER: I seek leave to have the following answers to questions inserted in *Hansard.*

Leave granted.

FIREARMS ACT

In reply to **Hon. J.C. BURDETT** (12 September).

The Hon. C.J. SUMNER: The Minister of Emergency Services has provided the following response:

The Firearms Act Amendment Act 1988 was assented to on 1 December 1988 as a result of a Bill recommended to Parliament in the report prepared by the House of Assembly select committee. The report also recommended amendments to the regulations and further consultation between the Registrar and the various groups involved with the possession and use of firearms.

The consultation has taken place and the recommendations of the committees involved in the consultation, together with suggested amendments to the regulations, are being considered.

The amendments to the Act and regulations recommended by the select committee involved major changes to the Firearms Computer System, for which funding was approved in 1990. The computer redevelopment is on schedule and will be completed by January 1992.

Firearm safety will be the major thrust of the new legislation and various training programs have to be set up to cater for the different needs of applicants for licences which will ensure appropriate training in the safe handling and use of firearms.

Firearms controls are on the agenda of the Australian Police Ministers' Council meeting in October and the Special Premiers' Conference in November.

It was intended that the Firearms Act Amendment Act 1988 and the amended firearms regulations would be proclaimed to come into operation on 1 January 1992. However, as amendments may arise as a result of the Ministers' and Premiers' meetings, it is in the interests of all concerned that all such amendments should be introduced at the one time, rather than in a series of amendments which may confuse the public.

The Firearms Act Amendment Act 1988 and the new regulations should now be proclaimed early 1992.

VIOLENCE IN SPORT

In reply to **Hon. M.J. ELLIOTT** (8 October).

The Hon. C.J. SUMNER: The Minister of Emergency Services has advised that there are currently no police investigations under way into any incidents which occurred in the SANFL Grand Final.

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (NMRB) BILL

Adjourned debate on second reading.

(Continued from 12 November. Page 1738.)

The Hon. R.J. RITSON: This Bill is not opposed by the Opposition. It proposes a merger between the ANZ Bank and the National Mutual Royal Trading Bank and the National Mutual Royal Savings Bank. It has been agreed with the Reserve Bank. Because in a sense it contains an element of private law to enable the law to be tailored to this particular merger, the Bill was referred to a select committee of the House of Assembly.

The Liberal Party has considered the matters that are on record in *Hansard* as having been discussed in another place, has read the report of the select committee, agrees with the report and will be happy to expedite the passage of this Bill through its remaining stages without delay.

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

CRIMINAL LAW CONSOLIDATION (DETENTION OF INSANE OFFENDERS) AMENDMENT BILL

The Hon. R.J. RITSON obtained leave and introduced a Bill for an Act to amend the Criminal Law Consolidation Act 1935.

Read a first time.

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

That this Bill be now read a second time.

It seeks to alter the law concerning the detention of those people who are acquitted of crime on the grounds of insanity. It does not touch people who may be insane but do not take the defence, or who are mentally normal but are imprisoned because their abnormality does not fit the defence. At present, people found not guilty on this ground are required by the Criminal Law Consolidation Act to be kept in strict custody until the Governor's pleasure be known. If released, the decision is Cabinet's and is not free of political pressure. Moreover, the victims have no forum to voice concerns and have no knowledge of the patient's current health and behaviour.

This Bill seeks to replace the 'Governor's pleasure' provisions with a system of court orders whereby the court which ordered the detention in the first place could vary the terms of that detention or could order release on licence, vary the terms of conditional release or revoke its own previous orders. Furthermore, the Bill provides that victims, emotionally or physically traumatised by the event which brought the person to trial, and the detainee's next of kin will be offered counselling concerning the health and likely behaviour of the person. Furthermore, the interests of these victims or next of kin will be a consideration when the court is hearing an application for a variation of a detention order.

For centuries, English law and, more lately, Australian law, has held to the principle that mentally ill people who are incapable of having a guilty mind should not be punished. This principle is often presented as being embodied in the so-called McNaghten Rules. In the mid 19th century, one Daniel McNaghten—who confounded legal historians forever by signing his name with different spellings on different occasions—shot the secretary to the British Prime Minister, Sir Robert Peel. Prime Minister Peel was a very controversial person, being involved in much religious conflict between Catholics and Protestants, and he was also the founder of the London Metropolitan Police.

McNaghten suffered delusions and believed that the Pope had conspired with the Government and the police to have him, McNaghten, killed, and consequently he attempted to assassinate Peel but shot his secretary instead. When McNaghten was acquitted there was a huge outcry against the verdict and, under political pressure, the House of Lords requested that the High Court judges give their 'reasons in writing' as to the basis for acquitting people on the grounds of insanity. The majority of the judges got together and formulated a joint response for the House. This response stated in essence that an accused would need to show that he either did not know the nature of his act or that, if he did know, he did not know it was wrong. So the McNaghten Rule as we know it now was not part of McNaghten's judgment. It was a quasi-political response to a tense polit-

ical situation, forged in the crucible of religious and social conflict, and set in concrete until this very day. McNaghten himself probably knew that he was shooting a person and that it was against the law to do so. Therefore, it is ironic that McNaghten would not now be acquitted under the rule erected in his name.

If we go back to 16th century England, long before McNaghten, we find a similar rule which is a little wiser. It is in ye olde English, and I have tried to clean up its form to make it a little more understandable in the modern idiom. I quote as follows:

> If a Madman or a natural foole or a lunatik in the time of his lunacie or a child having no knowledge of good or evil do kill a man then there shall be nothing forfeited for it cannot be said that there is any understanding will. But if upon examination it fall out that he knew ill then the contrary shall be so.

That is from a *Handbook for Justices* by William Lambard, dated 1581. Lambard's instruction is perceptive in that it embodies a basic classification of mental illness. The term 'madman' probably refers to persons with major cognitive disorders, that is, disorders of knowing, such as schizophrenia. The reference to 'natural foole' is probably a reference to intellectual retardation, while the 'lunatik in the time of his lunacie' probably refers to what we now know are the cyclical mood swings of people suffering manic depressive psychosis.

The really interesting point about Lambard's writing is the bit about the 'child who apparently hath no knowledge of good nor evil'. That touches upon the question of inability to form mature moral judgment. That factor is absent from the later McNaghten rule, although it is half present in our statute law. Thus, at present we have the anomalous situation that a child of eight years cannot be convicted of anything because of the presumption that the child cannot form proper moral judgments. However, a child aged 18 years with an intellectual development of an eight-year-old is held fully responsible if he or she passes the strict McNaghten knowledge test.

My Bill deals only with the matter of court orders replacing the Governor's pleasure and the formal consideration of victims and relatives. It is designed to be flexible, scientific and divorced from political pressure. I have raised these other issues relating to McNaghten, and I now mention the problems of mentally abnormal offenders in prisons and hospitals. I raise this issue because it is an important area of concern, and it is too complex to be dealt with in a private member's Bill. But, the question is whether the law will one day advance from the 19th century towards 1581 and beyond—in other words, it would be an advance to re-examine the past.

I believe that the Government has initiated some research in this area, and I also believe that the Select Committee on the Penal System in South Australia may comment, in due course, on the wider issues. For now, I simply put the principles of judicially controlled detention before the Council and ask it to give the Bill a second reading. It is my desire to have the Committee consideration of the details of the clauses lie adjourned until next year so as to allow the widest consultation with medical, legal and community groups. I commend the Bill to the Council and seek leave to have the explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clauses 1 and 2 are formal.

Clause 3 repeals the 'Governor's pleasure' provision and provides for psychiatric detention until further order of the court.

Clause 4 provides that reports on the patient's condition are filed with the court and provides for counselling of victims and next of kin, and provides for court hearing of application for variation of detention or release on licence. It provides that victim's interests be taken into account.

Clause 5 is a transitional clause which brings people presently 'doing Governor's pleasure' under the proposed new system.

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

PATHOLOGY LABORATORIES

Adjourned debate on motion of Hon. M.J. Elliott:

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

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

(Continued from 30 October. Page 1510.)

The Hon. R.J. RITSON: We now pass from an occasion of reason to an occasion of rage. I was unsure whether to weep or rage about the Hon. Mr Elliott's action in this matter, but I have decided to rage. Mr Elliott brought into this Council a heap of gossip from a handful of disgruntled people—

The Hon. Anne Levy: Di Laidlaw does that all the time!

The Hon. R.J. RITSON: Well, it is usually not done with the intent to commercially destroy a legitimate business.

The Hon. Anne Levy: Oh, no! What other reason?

The PRESIDENT: Order!

The Hon. R.J. RITSON: I bow to the wisdom of Ms Levy in this regard. I will look for more examples. The matters in Mr Elliott's allegations directed at Gribbles Pathology do not withstand examination. I will deal with some of them and my colleague, Dr Pfitzner, will then systematically deal with others. It is shameful, intellectually dishonest and inexcusable for Mr Elliott to use the privilege of this place to make these outrageous statements without, apparently, having done any investigation to find out to what extent they are untrue, to what extent they matter and, indeed, what controls already exist over the system.

I think the Australian Democrats need to have a shadow Cabinet reshuffle. I am going to ask their Deputy Leader and Leader to confer about reshuffling the 30-odd about-to-be or could-have-been Ministers' positions that they hold—power without responsibility—so that they move the very humanly sensitive health policy away from he who would be smart, away from he of little knowledge who did a handful of biological subjects in his undergraduate course and is not nearly as knowledgeable as the Hon. Ms Levy, for instance, would be with her Masters science degree and her major in genetics.

Ms Levy knows that when working in a laboratory and putting one drop of stain on a slide, or when discarding a histological section of fixed tissue which is sterile and only microns thick—so small that you have to lift it with a hairbrush—that if you put that small fragment of sterile tissue down the same tube that Mr Elliott's poo goes down to Gulf St Vincent you are not doing any horrific damage. In this exercise that sort of thing is presented as some

execrable sin. Mr Elliott accuses the laboratories of putting litre after litre of xylene down the drain.

The Hon. Peter Dunn interjecting:

The Hon. R.J. RITSON: Well, they don't because it very quickly dissolves the polythene pipe, and then they have no plumbing left. They are very careful that it never goes down the drain in any laboratory. Xylene is the solvent used to dissolve the paraffin wax out of the tiny microscopic section of tissue after it has been cut by the microtome.

The wax stiffens the tissue for this microscopically fine cut, and then the xylene is used to dissolve the wax before the staining procedure occurs. No commercial enterprise is recession-proof. Everyone in business is looking to minimise their staff, and there have been minimal retrenchments in pathology laboratories as with others, but this honourable member listens to five disgruntled former employees, and ignores the very many gruntled employees who have presented a petition expressing their faith in Gribbles, and he did it for a headline. He is smart. He can see a headline when it is there to be had and, by golly, he got it, but to his shame.

He did not interview the other pathology laboratories to find out what their practices and controls are. It is one of the most controlled industries in Australia. Apart from being controlled by the criminal law and the law of torts, as we all are, it is controlled by many other Acts. I will mention the law of torts, because Mr Elliott expresses concern about life and death and early preventive measures needing to be taken. According to his speech, he feels that some life and death matters are at stake. If they were, surely there would be allegations about the quality of results, about negligent wrong results, in the courts or before the Medical Board, because the Medical Board is another controlling body. But no, there have not been any.

I have personal experience of referring material to Gribbles over a very long time, and I refer to other laboratories as well. I refer material to the laboratory which is most conveniently placed for the patient but, since 1967, I have been using its service, amongst others, and I have never had a problem with a negligently or carelessly wrong result. From a variety of laboratories, I have had the occasional lost specimen (which has to be taken again) may be because it is left outside the doctor's rooms in a courier box. I do not know whether or not small boys take it. In the past they used not to be terribly secure. So, occasional minor situations arise where a specimen has to be repeated.

There are also very difficult histological slides, particularly in the field of oncology, in which there may be a non-negligently wrong or inconclusive opinion, and a situation where several pathologists from other laboratories might have to consult and muse over the slide before they can give the correct advice to the clinician. However, I know of no instance affecting a patient's health, or the outcome of disease, in which negligence could be attributed to any laboratory. It just is not a big problem, and that is because the controls are there.

I will refer to the other controls. The practices of laboratories are controlled by the Medical Practitioners Act for the most part. I will deal with Mr Elliott's concern about non-doctor ownership shortly, because I have had something to say on that matter in a different context only yesterday. By and large, the people who are ultimately responsible for the tests, no matter where the dividends go in terms of the shareholdings, are doctors and are subject to the Medical Practitioners Act and the ethical constraints of the Medical Board. Because they are pathologists, they are also subject to constraints and disciplines by their own professional body, the College of Pathologists, which is one of the royal colleges of learned excellence in the field of medicine, vastly smarter than the about-to-be-former Democrat spokesman on health and his handful of biological subjects in his ordinary BSc.

Then we have NATA which Mr Elliott, after deep and intelligent consultation with his five disgruntled ex-employees, proceeds to disparage. He is worried because NATA, the National Association of Testing Authorities, is a non-government body, but it is an expert body and it acquires a lot of Government teeth under the Health Insurance Act, because the Federal Government will simply not give rebates to the patients of a service of which NATA will not approve, and it is not superficial. This bundle of papers that I have is a questionnaire that must be filled out before a NATA inspection. It is not a four-page form; it is 10 volumes of very complicated and technical questions. If NATA does not approve of the standards of a laboratory, no-one will use it because its patients will not get any Medicare refunds, and those are big teeth.

This is the most regulated of all branches of a profession that is the most regulated profession, the most publicly discussed profession and the most critically examined profession. Now, after Mr Elliott's farrago, it is the most idiotically defamed branch of any profession, and that being done under privilege. These stories of mysterious organs—uteri and God knows what—being put in the general litter stream are a nonsense.

There are more laws that control laboratories, apart from the Industrial Health, Safety and Welfare Act. There is the Waste Management Commission and its regulations. All these laboratories divide their litter stream in two. The general litter stream goes away with the council, subject again to council by-laws, while the biological waste goes away with a contractor, subject to the rules of the Waste Management Commission. I do not know what any laboratory can do other than dispose of its special material to a contractor who must obey the laws of the Waste Management Commission. What we do not need is another quango. Mr Elliott proposes a State registration board.

Later in his speech he said that he did not want to discourage NATA. He has disparaged it all over the place; the page is spattered with disparagement and then he says he does not want to disparage NATA. If he has a State board, presumably to ask the same exhaustive question—a State board to enforce the same standards as does the National Pathology Accreditation Advisory Council (and this is the material that lays down those standards), where will he get the people to sit on it? Will he put Aunt Sally on it; will he put Fred Nerk on it; or will he even sit on it himself, with his handful of biological subjects and wax as authoritatively, ignorantly, eloquently or maliciously—I do not know which—as he did on these pages in *Hansard*? What he will have to do to set up this committee, to find enough people who actually know what they are doing and who have more than a handful of undergraduate biology subjects is employ the very people who are presently serving in the pathology area in NATA. So, he will very much be reduplicating an existing committee to do the same job as he is complaining is not being done in this diatribe that is unfortunately recorded in *Hansard*.

I am aware that there is a lot of financial competition in the pathology field. The history of the economics of pathology is that many years ago, when the late Sir Earle Page devised the medical benefits system and the system of item numbers came out, pathology tests were done almost by steam. People in white coats bent over the Bunsen burner, test tube in hand, and the fees reflected the time and skill required to do these tests manually. For Mr Elliott's benefit,

'manual' does not mean once a year. As automation increased the speed at which the tests could be done and changed the manner of doing them, the rebates remained at their former level for a time, but the cost and speed of doing the tests changed radically, so it became very profitable.

Governments have tried to trim the fees back, truly to represent the modern costs and a fair profit and so there has been encouragement for lots of people to enter the field. I am prepared to say, without naming anyone, that in South Australia a firm has fallen by the wayside whose financial and billing practices left something to be desired. That firm was not owned by a doctor. I have spoken to the management of all the present firms and to their medical staff and in this competitive climate, if one firm was clearly inferior in terms of technical standards, you would think that one of its rivals could be found that would criticise it, but it cannot be found. One cannot find one of the competitors, who in financial terms would dearly love to see Gribbles disappear, to agree with Mr Elliott's rubbish. One cannot find a complaint to the Medical Board about a negligent result that altered patient outcome; one cannot find anything except this disgraceful, cowardly, reckless and inaccurate attack under privilege in this Chamber.

I am willing to give Mr Elliott an opportunity to recover some dignity. I have said that he was foolish, arrogant and unfair. This situation could be redeemed by one thing: an honest apology.

The Hon. Carolyn Pickles: They could have done some research.

The Hon. R.J. RITSON: Yes, I know; that is one of the many faults behind this, but I am still saying that, notwithstanding those faults and the fact that the Democrats need a shadow Cabinet reshuffle, it could be redeemed by a reasonably humble public apology—a statement to the effect that he was not in cahoots with five disgruntled ex-employees for the sake of headlines, in order to damage Gribbles. Perhaps, because of a temporary weakness of mind, he—

The Hon. R.I. Lucas: The McNaghten rule again?

The Hon. R. J. RITSON: No; I do not think Mr Elliott would find himself qualified under the McNaghten rule and, therefore, he would not be touched by my Bill. However, I call upon him now to make a modest apology and retrieve the reputation of his Party which he has sorely damaged around the community. In the sure knowledge that my colleague, Dr. Bernice Pfitzner, who has spent some time analysing the controls in greater detail, is about to speak, I yield the floor to her, but I think you can gather, Sir, by the tone of my remarks that I will not be supporting this motion.

The Hon. BERNICE PFITZNER: Perhaps I will address the situation with less rage and with more academic points, but the thrust will be no less against the reprehensible allegations concerning Gribbles. On 30 October 1991, the Hon. Mr Elliott moved a motion urging the State Government to investigate the introduction of an independent licensing procedure for pathology laboratories which guarantees, first, a high level of quality and reliability; secondly, regular independent inspection of quality control measures and occupational health and safety standards; thirdly, public involvement in the process and the publication of results to health professionals; and fourthly, laboratory participation in the Royal College of Pathologists of Australasia quality assurance programs. Supporting this motion the Hon. Mr Elliott claims:

> Many of the allegations I will raise relate to one of South Australia's major pathology laboratories, Gribbles, which has built a reputation of providing quick service to doctors.

These individual allegations must raise concern not only to the layperson but in particular to a person who has some medical training, as I have. Yes, it may be said that as medical practitioners we protect our own profession. That may be the case with some, but over and above this ethic, our paramount concern rests mainly with the protection and care of our patients and clients. This particular allegation strikes at the credibility of results which affect the wellbeing of a part of the community. In view of this, I have visited two of laboratories: the IMVS, a public laboratory, and Gribbles, a private laboratory and also the laboratory in question.

I have also spoken to other medical practitioners and a cross-section of pathologists. I have telephoned the Chief Executive Officer of the National Association of Testing Authorities (NATA), and I have spoken with one of the laboratory technicians who was involved with Gribbles over an unfair dismissal claim. I feel now that I have an overall picture of the situation.

I will present to this Council what I believe to be the overall view under the separate headings of: allegations; regulations controlling an accredited pathology service; and general discussion and conclusion. Under the heading of allegations, the Hon. Mr Elliott's allegations can be categorised into quality of service and disposal of waste. Quality of service relates to allegations of untrained staff; no senior staff being available; machinery malfunctions; inaccurate occupational health and safety issues; poor participation in quality assurance programs; no special procedures to process HIV positive specimens; incorrect labelling, etc.

These allegations relate to three specific departments in the pathology laboratories: immunology, haematology and histology. I have paid specific attention to these three departments on my visits, and I can find no valid evidence to support these allegations, except in one minor area to which I will refer later.

I have a report from Gribbles written by Dr R. Abbott, Pathologist and head of the haematology section, which itemises all these allegations raised by the Hon. Mr Elliott. I read his letter which refutes all Mr Elliott's allegations. The honourable member referred to past and present workers and in this respect Dr Abbott states:

> Much of Mr Elliott's speech is made up of hearsay evidence and we would ask that he divulge the source of his allegations. One can understand the possibility of disgruntled ex-employees making accusations, with much of what has been listed in this speech having been bandied around months or even years before. We would ask whether he has any complaints from present workers about the quality of standards of services in the Gribbles Pathology laboratory.

The Hon. Mr Elliott alleges that 'Gribbles has built a reputation of providing quick service to doctors.' Dr Abbott replies:

> We are proud of our efficiency and stand by our reputation of quick service. This is not at the expense of adequate examination of a specimen, and many difficult problems are held back and discussed with several pathologists.

The Hon. Mr Elliott states further:

> I have been told of frequent incidents in the laboratory's haematology department of specimens being mixed up and being labelled incorrectly and cross-contamination of specimens because of dirty instruments and equipment.

Dr Abbott replies:

> The use of qualitative rather than quantitative language, for example, the word 'frequent', shows the lack of objectivity in the Hon. Mr Elliott's speech. We are proud that we can handle such large volumes of work without mix-ups, and would ask him to quote specific incidents, if indeed he has any. Bar code labelling now of specimens and request forms has virtually abolished the chance of a specimen mix-up.

The Hon. Mr Elliott next alleges that 'only about half of the specimens processed are seen or checked by anyone other than an unqualified laboratory technician who put the specimens through the test'. Dr Abbott replies:

This is totally incorrect. All specimens are checked at least twice and abnormal results have further work performed on them and further checking.

The Hon. Mr Elliott stated in his speech that there are unqualified technicians. Dr Abbott's response is as follows:

No staff member is permitted to perform tasks for which they are not qualified. Staff members who are not qualified by certification are qualified by recent experience. All staff without formal certification work under direct or indirect supervision.

The Hon. Mr Elliott alleges that there are no special procedures for dealing with HIV positive specimens. Dr Abbott replies:

The person making this statement has done so through ignorance. In a community where most HIV specimens are undetected and therefore not labelled as being positive, we have to treat all specimens as potentially positive. I cannot emphasise the importance we place on staff education with respect to safe handling of all specimens. Specific regulations apply for areas performing HIV tests as laid down by the Commonwealth and the National Reference Laboratory. We comply with all these standards.

The Hon. Mr Elliott states further:

Many skin specimens for cancer, etc., were misplaced or numbered incorrectly or processed so badly that it was difficult to make a microscope slide and therefore get an accurate diagnosis.

Dr Abbott's reply is as follows:

Totally untrue. The histopathologists who work here, and all of whom have worked in other laboratories, will confirm that the standard of tissue processing here is extremely high.

I have inquired specifically on this particular issue and have observed the processing in Gribbles and in the IMVS laboratory, and I confirm Dr Abbott's statement. The Hon. Mr Elliott alleges further:

Staff feel very pressured by the amount of work which needed to be processed and that the level of pressure meant that mistakes are inevitable.

Dr Abbott replies:

Hearsay. Staff cope very well in maintaining standards and efficiency within the levels throughout the laboratory. In all laboratories there are peaks and troughs as batches of work come in, and staff members are rostered to take into account these variations.

I have noticed that the laboratory is indeed very busy compared with the IMVS. However, I did not observe any pressure on the staff using the observation of facial and body language. The technicians who showed me around did not appear to have a bank-up of specimens to be tested. The Hon. Mr Elliott further alleges:

Supervision of laboratory technicians who do not have any formal qualification is inadequate for them to have confidence in their work.

Dr Abbott replies:

This is hearsay. As outlined above, all staff are supervised appropriately according to the level of experience.

The Hon. Mr Elliott alleges:

In the haematology department, apparently no pathologist was on duty after hours, although a large quantity of work was processed overnight.

Dr Abbott replies:

This is totally untrue. As the medical head of the haematology department, I can assure people that I am available at all times, and if I am not contactable then one of the other haematology pathologists is available. Significant quantities of work are processed overnight, and if they are abnormal the results are held up and further work done the next day. When I arrive at work each morning there is a large pile of work waiting to be reviewed.

The Hon. Mr Elliott makes the further accusation:

In the histology department apparently quite urgent specimens often had to wait while the department head went interstate to do courses.

Dr Abbott replies:

This is hearsay and quite untrue. There are always histopathologists and scientific staff available to perform the necessary work in that department.

The Hon. Mr Elliott also alleges:

Machines and equipment used in testing procedures at this laboratory were only serviced when something went wrong, and in one section an ex-car mechanic occasionally used rubber bands to keep a machine operating.

Dr Abbott states:

Gribbles Pathology in Adelaide employs a full-time electronic service engineer with appropriate formal qualifications. He is on site to maintain and service equipment as required. We also maintain service contracts with major suppliers of equipment in the event of major malfunctions. We deny using rubber bands to keep machinery operating.

I have observed a particular engineer in the laboratory, and he appeared to be fully occupied. The Hon. Mr Elliott says:

I am told that staff were concerned that they did not have sufficient training to understand everything they should about the equipment they were using in relation to cleaning procedures and that no log book was kept to inform the next shift of a machine status.

Dr Abbott replies:

Again, you may see that this is hearsay, which we deny. If staff have any concerns about the adequacy of their training, they have every right to bring these to the attention of senior staff. Appropriate log books are kept as a NATA requirement.

I have observed those logbooks. Mr Elliott says:

They say that quality control testing and calibration of machines was undertaken infrequently.

Dr Abbott says:

Again hearsay only. We perform appropriate quality control and calibration according to recommendations of machine and reagent manufacturers and NATA requirements.

Mr Elliott says:

I understand that at the IMVS this procedure is done every 50 specimens, but I am told that at Gribbles it is done about every 300, and that the sample specimen was often not refrigerated in the meantime.

Dr Abbott says:

We cannot begin to understand what is meant by all this. Certainly, one of our machines processes approximately six times as many specimens per hour as the IMVS, but quality control is still done according to the recommended guidelines. For another of our machines, we keep a fresh specimen each day at room temperature as an appropriate control, as cooling and warming it distorts its value.

Mr Elliott says:

In-house methods manuals did not contain instructions of what to do.

Dr Abbott says:

In-house methods manuals are set out in accordance with NATA requirements and are available for anyone to see, together with instructions of what to do should results vary from expectations. All departments have a quality control officer.

I have observed these very comprehensive manuals, both in Gribbles and in IMVS. Mr Elliott says:

The implication for patients of incorrect or inaccurate results being returned because a machine was malfunctioning could be extremely serious.

Dr Abbott replied:

We agree. We use appropriate controls and, if our results are incorrect or inaccurate, we would not continue to have the confidence of the large number of medical practitioners who use our service.

I might add further that, if a specimen is said to be benign and it turns out to be cancerous, this inaccuracy, may I suggest, would hit the front page of the media.

The Hon. R.J. Ritson interjecting:

The Hon. BERNICE PFITZNER: That is right. Mr Elliott says:

Concerns have also been voiced about the frequency with which testing methodology and equipment was changed in one of the

laboratories without any explanation or validation or methodology and equipment.

Dr Abbott replied:

This is also hearsay and would like to know who has expressed concern and to see documentation of this as being an acceptable concern.

I have questioned both IMVS and Gribbles and understand that any change in methodology is always accompanied by validation and must be countersigned by the head of that department. I could go on and on about the various accusations that have been made, but I will not do so, because I think we have sufficient evidence here to show that these allegations do not appear to have any validation or substantiation. Further, may I say that, with regard to waste disposal, as the Hon. Dr Ritson mentioned, the disposal is under the control not only of the pathology monitoring agency NATA, which I will describe later, but also other authorities which are controlled under the Waste Disposal Act, administered by the Health Commission, and the E&WS Department, and it is also controlled by local government through its health inspectors.

Let me talk about the regulations that surround the accreditation of pathology laboratories. I would like to discuss it fully, because one will see that the regulations are very comprehensive. Accreditation of pathology laboratories is a method of ensuring quality service. The authorities which exist in the accreditation of pathology services (including Gribbles) are: the standards authority, the accreditation authority, the payment authorities, the inspection authorities, the quality assurance program authorities and the education and training authorities.

Before elaborating further on these authorities and how they monitor each pathology laboratory, let me first go through the history of accreditation of pathology laboratories. In relation to their history, payment for all pathology services in the private sector is reimbursed by the Commonwealth. The Commonwealth Government pays 85 per cent of the standard fee for each pathology service through its Health Insurance Commission. The Commonwealth Government now requires that all laboratories performing pathology tests and requiring payments by the Commonwealth Government for services to patients must have had to be registered through compulsory accreditation since 1986, This accreditation was done by a joint group of the Royal College of Pathologists in Australasia and by NATA, the National Association of Testing Authorities, which was established in 1982.

The Commonwealth Government encouraged the States to form their own accreditation board but, to date, only Victoria has done so. The other States find it sufficient to rely on NATA and RCPA for their accreditation. The Victorian board will be discussed further.

Let me talk about the standards authority. Standards are set by a group called the National Pathology Accreditation Advisory Council (NPAAC), established in 1979 by the Commonwealth Government and responsible to the Commonwealth Minister for Health. The functions of NPAAC are:

1. To consider and make recommendations to the Commonwealth and States on matters relating to:

(a) the general accreditation of pathology laboratories;

(b) the introduction and maintenance of uniform standards of practice in pathology laboratories throughout Australia; and

(c) the adoption by the Commonwealth, Northern Territory and the State of coordinated legislation and administration regarding the provision of pathology services.

2. To initiate, promote and coordinate educational programs in relation to pathology practice.

3. To collect and maintain statistics and information which the council considers necessary for the proper discharge of its functions.

The standards for pathology laboratories are written in broad principles and have more detailed checklists. The standards relate to the standards of NPAAC. It has 10 standards, including those for staffing, consultation, facilities, health and safety, specimens, equipment and instrumentation, methods for quality control, reporting and records. The membership of NPAAC consists of a Chairman (the Director-General of Health); an officer of the Department of Health appointed by the Minister; a representative of the Department of Veterans' Affairs; a representative from each of the States and Territories appointed by the respective States and Territories; and seven other members appointed by the Minister of Health, including three members nominated by the college, one member from the AMA, one from the Institute of Medical Laboratory Scientists, one from the Australian Association of Clinical Biochemists, and one member from the Australian Society for Microbiology, who are appointed for three years.

NPAAC also has subcommittees, one of which is the Laboratories Standards and Education Subcommittee. It is responsible for advice on minimum standards for pathology laboratories in Australia and for production of publications and educational material. NPAAC also promotes the system of categories for pathology laboratories, and there are eight categories. I seek leave to incorporate in *Hansard* without my reading it the pathology laboratory categories.

Leave granted.

Table 1, Pathology Laboratory Categories

Category 1:	A laboratory in which pathology tests in several divisions are performed under the full-time supervision of a pathologist.
Category 2:	A laboratory in which a range of tests within only one division of pathology is performed and which is under the full-time supervision of a pathologist who is qualified in that division of pathology or a senior scientist who is qualified in that division of pathology.
Category 3:	A laboratory in which the range of pathology services provided and the standard of work in the laboratory are under the direction and control of a pathologist or senior scientist employed in an accredited pathology laboratory conforming to the description in Category 1 or 2. This is a branch laboratory of a Category 1 or 2 laboratory.
Category 4:	A temporary category dealing with a laboratory of a recognised hospital. This category ceased to exist on 1 August 1990.
Category 5:	A laboratory in which pathology services are provided by or are under the supervision of a registered medical practitioner for patients of the medical practitioner or practitioners of whose practice the laboratory is a part.
Category 6:	A laboratory in which are performed a limited range of pathology services of a specialised nature and are performed under the supervision of a person having special qualifications or skills in the field of those services.
Category 7:	A laboratory located in an isolated area in which pathology services are provided under the supervision of a medical practitioner or a scientist.
Category 8:	A laboratory that does not fall within any other category.

The Hon. BERNICE PFITZNER: I will refer to the categories of significance. Category 1 is a laboratory in which pathology tests in several divisions are performed under the full-time supervision of a pathologist—and in

that category would be Gribbles. Category 5 addresses the medical practitioner's office. Category 7, which is of some interest, will be discussed later. Other standards authorities are: NATA, which incorproates NPAAC standards in more specific detail; the Standards Association of Australia; and the National Commission of Clinical and Laboratory Standards. These standards are all referred to.

Then there are the accreditation authorities. The Commonwealth acts as the accreditation board for all States except Victoria, which has its own accreditation board. The Commonwealth board has power to act only on those laboratories that are receiving Medicare benefit payments. Application is made to the Commonwealth Department of Community Services and Health which is now known as the Department of Health, Housing and Community Services. It awards a provisional accreditation, pending an inspection from NATA, or a two-year certificate of approval after inspection has been performed. It may resolve and inform the Health Insurance Commission, which is the payment authority. Since 1986, accreditation has been a requirement for Medicare benefits. Laboratories are categorised according to NPAAC categories. The Commonwealth Accreditation Branch is staffed by Government personnel with advisers in each discipline.

I now turn to payment/reimbursement authorities. Legislation was introduced in 1986, and the significant points were put as follows:

1. Personal supervision benefits are not payable for pathology services unless rendered under the personal supervision of an approved pathology practitioner. The pathology practitioner does not need to be physically present at all times when tests are performed.

2. Pathology services will not be eligible for benefits unless, for example, they are determined to be necessary by a treating practitioner; or the service was rendered in an accredited laboratory, etc.

3. An undertaking must be given to the Minister to become an approved pathology practitioner or an approved pathology authority.

4. The request forms of laboratories must be approved by the Commonwealth.

5. If there are reasonable grounds for suspecting a breach of undertaking by the proprietor or pathologist, suspension may occur, which terminates the benefits.

6. Allowance for a system of accrediting pathology laboratories.

The Health Insurance Commission is responsible for Medicare benefits control, including:

1. Awarding approved pathology practitioner status.

2. Awarding approved pathology authority status (that is, proprietorship).

3. Payment of Medicare benefits to accredited laboratory services.

4. Auditing laboratories to check Medicare payments.

As one can see, the requirements for pathology benefits are very complex and comprehensive.

I now turn to the inspecting authorities. In 1946, an organisation known as the National Association of Testing Authorities (NATA) was established to coordinate national testing facilities. In 1982, the RCPA collaborated with NATA to set up a scheme for inspection of medical laboratories. This scheme is mainly implemented by NATA, and the Commonwealth Accreditation Branch accepts the findings of NATA. The Council of NATA is made up of representatives from the Commonwealth (six); the States and Territories (eight); Australian Council of Trade Unions (one); Australian Institute of Physicians (one); CSIRO (one); Confederation of Australian Industry (three); National Standards Commission (one); Royal Australian Chemical Institution (one); Standards Australia (one); Institute of Engineers, Australia (one); RCPA (one); members of the association (eight); and co-opted (one).

The Hon. R.J. Ritson: And they all know more than Mr Elliott.

The Hon. BERNICE PFITZNER: My honourable colleague, Dr Ritson, has said that they all know more than Mr Elliott, and I suppose that is true. There are 2 411 facilities registered with NATA. I seek leave to incorporate in *Hansard* statistics which show the details of the facilities according to field, State and number.

Leave granted.

REGISTERED FACILITIES, FIELD/STATE DETAILS

Field	ACT	NSW	NT	QLD	SA	TAS.	VIC.	WA	OOS	Total
Acoustic and Vibration	—	5	—	1	1	—	9	2	—	18
Biological Testing	6	24	2	15	7	10	44	6	—	114
Chemical Testing	6	173	7	62	38	28	164	49	2	529
Electrical Testing	1	39	—	6	6	1	30	4	—	87
Heat and Temperature	—	16	—	3	3	1	15	3	—	41
Mechanical Testing	8	218	15	168	57	18	180	72	2	738
Medical Testing	5	201	5	56	36	9	85	18	—	415
Metrology	1	34	—	14	10	3	44	12	1	119
Non-destructive Testing	1	29	1	14	16	2	22	19	—	104
Optics and Radiometry	—	6	—	2	1	—	8	—	—	17
Quality Systems	—	5	—	1	1	—	2	1	—	10
AWSA (Wool)	—	78	—	12	19	7	57	46	—	219
TOTAL	28	828	30	354	195	79	660	232	5	2 411

The Hon. BERNICE PFITZNER: NATA is a limited company based in Australia. It has no share capital. It is a non-profit making organisation. Its aim is to set standards of laboratory practice, identify laboratories meeting these practices, and encourage all laboratories to meet these standards. A Commonwealth grant to NATA provides 16 per cent of its income.

NATA's assessments are very complex, detailed and thorough, as they should be, its being the main authority on which depends the accreditation and therefore the registration/certification and the Medicare benefits.

I will now give a brief overview of the processes that take place for an assessment for registration, as follows:

1. NATA provides guidelines for laboratory quality manuals to be used. These are looked at during an inspection. Elements in the guidelines are managements of laboratory quality system; description of laboratory and its function, staff equipment, testing environment, testing methods, operational procedures, control of test items, test records,

diagnostic and corrective actions, test reports, occupational health and safety, etc.

2. NATA sends assessors to laboratories. These assessors are all appropriately qualified and experienced in their field. They are unpaid. The laboratories are inspected every two years, and in between times quality assurance programs conducted by an agency such as RCPA are in place.

There are a number of pathology laboratories that have not had their first inspection. However, Gribbles, I understand, had its first inspection in 1988 and has just completed its second inspection. I understand also that this inspection has resulted in the recommendation that the laboratory be accredited and registered. There are minor corrections to be made, but nothing of a major or significant nature.

I now turn to quality assurance programs. The standards of the quality assurance programs, which are set by NPAAC, are known as 'criteria for assessment of external quality assurance programs'. The RCPA and the Wellcome Quality Assurance Program for Biochemistry are two such programs accepted by NPAAC. There are a few pathology laboratories that have not completed the voluntary program fully, that is, they have checked and returned only four specimens out of six specimens that these assurance programs give. However, Gribbles was not one of them.

We then have the education and training authorities. This is an important part of the accreditation system, so that the system is seen more as educative rather than punitive. These programs are run by the college, the Australasian Association Clinic Biochemistry, the Australasian Institute of Laboratory Scientists, etc.

As I mentioned, I have personally visited the IMVS, which is a Government operated pathology service, and Gribbles, which is a privately operated pathology service. Both were organised and orderly with appropriate chemical reagents in a safe place; appropriate waste disposal and receptacles were evident; the machines were in working order; and the staff used safety apparatus such as gloves and glasses. The difference was in the activity. Gribbles was very busy and the IMVS was less busy. The IMVS was very spacious but its laboratory rooms needed upgrading. Gribbles was lacking in space but its laboratory rooms were all well maintained.

As you can see, Mr President, there are separate processes for inspection, for accreditation and for payment. It is not just a few who feel that this large amount of legislation and regulation is unnecessary, but these people are working with it to uphold and improve the professional image of pathology. Now, we have the Hon. Mr Elliott, a member of Parliament's Upper House, the House where issues should be thoroughly investigated and reviewed dispassionately, in a 10 minute speech on 30 October causing untold damage and repercussions throughout to that laboratory and other laboratories, medical practitioners, specialists, generalists, NATA (the inspecting authority), and finally, and most importantly, the patients, whose confidence will have been eroded by these unsubstantiated allegations.

When I first started in Parliament, I was told that perhaps one needed to be careful and wary of the Democrats, and that they would do anything for media coverage. I did not believe it, but perhaps I am not so sure now. The Hon. Mr Elliott said that he did not want to cast aspersions on the work at NATA but he has done so, and some of that mud will stick. The Hon. Mr Elliott implies that chiropractic practice is regulated, and so are the people applying for liquor licences. Further, he says, '... it seems absurd that they [pathology laboratories] are nominally, at least, self regulated.' It is sad that he has not done his homework before making such statements. In effect, he is comparing the rules and regulations of a hairdressing salon with a surgical operating theatre. The Hon. Mr Elliott finally concludes:

> I have reason to believe, from the information I have gathered, that there may be shoddy pathology laboratory operators in South Australia who do not deserve the trust placed in them by health professionals and the general community.

What investigation and what validation did he undertake to come to that conclusion, other than listening to an angry group of people who mainly had an industrial problem and identified a minor pathology problem which I believe now has been rectified?

Did the Hon. Mr Elliott visit the particular pathology laboratory before putting the motion? Did he speak to NATA, the investigating accreditation body? Did he speak to any unbiased group? I think not. If the Hon. Mr Elliott wants to do something positive, perhaps he might investigate the Victorian accreditation board and compare and contrast our system with theirs. I have made a brief investigation and understand that the Victorian accreditation board is duplicating these procedures, except for one aspect—tests that do not attract Medicare benefits. The laboratory is in laboratory category 8. Perhaps the Hon. Mr Elliott would like to investigate that area, which is still not quite validated. As members of Parliament, we are allocated certain privileges. One of the more important privileges, I believe, is that of being able to make allegations without threat of legal action. We must use this parliamentary privilege with great caution and great responsibility. We must not allow the image of politicians to fall further into disrepute.

Therefore, in conclusion, I maintain that this motion is totally unnecessary, as all the suggestions included in it are already coped with very adequately, if not excessively so. It is a shame that, in the process of introducing this motion, aspersions have been cast on certain groups of professional people. These aspersions will be very difficult to dispel, as they come from a member of Parliament. I certainly do not support this iniquitous motion with its destructive implications, and urge members of the Council not to support it.

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

EXPIATION OF OFFENCES

Adjourned debate on motion of Hon. J.C. Irwin:

That the regulations under the Local Government Act 1934 concerning expiation of offences, made on 27 June 1991, and laid on the table of this Council on 8 August 1991, be disallowed.

(Continued from 11 September. Page 720.)

The Hon. J.C. IRWIN: On 11 September I moved for the disallowance of regulations pertaining to the expiation of parking offences. At that time I made some preliminary comments and sought leave to continue my remarks later. At the same time, the Joint Committee on Subordinate Legislation of the Parliament had moved for the same disallowance.

I wanted to give notice that the Opposition was considering disallowing the regulations and said that I needed some further time for consultation with the Local Government Association and other interested bodies. I apologise to members for the fact that some time has now elapsed. In fact, it is four weeks since I moved the motion and sought leave to conclude my remarks. I have not had a great deal of advice on this matter of new expiation fees

for parking, apart from a number of, I guess you would say, disgruntled individuals and their comments are reflecting on the fairly heavy rises in some of the expiation fees.

Indeed, the Royal Automobile Association was the only body to provide me with detailed comments on a range of rises to parking expiation fees, and I understand that these comments have also been made to the Subordinate Legislation Committee. I should now detail some of the RAA's objections. I am sure they were made on behalf of the motoring public. I do not question the RAA's right to speak on behalf of the motoring public or its undoubted ability to pass on accurate advice from its quite large membership, even if it does not seek a vote from its members on everything it says on behalf of the members. There were 40 parking offences listed where new expiation fees were raised, and 24 of those (60 per cent) were raised by 10 per cent, slightly more than the inflation rate, since they were last raised in 1989. I accept these levels of expiation fees and the rise as being reasonable, as would most people.

The RAA accepts the increased expiation fees for parking in a loading zone, which has increased 67 per cent from $12 to $20, because this offence generated more complaints in the RAA's understanding than any other offence. The RAA accepts the new $50 expiation fee for a disabled parking zone infringement and, if I recall the Minister's press release on this matter of new parking expiation fees, one of the main reasons for their gazettal on 5 August to come into force from that time was that there needed to be an expiation fee of that size for the disabled parking zones. We all understand and appreciate that this is one area of parking where some abuse is occurring, as I see around the city of Adelaide each day.

The RAA has great difficulty, as I do, accepting some of the huge increases that have been gazetted, other than those 24. The excessive increases are, briefly: no parking zone from $12 to $25, a rise of 108 per cent; not angled parked from $10 to $20, a rise of 100 per cent; parking in a parking space already occupied (and I find that difficult to come to grips with, but I guess it does happen) from $10 to $20, a 100 per cent increase.

The Hon. Anne Levy: It applies to a motor-cycle; a car comes in and stops the bike getting out.

The Hon. J.C. IRWIN: Right. Parking in a public place or car park has gone from $10 to $20, a 100 per cent increase; parking on ornamental grounds or reserves has gone from $10 to $25, a 150 per cent increase; parking on footpaths has risen from $12 to $33, an increase of 175 per cent; parking on traffic islands has increased from $10 to $33, a 230 per cent increase; parking within six metres of the approach of an intersection has risen from $15 to $33, a 120 per cent increase; parking on a bridge or culvert from $10 to $33, a 230 per cent increase; and not parallel parked from $10 to $20, a 100 per cent increase.

The fees for a number of offences have increased by 67 per cent, as I think I have said previously, and that is way above the inflation rate since 1989. Even if we accept 10 per cent over these two years as being reasonable, this is way above that and I have been given little justification for it. When I speak on the next motion regarding parking regulations, I will make it pretty clear that some councils have not done the right thing under the old regulations as far as signs and proper authority to erect signs are concerned, and I have little confidence at this stage that under the new regulations the situation will be any better. It is too easy at the stroke of a bureaucratic pen to go on lifting fines above the CPI, and local government must have caught the State Government's bug of lifting charges above the CPI. In this case it is this Parliament that is setting these rates, no doubt with very long consultation with local government, so it accepts the responsibility for raising the expiation fees. In one sense it has been put to me that it is lining its own coffers with that.

With the proliferation of unauthorised signs of which I have seen evidence, it will be pretty galling for motorists now to pay a vastly increased fine on that basis, and maybe more and more people or motorists (I am not sure which word to use) will challenge local councils when they get stung with these vastly increased fines. I urge members to support the motion.

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

PARKING REGULATIONS

Adjourned debate on motion of Hon. J.C. Irwin:

That the regulations under the Local Government Act 1934, concerning parking, made on 27 June 1991, and laid on the table of this Council on 8 August 1991, be disallowed.

(Continued from 11 September. Page 721.)

The Hon. J.C. IRWIN: I regret that it is now four weeks since I commenced my remarks on this motion, as well as the motion to disallow expiation of offences. I intended to speak on the Wednesday before last week's break from sitting and I was ready to do so. Unfortunately, I was required to represent the member for Victoria and the member for Murray-Mallee at a two day gathering in the South-East looking at wet lands and matters associated with new legislation for the South-East Drainage Act to be introduced this week in the Assembly. I guess I have some interest in that matter, because it is not far from where my home is. It was interesting to be there, but I understand that it was my duty also to be here at least to conclude my remarks on this motion so that other members could respond. I apologise for my unfortunate delay and hope with the conclusion of my remarks today that those who wish to contribute to this debate may be able to do so.

I said on 11 September, when moving the motion, that I would consult further with local government and others interested in parking. I have done that and I believe matters may be progressing or will progress in a satisfactory direction, and I will expand on that later. I have to say that even in the short space of the last two weeks I have been advised of many examples where parking regulations are being ignored; where some councils are not doing the right thing, and where ordinary motorists are being fined, and paying up in good faith when the expiation fees may well be based on illegal signs and markings. This is not good enough, even if I can be convinced there are only a handful of offending councils. People have the right to expect that councils do and will follow the letter of the law, in particular the parking regulations under which they operate. They have every right to expect that signs mean what they say, are easy to understand and that there is no need for expensive litigation to test the validity of an expiation notice.

If this confidence in the ability of councils to act in a proper and fair manner breaks down so far as parking is concerned then every Tom and Helen will rush to the courts for a solution. I put it to the Council and local government in general that this would be an unfortunate situation; local government should not let itself fall into question. I have previously asked the Minister of Local Government Relations questions about the parking regulations.

Included in the explanation of the questions were a number of specific instances showing where the system is break-

ing down or has broken down over a number of years. I have given examples of councils gazetting motions referring to the old regulations after 5 August this year when the new regulations came into force. I have a file of numerous other examples that I could give, and I am sure that the Subordinate Legislation Committee has this evidence as well.

I have photographic evidence of illegal signs with faded, illegible figures and wording still standing around Adelaide. I have photographs of clearway signs designating 'no parking' at certain hours, and new International Australian Standard signs marking clearways that designate hours when no-one should be parking, and standing beside those and almost touching them—and I have literally dozens of examples—are signs that say 'half-hour parking at any time.' How our tourists or even people who live in and drive around Adelaide can understand what they mean, I do not know—it is nonsensical to me.

I have photographs of signs erected for temporary purposes till standing weeks after the temporary conditions have expired. I am advised that the disregard for the proper implementation of parking regulations, both old and new, is not restricted to metropolitan Adelaide but is just as prevalent in the country areas of South Australia.

What I have said already in debating this motion and in the three questions that I put to the Minister for Local Government Relations has been in the main directed to examples of extensive failings in the old regulations before 1980. Many councils did not re-promulgate council motions and gazettals which would legalise the parking regulations they sought to implement. One may remember that in the Tonkin Government's time in 1980 there was disallowance of parking regulations. I am not sure of the date in 1980, but one side-effect of that was that many councils did not re-promulgate their regulations once the new ones had been put in place and after they were disallowed. In other words, through ignorance or otherwise many councils did not carry out their responsibilities properly under the Act.

Many motorists—perhaps many thousands—have been inconvenienced by illegal signs and have had to fork out many thousands of dollars in fines that in many cases may have been illegally raised. None of this gives me or anyone else any confidence that the regulations of 5 August will be any better. What I say now should be directed towards the new regulations that have been in force since 5 August this year. As the Minister has told us, they were arrived at after seven or eight years of consultation, and very intense work over the past two years.

What we have often found with regard to the consultation process is that not all interested people have been consulted, and I suspect that this may be the case with these regulations. Were local government senior parking inspectors and authorised officers consulted on the working parties? I assume they were. Were magistrates and lawyers who deal daily with parking regulations and alleged offences consulted on the working parties? I continue to hear from lawyers and some magistrates that what they have to deal with at times is not very pleasant.

Was the RAA or any other body that is interested in parking and expiation of regulations consulted or represented on the working party? If not, all those bodies should have been, and any further consultation must include the people and bodies I have mentioned. The Subordinate Legislation Committee and I have received examples of the inadequacies of the now gazetted regulations, some of which have been answered by an officer of the Local Government Bureau. Some have not been satisfactorily answered or no counter-argument has been put at all.

Mr Gordon Howie and others have pointed out to me the value of the Victorian regulations, which stand out for their national and international value. I cannot for the life of me understand why we do not base our regulations on their example, especially after eight years of work in South Australia on our own regulations. Victoria has been working well for years pre and post their adoption of International Australian Standard signs. For the sake of brevity I will give one example in one contentious area. I refer to the questionable definition of 'park'. The Victorian regulations have the following definitions:

'Leave standing' means—
(a) to stop a vehicle; or
(b) to permit a vehicle (whether or not attended) to remain stationary—
otherwise than—
(c) to aviod conflict with directions of a member of the police force or a traffic-control item or signal.

'Park' means to leave a vehicle standing if the vehicle is not actually engaged in taking up or setting down a person or goods.

There is a clear sense of distinction, yet the Director of the Local Government Bureau, in criticism of Mr Howie's comments to the committee, states:

The distinction between No Standing zones and No Parking zones is that a vehicle is able to be parked or left standing in a No Parking zone for the purpose of the immediate setting down or picking up of the passenger (reg. 15 (2)) but is not able to be parked or left standing in a No Standing zone for any purpose (reg. 15 (1)).

Throughout the regulations a reference to parking a vehicle is to include standing the vehicle. Hence the definition avoids awkward repetition of the concepts.

The term 'park' in all of the other States allows loading and unloading of goods in 'No Parking' areas. Why have standard 'No Standing' and 'No Parking' signs, which have a different meaning in South Australia? Why have regulations which differ from the concept of the Australian Standard (The National Road Traffic Code)? That one example gives a pretty clear message. Although we have adopted the Australian Standard signs we have adopted a different meaning in South Australia. What is the point of standard signs throughout Australia if we adopt a meaning here which will not only confuse our drivers going interstate but confuse our visitors from interstate? So much for doing all we can to ensure tourists have a happy stay in our State!

In a considered answer to a question from me relating to Part XIIA of the Local Government Act, the Minister reassures me that this part had been amended by Parliament in December 1990. It should be remembered that December 1990 was at the end of or near the end of, we are told, eight years of consultation on parking regulations, the last two of which were very extensive. Yet we find in the new amendments to the Local Government Act still to be discussed by this House four or five clauses relating to parking regulations and Part XXIIA. This is a clear example of a system off the rails—one more example of where the Government and its advisers, whoever they are, cannot get their act together. What a messy process.

We have had lengthy consultation on matters, including draft regulations, changes to the Local Government Act in preparation for new regulations, new regulations gazetted including standard signs with different meanings to other States and then within three months changes to the Local Government Act again. One has to wonder about the competence of those who prepared the regulations. One is left wondering how many other problems will arise with the new regulations, let alone how councils will use them, or abuse them, as has occurred with the old regulations, as I have said.

When I asked the Minister on 20 August if she had received any submissions calling on the suspension of the

new parking regulations until at least after the Adelaide Royal Show, the Minister replied 'I do not recall any submissions specifically stating that the Royal Show was a reason for this.' I am informed by Unley council that that council did request the Minister on 25 June 1991 to defer introduction of the new regulations until after 30 September, due to concerns relating to gearing up for the new regulations particularly with the Royal Adelaide Show looming.

The Hon. Anne Levy: I will show you the council's letter. It does not mention the show.

The Hon. J.C. IRWIN: The Minister can show me the letter, but I am acting on the advice I received from the council.

The Hon. Anne Levy: I assure the honourable member that they said they wanted it delayed so that they could use up their old parking tickets.

The Hon. J.C. IRWIN: The Minister can read that letter into her reply. The Minister obviously did not agree to council's request. I have to ask: why was this reasonable request rejected?

The Hon. Anne Levy: I did not think it was reasonable to delay it for everyone in the State so that the council could use up its old parking tickets; it was the only reason it gave.

The Hon. J.C. IRWIN: Okay. I am also informed by the City of Unley:

> This council wrote to the Minister for Local Government in 1989 when the regulations were being formulated advising that council's support of the new regulations was '... contingent upon a comprehensive and co-ordinated public education campaign being undertaken by the (then) Department of Local Government... it is appropriate that the department be responsible for ensuring that all road users are familiar with the new signs via a State-wide publicity campaign.
>
> Such a campaign is imperative to ensure that the new signs are understood by motorists and to minimise the acrimony that will otherwise arise as a result of misunderstanding and ignorance.
>
> The publicity campaign by the State Government in relation to this matter has been almost non-existent.
>
> Council has endeavoured to overcome this inadequacy by placing an advertisement in the local Messenger newspaper, using a media release and printing and distributing several thousand leaflets on the issue. The resources available to council for publicity are, however, obviously limited, and the issue needs to be tackled by the State Government on a State-wide basis.

The Hon. Anne Levy: No, by the LGA.

The Hon. J.C. IRWIN: It is their regulations.

The Hon. Anne Levy: For the LGA.

The Hon. J.C. IRWIN: Well, it is their regulations. You put them on.

The PRESIDENT: Order! The honourable Minister will have the opportunity to enter the debate.

The Hon. J.C. IRWIN: The Minister obviously rejected that advice from Unley, and I do not know from how many other councils, and has tried to explain to this Council previously how the media failed to take up her press release.

The Hon. Anne Levy: Yes.

The Hon. J.C. IRWIN: That is not a good enough excuse for important issues like new signage for South Australia. I accept that new regulations have to be promulgated some time, and now is not always the right time.

Even with reasonable foresight and the introduction of Australian standard signs, including some thought about the Adelaide Royal Show and the Grand Prix—which are dates that everyone knows about and which are events that attract a lot of people to South Australia—there is no reason why they could not have been left later than that, other than to promulgate the new expiation fees so that more money can roll into the coffers. But even with reasonable foresight with the introduction of signs, new to most South Australian motorists, however logical they are, there will be some intial confusion.

Despite the demise of the old Local Government Department, there is still a Local Government Bureau funded equally as it is by the Government and local government.

The Hon. Anne Levy: It is not! It is funded entirely by—

The PRESIDENT: Order! The honourable Minister will have the opportunity to debate.

The Hon. J.C. IRWIN: It is funded entirely by the State Government.

The Hon. Anne Levy: Indeed! Very much so!

The PRESIDENT: Order!

The Hon. J.C. IRWIN: The bureau and the Minister clearly still have a responsibility to do all they can to promote a smooth introduction of the new parking regulations, even three months after they were gazetted.

The Hon. Anne Levy: And the LGA will do so as soon as—

The PRESIDENT: Order!

The Hon. J.C. IRWIN: The Minister just cannot go on running away from this situation, leaving all the blame and all the flak to other people, and doing nothing. The State Local Government Negotiation Agreement clearly states under Bureau of Local Government Services Advisory Service Unit:

> 1. The Advisory Services Unit will no longer exist as of 31 May 1991. The remaining functions will be carried out by one FTE officer located within the bureau. Clerical support will be provided as required by the bureau.
>
> 2. Importantly, the remaining functions will be to provide administrative support and advice to the Bureau Management Committee and the Minister in relation to the statutory functions, including:
>
> - approvals required of councils;
> - investigations of council activities;
> - processing by-laws; and
> - complaints in relation to statutory offences or breaches of statutory provisions

The Hon. Anne Levy: Right! The LGA take the rest.

The Hon. J.C. IRWIN: Well, the processing of by-laws is clearly there.

The Hon. Anne Levy: No, the regulations—

The PRESIDENT: Order! The honourable Minister.

The Hon. J.C. IRWIN: I am well aware of the situation which has now arisen with both the Subordinate Legislation Committee and the Opposition moving motions in this Council for disallowance of parking and expiation regulations. I am also aware of what happened when the Parliament disallowed parking regulations in, I think, 1980 and the confusion that caused. I have not looked up that debate. I do not know whether it was the Opposition (which is now the Government) that moved that disallowance. Perhaps the Hon. Mr Griffin can help me, but I am well aware of the confusion that resulted from that.

In late October following consultation with the Local Government Association, I received the following letter from it:

> The Local Government Association of South Australia is concerned at the cost implications and confusion which is being caused by the uncertainty of the continuing status of the Parking Regulations 1991. The delay in resolving the issue has prevented publicity being given to the new parking signs.

The Hon. Anne Levy interjecting:

The Hon. J.C. IRWIN: Well, it's a pretty lame excuse. The letter continues:

> Any publicity will be extremely expensive and the association is unable to commit local government to this cost until the motion for disallowance is resolved.
>
> Should the 1991 regulations remain in force the association, in consultation with the Bureau of Local Government Services and any other relevant Government department, will publicise the new signs to the general public. You may also be interested in knowing that the association is currently considering providing a seminar during December on the new regulations of local government. Any assistance you are able to provide in resolving the

current confusion with regard to the status and continuity of the 1991 parking regulations would be appreciated by local government.

There are two points I wish to pursue from that letter. First, there is room for annoyance that the Local Government Association, individual councils, and the Minister, previously here and in a letter to Stephen Baker, the member for Mitcham, are blaming the Subordinate Legislation Committee and the Opposition for holding up a decision on the motions in this place, thereby making it impossible for the association and others to get on with trying to educate the public to the new regulations and particularly Australian standard signs. I say that it should be patently obvious to everyone that the Opposition does not and will not oppose the introduction of the new Australian standard signs, provided they are consistent throughout Australia—and that I thought is what standard means.

If I have not been clear enough I will say it again: we do not disagree with the introduction of new Australian standard signs in any regulation. There is nothing to stop the Local Government Association, the bureau or anyone else from publicising the new signs, and I object to this Council and the Opposition being blamed for doing what we are elected for, that is, to listen to what the people have to say. I am quite happy to stand up here and say loudly and clearly that I will listen to anyone who wants to approach me to speak their mind on any issue.

The Hon. Anne Levy: The LGA has approached you, and it speaks on behalf of—

The PRESIDENT: Order! The Hon. Mr Irwin.

The Hon. J.C. IRWIN: The second point I wish to respond to in the Local Government Association letter relates to the association's providing a seminar during December on the new regulations. I welcome that positive move and believe it should seek to embrace representatives of all of the 120 councils in South Australia.

The Hon. Anne Levy: There are a lot of parking problems in Carrieton!

The Hon. J.C. IRWIN: Well, yes, there are. There are a number of parking problems around the country areas. Port Pirie would be one, Clare is another and so is Port Lincoln.

The Hon. Anne Levy interjecting:

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

The Hon. J.C. IRWIN: Well, I am telling you that there are country councils that are breaking the law now, and if you think that is acceptable, where tourists or visitors are going through it, that is your view: it is not my view. It is not the responsibility of local government to break the law and, if local government is promising a seminar, I assume it would include everyone that has parking in their streets. I believe the Local Government Association and/or the bureau should convene a meeting of people directly involved in parking. I mentioned earlier the sorts of people who would have an interest and who should be involved: representatives of those who wrote the present regulations; local government inspectors; local government lawyers involved in advising councils on parking regulations; representatives from the courts who deal with parking regulations; Mr Gordon Howie, who is a champion of the ordinary motorists around South Australia, and anyone else like him; and bodies such as the RAA. I believe they should be involved before there is a seminar.

I look to the Minister and the Local Government Association for advice that they will convene such a meeting so that the advice given to me, which is too long to include now (and I have given only some examples, which have been given by many of the people that I mentioned above) can be put on the table for frank discussion. If the Minister thinks it is all smooth out there in motor land about parking regulations, she is being very badly misled. If this concept is not taken up by either the Local Government Association or the bureau, the Opposition will consider its position and options even more seriously.

In speaking to this motion to disallow the parking regulations I have alluded to two main factors: first, the way some councils in both city and country areas have behaved under the old regulations, which is spilling over under the new regulations. We have to be concerned if drivers or motorists are being improperly fined by councils through their own ignorance. We live in a society which thankfully accepts directions from councils through their signage, which it believes to be legal. We do not want a society which is suspicious of every move a council makes and needs constantly to go to court at great expense to everyone including ratepayers. The ratepayers miss out everywhere, because they are the ones that fund the defence in court to prove that motorists are innocent.

Secondly, I have tried to show, through limited examples, that the new regulations are not as good as they should be after such a long gestation period of eight or nine years. Maybe we will have to live with what we have, but if we do we should not lose any opportunity to make sure that the driver/motorist can live in harmony with what the community, which is represented by local government, wants.

I hope it is not too long before the various State Ministers move to adopt the uniform national code for parking. I am not sure of the thinking of Ministers on this matter, how far advanced it is, or even whether it is a concept to have some sort of national uniform code to go with the signs that are already in place in most areas of Australia. If we and local government fail to find the right mix of revenue raising and car movement control, inner city and ordinary suburban or strip shopping will move rapidly to large regional shopping malls that provide free car parking.

Recently I saw that occurring in America, where city centres were nearly dead and where one did not see many cars or people once they have come to their workplace, and I do not want to see the City of Adelaide die on its feet. I urge members to consider the matters I have raised and to support the motion.

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

STATUTES AMENDMENT (CRIMES CONFISCATION AND RESTITUTION) BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Crimes (Confiscation of Profits) Act 1986 and the Criminal Law Consolidation Act 1935. Read a first time.

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

That this Bill be now read a second time.

This Bill amends the Crimes (Confiscation of Profits) Act and the Criminal Law Consolidation Act in various respects. The Crimes (Confiscation of Profits) Act currently provides that money forfeited or obtained from the realisation of assets under the Act will be paid into the Criminal Injuries Compensation Fund. Following agreements reached by the Standing Committee of Attorneys-General additional money will be available to be paid in to the fund: namely, money or property forfeited under a registered interstate order is to be retained in the jurisdiction in which forfeiture occurs, rather than being repatriated to the jurisdiction in which the forfeiture order was made, and money received from

the Commonwealth under the Mutual Assistance in Criminal Matters Act (Commonwealth) when assets are repatriated from overseas.

Money will also be paid into and out of the Criminal Injuries Compensation Fund as part of the 'equitable sharing program'. This is a program agreed to by the Standing Committee of Attorneys-General whereby money recovered under State, Territory or Commonwealth confiscation legislation will be shared with another State or Territory if there has been a contribution made by an agency of that other State or Territory to the investigation or prosecution of the criminal matter or the related confiscation proceedings.

Following comments made by the Supreme Court in *Attorney-General v Dickman and Ors* the opportunity has been taken to clarify that a court has jurisdiction to make a restraining order before a person is convicted. This is the effect of the Act as currently worded but problems arose from the definition of 'forfeitable property' and its interrelationships with section 6 of the Act. These matters have been clarified.

In the case of *Taylor and Ors v Attorney-General* the Supreme Court pointed out that no specific provision is made for appeals from orders under the Crimes (Confiscation of Profits) Act. In fact, there is no specific provision for appeals from a range of orders of a *quasi* civil nature that may be made in criminal proceedings, for example, orders for compensation and restitution of property. The Bill makes provision in the Criminal Law Consolidation Act for a range of orders (including forfeiture and restraining orders under the Crimes (Confiscation of Profits) Act) to be appealable to the Full Court of the Supreme Court.

Provision is made by this Bill for money-laundering to be a criminal offence in this State. The background to these provisions is as follows. Australia signed the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in February 1989, and has been working towards ratification since then. Ratification of the convention will serve to achieve one of the aims of the national campaign against drug abuse.

In order for Australia to ratify the convention the law of each State must be brought into line with the convention requirements. In the South Australian context all convention requirements are satisfied except convention's obligations to create criminal offences in respect of money-laundering activities. The Commonwealth Attorney-General has requested such legislation be accorded priority in the legislative program, and has further indicated his preference for the convention to be implemented by State, Territory and Commonwealth legislation rather than exclusively by Commonwealth legislation under the external affairs power.

Money-laundering offences have already been enacted in the Commonwealth Proceeds of Crime Act, Queensland Crimes (Confiscation of Profits) Act and New South Wales Crimes (Confiscation of Profits) Act. Victoria, Western Australia and Tasmania are currently preparing money-laundering legislation in accordance with the Commonwealth request. Provision is already made in the South Australian Crimes (Confiscation of Profits) Act for the confiscation of tainted property when a person receives property knowing of its origin or in circumstances such as should raise a reasonable suspicion as to its origin. The Act, however, creates no criminal offences as are required by the convention.

The provisions made by this amendment create maximum penalties for money-laundering of $200 000 or 20 years imprisonment, or both, when the offender is a natural person and $600 000 when the offender is a body corporate. A person (or company) is taken to engage in money laundering if and only if the person (or company) engages directly or indirectly in a transaction that involves tainted property or receives, possesses, conceals, disposes of or brings into the State any money or other property that is tainted property and the person knows that the money or other property is derived or realised directly or indirectly from unlawful activity.

I commend this Bill to members and seek leave to have the detailed explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal.

Clause 2 provides for commencement on a day to be fixed by proclamation.

Clause 3 is formal.

Part 1—Amendment of Crimes (Confiscation of Profits) Act 1986

Clause 4 defines a number of terms used in the amendment.

The current definition of 'forfeitable property' is redrafted and transferred to section 6.

Clause 5 inserts proposed section 6 (1a) which redefines the term 'forfeitable property' in a manner which makes it clear that a restraining order may be imposed by a court prior to the conviction of an offender for a prescribed offence.

Clause 6 amends section 10 of the Act to provide for payments into and out of the Criminal Injuries Compensation Fund in circumstances not previously dealt with in the Act.

Proposed section 10 (1) *(b)* provides for the payment into the fund of any money derived from the enforcement of an order under a corresponding law registered in the State.

Proposed section 10 (1a) provides in paragraph *(a)* for money paid to the State under the equitable sharing program and, in paragraph *(b)*, for money paid to the State under the Mutual Assistance in Criminal Matters Act 1987 of the Commonwealth to be paid into the fund.

Proposed section 10 (3) *(b)* provides for payments by the State to the Commonwealth or to other States pursuant to the equitable sharing program.

Clause 7 amends section 10a (2) to make it clear that the State is entitled pursuant to proposed section 10 (1) *(b)* to receive on its own behalf the proceeds of the enforcement of an order in favour of the Crown in right of another State.

Clause 8 inserts proposed section 10b which parallels the provisions of the Proceeds of Crime Act 1987 of the Commonwealth in establishing an offence of money laundering.

Subsection (2) establishes the offence of money laundering punishable, in the case of a natural person, by a fine of $200 000 or 20 years imprisonment and, in the case of a body corporate, by a fine of $600 000.

Subsection (3) defines money laundering in terms similar to the Commonwealth Act.

Part 2—Amendment of Criminal Law Consolidation Act 1935

Clause 9 inserts the definition of 'ancillary order' into section 348 of the Criminal Law Consolidation Act 1935.

'Ancillary order' is defined to include forfeiture and restraining orders under the Crimes (Confiscation of Profits) Act 1986 and restitution and compensation orders under the Criminal Law (Sentencing) Act 1988.

Clause 10 inserts proposed section 354a.

Subsection (1) of that section provides that a person against whom an ancillary order has been made may appeal to the Full Court.

Subsection (2) provides that the Attorney-General may appeal to the Full Court against an ancillary order or the refusal to make such an order.

Subsection (3) provides for appeals against sentence and ancillary orders to be heard together where the court considers that this is appropriate.

Clause 11 provides that the right of appeal created by proposed section 354a applies in respect of proceedings commenced prior to the commencement of the amendment.

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

DIRECTOR OF PUBLIC PROSECUTIONS BILL

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

No. 1—Long title, page 1, line 6—Insert '; to make consequential amendments to certain Acts;' after 'Prosecutions'.

No. 2—Clause 7, page 3, after line 20—Insert new subclauses as follow:

(2a) A person who has power to consent to a prosecution, or to allow an extension of the period for commencing a prosecution, for an offence of a particular kind under the law of the State may, by notice in the *Gazette*, delegate that power to the Director.

(2b) A delegation under subsection (2a)—

(a) is revocable by subsequent notice in the *Gazette*; and

(b) does not prevent the person from acting personally in a matter,

but, once a decision on a particular matter has been made by the Director in pursuance of a delegation, the delegator is bound by that decision.

(2c) A document apparently signed by the Director and stating that the Director consents to a particular prosecution or that the Director allows a specified extension of the period for commencing a particular prosecution is to be accepted, in the absence of proof to the contrary, as proof of the fact so stated.

No. 3—After line 24—Insert new subclauses as follows:

(4) In any legal proceedings, the Director may appear personally or may be represented by a member of the staff of the office who is a legal practitioner or by counsel or solicitor (including the Crown Solicitor or the Solicitor-General).

(5) Details of any notices published under this section must be included in the Director's annual report.

No. 4—Clause 10, page 4, lines 9 to 13—Omit this clause and insert:

Investigation and report

10. The Commissioner of Police must, so far as it is practicable to do so, comply with any request from the Director to investigate, or report on the investigation of, any matter.

No. 5—New clause, page 4, after line 32—Insert new clause as follows:

Saving provision

12a. This Act does not derogate from the right of the Attorney-General to appear personally in any proceedings on behalf of the Crown.

No. 6—New schedule, page 4, after line 35—Insert the following schedule:

SCHEDULE 1
Transitional Provisions

Retrospectivity

1. (1) This Act applies in relation to proceedings commenced before the commencement of this Act.

(2) This Act applies in relation to offences committed before the commencement of this Act.

Director to take over from Attorney-General

2. Where, before the commencement of this Act, the Attorney-General had exercised in relation to particular proceedings, a power or function of a kind vested in the Director under this Act, the Director may assume and continue to exercise that power or function as if it had been exercised by the Director from the inception of the proceedings.

No. 7—New schedule, page 4, after line 35—Insert the following schedule:

Schedule 2
Consequential Amendments

Provision Amended	How Amended
Bail Act 1985	
Section 21a	Strike out paragraphs *(a)* and *(b)* and 'or' between those paragraphs and substitute: *(a)* the Director of Public Prosecutions; *(b)* a person acting on the instructions of the Crown; or *(c)* any member of the police force.
Children's Protection and Young Offenders Act 1979	
Section 46 (2) *(a)*	Strike out 'made by the Attorney-General'.
Section 46 (2) *(b)*	Strike out 'by the Attorney-General'.
Section 47 (1)	Strike out 'Attorney-General' first occurring and substitute 'Director of Public Prosecutions'. Strike out 'Attorney-General' second occurring and substitute 'Director'.
Section 47 (2)-(5)	Strike out 'Attorney-General' wherever occurring and substitute, in each case, 'Director'.
Controlled Substances Act 1984	
Section 45a	Strike out paragraphs *(a)* and *(b)* and 'or' between those paragraphs and substitute; *(a)* the Director of Public Prosecutions; *(b)* a member of the police force; or *(c)* a person authorised in writing by the Director of Public Prosecutions to commence the prosecution.
Crimes (Confiscation of Profits) Act 1986	
Section 5 (1)	Strike out 'Attorney-General' and substitute 'Director of Public Prosecutions'.
Section 6 (1)	Strike out 'Attorney-General' and substitute 'Director of Public Prosecutions'.
Section 6 (8)	Strike out 'Attorney-General' and substitute 'Director of Public Prosecutions'.
Section 9a (1)	Strike out 'Attorney-General' and substitute 'Director of Public Prosecutions'.
Criminal Law Consolidation Act 1935	
Section 57a (2)	Strike out 'Attorney-General' and substitute 'Director of Public Prosecutions'.
Section 57a (3)	Strike out 'Attorney-General' and substitute 'Director of Public Prosecutions'.
Section 275 (1)	Strike out 'Attorney-General' and substitute 'Director of Public Prosecutions'.
Section 276 (1)	Strike out 'Attorney-General' and substitute 'Director of Public Prosecutions'.
Section 276 (2)	Strike out 'Attorney-General' twice occurring and substitute, in each case, 'Director of Public Prosecutions'.
Section 281a (1)	Strike out 'Attorney-General' and substitute 'Director of Public Prosecutions'.
Section 281a (3)	Strike out 'Attorney-General' and substitute 'Director of Public Prosecutions'.
Section 285c (3) *(d)*	Strike out 'Crown Prosecutor' twice occurring and substitute, in each case, 'Director of Public Prosecutions'.

Provision Amended	How Amended
Section 285c (7)	Strike out 'Crown Prosecutor' and substitute 'Director of Public Prosecutions'.
Section 348a	Strike out this section.
Section 350 (1a)	Insert 'or the Director of Public Prosecutions' after 'Attorney-General'.
Section 351 (2b)	Insert 'or if the Director of Public Prosecutions made the application, the Director' after 'Attorney-General' first occurring. Insert 'or the Director of Public Prosecutions (as the case may require)' after 'Attorney-General' second occurring.
Section 352 (2)	Strike out 'Attorney-General' and substitute 'Director of Public Prosecutions'.
Section 353 (5)	Strike out 'Attorney-General' and substitute 'Director of Public Prosecutions'.
Section 362	Strike out 'Attorney-General' first occurring and substitute 'Director of Public Prosecutions'. Strike out 'Attorney-General' second occurring and substitute 'Director'.
Section 366 (2)	Insert 'or Director of Public Prosecutions' after 'Attorney-General'.
Section 366 (3)	Strike out 'or by the Attorney-General' and substitute, 'Attorney-General or Director of Public Prosecutions'.
Section 369	Strike out 'Chief Secretary' first occurring and substitute 'Attorney-General'. Strike out 'with the concurrence of the Attorney-General,'. Strike out 'Chief Secretary' second occurring and substitute 'Attorney-General'.
Schedule 1	Strike out 'Attorney-General' and substitute 'Director of Public Prosecutions'.
Schedule 2	Strike out 'Attorney-General' and substitute 'Director of Public Prosecutions'.
Schedule 3	Strike out 'Attorney-General' and substitute 'Director of Public Prosecutions'.
Criminal Law (Sentencing) Act 1988	
Section 22 (2)	Strike out 'Crown' and substitute 'Director of Public Prosecutions'.
Section 22 (7)	Strike out 'Crown' and substitute 'Director of Public Prosecutions'.
Section 23 (11)	Strike out 'Crown' and substitute 'Director of Public Prosecutions'.
Section 24 (1)	Strike out 'Crown' and substitute 'Director of Public Prosecutions'.
Section 24 (5) *(a)*	Strike out 'Crown' and substitute 'Director of Public Prosecutions'.
Section 24 (5) *(b)*	Strike out 'Crown' and substitute 'Director of Public Prosecutions'.
Section 24 (11)	Strike out 'Crown' and substitute 'Director of Public Prosecutions'.
Section 26	Strike out 'Crown' and substitute 'Director of Public Prosecutions'.
Section 27a (1) *(c)*	Strike out 'Crown' and substitute 'Director of Public Prosecutions'.
Section 27a (2)	Strike out 'Crown' and substitute 'Director of Public Prosecutions'.
Section 27a (5) *(a)* (iii)	Strike out 'Crown' and substitute 'Director of Public Prosecutions'.
Section 27a (5) *(b)*	Strike out 'Crown' and substitute 'Director of Public Prosecutions'.
Section 27a (6)	Strike out 'Crown' first occurring and substitute 'Director of Public Prosecutions'. Strike out 'Crown' second and third occurring and substitute, in each case, 'Director'.
Section 32 (6)	Strike out 'Crown' and substitute 'Director of Public Prosecutions'.
Section 32 (7) *(b)*	Strike out 'Crown' and substitute 'Director of Public Prosecutions'.
Section 32 (10) *(b)*	Strike out 'Crown' and substitute 'Director of Public Prosecutions'.
Evidence Act 1929	
Section 56 (2)	Insert 'the Director of Public Prosecutions,' after 'the Crown Solicitor,'.
Freedom of Information Act 1991	
Schedule 2, paragraph *(k)*	Strike out 'Crown Prosecutor' and substitute 'Director of Public Prosecutions'.
Juries Act 1927	
Section 31 (2)	Strike out 'Crown Solicitor' and substitute 'Director of Public Prosecutions'.
Justices Act 1921	
Section 141 (1)	Strike out 'Attorney-General' and substitute 'Director of Public Prosecutions'.
Section 141 (3)	Strike out 'Attorney-General' and substitute 'Director of Public Prosecutions'.
Section 155 (5)	Strike out 'Attorney-General' and substitute 'Director of Public Prosecutions'.
Section 155 (6)	Strike out 'Attorney-General' and substitute 'Director of Public Prosecutions'.
Section 188 (3)	Strike out 'Crown Solicitor' and substitute 'Director of Public Prosecutions'.
Legal Practitioners Act 1981	
Section 21 (3) *(w)*	Insert 'or the Director of Public Prosecutions' after 'Australian Government Solicitor'.
Section 51 (1) *(a)*	Insert 'and the Director of Public Prosecutions' after 'Australian Government Solicitor'.
Section 51 (1) *(b)*	Strike out this paragraph and substitute: *(b)* a legal practitioner acting on the instructions of— (i) The Attorney-General of the State; (ii) the Attorney-General of the Commonwealth; (iii) the Crown Solicitor; (iv) the Australian Government Solicitor; or (v) the Director of Public Prosecutions:
Local and District Criminal Courts Act 1927	
Section 327 (1)	Strike out 'Attorney-General' and substitute 'Director of Public Prosecutions'.
Section 337 (1)	Strike out 'Attorney-General or, in his absence, on the Solicitor-General,' and substitute 'Director of Public Prosecutions'. Strike out 'Attorney-General' second occurring and substitute 'Director of Public Prosecutions'.
Section 339	Strike out 'Attorney-General' and substitute 'Director of Public Prosecutions'.
Section 340 (1)	Strike out 'Attorney-General' and substitute 'Director of Public Prosecutions'.
Section 340 (2)	Strike out 'Attorney-General' and substitute 'Director of Public Prosecutions'.
Section 340 (3)	Strike out 'Attorney-General' and substitute 'Director of Public Prosecutions'.

Provision Amended	How Amended
Section 340a	Strike out this section.
National Crime Authority (State Provisions) Act 1984	
Section 19 (5)	Strike out 'Crown Prosecutor, or a similar office' and substitute 'Director of Public Prosecutions'.
Supreme Court Act 1935	
Section 118a	Strike out this section.

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

That House of Assembly's amendments be agreed to.

These amendments deal with a number of matters, some of which were raised during the original debate in this Chamber. I will refer briefly to them. Amendment No. 2 enables a person (Minister or otherwise) who has power to consent to a prosecution under a State Act of Parliament—and that may be the Minister of Consumer Affairs, for instance, who has power to consent to prosecutions in some areas, or the Attorney-General, who retains some powers to consent to prosecutions, for instance, under the Summary Offences Act dealing with obscene and indecent publications and, from time to time, legislation which contains provisions that prosecutions are to proceed only with the consent of a Minister—to delegate that power to the Director of Public Prosecutions.

If that is done, the delegation should be included in the *Government Gazette*. It provides that the delegation is revocable by subsequent notice in the *Gazette* and does not prevent the person from acting personally in a matter. It is a useful provision which would enable anyone who has the power to consent to prosecutions to delegate that power to the Director of Public Prosecutions while still retaining the ultimate authority.

Amendment No. 3 makes clear that the Director of Public Prosecutions can appear personally, which was obvious, and can be represented by a member of the staff if the officer is a legal practitioner. It makes it clear that that includes the Crown Solicitor, the Solicitor-General or counsel from the private bar.

Amendment No. 4 deals with the Commissioner of Police investigating a matter on request from the Director of Public Prosecutions. When the Bill was before us, that clause gave the Director of Public Prosecutions that power, but the Commissioner of Police was concerned that the proposal should be softened to some extent. Accordingly, the Commissioner of Police now 'so far as is practicable to do so' must comply with any request from the Director to investigate, etc., and that is consistent with provisions in other Director of Public Prosecutions legislation interstate. Further, it is now in accordance with the wishes of the Commissioner of Police.

Amendment No. 5 deals with the right of the Attorney-General to appear personally in any proceedings. Therefore, that retains the right of the Attorney-General to appear and prosecute a matter on behalf of the Crown. Presumably, that includes appearing on behalf of the Director of Public Prosecutions. In any event, the Attorney-General does have that right now. I do not imagine it would be exercised very often, but maybe an Attorney-General in the future will want to appear. That preserves the current rights of the Attorney-General in this respect.

Amendment No. 6 inserts the first schedule transitional provisions, which provide for the Director of Public Prosecutions to take over matters that are in train. Amendment No. 7 inserts the second schedule, which deals with a matter that was raised in the Committee stage when we debated it in this Chamber, and refers to consequential amendments that have had to be made. The option was to deal with those in a separate piece of legislation or to include them as a schedule. As it has turned out, Parliamentary Counsel have been able to prepare this schedule while the matter was being considered in another place.

Accordingly, the consequential amendments are dealt with in this second schedule. They deal with a number of amendments to Acts, including the Bail Act, the Children's Protection and Young Offenders Act, the Crimes (Confiscation of Profits) Act, and the Criminal Law Consolidation Act, where the Attorney-General has certain powers or is mentioned, or where the Crown Prosecutor is mentioned. It also deals with the Criminal Law (Sentencing) Act and a number of other Acts where either the Attorney-General, the Crown Prosecutor, the Crown Solicitor or the Crown are mentioned, and provides that the Director of Public Prosecutions will assume those functions.

The only other matter I should mention is in schedule 2, amendment to section 369, Criminal Law Consolidation Act, where there is a petition to review a conviction after all the appeal processes have been exhausted, and at present that petition has to go to the Chief Secretary and then, with the concurrence of the Attorney-General, can be referred to the Full Court. The references to the Chief Secretary in that procedure are now deleted. The petition comes to the Attorney-General and the Attorney-General refers the matter to the Full Court. That remains a power which the Attorney-General retains personally, because it is a petition to the Governor and, as such, it is appropriate that a Minister of the Crown make the decision to refer that for the consideration of the Supreme Court.

The Hon. K.T. GRIFFIN: Prior to these amendments being considered in the House of Assembly, I had the opportunity of perusing them. As a result of my perusal I made some representations to the Attorney-General and, as a result, some additions were made so that now I can say that I am prepared to support the motion in relation to these amendments. I say it in the context that the issues of principle which we debated in the second reading stage and the Committee consideration of the Bill have been determined by the majority of the Council. There are some areas upon which I was not satisfied, but I accept that I was not successful, particularly in the area of greater independence for the Director of Prosecutions.

So, on the basis of the majority decision of the Council and the acceptance by the whole Council of significant numbers of propositions in the Bill, I can say that in my view the amendments are consistent with the Bill as it passed the Legislative Council. I was anxious to ensure that if, under amendment No. 2, a person delegated a power or function to the Director of Public Prosecutions and the Director exercised those powers and functions, when the delegation was revoked and if that should occur, any decision made by the Director should not also be reversible following upon the revocation of the delegation. That has now been addressed in amendment No. 2. Related also to that, in amendment No. 3 is the requirement for details of any notices of delegation or revocation of delegation to be published in the Director's annual report. I now think that that means all of the decisions which affect the operation of the office of Director and which ought to be on the public record will in fact be on the public record. That is an aid to actual independence and also ensures that both those who make delegations and those who revoke them and the decisions of the Director of Public Prosecutions, as well as the Attorney-General, are open to public scrutiny.

I have no difficulty with amendment No. 4, because I recognise that it may be an impossibility for the Commissioner of Police to investigate or report on an investigation requested by the Director. Amendment No. 5 maintains the

scheme of the legislation in that, in many areas, the Attorney-General will have a concurrent responsibility, and this preserves that responsibility, not that I necessarily agree with it but, in the context of the Bill which is being passed, it is appropriate. The traditional provisions in amendment No. 6 are necessary and are supported. I had an opportunity previously to check the consequential amendments in amendment No. 7, and I am satisfied that they are appropriate. There were one or two changes to the original proposal on which I made representations to the Attorney-General privately and they have been accepted. So, it is in that context that I support the motion to agree with the amendments made by the House of Assembly.

The Hon. I. GILFILLAN: It comforts me that the shadow Attorney-General endorses the motion; we can feel confident indeed that the amendments are worth supporting, and I indicate that I will support them, as well. There is only one matter on which I would ask the Attorney-General a question relating to amendment No. 4. The Commissioner of Police must as far as practicable to do so comply with any request from the Director to investigate or report on the investigations of any matter. If there is a dispute between the Director and Commissioner of Police as to whether the Commissioner has as far as practicable complied with any request or has in fact refused to comply with the request on the grounds that it is not practicable to do so, how will that situation be resolved?

The Hon. C.J. SUMNER: I suppose the only way it could be resolved is if the Governor in Council directed the Commissioner of Police, pursuant to the Police Regulation Act.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: Or, alternatively, as the Hon. Mr Griffin mentions, the Bill refers to a report and, obviously, the DPP could refer to it in his annual report and draw attention to the fact that in his view the Police Commissioner did not adequately investigate a matter that he was requested to investigate by the DPP. Then, the matter would have to be resolved in the public arena in Parliament and before the public. However, that would not ensure compliance. The question the honourable member asked was how we would ensure compliance. The only way we could ensure compliance is at the political level by the Governor's directing the Police Commissioner. If the Governor-in-Council did not agree with the DPP's decision, they would not direct the Police Commissioner, but the DPP obviously does have a reporting mechanism through his annual report, and he could draw attention to it.

The Hon. I. GILFILLAN: I prefer your first option as the practical way to deal with it. You said, 'I suppose'. I think that is a reasonably satisfactory answer. I do not feel particularly reassured by the matter being dealt with in a report. That is usually or could be long after the event and it does not really offer particularly satisfactory relief to the Director if he or she had urgently required some action some months previously, but the Attorney did outline that he felt there could be an option for the Director to persuade the Government of the day to direct the Minister of police to direct the Commissioner.

The Hon. C.J. Sumner: The Governor directs the Minister.

The Hon. I. GILFILLAN: I think that is what I said; the Government directs the Minister.

The Hon. C.J. Sumner: The Governor directs the Minister.

The Hon. I. GILFILLAN: So, it has to go to the pinnacle of the hierarchy. It is not a Government decision; it has to go to the Governor herself.

The Hon. C.J. Sumner: No, the Governor would take advice from Cabinet.

The Hon. I. GILFILLAN: Apart from a dose of pedantry, what I understand is that, if the Director of Public Prosecutions persuades the Government that some action should be taken, the Minister of police can direct the Commissioner of Police. Obviously, I am confused.

The Hon. C.J. SUMNER: I am sorry that the honourable member is confused, but I thought I made clear that, under the Police Regulation Act as it stands at the moment, 'the Governor', which means 'the Governor on the advice of Cabinet', has the power to direct the Police Commissioner.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: As the Hon. Mr Griffin interjects, that direction is published in the *Gazette* and tabled in Parliament. That has happened with respect to two matters in the past decade or so: first, the original Special Branch and, secondly, a second set of directions with respect to the Operations Intelligence Section which took over some of the responsibilities of the old Special Branch, and also with respect to the Anti-Corruption Branch of the Police Force.

Directions have been given in respect of those matters in accordance with the procedure I have outlined. A dispute occurred in the early 1970s which led to the Vietnam Moratorium Royal Commission in this State conducted by the Late Sir Charles Bright, who was then a Justice of the Supreme Court. An impasse occurred between the Police Commissioner and the elected Government. There was a difference about how a particular issue, such as that which occurred during the Vietnam moratorium demonstration should be handled. In that dispute, the Police Commissioner said, 'I have totally independent powers of operation and the Government cannot interfere.' The Government accepted that that was the law and, therefore, could not direct the Police Commissioner. The honourable member will recall that there was a sit-in in the intersection outside Parliament and a number of arrests and violent acts led to the royal commission.

Justice Bright recommended that, in the final analysis, the elected Government should have the power to direct the Police Commissioner but, if the elected Government did that, it should do so publicly for all to see, so that there could not be some kind of secret direction to the Police Commissioner with which he might disagree. That is the procedure. Of course, most issues are resolved by discussion between the responsible Minister, the Attorney-General and the Police Commissioner. However, in the case of the old Anti-Corruption Branch it was felt that those directions should be given formally and placed on the public record because of their importance and so that the public could see what those directions were.

I return to the honourable member's question following that little bit of history that I hope is accurate. Under section 21 of the Police Regulation Act the power exists for those directions to be given. If, under the proposition that we are currently considering, a dispute arose between the DPP and the Commissioner of Police, one would obviously expect the DPP to discuss the matter with the Attorney-General. The Attorney-General would then take up the matter with the Minister of police, and if there was disagreement over an issue of major importance the matter could be raised in Cabinet, and Cabinet would have to decide whether or not to advise the Governor to give directions in accordance with the Police Regulation Act. I imagine that in most cases the dispute would be resolved at that level by discussion, as it ought to be. However, if it was not resolved and if

there was an impasse, the directions could be given by the Governor to the Police Commissioner.

If Cabinet decided not to do that, and if the DPP was dissatisfied, he would still have the full reporting mechanism to the House. As I recollect, one of the amendments that we moved allowed the DPP to provide a report at any time to the Speaker or President. So, if the DPP felt very strongly about the matter, it could be raised publicly at an early time, but in any event he or she would have the annual report and the matter would then be placed in the public arena and could be dealt with in the normal way by public debate.

The Hon. I. GILFILLAN: I found that to be a very satisfactory answer. I think it provides safeguards for the office, and I indicate support for all of the proposed amendments.

The Hon. C.J. SUMNER: I need to refer to just one other matter, and that is an issue that was raised in the House of Assembly by Mr Martyn Evans, the member for Elizabeth, who expressed his opposition to this Bill because he felt that Parliament was giving away some of its accountability mechanisms for questioning responsible officers about prosecution policy and that the existing system, where the Attorney-General is directly responsible, is a preferable course. We have been through that debate, but that was his view for those members who might be interested.

The Hon. K.T. Griffin: He didn't get his way.

The Hon. C.J. SUMNER: No, he did not on this occasion get his way. In the course of the second reading debate, that honourable member raised concerns about the powers of delegation given to the Director of Public Prosecutions under section 6 (4). The view expressed was that, as the Director will exercise important powers, the delegation of those powers should be very tightly controlled. No amendments in relation to this issue were moved, however, by the honourable member, but he did request that I make a statement about what the Government sees as the appropriate policy for delegations when the matter was considered again in this place.

The Government has considered the issues raised. It is clearly untenable to expect the Director to act personally in all matters at all times. Delegations will need to be broad enough to enable proper prosecution of all matters for which the DPP is responsible, especially when the Director is absent. However, in order to address the concerns expressed about the power of delegation, the Government wishes to indicate at this stage that it considers that delegations by the Director should be in writing and be either generally applicable or specific to a particular matter. This is, in fact, now the position with delegations in the Crown Prosecutor's Office. Obviously, delegations should be to suitably qualified persons. The Government is also of the view that it is appropriate for the annual report of the Director to detail the delegations by the Director during the year.

It should also be noted that the Bill now includes a wide representation clause providing that in any legal proceedings the Director may appear personally or be represented. This clause will enable a variety of legal practitioners to represent the DPP, and it is therefore not considered that the delegation power will need to be frequently used. At present, the delegation power is used frequently from the Attorney-General down to the Crown Prosecutor, and then to assistant Crown prosecutors and others who prosecute on behalf of the Crown.

Formal delegation instruments are used, but it is envisaged by the present Crown Prosecutor that because of the representation clause the delegation power will probably not need to be used to any great extent and probably only in cases of the absence of the DPP. So, he at least does not expect delegations to be used often. I think that is a reasonable situation. Obviously, the DPP must take ultimate responsibility for the prosecution of cases and for the work of his or her staff.

The Hon. K.T. Griffin: Is this a statement of Government's intention?

The Hon. C.J. SUMNER: Yes.

The Hon. K.T. Griffin: Which you hope the DPP will address.

The Hon. I. Gilfillan: This is a Martyn Evans request.

The Hon. C.J. SUMNER: Yes. What is that?

The Hon. I. Gilfillan: You just agreed with me. It is a Martyn Evans request reading.

The Hon. C.J. SUMNER: A reading?

The Hon. I. Gilfillan: Well, you are reading a statement that he wanted you to make.

The Hon. C.J. SUMNER: Yes, well he did not actually prepare the statement.

The Hon. I. Gillfillan: It is going very well.

The Hon. C.J. SUMNER: It is going very well. The Hon. Mr Gilfillan says that this is a statement that Mr Evans, the member for Elizabeth, requested that I make, which is what I said earlier, in this consideration of the Bill, and I am doing it. I further say that the detail of the concerns expressed, as the issues raised by Mr Evans, will be discussed with the DPP when the office is filled. But I do say that the Government's view is that the delegations probably should be made public, but we do not expect that because of the representation clause and the structure of the DPP's office that there will be a great number of delegations. We would expect the DPP to comply with the Government's wishes, at least in this respect, because it is a matter of policy and, in any event, as honourable members know, because of the structure of this Bill and the accountability which is in the legislation, the DPP could be directed in any event in relation to these matters by the Attorney-General.

Motion carried.

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

DISTRICT COURT BILL

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Interpretation.'

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

Page 2, line 1—Leave out the definition of 'master' and insert the following definition—

'Master' means a District Court Master:.

The definition of 'master' is an amendment to remove the reference to 'deputy master'. While the Act presently refers to masters and deputy masters, there is no distinction between the two. The amendment also does not restrict the number of masters.

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

Amendment carried; clause as amended passed.

Clause 4—'Establishment of court.'

The Hon. C.J. SUMNER: The Hon. Mr Griffin had a query whether some cross-reference is needed so that the name 'District Court' also means the 'District Court of South Australia'. In response, I think the definition of 'court' in clause 3 (1) does the necessary work.

Clause passed.

Clauses 5 to 9 passed.

Clause 10—'Court's judiciary.'

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

Page 3, after line 16—Insert—
(2) A master is, while holding that office, also a magistrate.

New subclause (2) provides that a master is, while holding that office, also a magistrate. I foreshadowed this amendment in Committee previously.

Amendment carried; clause as amended passed.

Clauses 11 and 12 passed.

Clause 13—'Judicial remuneration.'

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

Page 4, line 8—Leave out ', the judges and the masters' and substitute 'and the judges'.

These amendments provide for the remuneration of masters. Masters are not covered by the Remuneration Tribunal, but are entitled to the same remuneration as a magistrate in charge at a particular court.

The Hon. K.T. GRIFFIN: Might I just pursue that, in view of the fact that the Attorney has used the description 'magistrate in charge'. I was going to raise it under the next amendment. Can he indicate what is the status of a magistrate in charge and whether that description requires any definition, or whether that is already in existence under the Magistrates Act?

The Hon. C.J. SUMNER: A magistrate in charge is a stipendiary magistrate directed by the Chief Magistrate to perform duties in charge of a particular court. The Remuneration Tribunal determination provides a salary for a magistrate in charge, and that is the current rate that masters of the District Court are paid. There is nothing in the Magistrates Act that refers to a magistrate in charge, but there is in the determination of the Remuneration Tribunal.

Amendment carried.

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

Page 4, after line 11—Insert—
(3) A master is entitled to the same remuneration as a magistrate in charge.

This amendment is consequential.

Amendment carried; clause as amended passed.

Clause 14—'Leave.'

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

Page 4—
Line 13—Leave out 'or master'.
Line 14—Leave out 'or master'.
After line 15—Insert—
(2) A master is entitled to leave (or payment in lieu of leave) on the same basis as a magistrate.

These amendments provide that a master is entitled to leave or payment in lieu of leave on the same basis as a magistrate. This is resorting to the *status quo*. The Hon. Mr Griffin requested information about the leave entitlement of judges. Supreme Court, District Court and Industrial Court judges are entitled to the following leave. A judge is entitled to six months leave at the completion of seven years of service, and a further period of six months leave in relation to each succeeding completed period of seven years of service.

The Governor may grant any judge, immediately prior to his or her retirement, not more than six months leave of absence on full salary. To qualify for that entitlement, a judge has to have completed seven years of service for which leave has not been taken. Further, a cash payment may be made in lieu of the pre-retirement leave, but long service leave and pre-retirement leave should be coordinated so that there is no double entitlement to leave and any payment in lieu of leave.

A judge is entitled to four weeks annual leave in addition to the court vacation of 10 days or thereabouts over the Christmas and New Year period. In the Supreme Court masters also have these leave entitlements.

The Hon. I. GILFILLAN: It is an interesting observation that in this case the master is entitled to leave or payment in lieu of leave on the same basis as a magistrate, and that is reflected in the Bill. I am curious how widespread this availability is—that a master, magistrate, or, I assume, a judge, in lieu of taking leave, can continue to work and get the economic benefit in lieu of taking time off.

The Hon. C.J. SUMNER: The entitlements I outlined do not apply to magistrates and will not apply to District Court masters. When magistrates were taken out of the Public Service, it was done on the basis that their general entitlements would not be affected, so they still have Public Service entitlements to long service leave, annual leave, sick leave and the like. The same will now apply to District Court masters. The entitlements I read out apply to Supreme Court, District Court and Industrial Court judges and Supreme Court masters who have the status and now, under this Act, will be appointed District Court judges. So, judges are to be distinguished from magistrates and District Court masters in this respect.

The question that the Hon. Mr Gilfillan asked relates to the entitlements I outlined which apply to judges. They either work or they can take the leave. If they work the full period, that is, to the age of 70 years or until their retirement, and at the time that they retire they have worked for seven years without having taken any leave applicable to that seven year period, they are entitled to six months pay in lieu of not having taken that leave; or, if they have five years of service for which they have not taken leave, they are entitled to a lump sum payment in proportion to the amount of service for which they have not taken leave.

I know that to the honourable member these are quite generous benefits, and I think most people would concede that they are exceptionally good conditions. Of course, many judges claim that if they had stayed in private practice they could be better off because they would be appearing for the State Government, the Opposition, the State Bank or someone else at great cost to the community before royal commissions or in other arenas. But, that is a debate for another day.

The Hon. I. Gilfillan: Their conditions are determined by Act rather than the tribunal.

The Hon. C.J. SUMNER: Their salaries and allowances (whether or not they are entitled to a car and so forth) are determined by the Remuneration Tribunal. Their annual leave provisions are a matter of convention or agreement. Their entitlement to six months leave every seven years is in the statute, but the arrangements relating to pre-retirement leave or payment in lieu of leave, and the fact that you cannot double up, is the subject of a protocol that has been agreed between the Government and the judges. So, there is a distinction between remuneration that is covered by the Remuneration Tribunal and leave entitlements which are covered in the appropriate Act. If anyone wants a copy of that protocol, which was agreed some time ago and which really formalised the situation, I am happy to supply it.

Amendments carried; clause as amended passed.

Clause 15—'Removal of judge or master.'

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

Page 4—
Line 17—Leave out 'or master'.
After line 18—Insert new paragraph as follows:
(2) A master cannot be removed or suspended from office except on the recommendation or with the consent of the Chief Judge.

These amendments provide for the removal of masters. The amendments restore the *status quo* as provided in section 5m (4) of the Local and District Criminal Courts Act.

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

Amendments carried; clause as amended passed.

Clauses 16 to 19 passed.

Clause 20—'The court, how constituted.'

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

Page 5, lines 13 to 28—Leave out subclause (2) and insert subclauses as follows:

(2) If an Act conferring a statutory jurisdiction on the Court in its Administrative Appeals Division provides that the Court is to be constituted of a Magistrate, the Court will, in exercising that jurisdiction, be constituted of a Magistrate.

(2a) If an Act conferring a statutory jurisdiction on the Court in its Administrative Appeals Division provides that the Court is to sit with assessors in exercising that jurisdiction, then the following provisions apply:

(a) in any proceedings in which a party seeks the exercise of the relevant jurisdiction the Court will (except for the purpose of dealing with interlocutory, procedural or administrative matters) sit with assessors selected in accordance with the Act conferring the jurisdiction;

(b) where the Court sits with assessors—

(i) questions of law or procedure will be determined by the Judge or Magistrate presiding at the proceedings; and

(ii) other questions will be determined by majority opinion.

New subclause (2) is reworded to make clear that, where an Act provides that jurisdiction conferred on the court in its Administrative Appeals Division is to be exercised by a magistrate, then the court will in exercising that jurisdiction be constituted of a magistrate. Of course, the relevant Acts will need to be amended to confer jurisdiction on the Administrative Appeals Division.

New subclause (2a) provides that it is the Act which confers jurisdiction on the court in its Administrative Appeals Division. It determines whether the court is to sit with assessors. Qualifications and appointment of the assessors will be provided in the Act which confers the statutory jurisdiction on the court. Subclause (2a) *(a)* provides that the court will sit with assessors except for the purpose of dealing with interlocutory, procedural or administrative matters.

The Hon. K.T. GRIFFIN: That is very much clearer. One of the areas of debate when we first met as a Committee was related to this question of assessors—what they were and who appointed them. Now it is clear that that is to be done by the specific statute conferring the jurisdiction, and I do not think there can be any difficulty now with that description. I support the amendment.

Amendment carried; clause as amended passed.

Clauses 21 to 32 passed.

Clause 33—'Trial of issues by arbitrator.'

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

Leave out subclause (5) and insert:

(5) The costs of the arbitrator will be borne, in the first instance, equally by the parties or in such other proportions as the court may direct, but the court may subsequently order that a party be reimbursed wholly or in part by another party for costs incurred under this subsection.

This subclause provides for the costs of arbitrators. When agreeing to the Hon. Mr Griffin's amendment, I indicated that I was concerned about the budgetary implications of his amendment. The new subclause follows the Federal Court rules in relation to experts by providing that, first up, the parties are jointly liable to pay the costs, but the court can adjust the costs later.

The Hon. K.T. GRIFFIN: I accept what the Attorney is indicating, that this is a provision in the Federal Court legislation. Therefore, I cannot quarrel with the provision. I presume that the balance of the clause is similar to that which might prevail in the Federal Court, that is, that the court may initiate this action, that the arbitrator becomes an officer of the court and may exercise such of the powers of the court as the court delegates to the arbitrator.

It was the concept of the arbitrator and, in the later clause, an expert being an officer of the court that suggested to me that there was some merit in the proposition which I moved by way of amendment that the costs are not payable by the parties except to the extent ordered by the court. I accepted that that was to be subject to a review before the Bill finally passed this Chamber. Is the Attorney able to give an indication whether, in the Federal Court, the arbitrator becomes an officer of the court, and whether that will have any bearing on the question of costs?

The Hon. C.J. SUMNER: No, the Federal Court does not make them officers of the court. We have done it because, by that means, they can be given certain powers which might have to be dealt with otherwise or which they would not have and which may affect their capacity to do the work they have been given. Our view is that it will not affect the question of costs, whether or not they are officers of the court, and that this provision, namely, that it is up to the parties, will apply but, at the conclusion of the matter, the court can hear submissions on costs and make other orders.

The Hon. I. GILFILLAN: The latter part of new subclause (5) provides:

. . . that a party be reimbursed wholly or in part by another party for costs incurred under this subsection.

Can that 'other party' in fact be the Government? In other words, does the total cost of the arbitrator have to be borne by the parties engaged in the action, or through order of the court can part, at least—possibly wholly—of the costs be borne by the Government?

The Hon. C.J. Sumner: No, not under this provision.

The Hon. I. GILFILLAN: So, 'another party' in this clause is not inclusive of the Government?

The Hon. C.J. Sumner: That is right.

The Hon. K.T. GRIFFIN: What the Hon. Mr Gilfillan has raised is something to which I was proposing to refer, but I doubt if it is likely to occur. I suppose one could envisage a situation where the courts made a practice of referring issues out to arbitrators, and then the parties would have to bear all the costs of the arbitrator in those circumstances, making more time available to the court for other things. I think we will just have to watch to see how it is used. It is useful for the court to have the power to appoint an arbitrator and, under clause 34, an expert. I would have liked to see a bit of flexibility about the costs, but I do not make a big issue about it now. It is something we will need to monitor.

The Hon. C.J. SUMNER: I agree with that. If an arbitrator's or expert's investigation is to be ordered, then it would be done in circumstances which would shorten the trial and therefore make the overall cost of the litigation to the litigants less than it would be otherwise. I am sure that that is the way in which it would be used. Obviously, if it was not used in that way, one would expect there to be a significant complaint from litigants. I agree with the honourable member in what he says. The power is clearly there now, and we will have to monitor how it is used.

Amendment carried; clause as amended passed.

Clause 34—'Expert reports.'

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

Leave out subclause (4) and insert:

(4) The costs of the expert's investigation and report will be borne, in the first instance, equally by the parties or in such other proportions as the Court may direct, but the Court may subsequently order that a party be reimbursed wholly or in part by another party for costs incurred under this subsection.

This subclause provides for costs of experts in the same way as for arbitrators.

Amendment carried; clause as amended passed.

Clauses 35 to 41 passed.

Clause 42—'Costs.'

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

Page 11—Leave out subclause (5) and insert—

(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 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.

New subclause (5) makes clear that a person who fails to attend when summonsed to appear as a witness will be liable for costs only if the failure to attend was without a reasonable excuse. This issue was raised by the Hon. Trevor Griffin and I believe that this amendment now meets his concern.

Amendment carried; clause as amended passed.

Clauses 43 to 48 passed.

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

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

Clauses 50 to 53 passed.

Clause 54—'Accessibility of evidence.'

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

Subclause (1) *(a)*—Leave out 'a copy of'.

Subclause (1) *(c)*—Leave out 'a copy of'.

Subclause (2)—Substitute the following:

(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 clause, providing for public access to court documents, is modified to take account of matters raised in Committee. First, the material made available for inspection can be either the original or a copy. On payment of the appropriate fee a copy must be provided. New subclause (2) expands on evidence that will not be made available for inspection and covers possible situations with more specificity than in the previous subclause (2). This is in the same form as a similar amendment which I moved last night in the Supreme Court Bill and which will also be included in the Magistrates Court Act. It is an important principle providing access to public documents held by the courts. I think the formula we now have is satisfactory to everyone.

The Hon. K.T. GRIFFIN: I agree with that. It does pick up some of the issues that we raised in the course of debate on the matter last night and previously and, because it is now in a form consistent with other provisions in the Magistrates Court, as it will be, and the Supreme Court legislation, I am happy to support it.

The Hon. I. GILFILLAN: With some relief I hear that there is unanimous support for this eventual clause 54. I think it is of interest to the Council to know that this is the fourth draft of an amendment to this clause and statistically that must come pretty close to a record, certainly in my experience. I do not make any observation except that perhaps the process of public examination of this legislation was not as effective and thorough as it could have been; otherwise, we could have been saved this work. The Attorney-General is looking a little peeved; he is not recognising that this is the fourth attempt of this Government—this Attorney—to get one clause right in this Bill. At last we have done it.

The Hon. C.J. SUMNER: I do not know what the Hon. Mr Gilfillan is on about. He started this stunt yesterday in Question Time—

An honourable member: He's an ingrate.

The Hon. C.J. SUMNER: Right—about the Government legislative program and the sausage machine and all the other rhetoric he carried on about and, at various stages during the course of this legislation, he has complained about the process that has been adopted. I said yesterday that I would have thought he would applaud the process adopted which was public at all points. As soon as we had Bills in an appropriate form we introduced them into the Parliament in August. They lay on the table here for about seven weeks to enable, if not members of the general public, as the honourable member seems to be carrying on some pedantic point—

The Hon. I. Gilfillan: You said it was available to the general public.

The Hon. C.J. SUMNER: It is available to the general public. In this particular area that includes the courts, the legal profession, members of the public interested in this legislation and other members of the public who may not have been interested in it but who could have been, had they taken the time.

So, the process that was adopted was very satisfactory, because it led to the public exposure of these Bills for some seven weeks before we commenced debating them. I do not see what is wrong with that process. I said at the time that, as a result of consultation after it was introduced, there were bound to be amendments. I also do not see what is wrong with the proposition of having amendments to clauses such as this when those amendments have arisen as a result of reasonable comments made by members in the Committee stage. Normally, if the Government gets up and objects to everything the Opposition says, the Hon. Mr Gilfillan complains about that and says that we are unreasonable. In this case, the Hon. Mr Griffin makes a number of reasonable suggestions in relation to this Bill including this clause, for which I commend him, and, once again, the Democrats complain about it.

The Hon. R.I. Lucas: They are never happy.

The Hon. C.J. SUMNER: The Hon. Mr Lucas is quite right; they are never happy; they are ingrates. They are totally ungrateful persons. They do not realise the support they have from the Government to assist in the legislative program. I was intending to get up on the third reading of this Bill or a later Bill and commend members in this Committee for their dedicated devotion to the Bill and the constructive approach taken by everyone, but now the Hon. Mr Gilfillan has got up and spoilt it all.

The Hon. I. GILFILLAN: I have been grossly misrepresented. I am not complaining; I am just observing for the *Guinness Book of Records* that we have four Government introduced amendments to its own legislation, not from the public induced amendments but from the Attorney's own. I think it displays an admirable dexterity and I want to put on the public record that I commend the Attorney-General for his flexibility—for his ability to make these minor changes. I only raised the question mildly flippantly at the end of a long session, not as an attempt to stir. I would be the last person in this place to want another ingrate speech from the Attorney-General.

The Hon. C.J. Sumner: You got it.

The Hon. I. GILFILLAN: I know; that was gratuitous—that was a bonus penalty. I want to conclude my observation

that it has been a long, tortuous process and eventually we have reached a happy conclusion.

The Hon. C.J. Sumner: Not yet.

The Hon. I. GILFILLAN: Oh yes we have—to this one. There can be no doubt that, when the Hon. Trevor Griffin sits back and contentently says, 'Yes, I support the amendment', we are in happy land as far as legislation goes.

Amendments carried; clause as amended passed.

Title passed.

Bill read a third time and passed.

MAGISTRATES COURT BILL

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Interpretation.'

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

Page 2, after line 10—Insert definition as follows:
'small claim' means a monetary claim for $5 000 or less;.
Subclause (2)—Leave out paragraph *(a)* and substitute:.
(a) a small claim;

This amendment reincorporates the notion of a small claim. A small claim is a monetary claim for $5 000 or less. This amendment preserves what were formerly known as small claims, and a minor civil action is one founded on a small claim, a claim for relief in relation to a neighbourhood dispute or an application under the Fences Act or any other jurisdiction, such as the strata titles jurisdiction, conferred on the division.

The Hon. K.T. GRIFFIN: I am relaxed about the amendment. I recollect that the Attorney-General raised a question about how this ought to be described: whether 'minor civil claim' would be an appropriate description to replace 'small claim'. I acknowledge that after 20 years of common usage it is appropriate to retain the reference to 'small claim'. Therefore, I do not raise any objection to the concept, although I have lost the other battle on the amount.

Amendments carried; clause as amended passed.

Clauses 4 to 8 passed.

Clause 9—'Criminal jurisdiction.'

The Hon. C.J. SUMNER: The Hon. Mr Griffin queried whether it was necessary to amplify the description of 'indictable offence' in clause 9 *(a)*. New section 5 (1) *(b)* of the Justices Act makes it clear that indictable offences comprise minor and major indictable offences, so no amplification is needed here.

Clause passed.

Clause 10—'Statutory jurisdiction.'

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

Page 3, lines 26 and 27—Leave out 'to a particular division of the court' and insert 'either to the Civil (General Claims) Division, or to the Criminal Division, of the court'.

This amendment makes it clear that a particular statutory jurisdiction cannot be assigned by the rules to the minor civil division while at the same time preserving flexibility in assigning matters to the other divisions.

The Hon. K.T. GRIFFIN: This amendment picks up the issue that I raised during the earlier Committee consideration of the Bill. I was concerned that it would be possible to refer a statutory jurisdiction to a minor civil jurisdiction, and I did not think that that would be appropriate. So, what is proposed is consistent with the view that I then held and still do. I support the amendment.

Amendment carried; clause as amended passed.

Clauses 11 to 14 passed.

Clause 15—'The court, how constituted.'

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

Page 4, lines 25 and 26—Leave out subclause (2) and substitute—

(2) The court may be constituted of a special justice or of two justices—

(a) if there is no magistrate available to constitute the court;

or

(b) if the court, at the commencement of a hearing, allows any party who is then present to object to the proceedings being heard by the court so constituted (and, if a party does then object, the proceedings must be adjourned for hearing by a magistrate).

The Hon. Mr Griffin's amendment that we accepted for incorporation in the Bill was designed to ensure that justices of the peace continue to play a role in the administration of justice. On closer examination, I think the Hon. Mr Griffin's amendment reduces the role of justices of the peace. I would prefer to leave subclause (2) as it was originally introduced. If that is not acceptable, the amendment that I now move comes nearer to preserving the *status quo*. Two justices can now hear and determine a matter of complaint if no magistrate is available, irrespective of the wishes of the parties. The only limit is under the Criminal Law (Sentencing) Act, which prohibits justices sentencing anyone to more than seven days imprisonment.

My clause 15 (2) *(a)* preserves this position. Clause 15 (2) *(b)* preserves the position that two justices can hear and determine a charge if all parties consent. It also preserves the position in relation to special justices. I will leave it at that point at this stage. There are some other comments I wish to make, but perhaps the Hon. Mr Griffin can indicate his view in respect of the three options that are now available.

The Hon. K.T. GRIFFIN: I was concerned to at least maintain the *status quo* and to ensure a continuing role for justices of the peace, either a special justice or two justices sitting together. What concerned me about clause 15 (2) of the Bill was that it would be left to the court to determine by its rules those occasions where the court may be constituted of a special justice or two justices. It seemed to me that that was much more open than the present position where there are specific circumstances in which justices would be entitled to sit. So, it was an attempt to ensure that at least the Parliament had some say in the continuation of the role of justices because, at one extreme—and I admit that it is not likely—the rules could say that justices will not be able to hear or sit on any case at all. That would be the extreme. So, I did not want us to adopt something that would allow the magistrates to make that decision.

It seems to me that what the Attorney-General is proposing in the amendment which is now before us is preferable to my amendment, because it allows justices to sit in almost any case if a magistrate is not available, or if the court allows any party who is then present to object to the proceedings being heard by the court so constituted. The Attorney's amendment make it very much broader. The only question I have about that is whether the court will have a discretion as to whether to allow a person to object to the proceedings being heard. I can see that it would be unworkable if, every time justices sat, there was open slather on objections to justices hearing a matter.

I would not expect that that was the intention, but I would be interested in hearing an elaboration of what the emphasis on the word 'allows' is actually intended to do. However, as I say, apart from that, I generally prefer the Attorney's drafting, because it is much more open than mine, which tends to set two cases where justices may sit and then leaves the rest to be determined by the rules. I think the Attorney's amendment has a greater prospect of ensuring a continuing role for justices.

The Hon. C.J. SUMNER: I am advised that, although the wording is different, the intent is the same as the current law, and I think it means that, if any party objects at the beginning of a case to justices hearing it, that is the end of the matter. Apparently it works satisfactorily. When I say that it is the end of the matter, it is the end of the matter as far as the justices going on to hear the case is concerned, and it must then be adjourned to be heard by a magistrate. I think the drafting of my amendment restores the *status quo*, and that is what we now intend to do.

The only other thing I would say is that I think the question of justices sitting in court is a broader issue which needs to be examined by the Parliament and the community at some stage. Concerns are expressed from time to time about justices sitting in court. Those concerns are obviously reflected in the fact that, if a party objects to justices hearing a case, it can be adjourned for hearing by a magistrate, and it is reflected in the fact that justices cannot impose any sentence of imprisonment beyond seven days.

I do not want to go into that debate tonight. However, I foreshadow that it is an issue that has been around for some considerable time: it is still around, and I think it will need to be examined again in the future, I indicate in that context that a review of the role of justices of the peace is proceeding at the present time within the Court Services Department, and accordingly this issue may come back for consideration some time in the future.

Amendment carried.

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

Lines 29 and 30—Leave out subclause (4) and substitute—

(4) A registrar or justice may—

(a) issue summonses and warrants on behalf of the court;

(b) adjourn proceedings before the court;

(c) exercise any procedural or non-judicial powers assigned by the rules.

The Hon. Mr Griffin had an amendment to this clause, which was inserted in the Bill when we were in Committee on the last occasion. His amendment provides that registrars may exercise jurisdiction in any matter of practice and procedure prescribed by the rules. On reflection, this is too narrow. For example, registrars should be able to issue warrants. They do this now in their capacity as justices, yet this is not a matter of practice and procedure. Accordingly, new subclauses (4) *(a)* and (4) *(b)* spell out some of the things that justices were formerly empowered to do, and it provides that both registrars and justices can now do them. For example, the sheer number of summonses that are issued are too many for registrars to cope with, so justices will still be required.

New subclause 4 *(c)* spells out what the rules can authorise registrars and justices to do. The phrase 'procedural or non-judicial powers' has replaced the honourable member's 'practice and procedure'. The term 'non-judicial powers' is wider than the word 'practice' and will eliminate doubts as to what are matters of practice.

The Hon. K.T. GRIFFIN: I accept the reason for the application of the provision. It very largely goes to what I was proposing should be the limitations on the powers of a registrar. The registrar will have power to adjourn proceedings. The only question that arises is whether that is intended to be exercised in court or merely by some informal procedure and whether, if there is an adjournment, that power includes other questions which might relate to, for example, the matter of costs. I would not want that to be the position, because I think questions of adjournment can sometimes be contentious and can involve issues of importance for the respective parties.

The Hon. C.J. SUMNER: I am advised that the intention is to merely provide that the registrars can adjourn matters, that they can do it in open court, but that they do not have power to hear any other ancillary matters. That is the power which justices currently have and exercise in these circumstances.

Amendment carried; clause as amended passed.

Clauses 16 to 25 passed.

Clause 25a—'Court may conciliate.'

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

Insert the following subclause after subclause (4)—

(5) The costs of the arbitrator will be borne, in the first instance, equally by the parties or in such other proportions as the court may direct, but the court may subsequently order that a party be reimbursed wholly or in part by another party for costs incurred under this subsection.

This amendment is similar to the amendment moved to the District Court Bill, and it relates to costs of arbitrators.

Amendment carried; clause as amended passed.

Clause 25b—'Court may conciliate.'

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

Insert the following subclause after subclause (3):

(4) The costs of the expert's investigation and report will be borne, in the first instance, equally by the parties or in such other proportions as the court may direct, but the court may subsequently order that a party be reimbursed wholly or in part by another party for costs incurred under this subsection.

This amendment is similar to the amendment moved to the District Court Bill relating to experts' costs.

Amendment carried; clause as amended passed.

Clauses 26 to 31 passed.

Clause 32—'Costs.'

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

Page 9—Leave out subclause (4) and insert—

(4) 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;.

This amendment is similar to the amendment moved to the District Court Bill to ensure that a person who fails to answer a witness summons is liable for costs only if the failure was without reasonable excuse.

Amendment carried; clause as amended passed.

Clause 33—'Minor civil actions.'

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

Page 9, line 29—Leave out paragraph *(e)* and insert—

(e) the court is not bound by the rules of evidence;

(f) the court must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

This is a drafting amendment.

Amendment carried.

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

Page 10, after line 19—At the end of subclause (6) insert—

(It is intended that the District Court should give a final judgment on the review and should not send the matter back to the Magistrates Court for further hearing or for re-hearing.)

Members may recall that there was material in a footnote to clause 33 (6) which was not dealt with because of the doubts as to the status of the footnote. The material is now inserted after clause 33 (6).

The Hon. I. GILFILLAN: Why is it in brackets?

The Hon. C.J. SUMNER: I am not Parliamentary Counsel.

The Hon. I. Gilfillan: That is a satisfactory answer; I am satisfied.

The Hon. K.T. GRIFFIN: It is obviously now a substantive part of the Bill, and we do not have to argue about the italics. If it were to pass both Houses it would be part of the substantive legislation.

The Hon. I. GILFILLAN: What is the difference between the effectiveness of legislation that is or is not in brackets?

The Hon. C.J. SUMNER: At the moment the policy is to draft in plain English. If the honourable member reads the amendment he will see that it is quite plain. As brackets are part of the English language, it seemed appropriate that brackets be used in this context. It is part of the Bill; it is not a footnote any more. It is not a marginal note nor a heading; it is actually part of the Bill and will be read as such by the courts and anyone else.

The Hon. I. GILFILLAN: I am not content that this is appropriate legislation for quite a clear instruction of some significance to the District Court to give a final judgment on the review and not to send the matter back to the Magistrates Court for further hearing or for rehearing. I fail to see any reason why it should be worded in any other way or why it has to be wrapped up in brackets.

Amendment carried.

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

Page 10, after line 19—Leave out subclause (7) and insert—

(7) On a review, the District Court—

(a) may inform itself as it thinks fit on the subject matter of the appeal and, in doing so, is not bound by the rules of evidence;

and

(b) may, if it thinks fit, re-hear evidence taken before the Magistrates Court.

(8) In hearing and determining an application for review, the District Court must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

During the Committee debate I indicated that when a District Court hears evidence in an appeal in a minor civil action the District Court should hear the evidence in the same way as it is heard in a minor civil action. This amendment puts that into effect.

The Hon. K.T. GRIFFIN: The Opposition supports the amendment.

Amendment carried; clause as amended passed.

Clauses 34 to 41 passed.

Clause 42—'Custody of litigants' funds and securities.'

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

Clauses 43 to 45 passed.

Clause 46—'Accessibility of evidence.'

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

Leave out 'a copy of' in subclause (1) *(a)*.

Leave out 'a copy of' in subclause (1) *(c)*.

Subclause (2)—Substitute the following:

(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 clause deals with public access to court material and is amended in the same way as the provision in the District Court Bill and the Supreme Court Act Amendment Bill.

Amendments carried; clause as amended passed.

Title passed.

Bill read a third time and passed.

STATUTES REPEAL AND AMENDMENT (COURTS) BILL

In Committee.

Clauses 1 to 8 passed.

Clause 8a—'Amendment of Supreme Court Act 1935.'

The Hon. C.J. SUMNER: I am speaking to this clause to deal with issues that were raised by the Hon. Mr Griffin. This clause amended section 72 (1) of the Supreme Court Act to allow the court to make rules conferring on the Registrar or other members of the non-judicial staff the power to tax costs. The Hon. Mr Griffin asked what provisions there were to review any decisions of the non-judicial staff. Rule 107 of the Supreme Court rules provides for the review of acts of non-judicial staff of the Supreme Court. Rule 107.01 provides that while any proceeding or matter is before the Registrar or other non-judicial officer the Registrar or other officer or any party may seek the opinion of a master or, in cases of emergency or in reference from a master, of a judge upon any question arising in the course of such proceedings or matters.

Rule 107.02 requires the Registrar or other officer to act in accordance with the opinion of the master or judge, or the judge or master may assume control over the proceedings. Rule 107.03 provides that decisions of Registrars and other officers are subject to review or correction as is made, given or done by a master. Section 52 of the Supreme Court Act provides that, subject to the rules of the court, an appeal lies against a judgment, direction or decision of a master. I can confidently state that the same review process will be put in place to review taxing decisions by non-judicial staff. The Chief Justice was unavailable to discuss the matter, but the masters have been consulted.

The Hon. K.T. GRIFFIN: I am happy to accept that explanation and the assurance that there will be an appropriate review mechanism against the decisions of registrars. I would have liked to have it in the legislation, but on the basis that the rules already provide for a review of certain functions by non-judicial officers, and to maintain consistency, one can safely leave it to be dealt with in the rules.

Clause passed.

Clauses 8b to 8f passed.

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

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 exceed $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 18 months.;

(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;.

This amendment is designed to establish a proper gradation of penalties for an attempt relating to causing damage to property by fire or explosion. As I understand it, this makes it consistent with the rest of the clause as amended, and will enable this to be dealt with as a summary offence.

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

Amendment carried; clause as amended passed.

Remaining clauses (10 to 17) and title passed.

Bill read a third time and passed.

JUSTICES AMENDMENT BILL

In Committee.

Title passed.

Bill recommitted.

Clause 6—'Interpretation' reconsidered.

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

Page 2—

Line 3—Insert the following after 'group III offence' and substitute the following definition:

'fourth schedule offence' means—

(a) an offence against a section of the Criminal Law Consolidation Act 1934 listed in the fourth schedule;

(b) an offence of attempting to commit such an offence;

(c) an offence of aiding, abetting, counselling or procuring such an offence;

(d) an offence of conspiring to commit such an offence;

or

(e) an offence of being an accessory after the fact to such an offence:.

After line 29—Insert the following subsection:

(na) by inserting the following definition in subsection (1) after the definition of 'the Industrial Court':

'third schedule offence' means—

(a) an offence against a section of the Criminal Law Consolidation Act 1934 listed in the third schedule;

(b) an offence of attempting to commit such an offence;

(c) an offence of aiding, abetting, counselling or procuring such an offence;

(d) an offence of conspiring to commit such an offence;

or

(e) an offence of being an accessory after the fact to such an offence.

The amendments to clauses 6 and 8 and new clause 50 are all related, so I will deal with them together. The amendments to this clause, and the related amendments, are slightly more complex in their definition of what were originally called 'offences of dishonesty' in the first version which was briefly debated yesterday. The term 'offences of dishonesty' was causing concern to the Committee, and members were worried about whether it was sufficiently specific to give an indication to the courts of what matters came within that definition. So, in this redraft, it has been discarded.

In its place there will be two lists of offences: the first is called third schedule offences, which are defined also to include ancillary offences, and lists offences which may be summary, minor indictable or major indictable, depending primarily upon the monetary sum involved in the offence. Hence section 5 (2) *(c)* of the Act now refers to third schedule offences, classifying offences which are summary. Section 5 (3) refers to them when dealing with minor indictable offences.

The second list is called fourth schedule offences and is also defined to include ancillary offences. Fourth schedule offences may be minor indictable or major indictable, depending on whether the amount involved is less than or greater than $25 000. These offences cannot be classified as summary, even if they involve less than $2 000. Hence section 5 (3) of the Act, which deals with minor indictable offences, is now to be amended to refer to both third and fourth schedule offences. The offences in the fourth schedule are to be distinguished from offences in the third schedule because, with one exception, they involve a breach of trust as well as stealing or dishonesty. It is that element of breach of trust which aggravates the offence beyond the category of summary offences, but there is no reason why they should not, in appropriate cases, be treated as minor indictable offences.

I think it is fair to say that the element of a breach of trust was one which the Hon. Mr Griffin believed should import greater seriousness to the offence than otherwise, and that has been picked up in these amendments and accepted by the Government. The exception is section 134, which is aggravated by being an additionally serious penalty applied to a conviction for a dishonesty offence committed after a previous conviction for a felony. It is thought that this circumstance of aggravation also places it beyond the category of summary. It should also be noted that paragraph *(a)* (i), (ii) and (iii) of section 214 has been taken from either list on the ground that these offences involve such a grave breach of trust that they should always be treated as major indictable offences.

The Hon. K.T. GRIFFIN: I certainly support the amendment. The definition of offence of dishonesty, as the Attorney-General said, occupied some time in the Committee yesterday and there was certainly a concern that it was not clear from the mere description of offence of dishonesty what was involved. As a result, we have the amendment before us with two schedules. That is a preferable way of dealing with it. It eliminates a lot of uncertainty which would otherwise bedevil the classification of offences and certainly reduce the prospect for a dispute in the courts as to what was or was not an offence of dishonesty.

The first draft of these amendments was made available to me informally and I appreciate that. I did work through all of the offences that were identified and it seemed to me that initially at least there were some matters which ought not to be treated as summary offences in any event, and as the Attorney-General has indicated they are those which deal with breaches of trust. Where there is a breach of trust by trustees or by others the full range of the penalty ought to be available to the courts and it ought to be treated more seriously than just a summary offence.

So, in consequence of that view, we now have two schedules, a third and fourth schedule, which adequately express that distinction between those offences which do not involve an element of breach of trust and those which do. I appreciate the preparedness of the Attorney-General to consider the amendments to the drafting in that way. There will still be some possible debates about how the $2 000 or $25 000 might be calculated in some of these cases, but very largely that possible difficulty has been minimised by an amendment which seeks to define the mechanism by which that is determined. Undoubtedly, there will be some settling down in the course of the administration of the legislation and one can hopefully make some further changes if uncertainty is identified in the day-to-day application of the law.

In supporting the amendments I do want to make clear that I still hold the very strong view upon which I was defeated that a lot of these offences should not even be treated as summary offences, but I acknowledge that I have not been successful in pursuing that view and therefore in the context of what the Committee has accepted I believe the definitions proposed in this amendment will be more than adequate to address the issues that we have debated. I support the amendment.

The Hon. I. GILFILLAN: I take it that the third schedule provides offences of dishonesty that will be treated as summary offences and those that are listed in the fourth schedule will be indictable offences of dishonesty.

The Hon. C.J. SUMNER: Yes; except that the third schedule is only those offences which involve amounts under $2 000.

The Hon. I. GILFILLAN: So, there is a cap of $2 000 on them?

The Hon. C.J. SUMNER: Yes; that puts them into the summary category. Those offences listed in the third schedule that involve amounts less than $2 000 will be treated as summary offences.

The Hon. I. GILFILLAN: Yes, I see, and what is the fourth schedule? Is there any cap or value applying there?

The Hon. C.J. SUMNER: These are a category of all indictable offences but the $25 000 limit determines whether they are in the major indictable category or the minor indictable category.

The Hon. I. GILFILLAN: Well, as a matter of passing interest, 186 in the third schedule is identical verbally to 186 in the fourth schedule, so that fraud by factors or agents, whether it be summary or indictable, depends purely on whether the amount involved is above or below $2 000, if I understand the Attorney's explanation correctly.

The CHAIRMAN: Order! The Chair finds it very disturbing that members are not standing when they are addressing the Council. If it is a private conversation members should sit; if not, members should stand so that *Hansard* knows.

The Hon. I. GILFILLAN: I was actually on my feet, if you recall.

The CHAIRMAN: There is a conversation going on across the Chamber between the pair of you sitting down.

The Hon. I. Gilfillan interjecting:

The CHAIRMAN: It is more helpful if the Chamber knows who is talking and who is addressing the Chamber.

The Hon. C.J. Sumner: Conversations can clarify what is happening.

The CHAIRMAN: Well, do you want it on the record or off the record?

The Hon. C.J. SUMNER: If it is off the record, it is off the record. If we stand up it goes in the record.

The CHAIRMAN: That is not a very good thing for *Hansard.*

The Hon. I. GILFILLAN: I make the comment to the Attorney that I believe he may find that his advisers would like to have a word with him at the side of the Chamber. I apologise; there are two drafts before me and I understood them inaccurately.

Amendment carried.

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

After line 29—Insert:

(na) by inserting the following definition in subsection (1) after the definition of 'the Industrial Court':

'third schedule offence' means—

(a) an offence against a section of the Criminal Law Consolidation Act 1934 listed in the third schedule;

(b) an offence of attempting to commit such an offence;

(c) an offence of aiding, abetting, counselling or procuring such an offence;

(d) an offence of conspiring to commit such an offence;

or

(e) an offence of being an accessory after the fact to such an offence.

Amendment carried; clause as amended passed.

Clause 8—'Substitution of s. 5.'—reconsidered.

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

Section 5 (2) *(c)*—Leave out this paragraph and insert:

(c) a third schedule offence 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;.

Amendment carried.

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

Page 3, lines 21 to 24—

(Section 5 (3) *(a)* (ii) first dash)

Leave out all words in these lines and insert:

— a third or fourth schedule offence (not being an offence of violence) involving $25 000 or less;.

Amendment carried; clause as amended passed.

New clause 50—'Insertion of third and fourth schedules.'

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

Section of Criminal Law Consolidation Act 1934	Description
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 untruc 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 except an offence against paragraph *(a)* (i), (ii) or (iii)	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

FOURTH SCHEDULE

Indictable Offences of Dishonesty

The description of the offence is given for ease of reference only.

Section of Criminal Law Consolidation Act 1934	Description
134	Larceny after a previous conviction for felony
176	Larceny and embezzlement by clerks and servants
177	Larceny and embezzlement in the Public Service
178	Falsification of accounts
182	Larceny by partners
185	Fraudulent sales under powers of attorney
186	Fraud by factors or agents
190	Fraudulent company accounts
191	Fraudulent destruction or alteration of company books, etc.

New clause inserted.

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

That this Bill be now read a third time.

In moving the third reading of this Bill, the last of the package of court reform Bills with which the Council is dealing, I would like to make some remarks about the process that we have been through, remarks that I have foreshadowed when dealing with comments raised earlier by the Hon. Mr Gilfillan in Committee. This is the last of a package of nine Bills that has covered a wide range of issues concerning the administration and structure of the courts in this State. The Bills dealt with issues that have been in the process of maturing, one might say, for some considerable time, including reports on the District Court and its separation from the Local Court, on small claims, and/or issues relating to strata titles and, of course, the discussion papers prepared last year dealing with the classification of offences and committal proceedings.

Although I know the Hon. Mr Gilfillan found this process somewhat tiresome, I say to him that this package of legislation was quite important in the administration of justice in this State. I thank members who participated in the debate, particularly the Hon. Mr Griffin, for the constructive approach that has been taken in dealing with this legislation. Obviously, we disagreed on a number of issues of principle, but it was also true that the Hon. Mr Griffin and the Opposition supported the general thrust of the legislation and the structure that it was trying to establish, and the Government appreciates the support that was given.

Issues of principle were resolved and may be subject to further comment, but at least as far as the structure and the drafting of the Bills is concerned we have seen a cooperative approach to this quite extensive rewrite of legislation in this area. As I said, I particularly thank the Hon. Mr Griffin for his constructive approach to the debate.

I thank the Hon. Mr Gilfillan for his forbearance in dealing with the Bills. I know that he found the whole process somewhat tiresome, but I assure him that this process was, I believe, the best one to adopt in relation to these Bills. Had we not adopted this process and exposed them virtually as soon as they were ready on the understanding that there would be comment on the Bills once exposed, it is likely that we would still be dealing with them within Government and sending out exposure drafts and the like. The Parliament would not know about them and we would not have reached the point where we are now where I believe the Bills will be able to be passed this session.

Despite the honourable member's complaints, I think that process was satisfactory. There was public exposure at an early date and significant time for comment from those interested, including lawyers, judges and the like. So, I thank the honourable member for his forbearance. I assume that as he is up for election the next time around—

The Hon. I. Gilfillan: I am not.

The Hon. C.J. SUMNER: Are you retiring?

The Hon. I. Gilfillan: No, I will carry on. There is stability.

The Hon. C.J. SUMNER: Obviously, the honourable member will not be up for election for another six years, which means that he will be in here legislating for another six years in the interests of South Australians. I am sure that the time that he has spent on these Bills will have provided a significant educative process for him and will enable him to deal better with pieces of legislation that come up in the future. So, I ask the honourable member to look at his participation in these debates in that light. One is never too old to learn, and he still has a considerable contribution to make to the legislative process. The experience he has gained will affect his capacity to do that job in the manner that I know he wishes to adopt.

As this is the final one of these Bills, I repeat that the process we went through was useful. I appreciate the constructive approach taken by the Opposition and, in particular, by the shadow Attorney-General.

The Hon. K.T. GRIFFIN: It is no secret that the Opposition has supported the general thrust of these Bills. We have had the view for quite a long time that there would be value in the development of the court system if the

Magistrates Court were separate from the old local and district criminal court, and that each should be governed by its own Act of Parliament. Undoubtedly, it will result in efficiencies and enhance the status of the two courts and will, hopefully, mean a more efficient judicial system at those two levels in particular. The change in its jurisdiction will give the Supreme Court greater opportunity to take a broader overview of the whole of the system of the administration of justice.

As the Attorney-General has said, the Opposition has disagreed with the Government upon issues of principle. I suppose one adopts a philosophical view on these things: you do the best you can and if you do not get the numbers you have to live within the constraints that that imposes. That view has applied particularly in these cases. However, notwithstanding the differences on matters of principle, if one looks at the package of Bills that have come out of the Committee and have now been passed by the Council, there has been a remarkable amount of unanimity on a variety of matters.

I reflect upon the Enforcement of Judgments Bill, which my colleague the Hon. John Burdett handled, where he raised a number of issues. He moved some amendments and the Attorney-General moved others, and those amendments were largely consistent. Whilst in 1978 there was considerable controversy about the package of Bills relating to enforcement of judgments, I think the 1991 Enforcement of Judgments Bill lacked that controversy because the more difficult provisions were not included and a more realistic approach was taken to the way in which judgment debts should be enforced. On both sides, there was recognition that some changes needed to be made to that system. However, I have been pleased that in other areas the Attorney-General has been amenable on a number of matters that I raised, by either moving amendments himself—

The Hon. T. Crothers: He always is.

The Hon. K.T. GRIFFIN: I am not sure about that. Let us not spoil it, because there will be other legislation where the Attorney will not get an easy ride. I can think of one or two Bills coming up from the Lower House where the tension will be very much heightened. However, he has been amenable on this package of Bills, and I appreciate that and also the preparedness of the Attorney-General to allow his officers to have discussions with me on issues where there may not have been a difference on principle but where something could be added to the understanding and development of the Bills.

I have received a lot of assistance from the Law Society, which made comprehensive submissions on the Bills, and from other lawyers. Honourable members will know that, being in Opposition, no research resources are available on these sorts of Bills so, whilst relying on my own understanding, I also depend to some extent on the assistance that I get from bodies such as the Law Society. Although the Law Society might be criticised for having a vested interest in many respects, notwithstanding that I think it generally adopts a truly professional view on matters of concern not only to it and the administration of justice but also to the community at large. I want to record my appreciation for the support which has come particularly from the Law Society as well as other individual lawyers.

I should also make the observation that, with the concurrence of the Chief Justice and the Senior Judge, the Attorney-General made available to me correspondence which passed between him and the judges. I did not believe that it was proper to refer to the views of the judges in the course of the debate. I appreciated the opportunity to peruse the correspondence. It assisted me in reaching a conclusion in some areas where I may have been uncertain, but I did not think it was proper to bandy around their views, some of which did not necessarily agree with the Attorney-General, some which did and some which did not necessarily agree with the points of view that I was putting forward. I did not believe it was appropriate to involve them in the political debate on some of the issues of principle. So I also appreciate having had access to that.

It has been a long and difficult task to work through this package of Bills. I think they are important Bills and will make some significant changes to the administration of justice. I think that the process has been useful, and I think the way in which we have all handled it has been an aid to proper consideration of this important legislation. Therefore, I thank the Attorney-General for that amenability in the consideration of these Bills.

The Hon. I. GILFILLAN: In some ways I am sorry that the advisers to the Attorney-General have actually left the Chamber, because I think they deserve some acknowledgment for patiently sitting through a process which, by the Attorney-General's recognition, was at times somewhat tedious and drawn out. Maybe they had their own source of excitement. I feel it is appropriate to speak to the third reading of this Bill, because I think it is part of a bracket of the most portentous and historic legislation with which I have been involved in this place, although I made virtually the same claim about the Parliamentary Committees Bill. I think they are in two different categories, so I think the claim can be made for both without them competing.

The Attorney-General may, from time to time, describe me as an ingrate. I would like to say that I appreciate his observations and comments to the third reading and say that maybe they were ingratiating comments. I hope that my observations are not taken as gratuitous, because it is rare that we do have a climate in which there is such a palpable feeling of goodwill and sense of achievement. Therefore, I will spend a moment or two just dwelling on that.

I think it is appropriate for me to say that I have often felt privileged to be part of a triumvirate which has dealt with legislation in the manner in which we have handled this package of Bills. Obviously, I am the ignoramus of the triumvirate in the area of law, and I often need to act as an umpire in matters in which I do not think I even know the rules. However, I might say that I am very rarely in the minority. One of the advantages is that I notch up the wins.

It was mildly surprising to note that I was in the minority on a couple of occasions, and one particular occasion which I think is of significance was where the quantity of controllable substances was reduced so that, in fact, the original draft of the Bill was changed, and penalties and so on applying to those offences relating to what are commonly known as drugs appeared more severe. I make that observation in passing only because it was one of the rare occasions on which I felt quite strongly at odds with my two colleagues, the Attorney-General and the shadow Attorney-General.

I feel some misgivings about what may have been changes to the availability of trial by jury, and perhaps had I been lobbied or had access to argument by the Chief Justice and possibly other justices of the Supreme Court I may have had an alternative view. I think what I have sensed—although I may not have fully understood it—is that there has been a major effort to reform the whole judicial system and concomitant pieces of legislation to streamline, cost-cut and make more available these processes to ordinary citizens of South Australia. If I am right, I believe my first

comment is correct: that we have seen the passage of a series of portentous and historic pieces of legislation in this Chamber. I hope I am right, because it did take a lot of time.

I would like to conclude by paying my personal tribute to two people whom I think have given to the State beyond the call of duty in this particular context. I will mention the Hon. Trevor Griffin first, because he is in Opposition, and he has no obligation by role of his job to spend the inordinate amount of hours that he does on the very specific and exacting task of scrutinising legislation. He does so, as I understand it at least, with no sense of personal reward in his own kudos. Unless we breed a whole generation of students of *Hansard*, most people will not know what work he has done.

I also pay credit to the Attorney-General who, graciously and without any mean-mindedness, accepts the comments totally as they come forward, and I have appreciated both those attitudes, and I feel it is an appropriate time for me to record that. We may never be in this situation again, dealing with such a series of important and significant pieces of legislation, so I have taken the opportunity at the third reading stage to indicate my support for this Bill and for the other Bills that have already passed.

The Hon. C.J. SUMNER (Attorney-General): In reply, I thank honourable members for their comments and the remarks of both honourable members. One thing that I omitted to say when I moved the third reading is that, obviously, with a package of legislation such as this, as the Hon. Mr Griffin has conceded, there will be a period of settling down as the judiciary, legal practitioners and the public get to deal with the legislation. Therefore, it would not surprise me if some amendments are not necessary at some stage in the future. I hope that before proclamation no further amendments are necessary, but even in that period, which will be a period of some activity within the judiciary—in particular in getting the rules of court ready—some matters may be drawn to our attention which might require some correction. But, with that qualification, I am confident that the package is significant, as honourable members have said. We have given it considerable attention and, basically, I am confident that it will be satisfactory. I thank honourable members once again.

Bill read a third time and passed.

PAY-ROLL TAX (MISCELLANEOUS) AMENDMENT BILL

In Committee.

Clauses 1 to 3 passed.

Clause 4—'Insertion of ss. 4 to 4c.'

The Hon. R.I. LUCAS: New section 4 provides:

(2) A service contract for the purposes of this section does not include a contract—

(a) where the services are ancillary—

(i) to the supply of goods by the person supplying the services;

What is the practice or the intended practice in relation to the interpretation of 'ancillary'? Is it normally interpreted as being basically incidental, that it is neglible, or is there some other tax office interpretation of 'ancillary'?

The Hon. C.J. SUMNER: As far as I am aware, this word does not have a special meaning. It would bear the ordinary meaning that it has in the English language which, I am sure, we could pursue by consulting a dictionary. As far as I know, it has not been interpreted as a term of art. It would mean that services are a part of the supply of goods but not central to the supply of goods that, I suppose, are ancillary or incidental to the supply of such goods.

The Hon. R.I. LUCAS: For example, if the value of a contract was $100, would 'ancillary' be interpreted as meaning that the supply of goods proportion of that $100 would be greater than 50 per cent, and that the cost of services proportion would be less than 50 per cent, or is it not as simple as something along those lines?

The Hon. C.J. SUMNER: The *Concise Oxford Dictionary* definition is 'subservient, subordinate to'. So, it is obvious that the major activity has to be the supply of goods, and that the services that are ancillary are those that are subordinate, lesser to it or incidental to it. I think that that is about as far as I can take it. No doubt one could go through a whole lot of hypothetical instances and ask what was intended, but I do not think that one can do much better than rely on the plain English use of the word. Clearly any factual situation that arises will have to be the subject of interpretation by the courts.

The Hon. R.I. LUCAS: From discussions I have had with tax officers in relation to the interpretation of other sections of the legislation, I understand that the Commissioner adopts the procedure of advising his interpretation of the relevant clauses and subclauses. I have been advised that there will be an indication by the tax office as to how businesses ought to interpret one of the subclauses that will be the subject of an amendment by the Hon. Mr Elliott later in Committee, and on the advice given to me that would be a more liberal interpretation than I would have read into that provision. Whilst I accept that the Attorney cannot give me an answer, is it intended that advice will be provided by the tax office in relation to how this new subsection is to be interpreted by businesses?

The Hon. C.J. SUMNER: Yes, and if they disagree with it they have the right of appeal.

The Hon. R.I. LUCAS: I take it that the Attorney is not now in possession of exactly what that advice will be.

The Hon. C.J. SUMNER: No, I cannot give an indication of that at the moment. No explanatory notes on the legislation are available at this stage. What is meant in any particular case will depend on the facts of the case. I do not think I can take the matter further other than to say that 'ancillary' will be interpreted as I have outlined, as services that are subordinate to the main activity, which is the supply of goods.

The Hon. J.F. STEFANI: Will the Attorney clarify the position in terms of people who are employed in catering services on a contract or hourly basis? Are they deemed to be caught under this provision?

The Hon. C.J. SUMNER: Normally, if people are paid by the hour, they would be categorised as employees, anyhow, and be caught up under the existing Act without resort to these amendments.

The Hon. J.F. STEFANI: I know of caterers who employ people on a contract basis for the night or at so much per hour, and they are deemed to be contractors for the purpose of the employment. They are treated not as employees but as contractors on the basis of that particular function for that night.

The Hon. C.J. SUMNER: The question of whether a person is an employee and whether it is called a contract of service, or if a person is a subcontractor engaged in a contract for services, is not always a simple issue to determine. Payroll tax, as we know, is a tax on employment—that is, employees. What has been happening is that fairly unofficial devices have been used to try to establish that there is a contract for services, a contractor/subcontractor relationship, and therefore avoid the provisions of the Pay-

roll Tax Act, when in fact the real relationship is employer and employee.

I do not know the factual situation that the honourable member has in mind, and, without knowing it in all its detail, it is really very difficult to respond to his question. If people are brought in and work on an hourly rate and are subject to the direction of the employer about what they should do, and the like, they would be employees in any event. If the honourable member has some other factual situation to put, I will try to respond, but he must understand that this legislation is designed to overcome a loophole which we have seen created by what I understand to be creative approaches to the relationship between the employer and the employee, such that they attempt to characterise them as contractor-subcontractor relationships and therefore avoid payroll tax.

The Hon. J.F. STEFANI: I do not want to prolong the Committee, but I want to clarify the provision and the terms that will apply. A good number of caterers and reception centres employ people on a contract basis for the functions concerned, and they are deemed to be contractors for those functions. As such, no payroll tax is being paid at the moment because they are treated as contractors for the function. Will those contractors, as they are now treated, be treated as employees in terms of the payroll tax provisions?

The Hon. C.J. SUMNER: It is extremely difficult to give an answer to a hypothetical question in which all the facts are not known to me or to the Commissioner for Stamps. However, in general terms, as the honourable member knows, the purpose of the legislation is to impose liability where a contractor works primarily or exclusively for another person under what is defined as a service contract and provides labour or services to that other person. If what the honourable member is talking about is a caterer who enters into a contract with someone to perform catering services at a wedding and he does that in one hall one week, another hall the next week and another hall the following week, the relationship between the person who is having the wedding and the contractor would still be one of contract. That would not be affected by this legislation. However, if that contractor was doing work for the same reception house or organisation on a weekly or daily basis, then they might well be picked up by this legislation.

So, it is extremely difficult to answer the question in a hypothetical circumstance. What the honourable member would have to do is set out precisely all the relationships, because that is part of the problem with what happens and what we are trying to attack, namely, that arrangements are entered into which are designed to avoid the payment of payroll tax.

The Hon. J.F. STEFANI: I appreciate the Attorney-General's attempt to address my questions but specifically I am referring to a catering contractor who is engaged to perform a wedding and obviously does not have the labour force employed on a weekly basis to serve that wedding: he therefore engages people (whether it be two, three or five people) who are engaged on a subcontract basis for the night. These persons may be engaged on a casual basis in terms of the security of employment, because they may be engaged this Saturday, may miss the next Saturday and then be employed on the Sunday and the following Friday. Will the people who are now being treated as subcontractors be deeemed by this provision to be employees?

The Hon. C.J. SUMNER: First of all, to be caught by this legislation, the individual has to work 90 days in the year for that employer. However, whether a person who comes on and works in those circumstances is a casual employee or a subcontractor is a matter that has to be determined by the general law and, in the circumstances that the honourable member has outlined, they are almost certainly not subcontractors; they are employees and they would be considered by the courts to be employees. Probably, there would be claims for workers compensation because they are employees, not subcontractors, and that is what I said at the beginning when I was answering the question.

Whether the person is in an employer/employee relationship or whether they are in a contractor/subcontractor relationship depends on the facts of the individual case, and a number of criteria are set out in the law which determine whether one is in one category or another. If persons are paid wages on an hourly basis and paid regularly, or if they are subject to the specific direction of the employer as to what they should do and how they should do it and those sorts of things, that tends to mean that they are in an employee/employer relationship. On the other hand, if a person provides their own materials and their own tools, and they have a degree of independence about how they go about the job using their own skills, and so on, it is more likely that they are in a contractor/subcontractor relationship.

However, the fact that they call themselves a subcontractor does not necessarily mean that they are, at law. There have been cases where people have tried to characterise themselves as contractors or subcontractors but the courts have said, 'No, that is not the correct relationship; the correct relationship is that they are an employee of that person.'

So, the point is that, in the case which the honourable member has put, it would depend how the courts characterised the people who were engaged in that work. It sounds to me that the people who are called in to work on the basis to which the honourable member referred are not subcontractors; they are in fact casual employees of the catering company and, as such, they would be subject to payroll tax in any event.

The Hon. J.F. Stefani: Within the threshold?

The Hon. C.J. SUMNER: Sure, within the threshold, and they may not be caught within the threshold in any event. If they have somehow or other developed some kind of service contract which on the face of it may shift them from the employee/employer relationship to a contractor/subcontractor relationship and they work for more than 90 days for that same person, under this Bill they will be deemed to be in an employee/employer relationship and therefore subject to payroll tax.

The Hon. R.I. LUCAS: Under clause 4 (2) *(b)* we are talking about a 90 day period. I ask the Attorney whether any other State or Territory has a provision which is longer and, in particular, does the Australian Capital Territory have a provision for 120 days?

The Hon. C.J. SUMNER: The primary test for exclusion in the Australian Capital Territory requires that the services be rendered for less than 90 days in a financial year. However, in view of the difficulties that may be encountered in the building industry in predicting the actual number of working days that may elapse in the carrying out of a contract, the Commissioner in the Australian Capital Territory has issued a ruling whereby he has indicated that he will as a rule of thumb accept that a 120 calendar days measure may be used instead of the primary 90 days criterion. The 120 working days are to be determined by reference to the expected commencement and finishing dates of the contract work to be performed.

The Hon. R.I. LUCAS: Due to the specific problems and nature of the building industry, did the South Australian Government consider that option of the Australian Capital Territory in the drafting of the legislation and reject it, or did it not consider it at all?

The Hon. C.J. SUMNER: It is not in the Australian Capital Territory legislation; the 90 days is in its legislation. It is a ruling which I suppose aids the interpretation of the legislation, and I understand that, as part of the information that is given, the tax office here is happy to make a similar ruling.

The Hon. R.I. LUCAS: When tax Bills come before the Parliament, the Liberal Party receives some very precise legal advice on some aspects of the legislation, and that has not been different in relation to the Payroll Tax (Miscellaneous) Amendment Bill 1991. I want to quote from some of that advice, seeking a clarification of the interpretation of a phrase used in clause 4 (2) *(c)* and elsewhere in the Bill. That phrase is 'not ordinarily required'. The advice is:

> The concept of what is not ordinarily required by a designated person is a new concept. An example is anybody who owns a building, whether it be a commercial premises or dwellinghouse. That person would ordinarily require at some time the services of a plumber, an electrician, a carpenter, a painter, a lawyer/landbroker, a real estate agent and many others. Such services are ordinarily required, even though they are not regularly required.

I seek the Attorney-General's advice on that question.

The Hon. C.J. SUMNER: Circumstances involving private ownership of a dwellinghouse would not need consideration owing to the current threshold of $432 000 per annum, and there is a lack of business connection as required by the provision. In respect of a commercial building, considerations include: the 90 days criterion—this provision will eliminate most, if not all, services, such as plumber, electrician, carpenter, lawyer, landbroker, etc., mentioned in the example; the nature of the business conducted; the regularity of requirement for a particular service over a period of time—not necessarily just a single year; the availability of the threshold deduction, which is currently $432 000 per annum; and, if the service is not related to the conduct of the business, the exclusion test not ordinarily required would be satisfied.

The Hon. R.I. LUCAS: With respect to new section 4 (2) *(d)*, I cite the example of a partnership of a plumber and his wife. The wife is paid a small remuneration for answering the telephone and keeping the books, etc., but does not provide plumbing services as the plumber in the partnership would do. Would that partnership be caught by this exemption clause?

The Hon. C.J. SUMNER: I am advised that, in the example outlined by the honourable member, the wife would be caught as part of the service contract.

The Hon. R.I. LUCAS: I ask that that answer be clarified. A plumber forms a partnership with his wife, and the wife is paid an amount of money each year for answering the telephone and doing the books, etc., but does not actually perform any plumbing services. Nevertheless, she is providing a service to the plumbing partnership.

The Hon. C.J. Sumner: In partnership?

The Hon. R.I. LUCAS: In partnership. Does this particular section exclude my example of the plumber and his wife? My understanding was that it did not cover them and that therefore they would be caught, but I want to have that matter clarified and placed on the record during this debate.

The Hon. C.J. SUMNER: I repeat that payments to the wife do not fall outside the exemption that is provided for. Therefore, that relationship would be caught for the purpose of payroll tax.

The Hon. R.I. Lucas: Just the payments to the wife?

The Hon. C.J. SUMNER: Well, the honourable member was only talking about payments to the wife. He was talking about the wife's receiving income from the plumber for doing certain work, even though they were in partnership. I am advised that in the circumstances outlined by the honourable member the wife would not be caught by the exclusion; therefore, the Payroll Tax Act would apply to the partnership. Of course, we are talking about a threshold of $432 000, so it is a fairly hypothetical example and it is most unlikely to apply unless he is a very generous plumber.

The Hon. R.I. LUCAS: My question refers particularly to when the plumber takes a contract to perform plumbing work. He is in a partnership with his wife, so potentially two or more persons are employed to provide services in respect of that contract during the course of the business. They take out a contract for, say, $100 000 to do plumbing work somewhere. Does this section exclude this particular partnership? My understanding was that it would not be excluded.

The Hon. C.J. SUMNER: I am advised that in the circumstances outlined the payments to the wife would not fall within the exclusion and therefore would be caught by the provisions of this Act, provided we are talking about a plumber who works for the same person for more than 90 days. We are not talking about a *bona fide* subcontractor plumber who goes from the honourable member's house to my house, to the Hon. Mr Stefani's house, to the Hon. Dr Pfitzner's house, working in a direct contractual relationship with the honourable member or with me or with the other people I mentioned. The payment from the honourable member or from me to the plumber is not subject to payroll tax, but if the plumber works for more than 90 days for one particular person—

The Hon. J.F. Stefani: Or one company.

The Hon. C.J. SUMNER: Yes, or for one company, then that situation is more akin to an employer/employee relationship, and unless they come within one of the exemptions they are caught by this legislation.

The Hon. R.I. LUCAS: I think I now understand that advice. If we had a situation where two plumbers were in partnership, and they were employed by a builder for more than 90 days, clearly they would be exempt under new section 4 (2) *(d)*. So, if two plumbers worked together in a partnership to provide plumbing services to a builder for more than 90 days they would be exempt under this provision. However, the Attorney is now saying that instead of having two plumbers in partnership we have a partnership of one plumber and his wife. If the wife provides other services to the partnership, but does not provide plumbing services, this exclusion does not apply to that particular partnership?

The Hon. C.J. Sumner: Yes.

The Hon. J.F. STEFANI: I wish to clarify the point that my colleague the Hon. Rob Lucas was making. With respect to the relationship of two plumbers working in partnership, we are talking about payments made to them by the principal being totally exempt irrespective of whether they received payment separately. Is that the way we are interpreting the arrangements?

The Hon. C.J. Sumner: I missed it.

The Hon. J.F. STEFANI: If two plumbers, electricians or other people are engaged as a partnership to complete certain work as provided by this Bill, and for all intents and purposes they have arranged a verbal partnership to complete that work, and they each receive separate payments for the work being performed, are those payments exempt for pay-roll tax purposes? Is that the intention of it?

The Hon. C.J. SUMNER: If, as the honourable member says, there are two plumbers, electricians or other persons genuinely in partnership, and they contract with a person for certain work, and if it is properly characterised as a contract/subcontractor relationship, they are not caught by the provisions of this Bill.

The Hon. J.F. Stefani: Irrespective of whether they supply any materials and whether it is labour only in terms of performing that work?

The Hon. C.J. SUMNER: Well, that gets a bit more complicated, because you get back to the general debate that I tried to explain earlier, that is, whether the genuine relationship between the people is one of employer/employee or of contractor/subcontractor, and that depends on all the circumstances. As I said, there are cases in the law where people have attempted to say 'This is a relationship of contractor/subcontractor,' but the courts have said, 'No; it is not really. That is effectively a sham. You cannot just call yourself a contractor and subcontractor and therefore the law will assume that your description of the relationship is the correct one.'

The court will look behind the relationship to see whether it is genuinely contractor/subcontractor or whether it is, in fact, a relationship of employer/employee. Certain criteria are used to determine the nature of a relationship, some of which I have described before, such as the extent to which you are subject to direction and provide your own tools, materials, etc. So, if that partnership of two plumbers is in a genuine contractual relationship with the principal—the contractor—then they are not caught by the provisions of this Bill. But if they are, in fact, in an employer/employee relationship, that is a different matter.

The Hon. T. CROTHERS: I want to direct a question that emanates from the Hon. Mr Stefani's question that he latterly asked. Where, in fact, does that directive thrust that was contained in the Hon. Mr Stefani's question stop relative to the contractor/contractee or employer/employee relationship when, in fact, we can have a contractor and a subcontractor working for that person and then a subcontractor working for the subcontractor, and so it may go on and on *ad infinitum*? I may be wrong, but surely common sense would indicate that there must be a finite point where, in fact, you do not get an imposition of payroll tax.

In fact, the payroll tax applicable would be worth more than the job itself was worth, and I suppose that, if one wanted to go that far, that could be utilised as a tax rort in respect of claiming some advantage relative to the Commonwealth taxation provisions. That is my question: if, in fact, the position that Mr Stefani tried to define arises, where does it stop? How many times can you multiply the position from contractor to subcontractor to subcontractor? Where does that stop?

The Hon. C.J. SUMNER: The point raised by the honourable member is valid, and what he is effectively saying is, 'Is it a genuine contractor/subcontractor relationship, or is it in fact an employer/employee relationship?' That is the point that I was making earlier.

The Hon. J.F. STEFANI: I will not refer to the situation that the Hon. Trevor Crothers was imputing to me. I come back to the point to which I was referring, which is very simply: where there are two contractors in partnership, whether it be a verbal or written partnership, and where those partners work for a principal who supplies substantially all the materials for a cottage-type construction, where they move from one house to another, putting in the materials that are supplied to them by the principal builder of homes, such as pipes, gutters or sanitary fittings, they have a fixed price to do that job, and they move as partners from that construction site. One may remain behind and do the pipework, and the other may move to another house and complete the second fixing of the sanitaryware.

The Hon. T. Crothers: For the same principal?

The Hon. J.F. STEFANI: For the same principal. That goes on in the cottage industry, and that is the construction industry that exists today. If the honourable member wants to challenge me, I am quite happy to tell him that I have more recent experience than he, so I state the question to the Attorney-General in terms of those positions, and I think the Parliament must find out the position, not because the court has ruled, because the courts do not come into that situation until there is a test case in terms of an accident, liability or some other incident. As a member of Parliament, I want to know for the public of South Australia where they stand in terms of the payroll tax, and that is the question that I asked.

The Hon. C.J. SUMNER: And that is the question that I answered.

The Hon. J.F. Stefani: Excuse me. You have not answered it; you said—

The Hon. C.J. SUMNER: What's he doing? He cannot get up here and bounce us around. What is he on about? I am standing. I answered the question for the honourable member, and I said that, if the relationship was a genuine one of contractor to subcontractor, those payments would not be picked up by this legislation unless in paragraph *(d)*:

> The Commissioner determines that the contract under which the services are so supplied was entered into with an intention either directly or indirectly of avoiding or evading the payment of tax by any person.

What I said before is correct. If it is a genuine contractor/subcontractor relationship with the subcontractors being in partnership, unless they have entered into it as a device to evade tax, they are not caught by this legislation. I would have thought that that was fairly clear, and that is what I said before. I will not give a specific answer to a factual situation that the honourable member might put to me because it may not be complete. All I can say is that, in principle, if it is not an employer/employee relationship but a contractor/subcontractor relationship where the subcontractors are in partnership—that is how it is characterised at law—they are not caught. If they are both doing the work they are not caught by this legislation.

The Hon. M.J. ELLIOTT: Would I be correct in assuming that the fact that they claim a partnership is irrelevant to the other tests that are being applied?

The Hon. C.J. SUMNER: It needs to be a partnership to qualify for the exemption under new section 4 (2) *(d)*.

The Hon. M.J. ELLIOTT: But you are still applying the other tests for the genuine contractor/subcontractor relationship?

The Hon. C.J. SUMNER: Obviously the exemption in new section 4 (2) *(d)* comes into play only if they are caught by the principal provision. In fact, they may not be caught by the principal provision; they may not be working for more than 90 days for the same person. But, if they are, *prima facie* they are caught. If it is a genuine partnership where the members of that partnership are actually performing the work and it is a contractor/subcontractor relationship, not a regular employee/employer relationship (because they would be caught anyhow), that exemption gets them out of the principal provisions of the legislation.

The Hon. J.F. STEFANI: I put this case to the Attorney. A partnership is formed between two tradespersons who are both performing the work, and their capacity to perform the work is extended by the fact that the two of them can work together but in separate houses as if they were separate entities—one doing the first fix plumbing work on one

house and the second fix on another house, and *vice versa*. They can circumvent the law by having a partnership agreement on a piece of paper and, although the payroll tax office can investigate whether both partners are working on each other's jobs, at the end of the day that partnership would be valid and those partners would not be caught by the provision. However, the single partner who is in partnership with his wife and who has the capacity to work on one house by himself from the first fix through to the second fix at the end of the day is caught.

The Hon. C.J. SUMNER: If it is a genuine partnership they are exempt. If it is a sham partnership, they may be caught by the fact that the Commissioner may determine that the arrangement is such that it is just there to evade tax and is not a genuine situation.

The Hon. R.I. LUCAS: I move:

Page 3, after line 9—Insert new paragraph as follows:

(ba) where the services are of a kind ordinarily required by the designated person for less than 180 days in a financial year;.

I have been advised by Parliamentary Counsel and the tax office that this provision applies in New South Wales and, I think, Tasmania (and I am sure that the officers will advise me if I am wrong). The Bill provides that, if someone is working for more than 90 days for a particular employer in a contracting arrangement, that will be caught by the payroll tax legislation. My amendment tries to cater for the circumstances where a business may employ, say, an auditor to provide auditing services for a period greater than 90 days; for instance, they might need to employ an auditor on contract for four or five months in a particular year.

Under the Bill the payment for that five month contract to the auditor would be calculated with all the other payments to employees and, if the amount were over the $450 000 exemption level, that would be caught up in the calculation for payroll tax that has to be paid by that business. It is my contention—and obviously the contention of two other States, as I said, New South Wales and Tasmania—that, on any ordinary understanding of what is an employer/employee relationship, employing an auditor for five months should not and would not be described as an employer/employee relationship. One could also envisage that in these days of high flying management, planning and environmental consultants—everybody who is unemployed is called a consultant on something, and we have well established consultancies in a range of areas—businesses will increasingly employ them, and it may well be that they will need to employ them for a period greater than three months in a particular year.

This provision, if it is greater than three months and less than six months—which seems a reasonable compromise—would mean that the payment for that contract would not be caught up for the purposes of paying payroll tax. If one considers the costs of some consultants these days (and there has been some recent discussion about a consultant employed by the Housing Trust, I think, where the consultant was charging $1 200 a day, which equates to $6 000 a week), we are talking about significant sums of money that businesses may well be paying for the specialised services of consultants. This provision will mean that they will have to pay payroll tax at 6.1 per cent on the payments for those consultancy services.

As I said, my amendment, which exists in New South Wales and Tasmania, is reasonable because it provides that, if you employ one of these consultants for longer than six months in a particular year, that will be construed as basically an employer/employee relationship, and payroll tax will have to be paid on it. It is a compromise position to cater for the increased use of consultants. It is recognised in two other Administrations, and I urge members to support it.

The Hon. C.J. SUMNER: The Government opposes this amendment. I outlined the reasons for the Government's opposition to it in the second reading debate, and I rely on that argument.

The Hon. M.J. ELLIOTT: The Democrats support the amendment. As already noted by the Hon. Mr Lucas, it is essentially similar to that legislation which exists interstate. As I understand it, the experience at least in New South Wales is that it is a provision which is not utilised very frequently, and I am afraid I fail to see where there could be any significant abuse with respect to this particular amendment.

The Hon. C.J. SUMNER: The Government opposes it. I am not sure how strongly we oppose it—whether or not we will end up in a conference. I am advised by the Commissioner of Stamps that this does unduly complicate the situation and does produce another avenue for avoidance.

Suggested amendment carried.

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

Page 3, after line 16—Insert new paragraph as follows:

(ca) where the Commissioner is satisfied that the services are supplied by a person who ordinarily renders services of that kind to the public generally;.

This amendment is in response to concerns which the Liberal Party has addressed in an amendment which it has flagged but not yet moved, after line 35, where it proposes to include services constituting building work within the meaning of the Builders Licensing Act. I recognise that, within the building industry, a fairly large number of people are in genuine contract/subcontract relationships who may not be adequately covered by the existing provisions. I am also equally aware that, in the building industry, there is a very rapid growth in creative tax avoidance schemes and it is a matter of trying to find some way of sorting out the genuine contractor/subcontractors within them.

It is not the only industry that might be affected. There will be others as well, and it seems to me that the 90 day clause which we have already in the Bill may not be sufficient. Taking the building industry as an example, quite clearly a subcontractor could work for more than 90 days for a major building company, quite easily exceed the 90 days and still apply for subcontracts with a number of other companies, occasionally winning some, occasionally not. This provision will mean that those sorts of people will have another test available to them. If the Commissioner rules against them, they will still have available the appeals tribunal. It is my belief that those who are in the genuine contractor/subcontractor relationship will not then be completely shut out by the 90 day requirement which exists in an earlier subclause.

I expect that the Opposition will at least find this attractive, recognising that I will not be supporting a later amendment. This will pick up most of the genuine cases about which the Opposition is concerned. I note also that this provision exists in New South Wales, the Australian Capital Territory and Tasmania. I believe that the Government has been trying, as much as possible, to get this legislation to mirror what is happening interstate, so I would not have thought that it would be too concerned.

The Hon. C.J. SUMNER: The Government opposes the Hon. Mr Lucas's amendment which will be moved later. I understand that this is the Hon. Mr Elliott's attempt at compromise on the topic.

The Hon. M.J. Elliott: I was unhappy with the way things stood.

The Hon. C.J. SUMNER: He is not accepting what the Hon. Mr Lucas will move shortly, and we agree with that. We are prepared to accept the Hon. Mr Elliott's amendment.

The Hon. R.I. LUCAS: I am a realist. I accept the numbers, but I indicate that I will be proceeding very strongly with my amendment. I see some significant problems for the housing industry if the Democrat amendment is included in the Bill.

The Hon. M.J. Elliott: Have they had any problems in New South Wales?

The Hon. R.I. LUCAS: I do concede that the amendment is a marginal improvement on the Government's Bill, but it does not in any way cater for the significant problems that I outlined in my second reading contribution that will exist for the housing and construction industry at this time when we are experiencing the worst recession we have seen in this country for 60 years with respect to employment generation prospects.

I will address a couple of questions to the Attorney in respect of the Democrat amendment as he has indicated that the Government is prepared to accept it. My advice from the tax office on this amendment is that clearly many circumstances exist in the building industry at the moment with respect to tilers, bricklayers, carpenters, painters, and a number of other professions that I am sure the Hon. Mr Stefani could better list than I could—but there are four or five to start with—who predominantly work for one particular builder at the moment, doing their job on a variety of building construction sites or in a variety of homes.

We have talked about the repair industry. The hot water repair industry is another example, and companies in that industry at the moment do not pay payroll tax on those arrangements. The effect of the Democrat amendment, and the Government's acceptance of it, will be that the payroll tax legislation will extend to all those sections of the housing and construction industry—

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: It will apply to all those sections. The advice provided to us from the tax office in relation to this area of tradespersons in the building and construction industry is that at the moment there is very limited payroll tax collection from that section of the industry. Obviously the intention of the Government, as a policy decision, is to extend payroll tax collection into this area and increase the payroll tax base.

The effect of the Hon. Mr Elliott's amendment, whilst a marginal improvement, will mean that there will still be a very significant extension of payroll tax collection into the housing and construction industry and, in particular, to the sorts of examples that I have already listed. I indicated that the Liberal Party's position in the second reading was very reasonable, in that we recognised that the Government was committed to collecting $512 million a year in payroll tax and we could see the potential problems for future avoidance of that payroll tax, thereby eroding the payroll tax base.

We said our position was one of being prepared to assist the Government in preventing the further erosion of that tax base by the use of more and more artificial contrivances such as those to which the Attorney-General and I referred in the second reading debate. However, we said that we were not prepared in this Bill to see the Government, now assisted by the Democrats, extend the payroll tax base to whole new sections of industry which currently do not pay payroll tax.

As I have said, the housing and construction industry at the moment is on its knees for a variety of reasons, which I will not go into at the moment. It is on its knees. The last thing it wants at the moment in the middle of this depression cum recession (whatever we want to call it) is that extra impost by the Government, supported by the Democrats. There is no way in which we can help lift the South Australian economy and provide employment generation in key industry sectors such as the housing and construction industry if the Government, supported by the Australian Democrats, takes a conscious decision in this House to extend the payroll tax base to industries and sections of industry which currently do not pay payroll tax.

If the Government was saying, 'We will be completely ideologically pure; there will be no exemptions', at least the Liberal Party in this place could say, 'All right; we do not agree with the Government's position but we understand it.' But the Government, in clause 4 (2) *(e)*, has taken a clear and conscious policy decision that three industry sectors are important because they will be exempted. The Government exempts the courier section of the transport industry, the insurance industry and the door-to-door sales industry. So, the Government has made a policy decision that those three industries are important and, for this and whatever other reason, they are to be exempted from the provisions of this payroll tax legislation.

What we are saying and what we will be moving by way of later amendments is that the housing and construction industry in South Australia is at the moment, as it has been in the past and will be in the future, absolutely critical to any revival in the South Australian economy. If we in this Parliament are to seek to add to the costs in an ever-increasing cycle in this Bill and other Bills for the housing and construction industry, we cannot hope to put any sort of dent in the 10.7 per cent unemployment and the almost 30 per cent unemployment amongst 15 to 19-year-olds that exists in South Australia at the moment.

It is quite clear from the Hon. Mr Elliott's amendment that, in the circumstances about which I have spoken, where a tiler is working on a continuing basis for a contractor at the moment—

The Hon. J.F. Stefani interjecting:

The Hon. R.I. LUCAS: Yes, Jennings or Homestead, etc.—he will now be caught for payroll tax. I now want to explore what is meant by the use of the phrase 'to the public generally' by the Hon. Mr Elliott in his amendment. Again, I want to refer to some of the advice that we have had from our tax expert, as follows:

> The concept of what is 'the public' has been discussed on many occasions in company law and has caused considerable difficulty to the extent that it has been moved away from. This provision will require in future a proposed recipient of services to interrogate the provider of the services to ascertain where he has spent a large part of his time in the current financial year.

The key part of this advice (and it goes on in a number of other areas) is that a number of legal cases at present indicate the difficulty in company law of defining exactly what 'the public generally' or 'the public' by itself actually means, and that legislation is tending to move away from the use of such non-specific terms. I want to know from the Attorney how this phrase 'the public generally'—

The Hon. C.J. Sumner: Ask the mover of the amendment; don't ask me.

An honourable member: You supported it.

The Hon. C.J. Sumner: We don't want it. We would prefer not to have it. If you want to vote against it, join together and vote against it; that is fine. We just happen to be accepting it because we think it is better than your amendment. But don't direct questions at me; direct them to the mover of the amendment.

The Hon. R.I. LUCAS: I am directing them, hopefully, to the highly experienced and professional legal and tax

advice that is available to the Attorney-General but not to the Hon. Mr Elliott. If the Hon. Mr Elliott can sit down next to the advisers, I am happy to direct my questions to him. I want to know how this phrase is to be interpreted by the tax office. There are many examples. If we move away from the examples that clearly will be caught, we can examine examples of tradespersons who work perhaps for three or four persons on a regular basis in a particular year. They are not available to the public generally, in that Rob Lucas cannot go along to Julian Stefani, if he were a tradesperson, and say, 'Look, come along and do my job for Rob Lucas at home.' He is not available to the public generally, but he works not just for one employer but for three or four builders on a regular basis, doing his plumbing work, painting, carpentry work, or whatever it is.

I ask how that particular circumstance will be interpreted. Certainly, the advice given to us is that 'the public generally' would mean 'available to anyone in the public' and that, if one is restricted to three or four employers by way of one's own conscious decision and arrangement, that would not be caught by this phrase. From my discussions with the taxation office, I understand that there may well be a more liberal interpretation of this phrase, as long as it is not challenged in the court, and I seek clarification from the Committee on that.

The Hon. C.J. SUMNER: This amendment was delivered to the Government only a few hours ago, and it is not the Government's amendment. It is being accepted by the Government as a genuine attempt by the Hon. Mr Elliott to find a middle course in this area, but the words 'the public generally' will have to be interpreted. They will have to bear their ordinary meaning, but I can say that the tax officials have indicated that they will not adopt a strict interpretation and, obviously, whether particular individuals are covered will have to be worked out over time. However, I think it is fair to say that we have given the phrase its ordinary meaning and it will not be interpreted as a worst case scenario, if I can put it that way, in terms of the example that has been given by the honourable member.

The Hon. M.J. ELLIOTT: I think it would be quite ludicrous to believe that any subcontractor would apply for every contract that was going. Just because Rob Lucas wants his bathroom tiled and someone did not apply to do it does not mean that a subcontractor was not making himself available to the public generally. That sort of interpretation would be ludicrous. Anyone who could demonstrate that they are plainly seeking contracts with a number of people, including companies and the public, and are not obviously tied to one group of companies all the time, would be in a position to generally demonstrate that they are available for work and wishing to render services to the public generally. I do not think there should be a difficulty with that.

This is not a minor amendment. In fact, I think it will pick up a large number of the sorts of people about whom the Hon. Mr Stefani was concerned. I think it is also true that there are some narrow sections in the building industry at this stage that are already into creative tax avoidance. A few of those will be caught up, but in terms of the impact on the overall housing industry, we have to be honest—I do not believe that genuine subcontract relationships in relation to bricklaying, roofing, tiling, etc. will, generally speaking, be picked up by this payroll tax legislation. I cannot see that there will be any significant impact on the housing industry overall. Very narrow sections may be caught up, but after all they have been into tax avoidance over recent times.

The Hon. C.J. SUMNER: In response to the honourable member's question and earlier comments in Committee, I reiterate that the intention of the Bill is to stop tax avoidance, not to broaden the tax base. Similar criteria have been introduced in payroll tax legislation in New South Wales, Victoria, Tasmania and the ACT, all of which have had similar problems with avoidance in this area. So we are not generally on our own in wanting to close these loopholes.

The Hon. M.J. Elliott: Was that done by the Greiner Government?

The Hon. C.J. SUMNER: No, they were not done by the Greiner Government; they were put in place in 1987. As that legislation has not been repealed by the Greiner Government, one assumes that it agrees with it. A phrase similar to that contained in the Hon. Mr Elliott's amendment is contained in some of the interstate legislation. So, the honourable member is not breaking new ground in this area. If one bears those three things in mind, what the Government is proposing is reasonable.

The Hon. R.I. LUCAS: Will the Commissioner issue a guideline in relation to this particular provision?

The Hon. C.J. SUMNER: Yes.

The Hon. R.I. LUCAS: I am not an expert in the payroll tax area, but what procedure will a business contractor go through to satisfy the Commissioner? Do they write to the Commissioner? Are there standard forms, and what are the provisions for the appeal process?

The Hon. C.J. SUMNER: Obviously, procedures will have to be worked out in relation to the new amendments, but I am advised that a person seeking an exemption would write to the Taxation Commissioner if there was any doubt about the situation or if they wanted to put a submission that they were not liable for the tax. The Tax Commissioner would then investigate the matter and make an assessment. If the taxpayer objected to that assessment, there is a right of appeal to the Payroll Tax Appeal Tribunal and thereafter to the Supreme Court.

The Hon. R.I. LUCAS: The Government has accepted the amendment because the exclusions will be small and, to all intents and purposes, the difficulty for contractors and subcontractors to satisfy this provision will be extraordinarily onerous. As a result, there are unlikely to be significant numbers of people satisfying this provision. One has to satisfy the Commissioner. If one does not satisfy the Commissioner, one has then to be able to spend the time, effort and perhaps money on an appeal to the Payroll Tax Appeal Tribunal and, as the Attorney has indicated, fight the matter through to the Supreme Court.

People will throw up their hands and say, 'We will pay the extra 6.1 per cent payroll tax.' I think that is why the Government has been prepared to jump out of the blocks very quickly to accept the Democrat amendment, because it was very concerned about the amendment to be moved by the Liberal Party on this issue. Can the Attorney confirm that the advice available to him is that significant sections of the tradespersons part of the housing and construction industry do not pay payroll tax at the moment?

The Hon. C.J. SUMNER: There are some sections that do not pay.

The Hon. R.I. LUCAS: My question is: are there significant sections?

The Hon. C.J. SUMNER: Yes.

The Hon. R.I. LUCAS: Given that the advice which we have had before and which is now confirmed in this Committee stage is that significant sections of the industry do not pay payroll tax at the moment—that is the *status quo*—extending this provision into those areas will extend the

payroll tax base into significant new sections of industry. For those reasons, the Liberal Party believes that the amendment that I am about to move after this amendment has been carried, given that the Democrats and the Government are supporting it, would have been a much better amendment from the viewpoint of the housing construction industry and the South Australian community generally.

The Hon. C.J. SUMNER: The Opposition's amendment is a blanket exemption. Payroll tax is already paid within the building industry, as the honourable member would know. Although there are sections of the industry that do not pay tax, it is an attempt not to broaden the tax base but to produce in an industry a more level playing field and more equity between those who operate within its boundaries.

Suggested amendment carried.

The Hon. R.I. LUCAS: I move:

Page 3, after line 35—Insert new subparagraph as follows:
(iia) the services constitute building work within the meaning of the Builders Licensing Act 1986;.

We have had the debate on this issue, so I do not intend to repeat it. However, I indicate that the Liberal Party and I feel very strongly about this amendment. We believe that the Democrats and the Government together are doing and will continue to do great damage to the housing and construction industry. If we lose this amendment on the voices, I intend to call for a division.

The Hon. J.F. STEFANI: I want to reinforce my colleague's comments. Knowing the operation of the building industry, particularly the housing industry, I can see that companies such as Jennings, Pioneer and Fairmont Homes will all have a problem with payroll tax. That tax will be passed on to members of the public who are trying to buy a house in extremely difficult financial circumstances. In the end, those people will be penalised by this provision.

It is very clear that the Democrats are really aiding the Government in penalising people, certainly in the housing industry, where we require some leniency in allowing a process which has existed and which is not now giving revenue to the Taxation Office. A very wide net will be thrown out and, finally, the public will pay. The people whom the Hon. Mr Elliott is saying he cares for—the families with one or two children who are trying to buy homes—will all be paying so, as far as I am concerned, these provisions will obviously affect those people, and I will strongly support what my colleague is saying.

The Hon. M.J. ELLIOTT: I took great note of what the Hon. Mr Stefani and the Hon. Mr Lucas said during the second reading stage, and I have carefully considered what was said. Some concern was raised with me about the reason for moving the amendment that I moved. I believe that the amendment that has just been accepted by the Committee will offer relief to most genuine cases of contract/subcontract relationships that were not adequately picked up by other clauses. I believe that the Liberals—and obviously they have to do this for political reasons—are now overstating the problem, following the passing of the previous amendment. I do not believe that there will be the profound effects that they claim, and I think the speeches are probably more for the sake of *Hansard* and in preparation for the division that will follow.

The Committee divided on the suggested amendment.

Ayes (8)—The Hons. L.H. Davis, Peter Dunn, J.C. Irwin, Diana Laidlaw, R.I. Lucas (teller), Bernice Pfitzner, R.J. Ritson and J.F. Stefani.

Noes (9)—The Hons. T. Crothers, M.J. Elliott, I. Gilfillan, Anne Levy, Carolyn Pickles, R.R. Roberts, C.J. Sumner (teller), G. Weatherill and Barbara Wiese.

Pairs—Ayes—The Hons. Burdett and Griffin. Noes—The Hons. Feleppa and T.G. Roberts.

Majority of 1 for the Noes.

Amendment thus negatived; clause as amended passed.

Remaining clauses (5 to 12) and title passed.

Bill read a third time and passed.

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

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

The Hon. M.J. ELLIOTT: During my second reading contribution I raised the difficulties in the Port Lincoln area where, I have been told, it is the practice of large ships to discharge dirty engine oil or bilge into the sea as there are no proper collection services in Port Lincoln. As we are imposing heavy penalties for such matters, I think the Government should take some responsibility to assist industry to behave properly. Has the Government considered what will be done to assist the shipping and fishing industries in the Port Lincoln area so that there will be less incentive to go to sea and dump bilge and other oil?

The Hon. C.J. SUMNER: Obviously, it is an offence to dump. Resources are available, and those resources are placed in accordance with a national plan. The first point of contact is the Department of Marine and Harbors in the locality nearest the spill. If further assistance is needed that would be through the Australian Maritime Safety Authority.

The Hon. M.J. ELLIOTT: I would prefer more detail, and understand that that may have to be provided later. I would like to know precisely what resources are available. What is the Government doing in the Port Lincoln area in particular? What discussions are taking place with oil companies to ensure that used engine oil is collected and does not find its way out to sea, as is the case now?

The Hon. C.J. SUMNER: We are not aware of any specific discussions in relation to Port Lincoln. In Melbourne the industry has prepared materials for the fighting of oil spills, and that would be available on a 24 hour basis if an emergency arose.

The Hon. M.J. ELLIOTT: I am not talking about oil spills; I am talking about the difficulty in the Port Lincoln area where, as I understand it, oil is deliberately being dumped. I know that this Bill is about trying to stop that, but you have to catch the people first. The other end of the problem is that you have to supply the facilities so that the oil can easily be put on shore. As I understand it, there are no proper facilities to take used engine oil in the Port Lincoln area. What is the Government doing to try to facilitate the collection of those sorts of materials so that there is no incentive to go to sea and dump it?

Progress reported; Committee to sit again.

PETROLEUM (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 30 October. Page 1523.)

The Hon. L.H. DAVIS: The Liberal Party indicates its support for this amending Bill to the Petroleum Act. When the Act was introduced in 1940, no-one anticipated the fairly

dramatic developments that would occur in South Australia with the discovery of oil and gas, the building of pipelines within South Australia and now the proposal to join the pipelines of South Australia with the gas fields in the Amadeus Basin in the Northern Territory, and also the South-West Queensland gas reserves. Both of those areas, rich in gas, are quite likely to have pipelines connected into the Moomba-Adelaide pipeline. One of the amendments before us recognises this possible development and the need to have licensing provisions in the legislation to take this development into account. In other words, if a pipeline is developed to convey petroleum from or to a place outside South Australia, it will be necessary to have appropriate licensing requirements in the legislation.

The amendments also allow the Minister to enter into an agreement with a licensee now or in the future with regard to the ownership of a pipeline. The second reading explanation indicates that this may be necessary in the future to protect the long-term strategic interests of South Australia, namely, that the ownership of the pipeline will vest in the Crown at some future time. I must say that I find it unlikely that this would occur because the mood in Australia is away from Government ownership of assets such as pipelines. Rather, the mood is very much to the privatisation of pipelines, as instanced by the Commonwealth Government's proposal to privatise the gas pipeline into Sydney.

The Bill also gives the Minister power to approve any transfer of a pipeline licence. There are also provisions regarding the disposal of waste materials and inspection of wastes, and approval for waste disposal. There are also adjustments to the fees and penalties associated with the legislation which have not been adjusted for seven years. I understand that extensive consultation has occurred over a period with the principal operators in the petroleum industry in South Australia, and I refer to companies such as Santos. This Bill reflects negotiations between those parties and the State Government.

We respect and recognise the need to have an agreement which is workable on both sides. The Liberal Party also has consulted with the private sector interests involved, and we understand that they are happy with the Bill's several amendments. Finally, I should mention that the Bill also provides for the delegation of ministerial powers to give more speedy implementation to administrative matters under the legislation. Therefore, the Liberal Party supports the second reading of the Bill.

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

HOUSING CO-OPERATIVES BILL

In Committee.

Clause 9—'Membership of the authority'—reconsidered.

The Hon. I. GILFILLAN: I move:

Page 6—

Line 17—Leave out 'three' and insert 'two'.

After line 17—Insert new subparagraph as follows:

(ia) one being chosen from a panel of three persons who have a wide range of experience in the housing industry submitted by the Housing Advisory Council Industry Committee, or if that body is no longer in existence, being chosen after consultation with some other appropriate organisation or body involved in the housing industry determined by the Minister.

This is the result of some discussion and is a variation on an amendment that I foreshadowed last time we discussed the Bill, and that was my enthusiasm for having on the authority at least one member who has had experience in real estate matters as I referred to them in earlier discussions.

The South Australian Housing Advisory Council Industry Committee currently comprises representatives from the Hindmarsh Adelaide Group; the Department of Environment and Planning; the Department of Premier and Cabinet; Pioneer Constructions Pty Ltd; the South Australian Centre for Economic Studies; the Energy Information Centre; two from the South Australian Housing Trust; the State Bank; the Housing Industry Association; Master Builders Association; the Real Estate Institute of South Australia; REIA; Woodville City Council; two from the United Trades and Labor Council; the Housing Advisory Council Community Committee; and it has an executive officer and an observer from the Indicative Planning Council for Housing.

I have had discussions with the Minister, and the last time we discussed this I said that the authority will benefit from a person who has had practical and extensive experience in the hard-nosed side of the housing industry. I believe that that must include a close awareness of real estate, land values and property values and, with the wider wording in my amendment, an awareness of the building industry itself and of the construction and provision of materials. In other words, a wide range of experience (as I have identified in the amendment) should be required for appointment to this authority.

It may not be that this person is the only member of the committee with that experience. There are other people—two, in fact—who will be nominated by the Minister without any specification, but this requirement ensures that at least one of the people on the authority will have the experience that I believe is essential for a well balanced input to the authority's deliberations. I think it is fair to say that in the discussions I had with the Minister he showed some interest and enthusiasm in having on the authority a person such as I have described. I would ask the Minister who is handling the Bill in this place whether she has any comments from the Minister of Housing and Construction in relation to this amendment.

The Hon. BARBARA WIESE: As the honourable member has indicated, he has had discussions with the Minister about this matter. Although I believe the Minister would have preferred his original combination of members for this body, he has been prepared to accommodate the concerns that have been raised by the Hon. Mr Gilfillan, and agreement has been reached on the amendment that has now been moved by the honourable member. I am sure the Minister will want to act in accordance with the sentiments that have been expressed by the honourable member with respect to industry representation from among the members of the Housing Advisory Council Industry Committee, and I am sure that at the appropriate time an appropriate individual will be chosen to represent industry interests or to provide industry expertise to the Housing Cooperatives Authority. So, as I indicated at the outset, the Government supports this amendment.

The Hon. L.H. DAVIS: I certainly was prescient when I talked about breathtaking leaps of logic when we were discussing the role of the Democrats in shaping legislation in this Chamber over recent weeks. The Australian Democrats have totally ignored—have not even discussed—the amendments on file on this matter from the Liberal Party and have chosen instead to negotiate not with the Council on amendments but directly with the Minister. Nothing surprises me with their aeroplane jelly approach to legislative matters. I just say again how naive and impractical the Australian Democrats are when dealing with what is essentially feet on the ground legislation—dealing with taxpayers'

money. They have abdicated all responsibility in dealing with this important clause.

Their naivety astounds me. The Hon. Ian Gilfillan proposes that one person be appointed from a panel of three with experience in the housing industry submitted by the Housing Advisory Council Industry Committee in lieu of one being nominated by the Minister. That is his only amendment to clause 9. He then reads out the membership of that committee, and that includes members of the Department of Environment and Planning, two representatives from the United Trades and Labor Council and one member from the State Bank. They could all have experience in the housing industry. I am sure that the Trades and Labor Council has experience in the housing industry, as do the State Bank and the Department of Environment and Planning. They would all qualify within the definition in this clause.

Again, I return to the situation about which I cautioned the Council last evening when we discussed the matter: we could well have a situation where the authority is controlled by the cooperative movement itself. Quite clearly, the authority should have not only some policy direction but also some real control and direction from people independent of the cooperative movement. So, I remain very concerned about the amendment. I think it is inadequate.

The Hon. Ian Gilfillan has not given one excuse for rejecting the Liberal Party's amendment other than to say that it increases the number of members from seven to nine, which is pretty small beer in an Act that runs for 61 pages. Arguably, the cost involved will be minuscule, but it certainly provides balance with the Housing Industry Association and the Real Estate Institute, specific organisations that have a hands on approach to housing matters in different facets of housing. I cannot think of two more appropriate bodies to be involved.

Only recently, the Hon. Ian Gilfillan and I were guests at the Housing Industry Association's annual awards at its annual dinner—a magnificent occasion attended by 800 people. It is the biggest collection of people involved in the housing industry brought together at any one time in South Australia. It is a prestigious event with builders, planners, designers and architects all involved in this area. I cannot remember the last time that we had support from the Democrats, so nothing surprises me, but on such a simple and practical proposition as this I would have thought it was worthy of more consideration than we have had from the Australian Democrats.

The argument that I put is twofold. First, it ensures some balance in that committee and that the committee cannot be hijacked. I think that is an important consideration, given the track record of this Government. One could look, for example, at the SGIC and the extraordinary weakness of the board and the damage that has done over the past two years. Secondly, if you are going to guarantee proper housing industry representation, you will do that more surely through accepting the Liberal Party's amendment. Certainly, the Australian Democrats' amendment does not guarantee that.

The Hon. I. GILFILLAN: Apart from going into what seems to me to be a rather insignificant argument about the numbers on the authority—

The Hon. L.H. Davis: Exactly, and that is the only argument that you could mount.

The Hon. I. GILFILLAN: No, we have had the argument about the numbers before. Both the Hon. Legh Davis and I agree that there should be an ingredient on the authority that has had direct content with the harder edge of the housing industry. That does not necessarily mean that that person must come from real estate or housing building positions *per se*; nor does it mean that the only source of this type of advice and consultancy for the authority will come from the person—or in the case of the Liberals' amendment, the persons—from this background. If the Hon. Legh Davis is so suspicious of the *modus operandi* and the motives of this group setting up as the authority, obviously he will be quite fanatical about moves to try to infiltrate it with storm troopers who will represent the philosophies that he espouses.

I happen not to hold that deeply held suspicion. I believe that the people who are appointed to this authority will be keen to set up a housing cooperative structure in South Australia and have it implemented and working to the advantage of the people involved and to the most efficient use of the funds that are available for it. I am not so naive as to accept that there will be those who are less practical and less efficient than others in the use of the funds in the work-up of the schemes, and for that reason I think it is important to review the operation of the authority.

I have no hesitation in saying that I do not believe that the setting up of this authority through this legislation will be the end of the matter—a closed book. I think it needs to be watched and assessed as it proceeds along its track. If further down the track it is apparent that a further ingredient of hands-on experience on the authority would improve its performance, I would be prepared to consider it. However, I certainly am not convinced at this stage that we need do more than what would come into effect as a result of my amendment.

The Hon. L.H. DAVIS: I do not want to prolong this debate, because obviously I can count. However, I want to put on record certain matters, because it is always nice to come back, as we so often do, to Democrat benedictions and point out how they have been wrong over past years. I want to put on the record that it is not a matter of fanatacism that has driven me with my amendment on this occasion. It is a matter of realism and of having people with a professional and practical background who can bring some rigour and discipline to an authority that will be responsible for millions of dollars of taxpayers' money. Apparently, that fact continues to escape the honourable member.

The fact is that we have had fraud in the cooperative housing movement. The honourable member related a quite delightful little story at the annual meeting of CHASSA where I was asked to apologise for a press release that I made about the housing cooperative movement. The sad fact was that everything I said in that press release was true: tens of thousands of dollars have been lost. There have been fraud charges in respect of three housing cooperatives. Police have been involved and murder threats have been made. It has not exactly been beer and skittles. When one looks at the other public housing arm of the Government, certainly one cannot look so easily at the Housing Trust tenants ripping off the taxpayers of South Australia for tens of thousands of dollars.

So, I take seriously the fact that there are cooperatives which are being subsidised to the tune of $180 per housing unit per week and which have been in existence for nine years with the same tenants. That is a matter of some concern. It certainly raises the eyebrows of housing experts in other States who see it as being way out of line with what their expectations would be of an efficient, effective, and economic public housing operation. I take seriously my job as shadow Minister of Housing. I think I understand what I am talking about and, when it comes to financial matters, I hope that the Hon. Ian Gilfillan will respect that

fact at least: it is important to protect taxpayers in these extraordinarily difficult times in the shadow of the fiascos that have occurred in SATCO, SGIC and the State Bank, where many of their problems have been driven from the top rather than from the bottom.

Here we have a chance to do something, and what does the Hon. Ian Gilfillan say? He said, 'Well, if, in the future, a further ingredient of hands-on and practical and professional experience is required, let us bring it back, and we will amend the legislation.' That is a pretty sloppy approach. We have the chance now and he turns his back on it. I rest my case.

Amendment carried: clause as amended passed.

Clause 12 passed.

Bill read a third time and passed.

RESIDENTIAL TENANCIES AMENDMENT BILL

(Second reading debate adjourned on 22 October. Page 1274).

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

PARLIAMENT (JOINT SERVICES—PROHIBITION ON SMOKING) AMENDMENT BILL

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

PRIVACY BILL

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

ADJOURNMENT

At 11.57 p.m. the Council adjourned until Thursday 14 November at 2.15 p.m.