LEGISLATIVE COUNCIL

Wednesday 27 November 1991

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

PAPERS TABLED

The following papers were laid on the table:

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

HomeStart—Report, 1990-91.

Department of Fisheries—Report, 1990-91.

QUESTIONS

DISCRIMINATION

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

Leave granted.

The Hon. R.I. LUCAS: I refer to a hearing being held from today by the Human Rights and Equal Opportunity Commission of claims by three men that the national women's health program is in breach of the Commonwealth Sex Discrimination Act. The three-day hearing in Canberra is seen as a test case of whether women-only Government programs are valid under the law. Other programs that might be in jeopardy are women's refuges, women-only gyms and women's legal resource centres. The women's health program was launched by the Prime Minister two years ago, was endorsed by State Health Ministers and was allocated $34 million—half of which is funded by the Commonwealth and the balance by the participating States.

The main complainant against the program is a senior officer within the Commonwealth Health Department—the very body that administers the program—a Dr Alex Proudfoot. He has alleged that the Australian Capital Territory Women's Health Centre, which is financed under the program, is operating unlawfully because it is effectively closed to men. Dr Proudfoot further argues that women live longer than men and that a high proportion of men die from causes that are not specific to one sex. He summarises by saying that women's health services should either be restricted to women's diseases or be open to all.

The Government plans to argue that the program is exempt from sex discrimination requirements because the Act allows for 'special measures' to overcome disadvantages faced by women. However, according to the *Age* newspaper in Melbourne, counsel retained by the Australian Government Solicitor has advised that this argument will not succeed as the programs do unlawfully discriminate against men.

A perusal of State budget documents shows that South Australia plans to spend $1.144 million in combined funds this financial year on the national women's health program and a further $1.799 million on women's community health centres, $43 000 on Women for Sobriety (a self-help network of groups to assist women who are alcohol or substance dependent) and $19 000 on the Hindmarsh council women's health information project. My questions are:

1. Does the Attorney share the concern of women's groups and some human rights lawyers that, if the men's challenge is successful and the program is found to be in breach of the Sex Discrimination Act, women-only programs will be in jeopardy?

2. Has the Attorney had any advice as to whether our Equal Opportunity Act would require amendment to guarantee continuity of such programs and, if not, will he make inquiries and bring back a reply?

The Hon. C.J. SUMNER: This question is a little bit premature, with respect to the honourable member, I understand, as he has said that there is a hearing before the Commonwealth National Human Rights Commission at the present time that will adjudicate upon these very issues. Accordingly, the questions that he raises at this stage are hypothetical ones, that is, the extent to which women-only services might be contrary or not to the relevant equal opportunity legislation. Special measures can be taken under both Commonwealth and State Acts, which can overcome past discrimination. The honourable member said that the Australian Government Solicitor's counsel apparently has said that that will not succeed. I do not know from where that view has emanated, as I assume that that is the very argument that the Australian Government Solicitor will take before the Human Rights Commission to defend the special services for women in this area.

At this stage it is premature to speculate. I do not think there have been any complaints in South Australia about the women-only services. Obviously, if there were complaints made about them under our legislation, they would have to be adjudicated upon in this State. It is premature at this stage and, therefore, I do not intend to comment on the issue. I will await the decision of the Human Rights Commission. If it appears that there is a problem, obviously it will have to be addressed by the Commissioner for Equal Opportunity, administratively, or the Equal Opportunity Tribunal if an exemption from the Act is sought, as it can be sought and might well be sought, in the case of special measures or, in the final analysis, by amendment to the legislation through this Parliament. I do not recall having received any advice on this topic and, whether any amendment is necessary, I suspect, should await the decision of the Human Rights Commission.

SENTENCING AND HOME DETENTION

The Hon. K.T. GRIFFIN: I seek leave to make an explanation before asking the Attorney-General a question about sentencing and home detention.

Leave granted.

The Hon. K.T. GRIFFIN: I have been informed that a criminal by the name of Bukvic was sentenced in the District Criminal Court on 22 February 1991 to nearly five years imprisonment for a variety of breaking and entering and larceny offences. Bukvic had a string of prior convictions. On that occasion he was given a non-parole perid of 2½ years, which means that with full remission for good behaviour he could expect to be released towards the end of October 1992.

In fact, Bukvic was released on home detention after only nine months in gaol, being released this month a week or so ago, having served less than half of the minimum period he should have served under the non-parole period with remissions. Soon after being released on home detention he was arrested on charges of house-breaking. This again raises questions about the administration of non-parole periods and the use of home detention to get people out of goal early. The person who informed me of this said that the way in which the gaol terms and home detention was being used was a joke and makes a mockery of the system. My questions are:

1. Does the Attorney-General agree that release on home detention in the circumstances of Bukvic's case undermines

confidence in the prison administration and the home detention system?

2. What steps will the Government take to tighten up on the use and abuse of home detention?

The Hon. C.J. SUMNER: The honourable member has scrambled the two issues together somewhat unfortunately, but no doubt for a purpose, namely, to create confusion in the public mind about these issues. He knows full well, as everyone in this Parliament knows—but I do not know that it suits him to make it clear to the public—that when a non-parole period is set by the courts they are aware of exactly how long a prisoner will spend in gaol, given remissions.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: No, but you introduced the question of non-parole periods. Non-parole periods are irrelevant to the question that the honourable member has asked.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: Well, they are, because when the judge sentences, the judge knows the law as it has been passed by this Parliament and he knows exactly how long that prisoner will spend in custody, taking into account the period that is set as a non-parole period, because the formula is laid down in the sentencing Act. So, non-parole periods are really not relevant to this particular issue. The judge imposes the sentence based on how long he wants the individual to spend in gaol and he tailors the sentence, including the non-parole period, to get the result that he wants: the period in custody and the period on parole. With respect to the honourable member, I do not think that the non-parole period or otherwise is relevant to his question. The gravamen of his complaint, however, is that this individual, with whose case I am not familiar, was released too early on home detention.

The Hon. K.T. Griffin: Like 11 months.

The Hon. C.J. SUMNER: The honourable member interjects. 'Like 11 months.' I do not know the circumstances of this individual's release. The provisions passed by this Parliament, with the support of the Opposition, relating to home detention are very broad. Home detention is able to be used in appropriate cases and there is considerable discretion so to do. I do not know what processes were involved in assessing this individual for home detention. Home detention is a system which the Government, the Opposition and the Democrats support, and I think it is worthy of support. I do not know whether there was an error in this case, but obviously, in any discretionary system such as this, errors will be made. I do not know whether there was one in this case, but I can see that the possibility of error exists.

Another point that honourable members, whether they be Opposition, Government or Democrats, must take into account, is that our gaols are full. There is hardly any capacity left in the prison system at the present time. While Opposition members complain about inadequate sentences, the fact is that since 1983 or thereabouts—approximately at the time this Government came into office, or perhaps a little later—the number of prisoners in the system has doubled from about 500 as it was at its lowest peak following the election of the Bannon Government, to more than 1 000. The number of prisoners has doubled. I should have thought that indicates to the honourable member that the community's concerns about lenient sentences have been met to the extent that our gaol numbers have doubled and, despite increasing capacity for prisoners in which the Government has been engaged, the prisons are full. That is something that the community, the Parliament and the Government will have to come to grips with, and if it means another prison, well, that will be a result of processes which have seen more prisoners placed in gaol over the past decade or so.

It is not an issue about which the Government has taken final decisions as yet but, clearly, something must be done to deal with the question of the excess number of prisoners in the system. One option which I note has been floated in the media is that we need another gaol. From many respects, I think that would be regrettable, but it is clearly a reflection of the difficulties in the community at the present time regarding community safety and law and order issues. It is also a reflection of the fact that prison sentences in the past decade have increased, something which I think does need to be acknowledged by honourable members, particularly those who would call for further increases in prison sentences.

TOURISM SOUTH AUSTRALIA

The Hon. DIANA LAIDLAW: I seek leave to make an explanation before asking the Minister of Tourism a question on the subject of Tourism South Australia.

Leave granted.

The Hon. I. Gilfillan: Where is it?

The Hon. DIANA LAIDLAW: The Hon. Mr Gilfillan interjects, 'Where is it?' That is a good question which deserves a response from the Minister as well, but I have other questions to ask the Minister. According to union sources, the cost of ridding the Tourism South Australia building at 18 King William Street could be $1 million. A further $1 million is the conservative estimate that I have been given of the cost involved in closing the building, establishing a temporary information centre at the Exhibition Hall and later relocating to a new permanent address. These are substantial costs to the Government and the taxpayer generally. Therefore I ask the Minister—

The Hon. R.R. Roberts interjecting:

The Hon. DIANA LAIDLAW: Yes, well, there are a number of issues for which there are legitimate questions. Therefore, I ask the Minister, first, what efforts, if any, were made by TSA or other Government representatives to encourage the United Trades and Labor Council to lift the black ban that they placed on the TSA building last Wednesday, preventing any further maintenance work being undertaken on the building? I ask this question, recognising that the Minister stated yesterday that, following a subsequent inspection of the building last Monday by occupational health and safety officers from the Department of Labour, they did not consider it necessary to close down the building. The Minister also went on to say that asbestos readings were measured at one-tenth of the national standard of one part per million. I know that there have been 36 monitors in the building for some period of time, and that a number of floors in the TSA building—certainly I have been told floors 4 and 5—feature tags on the doors indicating that they are asbestos-free areas.

Secondly, when Cabinet agreed on Monday to move TSA to new premises, did Cabinet also approve funding for this exercise? If so, what funding was approved, and did this figure cover only the cost of a once-off move to a new permanent location, or did it also include the cost of the temporary relocation plus the cost of an asbestos removal program?

Finally, will the Minister explain the statement made yesterday by the Acting Managing Director of Tourism South Australia, Mr Roger Phillips, that:

. . . TSA staff who handle Government travel bookings and international travel bookings will continue to work in the 18 King William Street building on a temporary basis.

In respect of that statement, I am interested to know why Mr Phillips considers that it is okay for these officers to continue working in the building, yet two days earlier he rejected an offer from TSA Travel Centre staff to continue to operate an information and booking facility at the same location for the benefit of visitors to the State and tourist operators in South Australia.

The Hon. BARBARA WIESE: I will attempt to answer all those questions. However, as good as my shorthand is, after many years away from doing it regularly, I am not as good as I used to be in that respect. It may be that I will miss some of the replies, but I will do my best. First, I will correct some inaccurate information that the honourable member seems to have gleaned from somewhere or another. It is not true that the fourth and fifth floors of the building are asbestos free. There is still asbestos in various parts of those floors, as I believe there is asbestos on all other floors of the building.

It is also untrue, as I understand it, that offers were made by staff to keep the Travel Centre open. I have checked that matter with the Acting Managing Director since the honourable member raised this issue yesterday. He received no offers from any staff and no offers were communicated to him by anyone else on the staff. So, I think that it is not accurate to suggest that offers were made by Travel Centre staff to maintain a service to the public. The reason why the Acting Managing Director decided to close the Travel Centre services to the public was that the travel consultants on the ground floor were amongst the most nervous of Tourism South Australia staff about the asbestos issue. They agreed to re-enter the building only on the condition that it would be for the purpose of packing up and moving out. Therefore, that decision was taken on Monday in those circumstances.

In addition, on Monday the occupational health and safety officers of the Department of Labour, who inspected the building and received briefings on the most recent events, also decided that no maintenance should be undertaken on the TSA building, that the lifts should not operate and that the air-conditioning system should not be turned on again. They have the power under the appropriate legislation to make such orders and those orders were made on Monday.

I said yesterday, and I repeat it today, that in view of the fact that our building is 20 years old and therefore the maintenance requirements are quite heavy, and in view of the knowledge that our maintenance record would show that it is likely that the building would become inoperable within a couple of weeks, it was certainly deemed to be an appropriate decision that we should arrange to relocate. Our initial hope was that we could relocate once and only once and that we could move to appropriate accommodation, which we needed not only to ensure the health and safety of our workers because of the asbestos in the existing building but also because we needed more space anyway to accommodate our operations. A decision to move once would be in the interests of the staff and of the public that we serve.

Our initial desire was that we might actually be able to remain in the building until a transfer could be arranged through the services of SACON. That was not possible because of the circumstances that I have just outlined. Therefore, arrangements are being made to relocate staff, at the first available opportunity, to what is likely to be temporary premises until we can find a suitable long-term location for our staff.

The honourable member referred to black bans imposed by the United Trades and Labor Council last week when this matter first came to the fore. She asks whether negotiations were undertaken with the United Trades and Labor Council to have those black bans lifted. Discussions were certainly undertaken with the United Trades and Labor Council on this issue, because we wanted to pursue the option to which I have just referred. If it was safe to do so, then we wished to stay in the building until it was possible to relocate permanently.

Having received advice that the work that would need to be undertaken to decontaminate the building would require evacuation under any circumstances, our desire was, if it were safe to do so, to stay in the building until we could be permanently relocated. Therefore, discussions were undertaken with the United Trades and Labor Council about the possibility of having black bans lifted to enable maintenance work to occur to keep the building functioning in the meantime. Those negotiations were overtaken by circumstances that occurred on Monday when the occupational health and safety officials made the decisions to which I have already referred.

The Hon. Diana Laidlaw: But they didn't recommend the building be closed. There seems to be such a contradiction.

The Hon. BARBARA WIESE: The honourable member indicates that the occupational health and safety officers did not recommend that the building be closed; that is true, but what I have tried to say to her twice today and I believe at least twice yesterday—

The Hon. Diana Laidlaw interjecting:

The Hon. BARBARA WIESE: I really would ask her to listen carefully. What I have tried to get through to members in this place is that, due to the fact that we require considerable maintenance—

The Hon. Diana Laidlaw interjecting:

The Hon. BARBARA WIESE: Perhaps I should be more specific so that everybody can understand completely what I mean. The fact is that, in a 20-year-old building like ours, the air-conditioning packs up very regularly and requires maintenance. The areas that require maintenance are danger areas for the work force. The lifts break down very regularly and the areas in which the lift shafts are located are in the areas that have been deemed potentially unsafe for workers. On most floors the toilets break down on a fairly regular basis. We cannot operate a building with all those things happening. We know, from our maintenance records that, if we stay in that building and maintenance workers are not able to come into the building, these things will occur within a couple of weeks. That is the state of affairs. I cannot do anything about that; that is the reality. Therefore, we must try to get out of that building as quickly as we are able in order to continue the service that Tourism South Australia must provide to members of the public.

The honourable member has also asked whether any costings for relocation were included in the Cabinet decision made by the Government. The honourable member knows full well that Cabinet deliberations are not matters that are appropriate for public discussion, but what I can indicate is that at this point I cannot provide any costings for the honourable member. I suggest to her that no-one to whom she can speak can give accurate costings either on asbestos removal in the existing building or on relocation costs because, first, accommodation has not been finally identified (so one cannot make those calculations until that occurs) and, secondly, the full cost implications of the work that would be required in 18 King William Street are not available at this point, either.

The Hon. Diana Laidlaw: It sounds like the building may have to be pulled down, from what you have said.

The Hon. BARBARA WIESE: The honourable member interjects that it sounds as if the building may have to be pulled down. That is a very real possibility as I understand it, but currently work is being undertaken to determine the extent of the problem within the building and to make assessments about what work will be required and what the costs would be. SACON, which is the owner of the building, ultimately will make the decisions about whether it is appropriate to decontaminate the building and retain it for Government purposes, whether it be sold or whether it be demolished. But they are decisions for the future; they are decisions that cannot be taken at this time.

The decision which can be taken at this time and which has been taken relates to knowing that the work that is required is so extensive that it will require evacuation of the building. Therefore, coupled with the fact that we require expanded premises, anyway, and an application with SACON has been under consideration for relocation for quite some time now, it is a timely and reasonable decision to take to make that relocation now. In other words, due to these circumstances, Tourism South Australia's application has now jumped the priority list for applications amongst Government agencies for new accommodation. I believe that provides replies to the issues that have been raised by the honourable member, but I am sure that, if I have not replied to all those questions, she will let me know.

WOODS AND FORESTS

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister representing the Minister of Forests a question in relation to the structured finance timber transaction.

Leave granted.

The Hon. M.J. ELLIOTT: On the *7.30 Report* of Monday evening there was an item in relation to a timber sale. The sale was reportedly for $400 million less than the reported value of timber in the last Auditor-General's Report, which was $527 million. It is worth noting in the Auditor-General's last report that forests assets were increased in value by $66 million in the past financial year. If the transaction had been a straight sale of timber, that would have led to a decrease in the timber assets held by Woods and Forests and the scale of asset depreciation that had been reported would not have been allowed. So, clearly, it was not a sale of timber in the strict sense of the word.

In 1991 SAFA was reported to have an interest in Woods and Forests of $343.4 million. In 1989 SAFA was given 16.2 per cent equity in Woods and Forests in a debt for equity exchange—a debt created by SATCO and not by Woods and Forests. In 1990 SAFA was given full equity in Woods and Forests; this appears to be related to what is referred to rather cryptically in the Auditor-General's Report as 'the recent structured finance timber transaction'. Yesterday in the other place the Premier suggested that there had been no secret deals and that there was no secret about the transaction, and said that a media release had been put out on 22 June 1990. I have scoured every bit of media I can get hold of from around that day and I cannot find it, nor do the files in Parliament House—

The Hon. L.H. Davis: It was in the *Border Watch*.

The Hon. M.J. ELLIOTT: It certainly did not make its way into the files in this place. No information beyond this is available in the SAFA, Auditor-General's or Woods and Forests reports of 1990. I could find only one sentence in the Woods and Forests report, the Auditor-General's Report has about one sentence, and the SAFA report runs to three or four sentences. Debt owed to SAFA has been changed to equity in Woods and Forests but there has been a real loss to the State. The loss has re-emerged by way of the structured finance timber transaction. Instead of the debts and equity being held by Woods and Forests, they are now the responsibility of SAFA. It has been suggested to me that creative book-keeping has been used to hide the losses.

Yesterday, the Premier also said that a sale of Woods and Forests timber assets is not precluded; something that the Opposition has been floating for some time. To do so would mean repayment of the loan. In essence, it appears that the Woods and Forests timber assets have essentially been mortgaged. My questions are: will full details of the structured finance timber transaction be made public; is the transaction essentially a borrowing against the timber assets of Woods and Forests, rather than a sale; and does the Minister deny that creative book-keeping is being used to disguise the losses of both Woods and Forests and SATCO?

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

SCRIMBER

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking the Minister representing the Minister of Forests a question on the subject of Mr Steve Gilmour.

Leave granted.

The Hon. L.H. DAVIS: A perusal of the Tasmanian *Mercury* newspaper and the Melbourne *Age* reveals that Mr Steve Gilmour, Manager of Seymour Softwoods, has a colourful if not chequered career. Members will be aware that Mr Gilmour has been in the news over the past 12 months and in particular in recent weeks in making a bid to revive the failed scrimber project. During the mid 1970s as a radio announcer in Tasmania, Mr Gilmour often seemed to be in the headlines for the wrong reasons. His controversial style on the airwaves led him to become a candidate for the Tasmanian Parliament; in fact, for the Liberal Party and, with the Hare-Clarke system—

Members interjecting:

The Hon. L.H. Davis: Just stay tuned.

Members interjecting:

The PRESIDENT: Order!

The Hon. L.H. DAVIS: They obviously had a good lunch—with the Hare-Clarke system, which favours high profile candidates, Mr Gilmour was elected in December 1976. During his campaign he claimed he was an A grade journalist employed by radio station 7HT, but the Manager of the station said that the station did not employ journalists and, in fact, the Australian Journalists Association claimed he was not an A grade journalist but had only ever been employed previously as a C grade journalist by radio 3UZ in Melbourne. Mr Gilmour's response to the claim was that the AJA had been infiltrated by the left wing and, in fact, Mr Bingham, the then Leader of the Opposition, was forced to deny any such infiltration.

Whilst still a member of Parliament, Mr Gilmour opened a restaurant in a Hobart heritage building and ran into trouble with the Hobart City Council in 1978 for using the building also as a guest house and for offices, which was expressly prohibited by council regulations. The restaurant was not a success, and Mr Gilmour said he was forced to sell in 1979 because of a vendetta against him by people with Labor Party connections. Mr Gilmour lost his seat in

the election of 1979 and said he was leaving Hobart because he found it easier in Hobart to get jobs for people released from gaol than to get a job for himself.

Mr Gilmour next bobbed up in Melbourne when in 1985 he claimed he could match the ratings of Derryn Hinch on radio if only he could find a job. In 1986 the *Age* ran a story where the Asthma Foundation of Victoria had accused Mr Gilmour of making false claims. Apparently, he had set up the Asthma Research Fund in 1985 because he believed the Asthma Foundation was too conservative. According to the *Age* report:

> The row came to a head when Mr Gilmour used air time during a week as a stand-in commentator on radio to attack the Asthma Foundation and pharmaceutical companies. Mr Gilmour said that over-enthusiasm had led him to advertise for donations and to issue prematurely material which contained inaccurate claims.

Mr Gilmour first became known to me in September 1990, after he had described scrimber as a 'goldmine'. Even in a discussion with me on the telephone he admitted at that stage that he had not visited the scrimber plant at Mount Gambier—even though he was willing to invest up to $3 million in the scrimber project. He also appeared to have little understanding of the scrimber process, but he knew everything that I was saying about scrimber, through a media monitoring firm, which, coincidentally, was the very same firm used by the South Australian Timber Corporation.

On 6 November 1991 the *Advertiser* announced that Mr Gilmour was planning a $35 million bid to rescue the failed scrimber company. The article in the *Advertiser* stated:

> Mr Gilmour said that he had just returned from a $40 000 fact-finding mission in Europe and North America where a similar reconstituted timber product, Paralam, had been successful.

The fact is that Paralam has no similarity whatsoever to scrimber; it involves a quite different process. So, that $35 million bid was reported in the *Advertiser* on 6 November. On 15 November Mr Gilmour claimed that he was going to be raising $50 million over the next five years to revive the scrimber project. Then, on radio, on 16 November he said that after a confidential meeting that morning he would have to raise the $50 million over the next two years. So it was a moveable feast.

The Liberal Party has had an uneasy feeling about Seymour Softwoods' proposal to resuscitate the failed scrimber project. It also questions the close links which appear to exist between the Minister of Forests, Mr Klunder, the South Australian Timber Corporation Chairman, Mr Higginson, and Mr Gilmour, General Manager of Seymour Softwoods. It has been most unorthodox for him to be touting his bid publicly. It has been quite unacceptable for him to be suggesting that both Government and Opposition members of Parliament should be on any board formed to revive the scrimber venture, which obviously would create an impossible conflict of duty and interest.

Mr Gilmour has also claimed to a member of the media that he has sighted the H.A. Symons report, the report on which the Government based its decision to close down its support for scrimber—although the Government, of course, has denied that anyone has seen that confidential report. In recent weeks Mr Gilmour has put out a series of bizarre press statements. The Minister of Forests, Mr Klunder, in announcing on 31 July 1991 that the Government would not back the scrimber process said:

> I will be recommending to Cabinet that we seek the involvement of another company preferably with a background in timber technology development and with the capital resources and management expertise necessary to complete the task of commercial development.

Yet, later, Mr Klunder publicly said that he had invited Mr Gilmour to submit a proposal because of the keen interest that Mr Gilmour had shown in the scrimber project—when clearly Mr Gilmour's company and background do not meet the requirements set down by the Minister himself. It is a remarkable saga, over the past 12 months, where Mr Gilmour has made a series of remarkable and conflicting statements, statements which can be seriously challenged for their veracity. My questions to the Minister representing the Minister of Forests are:

1. Why has the Government been courting Seymour Softwoods, which until last year's statement by Mr Gilmour had been totally unknown to the major players in the timber industry?

2. Why has the Government so obviously failed to check Mr Gilmour's credentials, which are publicly available?

3. Can the Minister advise where he would expect the $50 million to come from, given that the Government has recently admitted that as yet not one beam of scrimber has been produced to specification?

4. Do not the foregoing circumstances again underline the lack of judgment and fitness of Mr Klunder as Minister of Forests?

The Hon. BARBARA WIESE: I think I can answer the last question. I think we would all agree that the Hon. Mr Klunder is a very fit and proper person to be Minister of Forests. As to the remaining questions, I will refer those to the Minister of Forests and I am sure that he will provide appropriate replies.

SAMIC

The Hon. I. GILFILLAN: I seek leave to make an explanation before asking the Minister of Corporate Affairs a question about the company, SAMIC.

Leave granted.

The Hon. I. GILFILLAN: SAMIC was first licensed as a venture capital company in late 1984 and operated under provisions of the Management and Investment Companies Act, which, under Federal Government encouragement, established similar companies in other States. SAMIC was established to invest in other high technology companies or projects for which, in return, investors received a 100 per cent tax reduction in recognition of the high risk nature of the investment and the advantage to Australia in supporting high tech development. SAMIC invested in 13 businesses in South Australia, all of which subsequently failed, leaving investors with only 40c of their original investment dollar. The shareholders wanted to pull out of the requirement to invest only in high tech ventures, but without the approval of the Federal Government investors would have lost their 100 per cent tax deduction protection.

However, the Federal Government indicated that if funds were withdrawn from ventures and placed on deposit for three years the funds could subsequently be released to SAMIC for use, with no strings attached. Earlier this year, the value of SAMIC shares had come back to 50c in the dollar—because of the high interest rates—and three of the major shareholders, the State Bank, SGIC and Beneficial Finance, sold their shares at 46c each to merchant banker Mr James Hayward and to others friendly towards Hayward's interests, so that Hayward was able to control at least 19.9 per cent of SAMIC.

The Hayward group then demanded two seats on the SAMIC board, despite objections from SAMIC's Chairman at the time, Mr Ian Cocks, who is also Chairman of the Grand Prix board. But the share interests friendly to Hayward used their numbers to get their way, which included replacing Cocks with a chair friendly to Hayward, Mr John

Wilkinson. The old board, however, believed that there should have been a full takeover offer to all shareholders, something that the new board was opposed to, for various reasons, one being because it wanted to remain listed on the main board of the Stock Exchange—and for that there is a minimum requirement of shareholders; they felt that that could be threatened.

The old board believed that, as SAMIC was on the threshold of a new direction with $8 million to invest from its original high tech investment obligation—they were cleared from that—all shareholders should have had the opportunity to have a say in the new direction of the company and in what forms and what types of investment were to be undertaken. I am advised that the new board's intention is to make its own decision and then to inform shareholders of that decision or other decisions later, by mail—hardly a democratic process. The new board is now looking for recession-proof investments, such as food or, strangely, horseshoe manufacture, preferably through companies going at fire sale rates or other companies having trouble with banks. Falling so soon after the frustrated attempts by an independent director to get on the Adsteam board and at a time when small shareholders' confidence in the corporate system is at an all time low, my questions to the Attorney are:

1. Does he believe that the 500 shareholders of SAMIC should have a say in what the company does with their funds?

2. Does he believe the situation as it exists in the current SAMIC board through the Hayward group formally acquiring almost 20 per cent of the company and appointing its own chairman, should require a mandatory takeover offer to all shareholders?

3. In an effort to restore public confidence, does the Attorney see merit in a proposal that shareholders have a right to elect a director to a board by popular, democratic vote, so that individual shareholders have a direct voice on the boards of public companies, and will he raise that matter in the Ministerial Council?

The Hon. C.J. SUMNER: I am not familiar enough with the facts of the SAMIC situation to comment on the first two questions, but I will certainly examine them and bring back a reply.

The question of minority shareholders' rights has exercised a considerable amount of interest in the past few years. As a result of the events of the 1980s, the problems of minority shareholders have been brought more to the fore. In answer to a question from the honourable member the day before yesterday, I mentioned that the Cooney report, named after Senator Cooney who chaired the Senate Legal and Constitutional Affairs Committee inquiry into directors' duties, made a number of recommendations relating to the duties of directors which would have assisted shareholders in securing greater accountability from directors, but the report of that committee has not yet been implemented. It is being considered by the Federal Government and no doubt will in due course be referred to the Ministerial Council.

I am not sure whether other things can be done to assist minority shareholders. The honourable member has raised a proposition that the votes in companies, at least for one position of director of a company, should be determined by popular election—that is, irrespective of the number of shares held by an individual. It may be that companies might like to consider that to try to restore faith in their operations and overcome the sorts of problems that existed at the Adsteam shareholders' meeting and at the SAMIC shareholders' meeting. It is clear from media reports, particularly in relation to the Adsteam meeting, that a lot of very angry minority shareholders felt that they had been badly done by by the directors, whom they see as holding their positions essentially because of complicated cross-ownership provisions with other companies, so a small group of directors effectively control the company without any consideration being given to the smaller shareholders.

The proposition raised by the honourable member is interesting. I think that if a company wanted to do that it probably could under its articles, if it amended its articles to that effect. It may be that, if the honourable member is accustomed to going to shareholders' meetings, he could put forward this proposition. If he happens to be a shareholder—I am not aware of this—he or someone else might be able to propose this at a shareholders' meeting. I am not 100 per cent sure whether that mechanism would work, but it might be appropriate and it is something that the honourable member could consider.

I am prepared to take up the honourable member's suggestion through the Ministerial Council and the Federal Government, which is considering the issue of directors' duties and the related issue of the rights of minority shareholders. I will let him know what the results of those discussions are in due course. More immediately, however, I will look at the other questions that he has asked and bring back a reply as soon as I am able to do so.

SWIMMING POOL FENCING

The Hon. J.C. IRWIN: I seek leave to make an explanation before asking the Minister for Local Government Relations a question regarding swimming pool fencing.

Leave granted.

The Hon. J.C. IRWIN: There is an amount of confusion concerning the requirements of perimeter and/or isolation fencing of swimming pools. This morning I heard of a person who had just installed a swimming pool being told by a council that they were required to have isolation fencing.

Another example, which could lead to confusion, comes from an *Advertiser* article published in March this year, when the Child Accident Prevention Foundation said that the regulations make it compulsory for new pools and spas constructed after January 1992 to have isolation fencing. No doubt a lot of this confusion has been brought about by the green paper on swimming pools released by the Department of Local Government in June 1990, which states:

> The South Australian building regulations 1990, which incorporate the Building Code of Australia, will be made on 2 August 1990. Under those regulations all new pools are required to be isolation fenced to the Australian Standard but this will not be mandatory until 1 January 1992. To change that it would be necessary to make a variation to the building regulations 1990 to preserve the *status quo*.

In answer to a question by me on 15 November 1990, the Minister said that the draft white paper is being prepared for submission to Cabinet. She also said that the draft white paper will be finished this year—1990. In March 1991 the *Advertiser* stated:

> However, the subsequent white paper has been held up by the recent abolition of the department and is not expected for about four weeks.

On 26 November 1991, a spokesperson for the Local Government Relations Minister was reported in the *Advertiser* as saying that the white paper would now be released next year, which I take to be 1992. My questions are:

1. Will the Minister for Local Government Relations be responsible for the white paper, or will it come from the Department of the Premier and Cabinet?

2. Can the Minister help to clear up the confusion by explaining whether the South Australian building regulations 1990, which incorporate the Building Code of Australia, override the Swimming Pool (Safety) Act 1972?

3. When exactly will the isolation fence regulation be in operation?

4. What is the Minister's expectation for the release of the white paper?

The Hon. ANNE LEVY: I thank the honourable member for his question. I regret as much as anyone else that this matter has not advanced as rapidly as I and many other people would have wished. I certainly hope that the white paper will be available early in 1992. I am sure that the honourable member is well aware that there is no longer a Department of Local Government, but there is the State/Local Government Relations Unit, which is situated in the Department of the Premier and Cabinet and which works with me in relation to matters between State and local government. That unit will be responsible for preparing the white paper. Although it is located in the Department of the Premier and Cabinet, it is certainly in association with me that this work is being done. I hope that clears up one area of possible confusion.

The white paper will be looking at two separate issues: safety fencing for new pools and safety fencing for existing pools. The honourable member's question relates particularly to the safety factor involving new pools, so I think we can leave aside existing pools.

In South Australia we have the current law in the Swimming Pool (Safety) Act and, of course, if any Act of Parliament is in conflict with regulations, it will override the regulations. The legal situation at the moment, until there is some change, is the Swimming Pool (Safety) Act 1972, which requires perimeter fencing of a certain standard for any property in which there is a swimming pool.

The new building regulations come into operation on 1 January next year, although I should perhaps point out to honourable members that the building control branch is no longer my responsibility but that of the Minister for Environment and Planning, although I represent her in this Chamber. The building standards personnel have undertaken to consider the details of their regulations regarding isolation fencing. As I understand it, the current building code is in the form of guidelines and is not really in an appropriate form for calling up the code. I am here quoting from people with greater expertise than I have in relation to building regulations but, as I understand it, from the way the guidelines are expressed at the moment in the uniform building code, it is extremely difficult for building surveyors to determine precisely what the requirement is. Of course, the building surveyors must be unequivocal in the standards that they enforce when any application is made to a council for building approval.

Therefore, whilst isolation fencing is incorporated in the Building Code of Australia, it is in a form which, I am told, is apparently deemed not suitable for building surveyors to implement. As a result, work is being done at the national level to devise an Australian standard for pool safety which will be written not in a guideline form but in a mandatory form and which will consequently be more suitable for calling up in the building code.

This work that is being done at a national level has not at this stage been completed, and I am afraid that I have no information as to when it is expected to be completed, although I would hope that it would not be too far into the future. This would be a draft code which would set strict standards for things such as fence and gate design, fence location and other matters relating to swimming pool safety such as water recirculation standards and filtration systems. It is a code for swimming pools, not for the fencing of swimming pools. It would be broader in its application but will obviously cover fencing standards.

Other States have implemented legislation relating to swimming pool safety standards and isolation fencing both for new and existing pools, but I understand that the Government of New South Wales has recently undertaken to reconsider its legislation, partly in view of the revision which is occurring of the building code and the manner in which the code requirements are being drafted, and partly due to political pressures in the State of New South Wales. I have asked that the issue of swimming pool safety be made an item on the agenda of the next conference of local government Ministers. It would seem to me highly desirable that this matter be discussed at a national level and, if possible, that a common approach be taken for the whole of Australia. I would certainly like to explore the possibility of obtaining such a common approach at the next local government Ministers conference.

STATUTORY AUTHORITY REVIEW COMMITTEE

Adjourned debate on motion of Hon. R.I. Lucas:

That—

1. A Standing Committee of the Legislative Council on Statutory Authority Review be appointed.

2. The functions of the committee shall be—

(a) Where referred by resolution of the Legislative Council to the committee, to inquire into, consider and report on any matter concerned with the functions, operations, financial management or administration of a particular statutory authority or whether a particular statutory authority should continue to exist or whether changes should be made to improve its efficiency or effectiveness.

(b) Such other functions as are determined by resolution of the Legislative Council.

3. The committee consist of five members of the Council of whom three shall comprise a quorum.

4. The committee shall appoint a Chairperson who shall be entitled to vote on every question, but when the votes are equal, the question shall pass in the negative.

5. Unless the committee otherwise orders, a member of the Legislative Council who is not a member of the committee may take part in its public proceedings and question witnesses but shall not vote, move any motion or be counted for the purpose of any quorum or division.

6. The committee shall have power to act and to send for persons, papers and records whether the Parliament is in session or not.

7. The committee have power to report from time to time its opinions or observations, or the minutes of evidence only, or its proceedings.

8. The Council permits the committee to authorise the disclosure or publication as it thinks fit of any evidence presented to the committee prior to such evidence being reported to the Council.

9. The procedure of the committee shall, except where herein otherwise ordered, be regulated by the Standing Orders of the Legislative Council relating to select committees.

(Continued from 20 November. Page 2083.)

The Hon. M.J. ELLIOTT: I am of a mind to support the motion, but I am not absolutely convinced as to whether the form in which it now stands is appropriate. Certainly, I indicated in this place four weeks ago that there could be a need for these sorts of committees in the Legislative Council. Clearly, however, with the setting up of the stand-

ing committee system of joint Houses, an additional workload is placed on many members in this place, and there will also be important questions about resourcing, etc., of such committees. Whilst I generally support what is contained in this motion, I believe that there is a need for further examination before this Council commits itself to this path in a final form. With those words of general support for the motion, I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

EAST TIMOR

Adjourned debate on motion of Hon. Bernice Pfitzner:

That this Council—

1. Condemns the atrocities perpetrated during the incident of 12 November 1991 at East Timor Cemetery in Dili.
2. Strongly endorses the 1982 United Nations Assembly resolution on East Timor that the Secretary-General be asked to initiate consultations with all parties concerned with a view to exploring avenues and achieving a comprehensive settlement of the problem.
3. Urges the Federal Government to support the establishment of a United Nations presence in East Timor to monitor the current situation.
4. Requests the President of this council to forward the motion to the Minister for Foreign Affairs in the Australian Federal Government.

which the Hon. I. Gilfillan had moved to amend by adding the following paragraph:

5. Urges the Federal Government of Australia to recognise the right of East Timor to self-determination and independence.

(Continued from 20 November. Page 2088.)

The Hon. CAROLYN PICKLES: As I indicated last week, Government members wanted some little time to consider the amended form in which the Hon. Dr Pfitzner moved her motion and also the amendment moved by the Hon. Mr Gilfillan. I also move the following amendment:

Leave out paragraph 3 and insert the following:

3. Calls on the Federal Government to formulate proposals for a United Nations supervised act of self-determination for East Timor as a matter of priority and to use its diplomatic resources to enlist the support of the United Nations member States to ensure maximum support for such an act.

I do not intend to speak at length on this issue, except to say that I share the sentiments expressed by speakers thus far. I am sure that members all share a feeling of horror about the events in East Timor. However, I would like to place on the record some further information which I have received from Amnesty International (South Australia), and which I think members should have before they decide how they will vote on this issue.

Amnesty International indicates that since the events of 12 November 1991, at least 42 people, and possibly as many as 300, have been detained and some have reportedly been tortured and killed in police and military custody. According to one report, between 60 and 80 detainees, including witnesses of the Santa Cruz massacre, were taken from various prisons in Dili on 13 November, driven to a spot several miles outside the town, shot and buried in unmarked graves. Dozens of East Timorese were reportedly detained for questioning in Jakarta on 20 November following a demonstration in which they called for a thorough investigation into the killings and a referendum on East Timor's political status.

The Indonesian Government and military authorities have expressed regret at the deaths, and the Government has established a national investigation commission to inquire into the incident. However, the authorities have attempted to justify the massacre by claiming that security forces used force only when attacked and provoked by 'a brutal mob'. Several eyewitnesses, including a delegate of the International Committee of the Red Cross (ICRC) and a number of foreign journalists, have stated categorically that the procession and graveside ceremony were peaceful and that the soldiers opened fire without warning and without provocation. Amnesty International has viewed film footage and photographs of the incident which corroborate their testimony.

Amnesty International is calling for a thorough, impartial investigation into the cirumstances of the massacre at Santa Cruz, and of the alleged extrajudicial executions of 15 November. It is also seeking guarantees that those responsible for extrajudicial executions or for the ill-treatment of prisoners will be brought promptly to justice. It believes that investigations must be carried out by an independent body which has no link with the security forces allegedly responsible for the massacre. It also believes that any investigating body must include a team of trained forensic experts. The organisation urges the Indonesian authorities to permit investigations to be carried out under the auspices of a recognised international body, such as the United Nations Special Rapporteur on Summary or Arbitrary Executions.

Amnesty International is also seriously concerned for the safety of those arrested during and after the Santa Cruz incident, as well as scores of suspected political activists arrested during the past year. It is urging that those detained solely for their non-violent political activities or beliefs be immediately released and that, following their release, their safety be guaranteed.

It is important to go through the procedures in relation to the motion that has been moved in an amended form by the Hon. Dr Pfitzner. Originally her motion contained a paragraph that urged the Federal Government of Australia to recognise the right of East Timor to self-determination and independence. However, when she moved her motion, that paragraph was deleted. Subsequently, the Hon. Mr Gilfillan has sought to reinsert that paragraph. In a spirit of compromise and in an effort to reach some kind of accommodation, bearing in mind that the State Parliament has no jurisdiction in relation to foreign affairs, I have moved the amendment in this form and I sincerely hope that all members support it. I believe that all members share the sentiments originally put forward by the Hon. Dr Pfitzner and the manner in which she moved her original motion. I urge members to support the amendment.

The Hon. R.I. LUCAS (Leader of the Opposition): I have spoken before in relation to members of State Parliament speaking on foreign affairs related matters. It is an interesting question in relation to the position in which it puts State members. There is so much injustice in the world and there are many examples of violations of human rights. I guess it is a question of which issues we as State parliamentarians choose to address, because there are so many. The simple answer is that in the end it can be only an *ad hoc* way of addressing the issues. It depends on the individual responses of individual members who feel strongly enough about issues to bring them to the attention of members of State Parliament and ask us to address them.

In the past we have addressed motions on China, the USSR and on Chile. We now have a motion moved very ably by my colleague the Hon. Bernice Pfitzner some two or three weeks ago.

My position remains much the same: when we choose, as a State Parliament, to address issues outside our strict bounds of responsibility, such as these issues, it would be

preferable if there was a very great possibility of there being consensus and quick consensus on issues, so that we do not take up too much of our time in lengthy debate and so that we can get a unanimous view of the Parliament on an issue, which can then be relayed in the appropriate manner—whether it be to the Federal Minister or some other person, body or organisation—as the view of the Legislative Council of South Australia. Certainly, in relation to China and the USSR, we were part of—

The Hon. Carolyn Pickles interjecting:

The Hon. R.I. LUCAS: Yes, and South Africa, as the Hon. Carolyn Pickles reminds me—we were one little part of what I suppose was a worldwide movement or expression of opinion (and we do not overstate our importance in that process). From that viewpoint, together with many other Parliaments, on almost all occasions we expressed a unanimous view on the issue at hand, which indicated that tripartisan support—Labor, Liberal and Democrat. So, if there is a role it is that area where we should be looking and we should be considering the possibility of consensus—and quick consensus—as part of a worldwide expression of opinion. I would then hope that the potentially controversial or divisive issues could perhaps be debated in other forums and on other occasions.

The motion before us, as I said, was very ably moved by my colleague the Hon. Bernice Pfitzner. I would like to address two broad areas. First, I will address the area where there is unanimous support in this Chamber and within the Parliament generally, that is, the abhorrence at the massacre at the Santa Cruz cemetery on 12 November. I think that all members would condemn, without reservation, the shootings at the cemetery in Dili. There can be no justification for the use of force on such a scale against civilians. We certainly support calls for a full and open investigation of the incident to ensure that all those responsible for these events are brought to account in accordance with Indonesian laws and internationally accepted standards of human rights.

The inquiry must ensure that people can give evidence free from fear of reprisals. It must allow observers from international human rights organisations and make public all evidence and its findings. I note that the inquiry, which is called the National Commission of Investigation, is to be headed by a Supreme Court judge and has, among its members, representatives from the Ministries of Foreign Affairs, Home Affairs and Justice, a member of Parliament, and a member of the armed forces.

We welcome the statements by the Indonesian armed forces leaders that the incident and loss of life was deeply regretted and in no way sanctioned by the armed forces leadership. In saying that, I know that there has been some recent press publicity in relation to statements by one particular member of the Indonesian military, but I have referred to the officially sanctioned statements representing the Indonesian armed forces leaders that the incident and the loss of life was deeply regretted and in no way sanctioned by the leadership of the armed forces.

We reiterate that all steps must be taken to determine how the incident happened and where the responsibility lies. We also welcome the announcement that there will be a full public report of the commission's findings. However, as already outlined, we believe that the commission's hearings should, as far as possible, be open to the public, including international observers. If that were to occur, in our view this would certainly enhance the international credibility of the inquiry.

I want to place on the record the official position of the Federal Liberal Party and the Federal National Party, or the Federal Coalition, as enunciated by Senator Robert Hill, the Foreign Affairs spokesperson for the Coalition, in a similar debate in the Senate just yesterday. As a result of the discussions I have had with Senator Hill, his staff, and others, I suggest that even the original motion that we have before us today, together with the amendments, goes much further than the Federal Caucus position of the Federal Labor Party, certainly the Federal Liberal Party position, and even the position of the Federal Democrats as moved by their foreign affairs spokesperson in the Senate yesterday. So, the positions of the Parties in this State are different from those of their Federal colleagues.

I think that the Hon. Carolyn Pickles would acknowledge that the Labor Party's position in South Australia goes further than that of their Federal colleagues; our position goes further; and the Australian Democrats' position goes much further than even its Federal position as enunciated by its spokesperson yesterday.

The Hon. I. Gilfillan: Rubbish! Where are you getting your information?

The Hon. R.I. LUCAS: You can't interject out of your seat. Are you going to check that now? I want to place on record the position of the Federal Liberal Party, and I quote Senator Hill:

> We have hopefully moved into what some are describing as a new world order in which justice prevails and in which we have an international community more willing to comply with the international standards of human rights that have been now agreed. On the facts that we have before us so far relating to this incident, it would seem to be a gross abuse of the minimum standards that the international community has set.
>
> Because it is an international issue, it gives us as Australians the right and the responsibility to protest way beyond anything that concerns bilateral matters. Regrettably, Indonesia—as we saw with China and as we see with some other countries—still seeks to regard such matters as internal matters. We press the same point upon Indonesia as we pressed upon China: these incidents can no longer be regarded as internal matters, domestic matters; they are matters of international concern in which the international community has a right and a responsibility to act.
>
> What, therefore, should Australia do? What form of protest might most effectively reduce the chance of such a terrible event recurring? We are pleased about one aspect and that is that the Indonesian Government seems to have responded in this instance somewhat differently from its response to not dissimilar tragedies in the past. In this instance it has said that it deeply regrets the incident and the loss of life and that it will conduct a comprehensive investigation of all aspects of the incident. It has said that anyone 'proven to have violated the prevailing laws' will be charged and tried in accordance with Indonesian law.
>
> The Indonesian Government has set up a national committee of investigation to carry out this inquiry, which is, as the Minister said and I agree, of an entirely unprecedented stature, to be headed by a Supreme Court judge with members drawn from the Ministries of Foreign Affairs, Home Affairs and Justice, the Parliament and the armed forces.
>
> It demonstrates, I think, that the Indonesian Government sees that it does have a responsibility in this instance to properly investigate what occurred and to take appropriate action. We, of course, have pressed upon the Indonesian Government that such an inquiry should be open and free and that its deliberations should be in public; that its results should be made public; and that the Indonesian Government should bring criminal action against those who have demonstrated to have been in breach of the law. Only by such action will the Indonesian Government demonstrate to the international community that it is prepared to comply with what I described as the minimum standards of human rights which we are all now prepared to accept.

Senator Hill spoke at length on that motion yesterday and that is just a relatively brief extract from his contribution. However, I wanted to read that portion of his statement into *Hansard* to indicate the official position of the Federal Coalition.

As I indicated earlier (and I did not want the Hon. Mr Gilfillan to take any offence, because none was intended), I believe all members in this Chamber are going a little further down the track than did their Federal colleagues in

their debates yesterday. Whilst I am not sure whether the Hon. Mr Gilfillan is in earshot, I will quote from a joint letter dated yesterday from Vicki Bourne, the Australian Democrats Senator for New South Wales and Jo Vallentine, The Greens, Western Australia, to the President, the Hon. Kerry Sibraa, and it states:

> Dear Mr President,
> Pursuant to Standing Order 75, we give notice that today we propose to move:
> That in the opinion of the Senate the following is a matter of urgency:
> The need for the Australian Government:
> *(a)* to immediately send a fact finding delegation to East Timor to investigate the Dili massacre;
> *(b)* to reassess Australian military aid and defence equipment exports to Indonesia;
> *(c)* to move that the United Nations facilitate talks between all parties on the future of East Timor;
> *(d)* to request, in the strongest possible terms, that Indonesia agree to and facilitate all of the above.

It was not intended as a criticism in any way, because State branches and Federal bodies are independent organs and are quite entitled to make their own decisions on these matters, but the motion that was moved by the Australian Democrats and The Greens in the Federal Senate yesterday does not go as far as supporting independence and self-determination for East Timor.

I am not sure whether the Hon. Mr Gilfillan heard my quote from the letter written by Senator Bourne and Senator Vallentine to the President yesterday. It raises many issues, but it does not raise that particular complicated issue. Again, I do not want this to be misinterpreted in any way. That was not intended as a criticism of anybody. It is really just a statement of where we are in this Chamber, as opposed to where various members of our Federal Parties were yesterday in the Federal Senate in relation to discussing this issue. That is the first area addressed by the motion.

In the spirit of reconciliation and consensus, the Hon. Mr Gilfillan tells me that a statement was released yesterday by Senator Bourne which differs in emphasis from the motion that she moved in the Senate. I will quote from that, because I think the Hon. Mr Gilfillan is somewhat hamstrung in not being able to speak further in this debate. That release states:

> But it is not strong enough. Three major weaknesses stand out: there is no acknowledgment of the East Timorese people's right of self-determination despite UN resolutions reaffirming it; secondly, military exports and aid will continue and may only be reviewed if the internal Indonesian investigation is judged inadequate. They should be stopped immediately; and thirdly, it envisages at most a marginal role for the United Nations; the United Nations should be urged to play a central role in investigating the massacre, protecting East Timorese and resolving the underlying conflict.

I think that fairly places on the record Senator Bourne's public statement and also on the record is the motion moved by Senator Bourne and Senator Valentine for the Greens in the Senate yesterday. That is in relation to the first area, and I think all members would condemn the massacre and the killings.

We now move to what I find to be a difficult area, namely, the whole question of members in the State Parliament addressing the difficult areas of self-determination and independence, and Australia's relationship with another country—Indonesia. In doing so I want briefly to refer to some material, again provided to me by Senator Hill in relation to the background of the Indonesia-East Timor situation.

In December 1975 Indonesia invaded East Timor and brought to an end the civil war between the forces of Fretilin and the UDT which had erupted in August 1975, following an unsuccessful attempt by the UDT to sieze power. That was a matter of some debate in 1975, and in the *Advertiser* today there is a front page story about two former senior Whitlam Ministers indicating their view. I am not saying that they are right, because I do not know. They indicated their view of the attitude of former Prime Minister Whitlam and the Whitlam Government in that period in relation to what they might or might not have said to Indonesia in relation to invading and taking over the East Timor area. All members would have seen that article in the paper today.

In January 1978, the Fraser Liberal Government recognised the incorporation of East Timor into Indonesia. The Minister for Foreign Affairs at the time, Mr Andrew Peacock (still in the Federal Parliament) said that the Government remained critical of the means by which integration was brought about but recognised that it would be unrealistic to continue to refuse to recognise *de facto* that East Timor was part of Indonesia. In February 1979, again under a Federal Liberal Government, the Australian Government formally recognised the *de jure* incorporation of East Timor. The Hawke Government came to power with a platform supporting self-determination for East Timor, but this was abandoned in practice from the beginning. No change was ever made to the formal recognition of *de jure* sovereignty.

In more recent times—in November 1989—the signing of the Timor Gap treaty in relation to important oil resources in the Timor Gap area put Australia's recognition of incorporation on an even more formal footing. I do not have the detail in front of me but I think the Timor Gap treaty between Indonesia and Australia in 1989 had to be formally ratified by Federal Parliament and, although I am not 100 per cent sure, I think that that formal ratification, certainly supported by the Labor Government, was also supported by the Federal Liberal Party in the Federal Parliament as well. The Hon. Mr Gilfillan might be able to indicate the Australian Democrats' position at a later stage. The point being made by Senator Hill was that that Timor Gap treaty and its ratification by the Federal Parliament as recently as December 1989 have put Australia's recognition of that incorporation on an even more formal footing.

Another point that I want to quote is from another statement made by Senator Hill, which was released in the past week. It says:

> Whilst not in any way excusing this violence in relation to the massacre at Dili, we [the Federal Liberal Party] recognise that the situation in East Timor is complicated by the armed resistance to the Indonesian Government by the pro independence Fretilin movement. The efforts of the Catholic Church and the provincial Government to prevent human rights abuses would be strengthened if dissident groups in East Timor were to eschew violence in pursuit of their political aims.

I guess that takes members back to other debates that I am sure they have had in other forums in relation to the ANC and South Africa. Again, there may be differing views in this Chamber in relation to their support or otherwise for armed and violent resistance to try to change Governments in particular parts of the world. My personal view in considering this vexed issue comes from trying to balance those sorts of arguments that I have read from Senator Hill and what we see in many other parts of the world, with the world-wide trend towards independence and self-determination in many other parts of the world. Whilst we have seen it basically in federations which are in the throes of breaking up, such as the USSR and Yugoslavia, there are certainly many other examples of a move towards independence and self-determination throughout the world.

Certainly, as a Liberal, it is a difficult concept to argue against, that is, in particular, the concept of any genuine movement seeking self-determination. Therefore, when one addresses some of the amendments that we have before us, from the Hon. Mr Gilfillan and the Hon. Carolyn Pickles,

we raise the question not just of people's self-determination but also of the involvement of outside bodies and countries in assisting self-determination; for example, with the amendment being moved by the Hon. Carolyn Pickles, relating to the outside body being the United Nations supervising some act of self-determination. Whilst obviously we cannot expect in any amendment to have all the detail enunciated quite properly, there are questions as to how the United Nations would do that. If Indonesia for example were to oppose it, are we suggesting that the Federal Government and other Governments ought to be supporting the United Nations imposing itself into Indonesia and conducting, against the wishes of the Indonesians, a referendum, ballot or plebiscite, or something along those lines?

Again, I am not really sure of the detail of how such an outside body, even though it is the United Nations, would operate with these supervised acts of self-determination. Again, I think it is the sort of detail that is very difficult, complex and complicated for us in the Legislative Council of South Australia to address adequately and comprehensively during private members' time at the conclusion of the parliamentary session.

In talking about trends in the rest of the world, there are many examples throughout the world of peoples who want to determine their future and seek independence. For example, we have the Kurds in Turkey, Iraq and Iran who fought a war for many years seeking to form an independent Kurdistan. There were many gross civil rights abuses against the Kurds, including massacres, chemical warfare, and torture against the Kurds in those areas and they certainly want the right to self-determination and independence in that area.

In Bougainville just to the north and not too far from the area which is the subject of this motion we have the Bougainville separatists who want to separate from Papua New Guinea. A press report in the past week—again, its accuracy cannot be vouched for—says that 3 000 people have died or are dying because Papua New Guinea has denied Bougainville people access to medical supplies. I am not in a position to argue whether or not that figure of 3 000 is correct. Certainly, though, the Bougainville separatists want to go their separate way and they do not want to be where they are at the moment. As I understand it, they want to determine their future in independence and they are arguing that many people are dying because of the actions of the Papua New Guinea Government. As I said, the press report says that up to 3 000 people have died or are dying because of the refusal of access to medical supplies.

I am advised that people on the small island of Santo in Vanuatu have sought self-determination and independence in recent years and that that uprising or independence movement was put down by a police force supported by Papua New Guinea and Australia, that the Australian Government and Papua New Guinea decided that that independence movement or movement for self-determination on Santo should not be supported and that Santo was part of Vanuatu.

The Hon. T.G. Roberts interjecting:

The Hon. R.I. LUCAS: The Hon. Mr Roberts suggests there was only one person, but that is certainly not my advice. The movement might have been small but, if we are talking about a principle of self-determination, we are not necessarily arguing whether it is 1 000 people or one million people. If we are talking about the principle of people's rights to self-determination and independence, the number of people in an area should not be the question. It is the principle of whether or not they should be able to and whether we as Australian people, and now we in the Legislative Council, support all of these people in relation to their quest for self-determination and independence.

Certainly, we might be able to support that but the point I am trying to make is whether we in Australia should be calling on an outside body, albeit the United Nations, at least in the end, if the terms of the motion are clear, impose a supervised act of self-determination in those areas. It is a difficult area. All I am saying is that from my viewpoint as a Liberal standing in this Chamber, it is not black and white to me. It is extraordinarily difficult—it is grey. There were arguments from Senator Hill, which I tried to put earlier but, as a Liberal in this Chamber, the notion of supporting self-determination is obviously very powerful and an attractive notion, but there are equally these other questions that, if we support it in East Timor—and perhaps there is a powerful argument for that—then do we support the Basque separatist movement in Spain and France, but particularly in Spain? Again, many people have died fighting for their separate state. For many years there has been ongoing warfare, I am told, in relation to that movement and I am told that there are many other movements whose names escape me in that area seeking self-determination and independence in that area.

I refer more recently to the situation within the Republic of Russia. We have had the spectacle of the USSR breaking up into its constituent republics, most of them wanting to go their own way. Within Russia itself, in the Chechen-Ingush region a group wanted to separate and be free from Boris Yeltsen and Russia. Boris Yeltsen sent in the troops to put down the uprising in that area. Down in Armenia and Azerbaijan there is an area between those two republics that wants to go its own way. There are many examples throughout the world of people rightly or wrongly—I make no judgment about the individual examples—

The Hon. Diana Laidlaw: Judge them on their merits.

The Hon. R.I. LUCAS: Exactly. We all have to judge them on their merits. That is a matter for the individual conscience of each member in this Chamber. While one would not suggest that it is warfare, if one looks at the situation in Quebec in Canada, I am advised—I have never travelled to Quebec—that if one asked Quebec residents whether they would like to be independent and free to determine their future, perhaps with the United Nations supervised act of self-determination—

The Hon. K.T. Griffin: You'd have to ask them in French.

The Hon. R.I. LUCAS: Yes, one would have to ask them in French. If the Legislative Council had the power to give them the United Nations supervised act of self-determination, they would jump at the opportunity of determining their future to be an independent state or country and get away from Canada. People I have spoken to who have been there have said that that would certainly be the case in relation to Quebec.

The Hon. T.G. Roberts: There's no history of violent suppression of their culture.

The Hon. R.I. LUCAS: I just said that whilst that moves away from the question of warfare, as in the case of the Kurds and the Basque separatists and perhaps in Bougainville and areas like that, where we were talking about warfare, we still have the next stage of the continuum where people such as those in Quebec, whether or not they have been violently suppressed, would argue that their culture in some respects has been suppressed, although not by warfare. However, they would argue that what has been done to them they do not like and that they would like to reassert their freedom, independence and cultural traditions in an independent state. I accept that. That is at the other end.

Again at the other end I am told, although I am not old enough to remember (the Hon. Terry Roberts might be old enough) but back in the 1930s there was almost majority opinion for Western Australia to secede from the Commonwealth of Australia.

Members interjecting:

The Hon. R.I. LUCAS: I do not know whether it was the majority—it might have been Lang Hancock. I am told that in the '30s it got to a stage where there was a significant number—a majority some would argue—who wanted to secede.

The Hon. T.G. Roberts: My grandfather told me about it!

The Hon. R.I. LUCAS: The Hon. Mr Roberts tells us that his grandfather told him about that. As to those examples, I give no backing at all to the individual separatist movements. I do not know the reasons for or against. As the Hon. Diana Laidlaw said, they have to be judged on their merits, and I accept that. All I am saying is that it is very difficult in relation to all of these to make judgments, and if we do as a Parliament or as individuals support self-determination supervised by an outside body going into another country, even if that outside body is the United Nations, then we, too, must indicate, if we are asked, whether we support exactly the same rights being given to all those other separatist and independence movements in all other parts of the world.

It might be easy for some members because they might support all of them. The United Nations could have a full-time job supervising acts of disintegration—and by that I mean the breaking up—of the various countries and federations throughout the world as small groups and parts of countries seek self-determination and independence. If that is acceptable to the individual conscience of members, that is fine. As I said, from my viewpoint it is all very difficult: it is not black and white but a mass of grey. I want to indicate for those reasons that the best opportunity we have here in this Parliament of having absolute consensus—support from every member of the Chamber—is to concentrate on the first paragraph of the motion, which condemns the massacre, and also to support something that goes a bit further even than my Federal colleagues have gone—and this is not the Federal Liberal Party position—namely, paragraphs 2 and 3 of the Hon. Bernice Pfitzner's motion, which does call for some United Nations monitoring, involvement and facilitation of talks.

That is presently not the position of the Federal Liberal Party and—although again there might be a more recent telex from today—as of yesterday it was not the position of the Federal Labor Government, either, that the United Nations, even to the extent of monitoring and facilitation of talks, be called in.

The Hon. Bernice Pfitzner takes us a few steps down the track. I think that there is a very good chance that everybody in this Chamber can support taking us a few steps down the track to United Nations involvement. However, if the majority in the Parliament want to go a few more steps down the track to the position of the Hon. Carolyn Pickles or perhaps right to the end of the track in relation to full independence, my personal position will be to oppose the amendments. I indicate that there are varying views on this issue not just within the Parliament but within Liberal Party members as well, and each of us will indicate when we vote on this particular motion. There are varying opinions here. I do not want anyone to think that the views that I am expressing are shared 100 per cent by all my colleagues, but they are nevertheless my views. My position will be to oppose the two amendments and support the original motion of the Hon. Bernice Pfitzner, but, if the motion were to be amended, I would oppose the amended motion.

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

PERSONAL EXPLANATION: MEMBER'S REMARKS

The Hon. I. GILFILLAN: I seek leave to make a personal explanation.

Leave granted.

The Hon. I. GILFILLAN: In the remarks made by the Hon. Mr Lucas on the motion that the Council has just debated relating to East Timor, I claim misrepresentation of a difference between the State Democrat position and the Federal Democrat position on evidence or material with which he had been provided through Senator Rob Hill regarding a motion moved in the Senate Chamber yesterday. I should like to indicate that the position of the Federal Democrat Senators and the State Democrat—

The Hon. K.T. GRIFFIN: On a point of order, Mr Acting President, I raise the question whether that is a personal explanation in the circumstances.

The ACTING PRESIDENT (Hon. G. Weatherill): The honourable member will have to give a personal explanation. That was not a personal explanation, so I uphold the point of order.

The Hon. I. GILFILLAN: The mispresentation with which I took issue was the statement that the Hon. Mr Lucas made that there was a difference in the expression that I had indicated from that of Federal Senators. I indicated that that was a misrepresentation of—

The Hon. ANNE LEVY: On a point of order, Mr Acting President, that is not a personal explanation. A personal explanation can be an explanation of one's personal views or can correct a misrepresentation of one's personal statements; but it cannot refer to what one's Party may or may not do here or elsewhere. That is not a personal explanation.

The Hon. I. GILFILLAN: Standing Order 175 provides:

A member who has spoken may again be heard, to explain himself—

The Hon. ANNE LEVY: Order!

The Hon. I. GILFILLAN:

in regard to some material part of his speech—on which—

The Hon. ANNE LEVY: On a point of order—

The ACTING PRESIDENT: I will call 'Order!'

The Hon. I. GILFILLAN:

he has been misquoted or misunderstood.

The ACTING PRESIDENT: Order! My understanding is that the honourable member is using leave to make a personal explanation when he really wants to say that he has been misquoted or misunderstood.

The Hon. I. GILFILLAN: Misunderstood.

The ACTING PRESIDENT: Under Standing Order 175 you can do that.

The Hon. I. GILFILLAN: Thank you, Mr Acting President. The misunderstanding—I think I have already made this point previously and I accept that—was that in my statements I was in disagreement with the position of the Federal Democrat Senators. I want to make it plain to this Chamber that that is not correct. I sought to indicate that by making two quotations from a speech which will clear up that misunderstanding. It is on that basis that I seek leave to make the explanation. I quote from the speech of Democrat Senator Bourne yesterday:

The Australian Democrats, since the inception of the Party, have been consistently—

The ACTING PRESIDENT: Order! The honourable member cannot do that.

MOUNT LOFTY RANGES

The Hon. BERNICE PFITZNER: I move:

That this Council—

1. Urges the Government to make fully public the complete draft of the South Mount Lofty Ranges Management Plan.

2. Recognises the concern in the local councils regarding the proposed establishment of a Mount Lofty Ranges Regional Authority before the management plan has been put on public exhibition.

3. Disapproves of the proposed establishment of the regional authority before Parliament and the community have had an opportunity to assess the management plan in its entirety.

4. Calls on the Government to cease the processing of staff appointments to administer the regional authority.

The Mount Lofty Ranges have presented the Government and the local councils and the community in the Adelaide Hills with a dilemma. It is a scenic spot, provides Adelaide with over 60 per cent of its water and is prime real estate. As a result of this complexity, the Mount Lofty Ranges review was established approximately five years ago and was expected to be completed in two years. However, we now have a review which is still going after five years and $4.5 million has been spent. At present there is very little to show in the way of constructive planning policies for the Adelaide Hills.

Whilst waiting for the final SDP we have had three interim SDPs. The Mount Lofty Ranges SDP 1, put out on 14 September 1990, was the draconian one which prohibited any detached dwelling being erected.

The Mount Lofty Ranges SDP 2, which was issued on 18 November 1990, followed quickly because of the hue and cry engendered by SDP 1. This allowed for a detached dwelling to be erected on an allotment of four hectares or less provided that a habitable dwelling did not already exist.

On 7 November this year we had SDP 3, which is known as the Adelaide Hills/Fleurieu Peninsula SDP. The third interim SDP has had a change of name. However, nothing significant has changed in its content compared with interim SDP 2. Initially, there was a change in the 'four hectares or less' principle, which was to be removed. The implication of the removal of this principle was that one could now erect a dwelling on any size land on a single title, provided that it did not form part of a group of contiguous allotments.

If one had a group of contiguous allotments held in single ownership on 14 September 1990, one could only build on one of those allotments, provided that there was not a habitual dwelling on any one of these contiguous allotments. However, after only a week, the principle of 'four hectares or less' was reintroduced, and we now have an SDP 3, which is not significantly different from the SDP 2. This was after 12 to 15 months had elapsed, with numerous bureaucrats on high salaries supposedly having worked on it to bring in something of substance. It also creates some doubt as to the legality of SDP 3. If it is basically the same as SDP 2 with only '12 minor changes of no significance', how valid is it, taking into account that section 43 of the Planning Act 1982 allows only for an interim SDP to last for 12 months?

I note that the Minister has extended this SDP until March 1992, as the Department of Environment and Planning has, 'not had the time to reach the depth of details it required'. That is a quote from the *Advertiser* on 15 November 1991. It is incredible to me that the depth of detail has not been reached after five years of consultation. The excuse appears to be that the Adelaide planning review, launched in April of this year, must be taken into account. I only hope that the Adelaide planning review does not take another five years.

There is now circulating amongst a chosen few a draft document known as the 'South Mount Lofty Ranges Management Plan', apparently written on the basis of recommendations of the Mount Lofty Ranges Steering Committee. The Hills council, in particular, has caught some of the rumours of its contents and is particularly worried about different aspects of the management plan. The proposed management plan ought to be made available publicly so that the community, local government and Parliament can check whether their concerns are real or apparent, and so that full consultation might begin.

There are concerns about the management plan. Generally, it is most unusual that a management plan is put in place before aims, principles and objectives are enunciated. However, I presume that it is a method of finding out which implication or strategy of policies are acceptable to the majority in the community. In that way, one can then write the aims and objectives in to suit—a back to front method, I would suggest, which smacks of political expediency rather than a blueprint for vision and innovation!

The concerns in the management plan related to: watershed areas, transfer of development rights and vacant allotments, conservation policies, rural land, the hills face zone, urban growth and development, general amenity standards and the proposed regional authority.

In relation to the watershed areas, very little is being done about rural properties held as a single title, which are totally unsuitable for development. One should address whether these areas are riparian or water sensitive zones; whether they are subject to flooding, erosion, subsidence or extreme bushfire hazard; and whether the areas are too steep or unsuitable for the disposal of septic effluent, etc.

The further development in the watershed townships are a concern, as they have no adequate sewage and stormwater treatment facilities. There also does not seem to be any short or long-term plan for providing or upgrading these facilities. The land bordering a stream or river known as riparian areas needs to be protected, and policies for these are vague. There is a suggested buffer zone for these areas in the management plan but these are 'fixed buffers'. It would be preferable to have site determined buffers to take into account the different topography surrounding the particular stream or river. This is an important consideration, as where a stream or river feeds into a water supply storage it is important to protect the quality of influx and also to ensure that the stream or river acts as a water treatment system to the maximum possible extent. Certain forms of vegetation provide an effective filter for sediment and pollutants. The retention of vegetated strips is a good management technique. The extent of land requiring this sort of protection will vary according to soils, slopes, landforms, rainfall, nearby land use, etc. These features have to be taken into account when deciding on the buffer zones.

Finally, the watershed areas are important as they contain the water sensitive zones. In the management plan new terms are now used such as public water supply zones, primary production zones and rural living zones. These zones are not explained in the glossary supplied, nor are these zones identified. For example, is the riparian area included in the water sensitive zone? Is the 900 mm rainfall area included in the public water supply zone? Other activities in the watershed need to be looked at in detail, for example, mining and tourism, and firm guidelines need to be in place.

The second area is the transfer of development rights (TDR). This is an interesting concept and needs to be precisely detailed. It cannot be vague and open to interpretation, as a lot of planning guidelines tend to be. I understand that it is the intention to create a large number of new rural living areas to implement the transfer of development rights scheme. We need to know the locations of these transfers; which are the areas to be transferred; where are the new areas that will receive the transfer; and will the new areas be still in the watershed or outside the watershed? Further, which or what agency will be handling the conveyancing of the land transfer, that is, Government or private? TDR is a technique to compensate landowners for the land which is in a high water sensitive zone and possibly not able to be developed. We need to look at this technique in detail and for the landowners themselves and the community to take part in the discussion of this relatively new concept.

Conservation policies are very superficial in the management plan, and in some key areas of the environment there are problems and issues. Such issues are ecologically sustainable development, for example, waste minimisation management, energy conservation, conservation of natural resources such as water and minerals, elimination of all types of pollution, and land preservation.

Conservation of biological diversity involves measures for protection of endangered species and plants and inadequacies in the current network of conservation parks.

The preservation of European and Aboriginal heritage is a topic that is not mentioned at all. I refer also to preservation of areas and sites of outstanding scenic beauty. Areas like the coastline between Cape Jervis and Victor Harbor ought to be considered.

I refer also to rural land. There is no overall plan for agricultural development in the Adelaide Hills. Such a plan needs to be prepared for the whole region before the more detailed management plan can be implemented. The plan should address potential new forms of agricultural development in the Adelaide Hills; promotion of various activities to satisfy markets more fully, for example, diversification, improving quality, etc.; promotion of organic farming; provision of greater support to family farms; future directions on part-time farming; and major problem areas, for example, marginal farming areas where specific action plans need to be prepared.

The hills face zone is an area of great importance. The decision to exclude it from the management plan is beyond comprehension. The management plan justifies this with one sentence:

> The hills face zone which is regarded as a backdrop for the Adelaide plains and therefore should be considered in that context.

That statement is in direct contrast to the concept of the second generation parklands, which was launched by the Hon. Dr Hopgood, the then Minister for Environment and Planning, in 1984. In a blaze of publicity, in a press release the Minister stated:

> The second generation parklands will provide green spaces for people in the outer suburbs to enjoy and use in just the same way as the city parklands already provide for inner areas ... Much of the land to be incorporated in the second generation parklands is already parks and reserves. However, it is important that the future as open space of such areas be safeguarded. A study will determine the exact boundaries of the parklands but we want to provide a system which links these open areas with creeks and rivers and the hills face zone.
>
> ... The idea is visionary [which it is] and will take many years to establish.

We are now seven years down the track and nothing has been done. He continued:

> Nevertheless, we need to look ahead to ensure Adelaide is well served by open space in the twenty-first century ... Just as we are now grateful to the early colonists for setting aside Adelaide's parkland belt so also do we need to lay our own framework for the future.

Dr Hopgood then goes on to say that the second generation parklands study would include various ideas and one of the ideas relating to the HFZ was 'the preservation and enhancement of the natural rural character of the western slopes of the Mount Lofty Ranges, that is, 'hills face zone'.

I wonder what has happened to that study? Why was it not implemented, as I understand that it was stated that the hills face zone was to be the cornerstone of the second generation parklands concept? Why is such an important part of the Mount Lofty Ranges not included in the review? But now, in the Mount Lofty Management Plan, it is to be excluded from consideration. It must be understood that the hills face zone has been under extreme pressure for development over the past two years and the zone should be considered an integral part of the Mount Lofty Ranges and planned accordingly. The Adelaide Planning Review appears to be concerned only with the visible part of the hills face zone. Does that mean that the non-visible parts can be further developed? This is disconcerting to those of us who are concerned about the area's future.

The next area of concern is the urban growth and development. Except for watershed townships, where some parameters have been set down for urban expansion, the rest of the management plan lacks basic policies for urban growth and development, for public transport and the provision of community facilities. Matters which should be considered in directing growth to existing townships are: spare capacity in sewerage and sewage disposal facilities; spare capacity in schools; spare capacity in schools; spare capacity in community and health facilities; service threshold limits—for example, one chemist per 3 000 population and one primary school per 1 000 population; availability of or potential to provide public transport; physical or environmental constraints; and conservation of good farmland.

Another issue relates to general amenity standards. General amenity control seems to be weakened in this management plan. The Adelaide Hills are one of Adelaide's greatest natural assets and every effort should be made to retain and enhance their character.

Finally, I wish to address the issue of the proposed regional planning authority. The concept of a regional planning authority for the Mount Lofty Ranges has many difficulties. In general, the main difficulty is whether regional planning is to be comprehensive and have vision for the future, or is regional planning to do only with matters of physical development and its control? The latter is a very narrow concept. The abstract of a report by Mr Bowie in 1990 states:

> This report embodies observations on the practice of regional planning in non-metropolitan regions of New South Wales, Victoria and New Zealand. It analyses the results, plans and practice of non-metropolitan observations, interviews, and other data collected in the field in 1988 and from relevant literature, concluding that non-metropolitan regional planning has not been effective generally and that a great deal of this may be explained in terms of a reluctance of central government to enter into genuine agreements with regional communities, and a reluctance on the part of planners to seek strategic visions. The future of regional planning in these jurisdictions depends on whether central governments are serious in regard to regional planning.

For the Mount Lofty Ranges there are local problems such as a possible establishment of a fourth tier of government, which will duplicate existing planning administration; possible inadequate and unsatisfactory composition of representatives; and possible difficulty with obtaining and utilising

expert advice for overseeing any scheme for the compensation of landowners or addressing special problems such as water quality, etc.

Over and above these local problems of regional planning is to put this concept in a wider context, especially as this area, as stated, provides the whole of Adelaide with over 60 per cent of its water. Thus, the creation of a regional planning authority for the Adelaide Hills cannot be considered in isolation from the planning administration of the rest of the State. There can be no doubt that the creation of a regional authority in this area would set a major precedent for the establishment of regional authorities elsewhere. Therefore, the creation of this body has to be considered within the wider context of future planning administration of the whole State. It would certainly be extremely premature for the Government to establish this authority while the Adelaide Planning Review is examining the major problems with the current planning administration and determining the most appropriate administrative structures to have in future. In conclusion, in view of the potential difficulties and conflicts that will arise with any proposal, I again commend this motion to the Council.

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

CHILE

Adjourned debate on motion of Hon. I. Gilfillan:

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

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

2. the proceedings against prisoners charged with politically motivated offences are re-examined without delay, aimed at determining whether those prisoners who did not receive a fair trial according to international standards should be released or should have their case re-heard under fair procedures;

3. the death penalty is abolished;

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

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

which the Hon. T.G. Roberts had moved to amend by leaving out paragraph 5 and inserting:

and further this Council calls upon the Federal Government, being a signatory to the International Covenant on Civil and Political Rights, to advise of its concern that an independent and impartial review of the judiciary be held.

(Continued from 20 November. Page 2091.)

The Hon. R.I. LUCAS (Leader of the Opposition): Hundreds, possibly thousands, of people disappeared during the 17-year rule of general Augusto Pinochet. The harshest period of oppression was from September 1973 to January 1974 when the secret police routed out the opposition. A report in the *Sunday Mail* of September 1991 stated that recent exhumations of unidentified bodies at Santiago's main cemetery are forcing the Chilean nation to confront the painful legacy of that 17-year rule. The exhumations were ordered by Judge Andres Contreras at the request of the Catholic Church's human rights agency, the Vicary of Solidarity.

Some of the bodies exhumed from Yard 29 of Santiago's general cemetery contained 35 bullet impacts and others had broken bones and indications of torture. The graves are believed to hold bodies of 105 human rights lawyers killed in Chile's 1973 military coup. Other victims are understood to be union members, community leaders and leftist sympathisers of the toppled Government of Marxist President Salvador Allende.

In March this year, President Patricio Aylwin, who was sworn into office a year earlier ending almost 17 years of military rule, released a chilling report called the Rettig report on human rights abuses in Chile. That Rettig report adds to other reports by esteemed international human rights organisations such as Amnesty International, which have also chronicled the saga of human rights abuses in Chile. The Rettig report detailed more than 2 000 killings by the military regime's secret police during the previous 17 years under General Pinochet. At least 957 people disappeared after being arrested by security forces, according to the Government report.

President Aylwin is under pressure from his supporters to bring to trial those responsible for human rights abuses. However, General Pinochet, who has stayed on as army Commander-in-Chief of the 53 000 strong army, has vowed that none of his men will be tried. It is interesting to note that some members in this Chamber, the Hon. Mr Gilfillan, the Hon. Terry Roberts, I think the Hon. Bernice Pfitzner and myself, were indeed fortunate to meet with the newly appointed Australian Ambassador to Chile just last Thursday, I think it was. That was one of the reasons why I have deferred my contribution in this debate until today.

The Australian Ambassador to Chile indicated that, whilst General Pinochet had indeed said that, there had been some evidence of a small number of trials of some of the key military leaders in the Pinochet military apparatus. Whilst there certainly have not been wholesale trials of all the people involved in the killings and the torture, there has been some evidence of a limited number of trials of some of the key people in General Pinochet's regime.

General Pinochet has boycotted meetings with Aylwin and used others to lambast the President's policies and aides and has warned his armed forces will not tolerate being put on trial for human rights abuses. His frequent vow to protect his men from civilian attack remains an ominous reminder of the army's power to defy Government authority. This control by default that Pinochet maintains, at least in part, over power in Chile by a commander of the army, together with the lessons of retribution learnt after the collapse of military rule in Argentina, have been influential in the Chilean Government's decision not to pursue a wide scale and comprehensive witch-hunt for architects of past crimes.

One of the points that was brought home to members by the Australian Ambassador to Chile, Matthew Peak, was that in a couple of the important arms of control in Chile—the Senate and the judiciary—General Pinochet still maintains elements of control through past appointments that he has made to both bodies. As I understood his advice to us, members of the judiciary and I think members of the Senate were appointed for life.

The Hon. I. Gilfillan interjecting:

The Hon. R.I. LUCAS: I was just looking to the Hon. Mr Gilfillan for advice there, but my recollection is that some of the members of the Senate were appointed for life by the President and some, if not all, members of the judiciary were appointed by the President, again for life.

I am not sure whether there is a retiring age in Chile but, through that mechanism, during his period in power General Pinochet managed to ensure that key people entered the nominated section of the Senate and, also, were appointed to the judiciary.

As a result of some of the reading I have done on this matter in relation to the judiciary, I discovered that in his last year in office General Pinochet offered very generous retirement packages to elderly members of the Supreme Court and named nine new justices to life terms, so it is indeed a life term and, evidently, with some carrot and stick but a lot of carrot, managed to turn over a key number—nine members—of the judiciary with generous retirement packages and then appointed nine new justices to life terms in his last year.

One of the articles I have read in research of this motion said that in September 1990 the Supreme Court ruled that the 1978 amnesty law prevented investigations into alleged abuses which occurred before that date. As I indicated earlier, most of the worst cases of abuse occurred in particular during 1973 and 1974. That is not to say there were not, and still are not, continuing cases of abuse in human rights violations, but some of the worst examples were in that period pre-1978. As I said, last year the Supreme Court ruled that the 1978 amnesty law prevented investigations into abuses occurring before that date.

This ensures that the harshest period of repression from September 1973 to January 1974 is out of bounds. A month earlier, that is, in August 1990, the Supreme Court unanimously upheld the 1978 statute protecting members of the security forces from prosecution for abuses. So, clearly, if one has friends, or if not friends certainly does not have enemies, in key positions in the judiciary and, in large part, amongst the appointed members of the Senate, then that is obviously a continuing element of the control that Pinochet maintains over key elements of Government and administration in Chile.

I have here a note that it should be remembered that Pinochet was also able to appoint nine senators to Congress. This meant that, although Aylwin's Coalition of Parties for Democracy Party was able to gain 22 of the 38 elected seats in the Senate, it failed to achieve an overall majority, because of this blocking majority of senators that Pinochet had appointed in the last year of his reign.

The Australian Ambassador to Chile advised us that President Aylwin had been instrumental in obtaining the release of many political prisoners from the Pinochet years of rule and I think it is fair to summarise his short briefing to us, namely that, whilst nothing is perfect, certainly over the past 12 months or so under President Aylwin, the situation with respect to civil rights—human rights—was certainly improving in Chile. In fact, Mr Peak indicated or estimated that as of October 1991 about 80 political prisoners were still in prison, compared with about 390 when Aylwin came to office. So, that number has been reduced from 390 to 80.

Mr Peak made the point that one cannot argue that all those 80 political prisoners are glowing innocents and he gave evidence to us that a small number of those would probably not be released if and when they came to trial because they were up on charges such as, in one case, throwing acid in the face of an innocent civilian. Another case was in relation to a bombing—the detail of that case escapes me. I can vividly remember the case of the person who was in gaol and who was alleged to have committed an offence of throwing acid in the face of some other Chilean citizen. So, the point Mr Peak was making to us, I guess, was that, whilst President Aylwin had reduced the number of political prisoners from 390 to 80 during his period in office, some (obviously not all) of those 80 may well not find themselves being released in the short term at least.

Last year the human rights environment continued to improve in Chile. However, instances of violations continued. For example, according to the United States' report submitted to the Committee on Foreign Relations of the US Senate and the US Senate Committee on Foreign Affairs. 19 cases of torture and three of political kidnapping occurred. The same report cited seven cases involving the use of excessive force by carabineros (police) resulting in death, which are also under investigation. At the same time, that US study quotes the independent Chilean Human Rights Commission as charging that seven civilians died as a result of the use of excessive force by the carabineros as of 31 July 1990.

It was interesting to note that, when asked to comment on the motion before this Chamber, amongst other things (I think it is fair to say, without placing on the public record that he did not seem to be violently objecting at all to the motion before this Chamber), Mr Peak indicated that he felt that the Chilean public would be unlikely to support the removal of the death penalty from the statutes. According to an Amnesty International report, in January 1991, nine prisoners charged with politically motivated offences continued to face the death sentence.

I must say that opinions within the South Australian community would vary on the death sentence, as would opinions within the Liberal Party. Certainly, my personal view would be to ensure that we did not reintroduce capital punishment in South Australia, and therefore to support its abolition in Chile, but I place on the record that that is not necessarily the view of all members of the Liberal Party. Certainly, there would be differing views on that issue. However, in the interests of getting a unanimous consensus view on that resolution, the Liberal members and I will support the motion before the Chamber.

Under article 19 of the Chilean Constitution, civilian and military courts may order detention for five days and extend it up to 10 days for suspected terrorist acts. In some cases under military jurisdiction the detainees' access to lawyers has been restricted. The Chilean Human Rights Commission reported 15 arbitrary individual arrests and 105 arrests from March 1990, when President Aylwin came to office, to November 1990. Many of those detained under article 19 are never charged and are released after several days. The use of State security laws to harass political opposition has fallen, but has certainly not disappeared entirely.

The last area I want to address generally is in relation to privacy and freedom of the press, which are obviously matters of interest in South Australia at the moment. The 1984 anti-terrorist law permits the surveillance of those promoting political views contrary to the Constitution or those suspected of terrorist crimes, and the interception, opening or recording of private communications and documents in such cases. Legal reforms passed by the Chilean Congress in December 1990 continue to permit special surveillance in suspected terrorist cases, although they strengthen the court's supervision of it. The Aylwin Government itself filed charges of 'offences against the President' against a retired army general who called the President a hypocrite for attending the funeral service for former President Allende. I would have thought that that was not an overly significant offence—calling someone a hypocrite.

The Hon. J.C. Burdett: Especially if they are.

The Hon. R.I. LUCAS: Yes; but I would have thought it was a bit beyond the pail that one could be charged with

offences against the President for calling him a hypocrite. Whilst the situation is improving in Chile, there are some examples with which most members in this Chamber would be a tad uncomfortable. The Government withdrew the charge on 18 September 1990 as a gesture of reconciliation after, I might say, there was some mobilisation of public opinion against the President for that charge being filed.

The military justice system still prosecutes civilians for offending or threatening the armed forces, including journalists who publish satirical reports. Again, we might be a little uncomfortable with that. In our more private moments we might be inclined to punish journalists who publish satirical reports about us or against parliamentary institutions, but we would not go down that path, whereas the political justice system in Chile still does. According to Amnesty International, about 30 journalists faced legal proceedings in the military courts during 1990 under President Aylwin. A number were brought up under certain articles under the Code of Military Justice which makes it an offence to threaten, offend or defame the armed forces or carabineros respectively.

So, I indicate that in general terms the Liberal Party supports the motion moved by the Hon. Mr Gilfillan with the amendment that has been moved by the Hon. Terry Roberts. We feel that the Hon. Mr Roberts' amendment to part V of the motion is a more appropriate way of expressing our view in relation to the need for an independent and impartial review of the judiciary in Chile. I would hope that, together with the Hon. Mr Gilfillan, we might achieve a degree of consensus on this motion as amended.

Amendment carried; motion as amended carried.

ROAD TRAFFIC (SAFETY HELMET EXEMPTION) AMENDMENT BILL

Order of the Day, Private Business, No. 20.

The Hon. DIANA LAIDLAW: I move:

That Order of the Day No. 20 be discharged.

Order of the Day discharged.

The Hon. DIANA LAIDLAW: I move:

That the Bill be withdrawn.

Motion carried.

CORPORAL PUNISHMENT

Adjourned debate on motion of Hon. R.I. Lucas:

That regulations made under the Education Act 1972, concerning corporal punishment made on 30 May 1991 and laid on the table of this Council on 8 August 1991, be disallowed.

(Continued from 20 November. Page 2092.)

The Hon. M.J. ELLIOTT: The only reason why I am speaking now is that the Opposition is keen to have the matter voted on today. They argue that they want this matter to be sorted out before the next school year. I would like to have made a more significant contribution but, in the light of other matters before us now, I simply have not had time to prepare the material that I would wish to present. Therefore, my contribution will be brief. I had experience in teaching for nine years and during that time I had difficult students in classes. In Whyalla I taught what were considered to be the toughest classes in Whyalla. There were some very interesting children in those classes. I must say that, based on my experience in schools over that period and from working with children who could be difficult, I cannot defend corporal punishment remaining in schools. I do not believe it achieves the desired end result.

I believe there are alternative measures to achieve that end result—unless the end result is simply believing that a good beating shuts them up for a while. If that is the end result we are wanting and nothing more than that, then corporal punishment may achieve that. Presumably, though, we are trying to achieve more with our children than just shutting them up occasionally. I assume that we are trying to do more than that, and that we are trying to communicate with these people and get across to them an appreciation of the sort of society in which we believe, the sort of society where people achieve things by negotiation, a society where there is understanding. That is not the sort of society that takes to beating its children.

Unfortunately, no matter how hard one tries to draft regulations, the fact is that once you start allowing any corporal punishment the interpretation becomes rather wide, and there have been recent cases in this State of blatant abuse of corporal punishment by people in positions as high as headmaster. In fact, in recent times they have been the only people allowed to give corporal punishment.

The Hon. Anne Levy: They were allowed to delegate.

The Hon. M.J. ELLIOTT: In some cases, yes. In fact, I recall in my first year of teaching a deputy offered to delegate his authority to me to cane a student. I only ever wanted to take him up on one occasion, involving the son of the local school inspector. With all the rough and tough kids, the only one who really frustrated me in my first year of teaching was the son of the local school inspector.

The Hon. Diana Laidlaw: I would have thought you would get quite a good impact.

The Hon. M.J. ELLIOTT: He probably did, too. At the end of the day it is not corporal punishment that is going to produce the real discipline that we are hoping to get out of the citizens of our State. I am afraid that the Hon. Mr Lucas has been caught up in some of the right wing rhetoric. We still have not advanced far from the cat-o'-nine-tails, it appears. It is most unfortunate, but at least on this occasion we know that the numbers in this Parliament will not allow that regression to occur. I oppose the motion.

The Hon. R.I. LUCAS (Leader of the Opposition): I intend to speak only briefly. Most members in the Chamber have debated this issue before. There are the well established positions of the major Parties and individuals who have addressed this issue on a number of previous occasions. As I indicated about six or seven weeks ago when moving the motion, the position of the Liberal Party—both the parliamentary Party and the organisation—is quite clear. There is strong support for the retention of the option of corporal punishment within our schools. There ought to be a question of choice, and there is, as I acknowledged in my contribution, a trend toward not using it. As I indicated, we certainly have no objection to that. It ought to be up to the school communities—both staff and school councils as they are currently constituted—to make those decisions. The Liberal Party says that, amongst the array of various penalty and punishment options that can be included in a behaviour management policy, corporate punishment ought to remain as one element of the menu from which local school communities can make their own informed judgments as to what is best and most appropriate for the management of student behaviour in their schools.

All I can say to those who do not support the retention of corporal punishment and do support contracts, negotiation, counselling, discussion and rationality is that they need to get out into the schools and talk to teachers in Whyalla,

Elizabeth, Salisbury, Christies Beach and the western suburbs of South Australia and ask what they want.

If one listens to the member for Hartley and the member for Elizabeth, who seem to be running the Government at the moment, whether it be the parliamentary institution or the agenda of the Government, with their increasing gung-ho support for a whole range of legislative changes that the member for Hartley says the community wants for tougher law and order, and who always indicates that the reason—

The Hon. T.G. Roberts: He has never pandered to the lowest common denominator before.

The Hon. R.I. LUCAS: The Hon. Terry Roberts says that he has never pandered to the lowest common denominator before, and I am sure that is probably the case. The Hon. Terry Roberts is an accurate assessor of his colleagues, whether in this Chamber or in another place. Perhaps sometimes he makes errors; that I do not know. I leave that judgment to the Hon. Terry Roberts and his colleagues. The Hon. Mr Groom—not the honourable; the member for Hartley—always—

The Hon. Anne Levy: He is reasonably honourable.

The Hon. R.I. LUCAS: The Hon. Anne Levy says that he is reasonably honourable. I think that he is being damned with faint praise by his colleagues in this Chamber. He is certainly not in the true sense of the word, honourable as we in this Chamber would acknowledge it. He always refers, in this clamour for tougher law and order in relation to his legislative achievements, to the fact that parents tell him they want this or they want that and that he is there delivering on their behalf legislative reform and prodding the Bannon Government into action.

I would say to the member for Hartley and others that if they use that argument to support their actions in other areas, they should go out and ask those very same people, the parents in particular and local communities, whether or not they want the option of corporal punishment to be retained in schools. I can assure Mr Groom and everybody else that the great majority—in some polls up to 70 per cent—of South Australian people support the retention of the option of corporal punishment as part—

The Hon. G. Weatherill interjecting:

The Hon. R.I. LUCAS: The Hon. Mr Weatherill wants to join in. Members on the other side of the Chamber who want to support the removal of corporal punishment from schools need to look at themselves and consider whether they, in their own behaviour management policies for their children over the past 10, 20, 30, 40 years, or however long it has been, on any occasion raised their hands across the backside, the leg, the hand, or wherever, in reasonable fashion.

The Hon. Anne Levy: There is a difference between being a parent and a teacher.

The Hon. R.I. LUCAS: Well, the Hon. Anne Levy does not accept that. She has argued publicly, as I have put on the record in the past, that she supports Scandinavian-type legislation.

The Hon. Anne Levy: That is a misquote.

The Hon. R.I. LUCAS: No, it is not.

The Hon. Anne Levy: I said it was worth considering.

The Hon. R.I. LUCAS: Exactly.

The Hon. Anne Levy: That doesn't mean that I support it.

The Hon. R.I. LUCAS: You are on the public record and I have placed it on the public record, and people who have spoken to you—

The Hon. Anne Levy: You are as capable of misquoting as anybody else.

The ACTING PRESIDENT: Order!

The Hon. R.I. LUCAS: People have spoken to the Hon. Anne Levy. I gave the Hon. Anne Levy some credit, because I have said that I believed that she was consistent in that she opposed the use of corporal punishment in schools and opposed the use of corporal punishment by parents for children.

The Hon. Anne Levy: I've never said that. I've said it is worth considering, and there is a difference.

The Hon. R.I. LUCAS: I said that I think the Hon. Anne Levy has been at least halfway to being consistent on that argument. There are many others within the Labor Party and Government who are not, because they seek to distinguish between what goes on in schools and in homes in relation to behaviour management.

As I said, the views are well known. It is clear that the Government and the Democrats will not support this motion. I accept that, but I have placed our position on the record. As we have only two days to go, and as we have done with other resolutions and motions this afternoon, in the interests of expediting proceedings, we shall not be calling for a division if we lose on the voices.

Motion negatived.

EXPIATION OF OFFENCES

Order of the Day, Private Business, No. 23.

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

That Order of the Day No. 23 be discharged.

Motion carried.

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 20 November. Page 2100.)

The Hon. J.C. IRWIN: I should like to sum up quickly on this motion. I should like to be presumptuous and count on the Democrats' support for my motion of disallowance, which has been on the Notice Paper long enough for them to make a contribution, but no doubt through pressure of other business they have not done so. I guess they would not support it anyway, so I assume that it would be lost. I have tried to think through the consequences had they supported it and the motion had been carried. First, there would be a void, which we have known before when regulations have been disallowed between now and the gazettal time of new regulations. If they were the 5 August regulations re-gazetted, nothing would have changed or been achieved. If new regulations were written overnight, which I understand they have been before, I imagine that the same problems, as have been expressed to me over a number of months, would appear again, but perhaps in a different form. Again, nothing has been achieved.

I am somewhat disappointed with the present subordinate legislation process. I confess that I do not know a great deal about it. Therefore, I shall tread fairly warily and not say much about it. I thought that the committee would have the expertise and the back-up support. In saying that they do not have expertise, I am in no way reflecting on any member of the committee. I relate to some of the back-up support which they might have and which would be able to go through the evidence so that the committee would be well advised as to which side of the argument that they

were hearing was right, whether on a Party line basis or not.

However, I understand that there would not be any great in-depth debate on the matters entered into regarding the parking regulations, so no-one really knows where right or wrong is in this matter. The proposal from the member for Elizabeth relates to the subordinate legislation process for the new committee which will look at legislation and regulations in the future. That legislation, which will be debated here next year will, if passed, allow for committee structure or scrutiny prior to regulations being gazetted rather than thereafter. On the surface, this seems to be a good proposal, but I put it to members that it will not be worth much if quite considerable research facilities and personnel are not devoted to this very important matter.

Occasionally, as I have seen in this place, regulations are disallowed. No Opposition Party has the research capacity or capability to analyse at length complicated sets of regulations, and I certainly do not have that capacity nor the time during sitting periods to work through all the matters that have been put before me.

I would like again to acknowledge the offer of the Local Government Association to hold a seminar of member councils with regard to the new regulations, embracing as they do the new Australian standard signs. The LGA have suggested that it could be held in December, but I do not hold it to that date. It is better to go through the seminar process properly than to rush it through and get it over with at any cost. I also acknowledge the Minister's offer to have some involvement in helping to convene a meeting between the Local Government Services Bureau and interested people who have experience with parking regulations, who should at least discuss a range of matters that have been brought to my attention and any other serious matter related to the parking debate.

I am familiar with some thoughts within departments that there should be some fine-tuning of the regulations, and that may be a normal process, anyway. I understand that there is some need to do something with the parking regulations now, just as the local government legislation that we will have in front of us later this evening fine-tunes some of the evidentiary provisions for pursuing people who have committed parking offences. I move:

That Order of the Day No. 24 be discharged.

Motion carried.

ENVIRONMENT, RESOURCES AND DEVELOPMENT COMMITTEE

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

That, on the commencement of the Parliamentary Committees Bill, the following members be appointed to the Environment, Resources and Development Committee, viz.: the Hon. T.G. Roberts, the Hon. M.J. Elliott and one other, and that a message be sent to the House of Assembly in accordance with the foregoing resolution.

Briefly, this is the first of three Notices of Motion which I have given and which I will move today dealing with appointments to the new committees established under the Parliamentary Committees Act which recently passed the Parliament and which was assented to last Thursday. The Government's intention was to proclaim the Act to come into effect before the start of next year's sittings and, in anticipation of that proclamation, to appoint members to the committees so that they could meet again in anticipation of the proclamation, appoint their Chairs and engage in discussions with the Speaker and the President so that, on the first day back, the committees would be fully functional.

The Labor Party has elected its nominees to the committee, as have the Democrats, and the Independent Labor member in the House of Assembly has also nominated for the Economic and Finance Committee, which is wholly a House of Assembly committee. Although the Liberal Party was notified last week that the Labor Party at least intended to make its nominations this week and wanted, if possible, the appointments to be made formally by the Houses before they rose for the Christmas recess, I now understand that the Liberal Party has not organised its nominees.

The motion is moved in a form which nominates those whom the Government and the Democrats have agreed should be put forward for appointment to these committees and leaves open the question of the one other. In this series of motions two are nominated. In the case of the Environment, Resources and Development Committee, this involves the Hon. T.G. Roberts, Labor; the Hon. M.J. Elliott, Australian Democrats; and one other. In the case of the Social Development Committee, it involves the Hon. Carolyn Pickles; the Hon. I. Gilfillan; and one other. In the case of the Legislative Review Committee, it is the Hon. M.S. Feleppa; the Hon. G. Weatherill; and one other. In relation to that 'other', we would invite the Liberal Party to nominate a person on the basis of the understandings which exist and have been discussed between the parties. We would invite the Liberal Party to make those nominations now or tomorrow if they are ready but, if not, obviously we will have to await the resumption of the session in February.

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

SOCIAL DEVELOPMENT COMMITTEE

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

That, on the commencement of the Parliamentary Committees Bill, the following members be appointed to the Social Development Committee, viz.: the Hon. Carolyn Pickles, the Hon. I. Gilfillan and one other, and that a message be sent to the House of Assembly in accordance with the foregoing resolution.

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

LEGISLATIVE REVIEW COMMITTEE

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

That, on the commencement of the Parliamentary Committees Bill, the following members be appointed to the Legislative Review Committee, viz.: the Hon. M.S. Feleppa, the Hon. G. Weatherill and one other, and that a message be sent to the House of Assembly in accordance with the foregoing resolution.

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

STATUTES AMENDMENT (CRIMES CONFISCATION AND RESTITUTION) BILL

In Committee.

Clause 1—'Short title.'

The Hon. C.J. SUMNER: I will use this opportunity, with the leave of the Committee, to respond to the issues raised by the Hon. Mr Griffin. First, the honourable member raised the question of whether there is to be a formal agreement for sharing the proceeds of crime under the equitable sharing program. This matter has been discussed

by the Standing Committee of Attorneys-General. Ministers have agreed that there should be a State-to-State sharing agreement where a forfeiture order is obtained in one State and registered in another State, and where more than one jurisdiction assists in the investigation and the order is only taken out in one jurisdiction.

A draft formal agreement has been prepared, and I believe it has been made available to the Hon. Mr Griffin. It gives the Attorney-General in the State holding the confiscated proceeds the right to determine what proportion, if any, of proceeds should be shared. The determination of the Attorney-General is final and binding. As between the Commonwealth and the States administrative arrangements are already in place to similar effect. I understand that details of these administrative arrangements have been made available to Mr Griffin. Payments under the Commonwealth scheme have been made to Western Australia and New South Wales.

Secondly, the honourable member asked what the net benefit to South Australia is likely to be from these arrangements. The short answer is that we do not really know, but to the extent that this State participates in a cooperative way with other jurisdictions and currently would get no reward, the Bill will allow the work done to be recognised in a portion of proceeds ultimately recovered.

Thirdly, regarding the operation of the Mutual Assistance in Criminal Matters Act (Commonwealth), under that Act the State can register an order and when assets are repatriated from overseas following enforcement in a foreign country under mutual assistance arrangements, the Commonwealth Proceeds of Crime Act allows that money to be paid to the State.

Fourthly, the honourable member raised a question relating to the details of operation of the Criminal Injuries Compensation Fund. He suggested that the Auditor-General's Report on the fund might be more detailed. I have no objection to the Auditor-General providing more detail on the fund. I will request the Chief Executive Officer of the Attorney-General's Department to ensure more detailed financial information is kept relating to the fund, particularly in the light of these amendments, which increase the sources of income for the fund, and also provide for payments out of the fund to other States.

Fifthly, the honourable member asked for details of the progress of money laundering legislation in other States. As stated, New South Wales and Queensland already have provisions in place, as does the Northern Territory. The Victorian legislation passed both Houses last night and is expected to be in operation early next year. Tasmania has legislation ready to be introduced but that has been overtaken by political events in that State, and Western Australia has not yet introduced its legislation. Sixthly, in relation to the expenditure of amounts from the fund, our program is directed at the treatment and rehabilitation of persons who are dependent on drugs. I advise that the following payments have been made: in 1989-90 Warinilla drug clinic creche, $16 250; and in 1990-91 Methadone program, $69 000; Warinilla drug clinic creche, $15 000; and Aboriginal case worker, $30 000, to provide a counselling service to Aborigines in prison with drug problems. All payments were made as a result of requests from the Drug and Alcohol Services Council, supported by the Minister of Health. Seventhly, on the question of rules of court and the right of appeal, I have no objection to an amendment to change the words 'subject to rules of court' to 'in accordance with rules of court', which was the formula we adopted in the courts package.

Clause passed.

Clauses 2 and 3 passed.

Clause 4—'Interpretation.'

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

Page 2, line 1—Leave out 'and' and insert 'or'.

A minor amendment is required to the definition of 'equitable sharing program'. The word 'and' appearing between the two limbs of the definitions should be 'or' in order to make it clear that each part of the definition is separate and not dependent on the other.

Amendment carried.

The Hon. K.T. GRIFFIN: I thank the Attorney for the information that he has provided, which is helpful in understanding the scheme covered by the Bill. However, I have not had an opportunity to read the draft agreement. I have a few questions in relation to the equitable sharing agreement. If it is not possible for the Attorney to answer them now, it is not an issue of such substance that it will hold up consideration of the Bill. Will the Attorney clarify the procedure that is likely to apply where a forfeiture order is made in, say, New South Wales, and is enforced here? It may be enforced in other States as well, but in so far as the South Australian/New South Wales relationship is concerned, will the Attorney outline the procedure that is likely to be followed in deciding what proportion of the assets should be transferred to the other jurisdiction? How is that to be calculated in terms of cost and a whole range of other expenses that might have to be taken into account?

The Hon. C.J. SUMNER: The administrative system in relation to the Commonwealth is now in place. What happens is that, on receipt of a request from the State, the Commonwealth prepares a report setting out the respective involvement of Commonwealth and State agencies in the matter. Then the Commonwealth Attorney-General would decide the appropriate apportionment (50/50 or 40/60) between the Commonwealth and the State concerned, depending on the relative level of involvement of the different jurisdictions. I understand that the same procedure will follow here. The jurisdiction that is holding the assets will invite submissions from other States that have been involved in the forfeiture and collection of those assets and then the Attorney-General in the State in which the assets are held will make the decision based on those representations. The agreement provides that the Attorney-General's decision is final and binding.

One will just have to rely on commonsense and good relations between the various jurisdictions to ensure that the Attorney-General in one State does not try to make decisions which are clearly detrimental to the other States in the light of the contributions that have been made by those other States.

The Hon. K.T. GRIFFIN: Is that decision then to be taken on the basis, for example, of the amount of work which each State's agencies has applied not to the trial and the other things but to the actual confiscation, and the proceeds are then divided *pro rata* to the relevant proportions of work?

The Hon. C.J. SUMNER: That is what is intended, yes.

Clause as amended passed.

Clauses 5 to 9 passed.

Clause 10—'Right of appeal against ancillary orders.'

The Hon. K.T. GRIFFIN: I do not have an amendment on file, but I move:

Page 4—

Lines 35 and 36, leave out 'subject to rules of court' and insert 'in accordance with rules of court'.

Line 37, leave out 'subject to rules of court' and insert 'in accordance with rules of court'.

Amendments carried; clause as amended passed.

Clause 11 and title passed.
Bill read a third time and passed.

CORPORATIONS (SOUTH AUSTRALIA) (MISCELLANEOUS) AMENDMENT BILL

In Committee.
Clause 1—'Short title.'

The Hon. C.J. SUMNER: With the indulgence of the Committee, I use this clause to respond to questions raised by the Hon. Mr Griffin. The first question was whether the Bill can be amended to provide for the accounts of the National Companies and Securities Commission to be lodged within six sitting days and not 12 sitting days as provided for in the Bill. Obviously, it could. However, the South Australian Bill's requirement of 12 days, which is in fact different from that of the Victorian model Bill of 15 days, is based on the standard provision in South Australian Acts for the laying of annual reports and the like before each House, that is, within 12 sitting days of receipt by the relevant Minister, and that is the model that has been copied here.

The second question was whether the amendments in respect of the Family Court enable the Family Court to deal with significant commercial proceedings. In summary, the Family Court's jurisdiction is limited by the Family Law Act. Section 33 of the Family Law Act extends the matrimonial jurisdiction of the Family Court to encompass associated matters which arise under Federal legislation. The corporations law of a jurisdiction is not Federal legislation. Accordingly, in order to ensure that the Family Court can deal with company matters ancillary to the matrimonial causes before it, the States and the Northern Territory have to confer jurisdiction on the Family Court in respect of civil matters arising under the corporations law of those jurisdictions.

Wholesale jurisdiction is averted by a requirement for Family Courts to transfer proceedings in certain circumstances where the proceedings would have been incapable of being instituted in the Family Court, are matters for determination outside its jurisdiction and in the interests of justices or, where the proceeding arises out of or relates to another proceeding before the Federal Court or Supreme Court and that court is the most appropriate court to determine the proceeding. So, a 'significant commercial proceeding' would be a matter that would be required to be transferred.

The third point was: what was the nature of the consultation that occurred between the Commonwealth and the States on the Bill? As to the contents of the Bill, for example, the Commonwealth amendments that required complementary State legislation: the Commonwealth Attorney-General put a paper before the first ordinary meeting of the Ministerial Council for corporations on 7 February 1991, outlining in detail the amendments he sought to include in the Corporations Legislation Amendment Bill 1991. The Ministerial Council gave approval in principle for the introduction of the Bill and undertook to introduce such complementary State legislation as necessary.

The fourth point was: do amendments to the Corporations Law at the Federal level proceed unilaterally? The provisions of paragraphs 21.6, 21.7, 21.8 and 21.9 of the heads of agreement (that is, of the Alice Springs accord) deal with the functions of the Ministerial Council in respect of legislative amendments to the Corporations Act.

Under these provisions, the Ministerial Council is to be consulted in relation to all legislative proposals involving amendment of Commonwealth corporations legislation and State application legislation. However, the Ministerial Council has only a consultative function in respect of chapters 6, 7, 8 and 9 of the Corporations Act. These chapters deal with takeovers, securities, public fundraising and futures industry.

The Ministerial Council has a deliberative function in respect of all other legislative proposals and the Commonwealth will not introduce any such proposal without the authority of a majority vote of the council. In this respect the Commonwealth has four votes and a casting vote if there is a tied vote, and the States and the Northern Territory each have one vote. The Commonwealth, however, is not obliged to introduce any proposal with which it does not concur. In view of the consultation requirement, the amendments are not made unilaterally. There is nothing to prevent a State Minister from submitting a proposal for amendment(s) to the Corporations Law for consideration by the Commonwealth.

The fifth point was: what is the status of the agreement between Governments and can a copy be made available publicly? The proposed formal agreement for companies and securities has been drafted by the Corporations Act steering committee. It is at present being closely examined by Ministerial Council officers and it is envisaged that the comments of this State will be completed prior to Christmas. Unfortunately, all issues have not yet been finalised and because of that a copy cannot be made public.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: I might be able to. The sixth point was: what progress has been made in relation to winding up investigations or other proceedings under the previous national companies and securities scheme and is there any difficulty in the continuation of those proceedings once the State national companies and securities legislation has been repealed?

The response is that the State Business Office (which carries on the residual Corporate Affairs Commission functions) has entered into and completed negotiations with the ASC for the continuation of investigations or other proceedings under the previous national companies and securities scheme. Where any matters have involved offences under that scheme, they have been passed on to the ASC for either continued investigation or to deal with the proceedings involved.

Continuity of proceedings and investigations is retained by sections 84-92 of the Corporations (South Australia) Act 1990. Section 85 provides for cooperative scheme laws (that is, the laws of the previous scheme) to operate of their own force only in relation to: matters arising before the commencement of section 85; and matters arising, directly or indirectly, out of such matters, in so far as the national scheme laws do not deal with those matters. Therefore, investigations and proceedings that arose before 1 January 1991 will continue to be dealt with under cooperative scheme laws.

The honourable member asked what were the issues of difficulty. One issue of difficulty which has been the subject of discussion and probably to some extent correspondence from the honourable member at least in relation to one aspect of it, is in the interpretation of one of the paragraphs of the formal agreement dealing with State access to the ASC national database. There may be other issues but perhaps if the honourable member asks me what they are I might be able to get a briefing on it in the meantime.

The Hon. K.T. GRIFFIN: I thank the Attorney-General for that response to the questions I raised. It would be helpful to know what other issues might be delaying the

conclusion of the formal agreement between Governments in relation to the corporations law and, if he has that information about the matters which are holding up the conclusion of the agreement or can obtain it, I would appreciate receiving it.

The Hon. C.J. SUMNER: I think it is fair to say that the major issue has been this dispute about State access to the ASC database, which I have mentioned. As to others, there are basically issues of clarification to ensure that the formal agreement does accord with the heads of agreement and, as the honourable member would know, issues of this kind usually arise in any Commonwealth-State negotiations. It is not possible to specify them more accurately at this stage. I am advised that officers are holding a telephone conference meeting next week to deal with some of the issues. At this stage I am not able to identify more specifically what those issues are. It involves a number of general issues about which the States are concerned, to ensure that the formal agreement in fact lines up with the heads of agreement that were agreed at Alice Springs.

Clause passed.

Clauses 2 to 17 passed.

Clause 18—'Conferral of functions and powers in relation to cooperative scheme laws.'

The Hon. K.T. GRIFFIN: I have a couple of questions in relation to this clause. In proposed subsection (1) *(a)* the Commonwealth Director of Public Prosecutions has the same enforcement powers in relation to cooperative scheme laws as has the Crown in right of South Australia acting by the Attorney-General or such other person as may be prescribed by regulation. Is the reference to such other person as may be prescribed by regulation only there for the purpose of dealing with the prospective State DPP or is it there for some other reason? If so, who is likely to be prescribed?

The Hon. C.J. SUMNER: I am advised by Parliamentary Counsel that the prescription by regulation provision was put in to accommodate the impending appointment of a Director of Public Prosecutions. We may be able to obviate the need for some paperwork by amending this clause now, if the honourable member has no objection. I move:

Page 6, line 34—Strike out all the words after 'or' and insert 'the Director of Public Prosecutions of South Australia'.

By moving this amendment we will dispense with the need for regulation.

Amendment carried; clause as amended passed.

Remaining clauses (19 and 20) and title passed.

Bill read a third time and passed.

[*Sitting suspended from 6.1 to 7.45 p.m.*]

WRONGS (PARENTS' LIABILITY) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 26 November. Page 2267.)

The Hon. C.J. SUMNER (Attorney-General): I thank honourable members for their contributions to the debate on this Bill. I am pleased that the Hon. Mr Griffin and the Liberal Party have said that they support the second reading of the Bill. It is pleasing to see that they have seen fit to support the Bill on this occasion and the underlying principles in it, although one might be puzzled as to why on previous occasions they have chosen to reject the Bill out of hand. I suppose that matter will be left to the speculation of the historians.

The Hon. Mr Griffin has made some points in his address with which I should like to deal. It has been made clear on numerous occasions, both in this Chamber and in another place, that the Bill is not intended to apply to parents who are acting responsibly in caring for their children in a reasonable manner. This Bill is directed to those parents who can be shown not to have exercised an appropriate level of supervision and control over their children's activities and as a result their children have caused loss or damage.

A plaintiff wishing to commence an action against the parents of a child who has caused damage or loss will initially have to seek leave of the court to do so. If leave is granted, the plaintiff will have to show that the child was under 15 years of age, that he or she committed a tort and was also guilty of an offence. Further, the plaintiff will have to show that the parent was not exercising an appropriate level of supervision and control over the child's activities at the time of the commission of the offence. The plaintiff bears the onus of proof to establish all these factors.

The Bill then provides a defence if the parents are able to prove that they generally exercised, to the extent reasonably practicable in the circumstances, an appropriate level of supervision and control over the child's activities. This is quite fair and avoids the situation, raised by honourable members in this Council and in another place of a parent who is generally responsible being liable for damage caused by his or her child.

The Opposition proposes an amendment to this clause which would require the plaintiff to prove that the parent generally failed to exercise an appropriate level of supervision. This is something that the plaintiff would find impossible to prove. It is not within the plaintiff's knowledge how a family normally operates. To impose such a burden of proof on the plaintiff, as the Opposition is attempting to do, would make it impossible to bring a successful action under the Bill. The Bill, as introduced, takes the more sensible approach: if the children's actions were the result of a lapse of supervision but the parent can show that usually the supervision was appropriate, then the parent is not liable.

The honourable member has also proposed that a parent only be responsible if the child is residing with the parent at the time of commission of the offence. This means that the child must be dwelling permanently with the parent at the time of the offence. There is no reason why, in cases of separated or divorced parents, the parent who has access to the child on the weekends should not be responsible for his or her behaviour. That parent is still exercising control over the child and should assume the responsibilities of a parent.

The Opposition is also proposing that the Minister of Family and Community Services be responsible if, at the time of the tort, the child was under the guardianship of the Minister. This proposed amendment was rejected in another place on the ground that the Minister was responsible for children who were deemed to be uncontrollable. Further, the amendment made the Minister strictly liable, and this was seen as unfair. The honourable member has now proposed a further amendment if proper care and supervision was not exercised by the Minister.

This amendment is opposed on the ground that the measure in the Bill seeks to impose responsibility on parents who can be shown to have taken little or no responsibility for their children. Further, the select committee considered and specifically rejected imposing any liability on the Minister. The Minister will be responsible for torts committed by children under his or her guardianship. If the Minister can be shown to have breached a duty of care owed to a

person the Minister will be liable under ordinary tort principles.

I wish to point out at this stage, in response to the honourable member's claim that parents will have the details of their private family life brought into the public arena, that sections 69 and 69a of the Evidence Act 1929 cover this situation. Pursuant to the Act, the court is given a discretion to suppress names or clear the court so that privacy can be maintained.

The honourable member has also made the point that judgment against a parent under the Bill could result in bankruptcy. In response to this, I refer the honourable member to clause 5 of the Bill which allows the court to order that instalments be paid and to vary such order on the application of the judgment debtor.

A further amendment has been proposed which would limit to $10 000 the liability of a parent under the Bill. This amendment has been put forward on the basis that other jurisdictions import such a limitation into their legislation.

I think the only other jurisdiction involved at this stage in Australia is the Northern Territory, which has imposed a limit of $5 000. However, the Northern Territory legislation has a strict liability on the part of parents and it does not have the qualifications that we have introduced into this Bill.

The Hon. J.C. Burdett interjecting:

The Hon. C.J. SUMNER: It is strict liability.

The Hon. J.C. Burdett: Only when the child resides with the parent.

The Hon. C.J. SUMNER: But it is strict liability. It does not matter whether one exercises proper supervision or not; it is strict liability, and that makes it completely distinguishable from the Bill that we have introduced on the point of whether there should be a limit. The major difference between the Northern Territory and South Australia that has not been alluded to by the honourable member is that other jurisdictions impose strict liability on the parents, whereas under the Bill parents will have to be shown to have failed in their obligations to supervise their children. In this instance there is no reason why their liabilities should be limited in any way.

Finally, the honourable member points out that certain juveniles who commit serious offences should be dealt with strongly as adults. For the record, provision has been made in the Children's Protection and Young Offenders Act since 1979 for committal of certain juveniles to the adult court for trial where the child is charged with an indictable offence. The whole question of the Children's Protection and Young Offenders Act and juvenile justice generally is currently before a select committee of another place.

Bill read a second time.

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

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

Page 1—After line 13, insert new subclause as follows:

(2) A proclamation under this section must provide for the whole of this Act to come into operation on the one day.

This is in anticipation that one of my later amendments (that is, the amendment that the Minister of Family and Community Services will also have a liability in certain circumstances) will be successful. Under the Acts Interpretation Act it is possible for the Bill, when passed, to be proclaimed in part or in whole with parts being suspended from operation. One of my concerns is that, if the Parliament agrees that the Minister of Family and Community Services should have some liability, that provision should not be suspended from operation.

In relation to clause 2, I am proposing an amendment which provides that the whole of the Act comes into operation on the one day, so that there is no opportunity to use the provisions of the Acts Interpretation Act for the purposes of suspending part of it from operation.

I propose to deal with the substantive issue of the Minister of Family and Community Services when we reach that amendment so, in a sense, the amendment that I move is, to some extent, anticipating what might happen with that later amendment. However, because it is appropriate to deal with it now, I have moved it.

The Hon. C.J. SUMNER: The Government formally opposes this amendment. It really is totally unnecessary. I think the general clause that we have in relation to Acts coming into operation on a day to be fixed by proclamation is satisfactory. There seems to be no reason to change that formula, although I do not envisage circumstances where part of the Act would be proclaimed and other parts left unproclaimed for any reason. I cannot see any reason why that should happen in this case, but neither do I see any reason to change from the formula that has been used generally to date.

The Hon. K.T. GRIFFIN: I should say that the formula changed a year or so ago automatically to empower a Government to suspend the operation so that if one now wants to ensure that it is not suspended one really must enact a specific provision which negatives the provisions of the Acts Interpretation Act as amended in the past year or so. That is the reason for doing it in this way.

The Hon. I. GILFILLAN: On invitation, I indicate that I will oppose the amendment. I have some observations to make in general about the amendments, but I do not think this is an appropriate amendment, and I oppose it.

The Committee divided on the amendment:

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

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

Pair—Aye—The Hon. J.F. Stefani. No—The Hon. M.J. Elliott.

Majority of 1 for the Noes.

Amendment thus negatived; clause passed.

Clause 3—'Insertion of s. 27d and heading.'

The Hon. K.T. GRIFFIN: I think it is appropriate to deal with these amendments separately, although the proposal to insert paragraphs *(c)* and *(d)* involves two different issues, and it may be that a way can be found for those to be voted upon separately. The Bill provides:

Where—

(a) a child under the age of 15 years . . .

which effectively means 10 to 14-year-olds:

. . . commits a tort;

and

(b) the child is also guilty of an offence arising out of the same circumstances,

a parent of the child is jointly and severally liable with the child for injury, loss or damage resulting from the tort if the parent was not, at the time of the commission of the tort, exercising an appropriate level of supervision and control over the child's activities.

There are several features of that provision about which the Liberal Party is concerned: first, that the person who is the claimant will not have to do anything more than establish that the child is under the age of 15 years, has committed a tort and is guilty of an offence. The parent is then jointly and severally liable with the child. The parent then has the right to establish a defence by proving that the

parent generally exercised, to the extent reasonably practicable in the circumstances, an appropriate level of supervision and control over the child's activities.

Effectively, what will happen with subsection (1) is that the parent will be *prima facie* liable for the injury, loss or damage resulting from the child's tort. The parent will then be able to establish the defence which, admittedly, is on the balance of probabilities. That will mean that the parent will have to attend court. Notwithstanding the observations of the Attorney-General, I would suggest that that would be in an open court, unless the court orders otherwise and, whilst giving evidence, the parent may also be subject to cross-examination.

That is the first problem we see: there is *prima facie* case and then a defence. We want to provide that the plaintiff will have to establish that the parent was not at the time of the offence exercising, and generally failed to exercise, a level of supervision and control over the child's activities appropriate in all the circumstances of the case. We acknowledge that that may present some difficulty for the plaintiff, but that is not uncommon in the civil law, where mostly there are not provisions for *prima facie* proof and then a defence being available. In a sense, there is a mixture of civil and criminal about this provision. Certainly, in the criminal law there are frequently reverse onus provisions. Where there is something in the knowledge of the defendant, the defendant has the onus of discharging the burden of proof. However, that is not common in the civil law. This section places the onus back on to the parent. So, that is where the pressure will be.

The other major area of concern is that each of the parents is jointly and severally liable with the child for the injury, loss or damage. During my second reading contribution I indicated that there are many circumstances in which parents might generally be acting responsibly and they may be good and reliable parents, but they may have a lapse of judgment. They may leave the child with grandparents, friends or a baby sitter and the child leaves the place where he or she is being cared for and commits an offence, which results in liability, at least on a *prima facie* basis, being attracted by the parent where there is a tort and where the child is also found guilty of an offence.

Of course, the next set of circumstances relates to those parents who are not living together; they may be divorced or separated. There may be a situation where the child normally lives with one parent and the other parent periodically has access. It may even involve a parent taking the child away for the holidays. One of the Liberal Party's concerns is that because both parents are jointly and severally liable the person who does not have custody will attract a liability unless the defence can be established. Some people would argue that both parents ought to accept responsibility, even though both of them are not, one could say, in possession of the child. However, that is an unreasonable and unrealistic proposition, although I recognise that in terms of family law responsibilities, both parents have responsibility for nurturing and bringing up the child, as well as the income earners having liability to maintain and provide for that child.

It is different in the context of this Bill, I would suggest, because the non-custodial parent will not ordinarily be in a position to exercise immediate discipline or to set the framework within which discipline may be applied and where supervision and control may be exercised. On the other hand, it may be that there is a non-custodial parent who, as I said earlier, has access to the child over, perhaps, a weekend or even for a day, or maybe for several weeks during the holidays, and whilst with that non-custodial parent the child commits an offence and a tort. In those circumstances it would be quite unreasonable for the normal custodial parent to have a liability jointly and severally with the parent who has the access.

The answer that I am sure the Attorney will give—although he can speak for himself—is that the court will be able to sort out which parent acted properly and the parent who did not have the immediate possession of the child at the time the offence was committed may not have any liability. However, there is certainly a very strong risk that a person who might have suffered loss might wish to pursue action against both parents, regardless of the custody and access arrangements on the basis that this Bill says that the parent is jointly and severally liable with the child. That means what it says: *prima facie*. There is a liability on both. If the vindictive plaintiff desires to take both to court and to push them hard on the basis that one of them may settle in order to avoid the trauma of the court proceedings then there is really nothing to stop that in this Bill. It may be that that settlement is quite unjust in respect of the person who has had to make the settlement.

So, in summary, the Liberal Party's concern is that there is a potential for liability and injustice. That is fundamental to the Bill as far as we are concerned. If the Liberal Party's amendment is accepted, that will remove a significant concern from the potential injustice that might be created as a result of the way in which the Bill is framed at the moment.

Of course, we wish to address some other issues in relation to the defence, because the terminology is also pertinent in relation to our amendment. However, in relation to the defence, presently there is no precedent in law which would provide guidance to a court as to the supervision and control that a parent should have exercised in the circumstances. The defence is that the parent should prove that he or she generally exercised, to the extent reasonably practicable in the circumstances, an appropriate level of supervision and control over the child's activities.

The Hon. R.J. Ritson: Over what time? In the early formative years?

The Hon. K.T. GRIFFIN: That is one of the immediate difficulties. What does 'generally exercised' mean? Is it in the time frame of the past week or so, or, as the Hon. Dr Ritson says, over a much longer period? If there was a problem in the early stages of a child's relationship with the parent that might have caused the child to rebel so that the child became headstrong and unwilling to obey the wishes of the parent, is that one of the factors which is relevant and which might militate against a parent in the sort of contest envisaged by this provision? The parent must also show that that supervision and control was of an appropriate level, that it was reasonably practicable in the circumstances, and that it was supervision and control over the child's activities.

During my second reading contribution I made the point that it is supervision and control not so much over the child but, rather, over the child's activities. There is a distinction between the two. Supervision and control over the child necessarily encompasses activities and includes supervision and control of every facet of the child's life. I would suggest that supervision and control over the child's activities is more related to the sorts of things that a child might do outside the family home. Of course, that is impossible when mother or father—or both—have sent the child off on a pushbike to a friend's place one kilometre away and they are unable in those immediate circumstances to exercise a level of supervision and control over that child's activity in that sense.

In relation to a parent, we see some problems which can be overcome by our amendment. We are not just talking about victims generally described. As I said during my second reading contribution, we might also be talking about those who might be subrogated to the rights of the plaintiff. Whilst that may not necessarily alter the question of responsibility, it is relevant to assess who might be taking advantage of this sort of legislation. So, that is the argument I present in relation to paragraph *(c)*.

My proposed paragraph *(d)* seeks to provide that the Minister of Family and Community Services will have a liability, jointly and severally, with the child in certain circumstances. As I said in my second reading contribution, there was a valid criticism in the House of Assembly of the amendment proposed. That is not necessarily a reflection on the person who moved it, but the argument presented by the Government was that this exposed the person to strict liability. It was certainly not intended to do that, but it did, and I acknowledge that fact and recognise that was not appropriate in the circumstances.

Notwithstanding that, we believe that there ought to be a liability in the Minister of Family and Community Services in certain circumstances. The amendment which I now move relates to the liability of the Minister jointly and severally with the child where, at the time of the commission of the tort, the child was under the guardianship of the Minister. While recognising that the Minister would not have the day-to-day supervision and control of the child but would place that child with some other person if the person who had the actual custody and care of the child was not exercising (and generally failed to exercise) a level of supervision and control over the child's activities appropriate in all the circumstances of the case, then the Minister would have a liability. That puts it on almost the same footing as the liability of a parent, except in relation to the question of residence.

Our view, which is a very strong view (and we believe it is one of the critical issues of the Bill along with paragraph *(c)*) is that the Minister has to accept a responsibility for ensuring, as much as it is possible to ensure, that there is a level of supervision and control over children who are under the guardianship of the Minister. To some extent, those children under the guardianship of the Minister are so placed because they might be uncontrollable children, but that is not always the case. A child might be a perfectly reasonable and responsible kid who might be a neglected child—not uncontrollable, but who just needs someone to accept legal responsibility for him or her. So, that child might not necessarily be uncontrollable.

However, under the Children's Protection and Young Offenders Act, the Minister accepts a responsibility as the ultimate guardian of such children. It seems to me and to the Liberal Party that the Minister has to accept a responsibility to ensure that those children are properly cared for, that they are given the proper upbringing, and that they do learn the standards appropriate to the society in which they live. If the child runs away and commits a tort or an offence, and if damage is caused, the Minister should have some liability in the circumstances envisaged in the paragraph.

It is all very well for the members of the Government in the House of Assembly to say, 'Well, what do you expect the Minister to do if the child is uncontrollable? That is why they are with the Minister and the Minister should not have any responsibility in the circumstances.' My response to that is that, if the Government expects families, natural parents or adoptive parents, to exercise certain levels of supervision and control over their children then, if the Minister is in the place of a parent, the Minister must have the same obligations.

If it is good enough to place the obligations upon ordinary citizens to have responsibilities for their children in the way in which this Bill envisages, it is equally appropriate for the Minister, who is *in loco parentis* to the child and who has the responsibility at law for the child, to have a similar responsibility. One can also say generally speaking (although I do not think there is any statistical data to establish this) that it is a perception that many of the children who do cause serious damage to public or private property are under the guardianship of the Minister. Certainly, that was the view of several of the people in the legal profession to whom I referred this Bill and who act for these sorts of children in difficulty and their parents, namely, that a greater number of children, who are under the guardianship of the Minister, commit these offences—

The Hon. Diana Laidlaw: The police would tell you the same.

The Hon. K.T. GRIFFIN: —than do those in the care of their parents. Proportionately it is very much higher and my colleague, the Hon. Diana Laidlaw, reminds me that the police also make that observation on the many occasions that the police talk to members about the problems of juvenile crime. So, the Liberal Party feels very strongly about both of these amendments and believes that they are significant amendments for the Bill and that they ought to be accepted by the Chamber on the basis that they make significant improvements to the Bill and remove some of the unreasonable pressure on parents which would otherwise be placed upon them if the amendments were not passed.

The Hon. C.J. SUMNER: The Government opposes both aspects of this amendment moved by the honourable member. I have dealt with both of them in my second reading response and do not want to elaborate again at great length, but the first amendment, which would require the plaintiff to prove that the defendant generally failed to exercise appropriate levels of supervision and control, would in my view make the Bill unworkable. The facts about whether a parent is generally exercising an appropriate level of supervision and control over a child are known only to the defendants, to the family, and, while it is reasonable to require the plaintiff to establish that there was not adequate supervision in a specific sense, to require them also to establish that there was generally a failure to exercise proper supervision and control is an onus which they almost certainly could not discharge. Therefore, effectively what the Opposition is doing is gutting the Bill. That needs to be made clear to the Council and needs to be made clear to the public of South Australia. By this amendment, the Opposition is gutting the Bill.

In the second reading reply I explained in detail the reason for the non-acceptance of this amendment by the Government. I repeat that it would place an impossible onus on a plaintiff and, accordingly, if it places an impossible onus on the plaintiff to prove these facts, then the plaintiff could never make use of the provisions. That is gutting the Bill.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: Well, it is effectively an impossible onus, unless the plaintiff is so close to the family that is the defendant that they know the circumstances of the supervision of the child of that family. If, however, they do not know and have absolutely no knowledge of that family and yet they still had damage or injury done to them, they simply could not establish the issue of lack of general supervision.

The Hon. K.T. Griffin: And your idyllic Bill does—

The Hon. C.J. SUMNER: —provide a defence.

The Hon. K.T. Griffin: That is right.

The Hon. C.J. SUMNER: But that defence is one that has to be established by the defendants, and their circumstances would be known to the defence family. As the honourable member quite rightly pointed out, there are circumstances where defences are provided where they are facts—

The Hon. K.T. Griffin: In the criminal law.

The Hon. C.J. SUMNER: Whether or not it is in the criminal law or civil law does not worry me but the fact is that there are circumstances where defences are provided to respond to a *prima facie* case when the facts which establish those defences are facts that can only really be known in any realistic sense by the defendants themselves, and that is a similar situation here. So, I will not elaborate.

The Hon. K.T. Griffin: That is not the normal position in the civil law.

The Hon. C.J. SUMNER: That is not the normal position but I do not see that one needs to draw a distinction. After all, we are talking about circumstances where a criminal offence has been committed by a child and I think that if this Bill is to have any effect at all, we must reject this amendment. To support the amendment would in my view render the Bill completely ineffective.

As for the second proposal in the amendment, which is to impose liability on the Minister, that too is rejected by the Government. We are not really talking about the Minister in these circumstances; we are talking about the taxpayers of South Australia, and it is really a quite extraordinary proposition for members opposite to put that a Minister is forced because of the circumstances of a family—the neglect or uncontrollable behaviour of a child—on behalf of the taxpayers of this State to take responsibility for that child, because it is a child in those circumstances, but then, to have an additional burden imposed on taxpayers if that child causes damage.

The fact of the matter is that through the Minister the taxpayers do not take on these children as wards of the State or for control by the State because they want to. The Minister and the taxpayers of South Australia would be very happy to leave these children in the hands of their families if they were not uncontrollable or being subject to neglect by their parents but, in the public interest and by laws established by this Parliament, the Minister, representing the taxpayers of South Australia, is obliged to take on the responsibility for children in these and similar circumstances. It is done in the public interest and because they are children of this kind. It seems to me that we have to answer the question why should there be the potential for yet another burden on the taxpayer when it is an obligation that is forced on the Minister by the family circumstances—Ministers do not voluntarily take on these responsibilities themselves.

That is the argument against the second part of the proposition. Finally, the select committee in the House of Assembly which looked at this Bill specifically rejected the proposition that the Minister should be held responsible under it and I think some credence should be given to that. The Bill went to a select committee because when it was first introduced into this Parliament, it was thrown out completely by the Liberal Party and the Democrats. The Government felt it was a principle worth pursuing, which is why it referred it to a select committee in the House of Assembly, and that committee, including Liberal members, supported the proposition that the Minister should not be bound. Therefore, we do not support any aspect of this amendment moved by the Hon. Mr Griffin.

The Hon. K.T. GRIFFIN: I am disappointed that the Attorney-General is not acknowledging that the Minister should have some liability. There is no denying that the Minister is required to take a responsibility for neglected or uncontrollable children but the whole basis for this Bill, as I understood it from the Government's point of view, was to ensure that people who suffered some loss as a result of the tortuous acts of a child who at the same time had committed an offence, should be able to seek some recovery from a parent. If one applies that rationale to the Minister of Family and Community Services, even though the taxpayer might ultimately pay, why should persons who suffer loss as a result of a child under the guardianship of the Minister be treated differently from those who suffer loss as a result of the acts of a child not under the care and control of the Minister? It is a question of which perspective one cares to address, but it seems to me to be inconsistent on the part of the Minister and the Government to argue one thing against natural or adoptive parents and another thing in relation to the Minister.

The Hon. I. GILFILLAN: The first part of the amendment, which seeks to limit the responsibility to the parent with whom the child is residing at the time, appears to me to have some quite horrendous potential consequences. It means that a parent who may be exercising the greater responsibility of the two parents, and the one who may be making an effort to look after a fractious and difficult child, would be the only one of the two parents who would be liable for any penalty under the implementation of this legislation. The response of the Government to the second part of the amendment was quite revealing. On the face of it, it appears to have some sense of justice so that, if the aim of the Bill is to provide some compensation for victims of offences committed by the child, it seems grossly unfair that the victim who does not choose the offender will be in the gamble of whether the child is the ward of the State or an uncontrolled child of natural or adoptive parents. It appears to me, therefore, that the Government's intention is now abundantly clear: this measure is an attempt to embarrass or compel a better standard of parenting. Otherwise there is no point in exempting the Minister from the impact of this legislation.

That neatly brings me to our position concerning the Bill. This Bill is probably the most ill-conceived legislation that I have had the embarrassment to have to discuss in this Parliament. In my opinion it is totally without any possibility of affording any benefit to anyone in this State. It is loaded with the potential of causing an enormous amount of damage. It is our intention to discard totally any attempt to change it and tamper with it, although some amendments may be worthy of passing consideration, because it does not deserve that sort of consideration. The challenge may be put to the Government to answer: what does the Bill attempt to achieve? Will it retrospectively improve the behaviour of children who, through circumstances of no choice of their own have been involved, nurtured and developed into a situation where they are antisocial or their behaviour patterns are such that they offend?

Is it an attempt that it will have a prospective effect on parents, who, under stress or breakdown, unemployment, emotional trauma and all the factors which cause parenting and family life to disintegrate, will therefore change their lifestyle and circumstances in which they find themselves so they will not be vulnerable to the effects of this Bill? Is that the Government's intention? Is it the intention of the Government to appear to be a good big brave Government that is showing a nice bit of muscle to deal with what the public is properly concerned about, that is, offences and

delinquency in the young of our community, many of whom are committing those offences because of the very circumstances that I have outlined. This Bill does not deserve to be considered seriously. It was thrown out last time it was presented in this place. It should be thrown out again and I urge the Opposition to kill this Bill so that it has no chance of venturing onto the statutes of this State.

Our Opposition to the amendments is not necessarily totally on a pro and con basis or whether it may marginally or otherwise affect the general value of the wording of the Bill, but we are voting to oppose all amendments because we do not believe the Bill deserves such attention and it should be rejected on any criteria that I can think of that the legislation should be deliberated on in this Chamber. I oppose the amendment.

The Hon. C.J. SUMNER: That is a very curious position to be taken by the Democrats and a rather overwrought contribution by the Hon. Mr Gilfillan.

The Hon. M.J. Elliott: Knee-jerk legislation.

The Hon. C.J. SUMNER: It can hardly be knee-jerk legislation when it was introduced to this Parliament over two years ago, debated fully in this Parliament, rejected by the Parliament at that stage, reintroduced in another place by the Government, referred to a select committee specifically by the Government—a select committee on which the Liberal Party was firmly represented—

The Hon. M.J. Elliott: Not very good on select committees.

The Hon. C.J. SUMNER: The Hon. Mr Elliott interjects that they are not very good on select committees. I am not going to comment on that. All I am going to comment on is his interjection that it is a knee-jerk reaction. A Bill that has been before Parliament for 2½ years in one form or another and subject to the sort of debate to which it has been subjected can hardly be a knee-jerk reaction. It was referred to a select committee and that committee took evidence and made its report. It included the Liberal Party. The Bill now before us gives effect to the recommendations of that committee. It is hardly what I would call a knee jerk reaction to the Bill.

The Hon. Mr Gilfillan has attempted to say that the Bill will do nothing. I do not believe that that is the case but I certainly concede that it is not a Bill introduced to solve all the problems of parenting or all the problems of juvenile delinquency that might arise from ineffective parenting. It obviously will not do that—nor is it designed to do that. The honourable member is fully aware, as the Parliament is fully aware, of the broader based initiatives taken by the Government in this area through the community crime prevention programs that involve juveniles. The Lower House has established a select committee to look at this difficult issue, one which I am sure all members would know we do not have on our own in South Australia.

It is a problem that faces every State and similar nation in the world. That is not to say that we ignore it but that the issues involved in juvenile delinquency are enormously complex. The Government does not put forward this Bill as a panacea to solve those issues. Underlying it is a principle that I think the community supports and a principle that has logic to it; that is, the family as the basic unit in society in which parenting skills should operate to instil in children proper standards of behaviour for the future.

All of us have the potential to fail in that quest. However, if we accept the importance of the family in society and the importance of parenting skills in the context of that family, and if we accept the responsibility of parents for their children as being basic to the structure of our society, I do not see anything wrong—in fact, I see it as perfectly logical following from that—in imposing some responsibility on parents for the actions of their children. It is fair to say that this Bill does it in a very limited and qualified way.

The Hon. R.J. Ritson: You have lost the common touch. Not all people without parenting skills are blameworthy.

The Hon. C.J. SUMNER: The Hon. Dr Ritson says that I have lost the common touch. I think that the honourable member, if he studied the Bill, would see—and I know that the select committee was concerned about this—that there are significant qualifications in it that ought to overcome the problems that he may foresee. It is all very well to say that people are not responsible for the fact that they do not have parenting skills, but in the final analysis in our society we have to come back to some element of personal responsibility for our actions. We cannot totally discard the concept of personal responsibility by saying that it is due to the environment, violence on television or it is someone else's fault.

Referring to the Hon. Mr Gilfillan's contribution on what he sees as the Bill, whether he accepts it or not, that is a reasonable response and justification for the Bill and a reasonable justification based on what one ought to recognise, and what I think the community recognises, about the responsibilities of families in our society. There is little doubt to my mind that the community generally accepts the basic underlying proposition about parental responsibility for their children. If they accept it, it seems to me that there is nothing wrong with legislators representing those people reinforcing those concepts by a Bill such as this.

It is fair to print out that in the Northern Territory a Bill has recently been passed which imposes strict liability on parents for the damage done by their children up to a maximum of $5 000. That is strict liability, not the sort of qualifications that exist in this Bill. To some extent, there is more logic in that approach than there is in this Bill, but this Bill—

The Hon. R.J. Ritson: It is much narrower.

The Hon. C.J. SUMNER: It is not narrower; it is much broader. It is strict liability if they are living with their parents. It is considerably broader in ambit than this Bill and it may well be more logical, but this Bill, as a compromise, perhaps suffers from some defects. I would ask honourable members to look at the underlying principle which has given rise to this legislation, which was recommended by the working party on the Children's Court which reported a couple of years ago. That report pointed out that in the French and German civil codes, for example, there are also provisions of reasonably strict liability on parents for damage caused by their children. This issue has also been addressed and legislation has been passed in a number of States in the United States of America. The Northern Territory is not the only State in Australia that is considering it. We have been considering it, as have New South Wales and Victoria. It is not an easy issue; I concede that.

The Hon. K.T. Griffin: United States liability is limited.

The Hon. C.J. SUMNER: There are different versions of the Bill in the United States. They are not all the same because of the different States. Despite the Hon. Mr Gilfillan's comments, I do not accept his emotional tirade against the Bill. I would ask him and other honourable members to come back to the basic philosophy which drives it, and I think that is one that most people in the community would support.

The Hon. K.T. GRIFFIN: Having got onto the philosophy of the Bill, it is important to make a few observations. As I think many would expect, I am disappointed that the Hon. Mr Gilfillan is not at least supporting some of the

amendments, but I understand the point of view that he has expressed.

It is difficult to determine the ways by which parents may be persuaded to accept not just responsibility, but liability, for the acts of their children and at what stage they should accept that liability. We had an example a couple of days ago of two seven or eight-year-old children who ran amuck at a school. In that instance the parents worked with the children to clean up the damage.

Under this Bill, there would be no liability upon the parents to do that. I think we will find that in most families in the community there is an acceptance of a moral obligation at least to ensure that the child makes some contribution to remedying the damage that might have been caused. On many occasions, parents join in in ensuring that the damage is compensated for or repaired.

The question is whether a Bill like this, in the form in which it comes before us, will have the effect of encouraging parents to maintain supervision and control or whether it will deter them and cause added pressures on families, particularly where there might be a child who is difficult, but not necessarily impossible to control, or where there may be a high-spirited child who, on only one occasion in his or her lifetime might become influenced by peer group pressure and commit a tort, an offence, and cause damage. In those circumstances the question is: what impact will that have on the family?

We on this side of the Council have a very strong view that the family is critical in our society and that it ought to be supported and maintained as much as possible. However, we recognise that in difficult economic circumstances, for example, there are added pressures on a family. Tensions increase if one or both parents who might normally be employed are unemployed, if they are on the dole or if they are unable from the income of one or both to provide adequate clothing for their children.

There are in the community many people who cannot afford to buy proper shoes, or who allow their children to wear unpatched clothes. There are more of those people at the moment than there have been for many years because of the difficult economic circumstances. The real question to ask in relation to this Bill is, if it passes in its unamended form, what will be the consequences for those sorts of families? The prediction by SACOSS, for example, is that it will add pressure to those families who are disadvantaged, not necessarily as a result of any fault of theirs, but because of the circumstances in which they might find themselves, whether socially or economically.

In those circumstances, if one of the children happens to commit a tort and the parents are ultimately sued for the damage that might have been caused by the child, that could result in the complete breakdown of the family. As some have indicated, it could also mean that, where a child was difficult to control, parents might be persuaded to cut their losses. I would be surprised if that happened in many families, but it does happen, particularly where a family is already under pressure, where perhaps the parents have separated or divorced and one parent, usually the woman and the mother, has the responsibility of looking after those children against very difficult odds and in circumstances of considerable pressure. When one looks at those sorts of families, one must register very serious concern about the impact that a Bill of this nature will have upon them.

The Hon. R.J. Ritson: It would be terribly damaging to the bond between parent and child, surely.

The Hon. K.T. GRIFFIN: Well, that is one of the arguments that has been put forward.

The Hon. C.J. Sumner: This is just the second reading speech. Get on with it.

The Hon. K.T. GRIFFIN: The Attorney-General has made some observations about the philosophy of the Bill. I am entitled to respond as I and the Liberal Party see the philosophy of the Bill and some of its effects. I am expressing concern that it looks as though the amendments that I have proposed are not likely to pass. I am seeking sensibly and rationally to talk about the problems that that may well create, and I think there are some significant problems. That is the evidence that has been presented to the Liberal Party in consideration of this Bill.

In relation to the Minister of Family and Community Services, I have already responded to that. If it is reasonable for ordinary families and parents to be subject to the pressure of this Bill in relation to damage caused by a child, it is equally reasonable to expect that the Minister will be subject to the same pressures, collectively, and that those who might suffer a loss as a result of the acts of children in both circumstances ought to be treated similarly.

The Committee divided on the amendment:

Ayes (10)—The Hons J.C. Burdett, L.H. Davis, Peter Dunn, K.T. Griffin (teller), J.C. Irwin, Diana Laidlaw, R.I. Lucas, Bernice Pfitzner, R.J. Ritson and J.F. Stefani.

Noes (11)—The Hons T. Crothers, M.J. Elliott, M.S. Feleppa, I. Gilfillan, Anne Levy, Carolyn Pickles, R.R. Roberts, T.G. Roberts, C.J. Sumner (teller), G. Weatherill and Barbara Wiese.

Majority of 1 for the Noes.

Amendment thus negatived.

The Hon. K.T. GRIFFIN: As my next amendment was consequential upon the amendment which I have just lost, I do not intend to move it. I now move:

Page 2, after line 5—Insert new subsection as follows:

(4a) An order for damages made pursuant to this section against a parent cannot exceed $10 000.

The liability that is imposed by this Bill is unlimited, and it relates not only to property damage but also to personal injury. To that extent, it is very much wider than the provision in the Northern Territory legislation which, effectively, is the only legislation in Australia that relates only to property damage. However, as the Attorney-General said, the issue of liability is dealt with differently.

The Opposition believes that there ought to be some cap on the liability of parents under this Bill for the acts of their children. It appeared to us that $10 000 was a reasonable figure. Even that figure will send many parents to the wall. Many families cannot afford $5, let alone $10 000. Nevertheless, because the Children's Protection and Young Offenders Act has a limit of $10 000 in relation to the amount of compensation that may be awarded against a young offender, it seemed to us that that was an approriate level to include in this Bill.

There was a lot of questioning in the other place by Government backbenchers about the way in which the $10 000 was to be imposed—whether it was to be *pro rata*, whether it was to be up to $10 000 or whether it was to be treated in some other way. I would have thought that it was clear from the amendment that it is limited to $10 000. There is no issue of *pro rata* apportionment of a loss. If a person has lost $15 000 then the court might award $10 000. If a person has lost $10 000 then the court may award $10 000. If a person has lost $20 000, it is still a maximum of $10 000. It is our belief that imposing this limit will make the point that is sought to be made by the Bill—that in some circumstances parents will have to meet a liability for the damage caused by the act of a child, but that that should not be an unlimited liability.

The issue is recognised, but the liability is limited. It is limited also for reasons that I have earlier identified—that the very fact of a claim under this Bill may create tension on a family and within a family, that might cause that family to break apart. It is less likely, I would suggest, with a $10 000 penalty than with a $100 000 penalty. Nevertheless, I recognise that for some families $10 000 may have the same effect. However, at least if our amendment to the earlier part of the clause had been accepted, and with this $10 000 cap in place, it would have limited the potential impact of creating unbearable pressures for families and for parents, in particular those who are trying to do a good job but who, through no fault of their own, fail to do so. So, it is with those issues in mind that I move to impose a limit of $10 000 on the amount of damages that can be awarded against a parent.

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

The Hon. C.J. SUMNER: The Government opposes the amendment. The Democrats are really adopting an extraordinary approach to this Bill—even for them.

An honourable member interjecting:

The Hon. C.J. SUMNER: They are not actually, they are totally opposed to the Bill. One can only assume that they are involved in a tactical squeeze on the Liberal Party, hoping that by not accepting the amendment moved by the Liberal Party that would force the Liberal Party to vote against the third reading. That is the only interpretation that one can put on the Hon. Mr Gilfillan's approach to this. That is a matter for him.

It seems astonishing that, after all he has said about this, that he opposes the amendment moved by the Hon. Mr Griffin to limit the liability. He has argued throughout that there should be no liability on parents. The Hon. Mr Griffin introduces an amendment which reduces the liability on parents from unlimited liability to $10 000, and the Hon. Mr Gilfillan opposes it. It is not for me to argue the logic of that case. The only logic is political logic—to squeeze the Opposition into a position where it votes against the third reading. That may well be the tactic. Whether or not that is successful, remains to be seen. However, the Government believes that we are not dealing here with a case of strict liability: it is an issue where there are significant qualifications and considerable steps that have to be undertaken before liability is established against a parent. The select committee did not recommend any limit. So, the Government cannot accept the amendment.

The Hon. I. GILFILLAN: The Attorney reflected on the motive of the Democrats' position. In my second reading speech I indicated that the Democrats would not entertain any amendments. I spoke at some length, explaining that I saw no point in gracing any amendment with Democrat support, because it could easily be misconstrued that in some way we believe that this measure could, to some extent, do some good. The Attorney either cannot conceive of a motive that is straight down the middle, or he just refuses to believe what I have said in this Chamber. That is his choice; he can choose to disbelieve if he wishes. However, I take this opportunity to point out that the Democrats have taken a straight, consistent position on this Bill. There has been no variation in that position from the beginning to the end.

If the Attorney wants to deviate to look at the pros and cons of certain amendments, he would very quickly realise that virtually none of the amendments makes any substantial difference to the Bill. He will realise that, if this ridiculous legislation is put in place, the question of the cap being $10 000 will be immaterial to the families concerned, because they will not be able to get $200. They would be very likely to be thrown into gaol for not being able to meet their obligations. Then this lament about having so many people in prison, and this Government's crying crocodile tears about that will be proved to be hollow, as it doubles the penalties for those convicted of graffiti vandalism so that they serve six months in prison instead of three months and now exposes the most impecunious in our society to imprisonment for debt defaulting. When the Attorney takes the liberty to impugn my motives and the consistency of the Democrats' position, he should look at his own situation.

The Committee divided on the amendment.

Ayes (10)—The Hons. J.C. Burdett, L.H. Davis, Peter Dunn, K.T. Griffin (teller), J.C. Irwin, Diana Laidlaw, R.I. Lucas, Bernice Pfitzner, R.J. Ritson and J.F. Stefani.

Noes (11)—The Hons. T. Crothers, M.J. Elliott, M.S. Feleppa, I. Gilfillan, Anne Levy, Carolyn Pickles, R.R. Roberts, T.G. Roberts, C.J. Sumner (teller), G. Weatherill and BarbaraWiese.

Majority of 1 for the Noes.

Amendment thus negatived.

The Hon. K.T. GRIFFIN: I do not have any further amendments. I did make some observation during my second reading contribution about the potential for bankruptcy. The Attorney-General responded and drew attention to subsection (5) *(a)* and I wanted to make some observations about that. The fact is that that provision will not prevent bankruptcy. If there is not a judgment or order against a parent, then the fact that the court may order the judgment debt to be paid by instalments is not in itself a constraint against the judgment creditor from issuing bankruptcy proceedings under the Federal Bankruptcy Act. The Federal Bankruptcy Act is not subject to State law and it has happened on many occasions that, where there is a judgment debt (even though it might be payable by instalments), a creditor might feel that more is to be gained by proceeding with bankruptcy than there is with taking the amount of the judgment debt by instalments.

The same would apply in relation to subsection (5). Even though there is a power to order payment by instalments, that will not necessarily deter a judgment creditor from pursuing bankruptcy proceedings if that is the most likely way that the judgment creditor will recover. I suppose that it is more likely to be the case in relation to bodies such as insurance companies which have a commercial responsibility to recover than it is perhaps for other people or organisations.

The fact that the court may vary the order is not in itself sufficient to avoid the provisions of the Bankruptcy Act. I draw attention, also, to paragraph *(b)* which provides that, if default is made in the payment of an instalment, the whole amount of the judgment debt becomes due and payable. So, if one instalment is missed, I would suggest that it becomes irrelevant whether the court may vary the order—the whole amount becomes due and payable, full stop. That is also indicative that bankruptcy proceedings might follow even at that point.

Of course, the other problem is that the judgment debtor himself or herself might decide that bankruptcy is the best way to avoid the debt. It is not a fine: it is a debt and, therefore, a judgment debtor is able to take the advantage of the Federal Bankruptcy Act to avoid the liability. In some circumstances where a person has a house, a motor car and a few other assets, that will not be the best course to follow but, in many instances, people who have no assets might well find themselves in a position where, to avoid

the liability, bankruptcy is the answer. That brings its own stresses and strains.

So, I do not agree with what the Attorney-General indicated in his reply about my point relating to bankruptcy and I wanted to ensure that the position which I hold in relation to that and as I understand the law is on the record.

Clause passed.

Title passed.

STATUTES AMENDMENT (STATE HERITAGE CONSERVATION ORDERS) BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

In 1985 the present South Australian Heritage Act was amended to give the Minister responsible for administering the Act power to place Conservation Orders on buildings or structures which were considered to have significant heritage qualities but were threatened with damage or destruction. It was intended that Conservation Orders could be placed on a building or structure at any point in time thus ensuring the protection of the State's heritage. Since 1985 this intent has been carried out in practice and has been generally accepted as a power which is available to the Minister.

During 1991 a court challenge was made to the power of the Minister to make a Conservation Order on a building after a planning application had been lodged for its development. The case in question involved the proposed demolition of the building known as Gawler Chambers on the corner of Gawler Place and North Terrace in the city of Adelaide and the subsequent erection of a modern hotel on the site. After the development application was lodged with the Adelaide City Council the Minister placed Gawler Chambers on the Interim Heritage List and issued an Urgent Conservation Order on the building to protect it from destruction. This was done in the belief the building was an important part of the State's heritage and was of significant aesthetic, historic and cultural interest.

The Adelaide Development Company, who were the applicants for development, took Supreme Court action to have the council consider the planning application without consideration of the heritage listing or Conservation Order. The Court held that the Council must have regard to the law at the time the application was made and as it considered the Interim Listing and Urgent Conservation Order introduced new law, Council could not have regard to them in deciding the application.

As a result of this decision much of the State's heritage which has not yet been assessed and documented could be lost. Planning applications which would result in the destruction or damage of a building or structure of heritage significance to the State could be made, and the Minister is powerless to intervene to provide protection. This clearly was not the intent of the 1985 amendment and the Government considers such a situation to be untenable given its commitment to protecting the State's heritage for the benefits of present and future generations.

Recognising the urgency of the situation the Government has moved quickly to introduce this legislation which will provide the necessary protection. The amendments proposed are in keeping with the original intention of the 1985 amendment and are aimed at putting the powers of the Minister beyond question.

Both the City of Adelaide Development Control Act 1976 and the Planning Act 1982 require the Planning Authority to consider a development application on the basis of the law existing at the time the application is made. The amendments proposed will enable the Minister to interim list a heritage item and place a Conservation Order on it after the planning application is lodged. In cases where this occurs the Planning Authority will be required to process the application and make its planning decision as though the Interim Listing and Conservation Order were in place at the time the application was lodged, thus ensuring proper attention is paid to heritage considerations.

Over the last year, six Urgent Conservation Orders have been issued. In four of these cases the Order was placed after careful assessment of requests from local councils for the Minister to use her powers to protect items of heritage value to the local community. The Government considers that to date Urgent Conservation Orders have been used judiciously and it is envisaged that this practice would continue in the future. The orders have a limited life of 60 days and this period can be extended up to 6 months by the Planning Appeal Tribunal thus allowing time for a complete assessment of the heritage significance of a building or structure. This small time delay is considered reasonable to ensure that items of irreplaceable heritage significance are not lost because of hasty planning decisions.

The amendments proposed to the South Australian Heritage Act ensures that where a valid planning approval is in existence it can not be overridden by a Conservation Order. The Government considers that this provision is essential to provide developers with the certainty necessary to proceed confidently with development proposals.

In framing the amendments the Government has sought to confirm the intent and practice of the 1985 amendment and provide the necessary level of protection for the State's heritage whilst giving developers the assurance that Conservation Orders can not be used to override existing planning approvals.

Clause 1 is formal.

Clause 2 provides that the measure is to be brought into operation by proclamation.

Clause 3 is a formal interpretation provision.

Clause 4 amends section 42 of the City of Adelaide Development Control Act 1976. Section 42 provides that the laws to be applied and the planning principles to be considered in deciding an application for development approval in the City of Adelaide and in resolving consequential issues in other proceedings (whether under that Act or not) are the laws and principles in force as at the time the application was made.

This section was the subject of judicial interpretation in the recent case before the Supreme Court of *Adelaide Development Co. Pty Ltd v. The Corporation of the City of Adelaide and Another.* The effect of the decision in that case is to overturn the previously generally accepted view that if an item (that is, a building, structure or land) was listed in the interim list, registered in the Register of State Heritage Items or made the subject of a conservation order under the South Australian Heritage Act 1978 after application was made for approval of a development relating to the item, the listing, registration or order did not constitute a change in the law but was rather an administrative act under

the existing law. As a result of the decision, where heritage listing or registration of an item occurs after a development application was made in respect of the item, the fact of the heritage listing or registration is, by virtue of section 42, to be ignored in the proceedings on the application.

Section 24 of the South Australian Heritage Act provides that it is to be an offence if a person damages or destroys an item that is the subject of a conservation order under Part V of that Act. This section was previously thought to operate to protect an item the subject of such an order against any subsequent damage whether proceedings for development approval had been commenced or development approval had been given. Also, as a result of the decision, where such an order is made in respect of an item after an application for development approval was made in respect of the item, the protection apparently afforded by section 24 will be excluded if the development application is successful and section 42 of the City of Adelaide Development Control Act will operate to authorise the development so approved.

In this context, the clause amends section 42 to add a new subsection that is intended to make clear that where a conservation order has been made (whether before or after the commencement of this measure) in respect of an item of the State heritage that was at the time of the making of the order the subject of an application for development approval—

(a) the item will be taken to have been an item of the State heritage for the purposes of section 42 at the time the application was made;

and

(b) the conservation order will be taken to have been in force for the purposes of that section at that time.

It should be noted that this deeming provision is expressed to apply where a conservation order is made after the lodging of a development application and not where an item the subject of a development application is placed on the interim list or registered under the South Australian Heritage Act 1978 without also being made the subject of a conservation order.

Clause 5 amends section 57 of the Planning Act 1982 which makes the same provision for the law applying in relation to applications for planning authorisation under that Act as section 42 of the City of Adelaide Development Control Act makes in relation to City of Adelaide planning applications.

The clause adds a new subsection to section 57 providing that where a conservation order has been made under Part V of the South Australian Heritage Act 1978 (whether before or after the commencement of this measure) in respect of an item of the State heritage or a State Heritage Area that was at the time of the making of the order the subject of an application for planning authorization—

(a) the item or area will be taken to have been an item of State heritage or a State Heritage Area for the purposes of section 57 at the time the application was made;

and

(b) the conservation order will be taken to have been in force for the purposes of that section at that time.

Clause 6 amends section 24 of the South Australian Heritage Act 1978. This section provides that it is an offence if a person damages or destroys an item or State Heritage Area that is the subject of a conservation order. The clause amends the section to exclude from this prohibition the carrying out of a development affecting an item or State Heritage Area in accordance with an approval under the City of Adelaide Development Control Act or a planning authorization under the Planning Act granted before the item or Area became the subject of a conservation order.

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

DISTRICT COURT BILL

Returned from the House of Assembly with amendments.

MAGISTRATES COURT BILL

Returned from the House of Assembly with amendments.

STATUTES REPEAL AND AMENDMENT (COURTS) BILL

Returned from the House of Assembly with amendments.

ENFORCEMENT OF JUDGMENTS BILL

Returned from the House of Assembly without amendment.

JUSTICES AMENDMENT BILL

Returned from the House of Assembly with amendments.

STAMP DUTIES (ASSESSMENTS AND FORMS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 21 November. Page 2194.)

The Hon. R.I. LUCAS (Leader of the Opposition): I support the second reading of the Stamp Duties (Assessments and Forms) Amendment Bill 1991. Members will be pleased to know that as this is mainly a committee Bill I will not spend much time in general comment in the second reading but, to help expedite the Committee stage of the debate tomorrow, I will at least outline the concerns we have with some of the aspects of the Bill and outline our amendments. Stamp duties are an important part of the $5 billion State budget. They contributed an estimated $330 million to the State revenue this financial year, an increase from $300 million last financial year, which is about 10 per cent. Certainly, it is interesting to note that there is an increase in stamp duty revenue of about 10 per cent at a time when we are in a national recession, and we certainly have a recession in South Australia. It is a significant increase in stamp duty estimated in the State budget papers for this year.

As I indicated recently in the debate on the Pay-roll Tax Amendment Bill, as a general principle the Liberal Party is prepared to support blocking off or closing the use of blatant and artificial contrivances which seek significantly to reduce either the payroll tax base or the stamp duty base for Government. As we indicated in relation to the payroll tax, all of us might not want to see the payroll tax. I guess at that stage we had not yet seen the fight-back package from

the Hon. Dr Hewson with the possibility of getting rid of payroll tax. It contributed $500 million and stamp duties contribute $330 million. They are significant revenues for the State and, whilst no one likes paying taxes and duties, as long as they are there, they are an important part of the revenue base for Government. Until such stage as we decide to get rid of them, then certainly my personal position, as I indicated, is that we can support the position that the base be protected until such a stage that we make conscious decisions to reduce the amount of stamp duty that should be paid or we abolish stamp duty completely from the State. I am not suggesting that that is likely to be a possibility at all.

However, as I indicated in the payroll tax debate, we do not support through these sorts of amending Bills the extension of the tax base by closing off loopholes. We would make the distinction that, if it is a genuine attempt to close off a loophole, the use of a blatant contrivance which is significantly affecting or has the potential to affect the tax base, that is one thing. However, if in trying to do that the Government and those who advise it in relation to the drafting of the legislation draft the amending Bills in such a fashion that potentially they can extend the tax base, then we do have significant concerns with that. If Government wants to increase the tax take it ought to do it openly and honestly and do so by attempting to increase the tax rate and the stamp duty rate.

As I said, I really want to make those general comments. The only other comments I want to make in the second reading are to address the specific areas of concern in the Bill so the Government can be aware of some of the issues that I will raise and some of the amendments that I will move during the Committee stage of the debate. The major reason for the Bill before us is tied up with section 31f (1) *(a)* of the current Stamp Duties Act. That provision in the Stamp Duties Act provides:

> Subject to this Act and in particular to section 31i a registered person shall . . . *(a)* not later than the 21st day of each month lodge with the Commissioner a statement in the prescribed form and verified in the prescribed manner setting out the total amount received by him as rent during the preceding month in respect of his rental business.

Hansard would not have detected the inflection of my voice there when I emphasised the two words 'as rent' in that subsection. As a non-lawyer and certainly someone not involved in taxation law, I think that seems to make a lot of commonsense. It does not seem to have any problems by what is intended in the legislation, particularly as it comes under the section of the Stamp Duties Act under rental business. However, as with much legislation and certainly with tax legislation, behind those two simple words 'as rent' there has been much legal precedent and there continues to be a continuing legal argument between the Commissioner of Stamps and various potential payers of stamp duty in the State of South Australia.

That culminated recently in a Supreme Court case which was eventually settled out of court by the State Government because, obviously, it was felt that it did not have much prospect of winning that case against the firm that was involved. As I said, it would appear on the surface of it that the words 'as rent' are quite straightforward and could not be open to too much interpretation as to what is intended. I want to outline the current situation. Some evidence has been given to us from a number of prominent hire companies, and these are people who hire tents, marquees, party equipment, machinery and so on to anyone who wants to pay the hiring cost.

The current situation in one firm was described to my office as follows: the Government some years ago agreed that he (that is the hire firm) could discount his rental revenue by 40 per cent to take account of the service factor. He also deducts replacement costs and delivery and collection charges from the returns to the Commissioner of Stamps. Another firm stated that the negotiated position with the Government is that the firm pays stamp duty on 75 per cent of the hire charges. These charges do not increase the cost of delivery, replacement of broken parts and the collection and sale of ancillary items such as serviettes and paper plates. The managing director or representative of the firm suggested that these additional items make up 10 per cent to 20 per cent of the turnover of the business. The situation is that if on the surface of it a hire firm is taking about $100 000 in rental income, the firm and the Commissioner of Stamps in the past have agreed that in some cases 25 per cent to 40 per cent (I am told that the record at the moment is about 82 per cent) worth of deductions can be made from that rental income before stamp duty is struck.

Taking the case of the first firm that I mentioned that had a 40 per cent discount factor agreed with the Commissioner of Stamps, if that firm had taken in $100 000 in rent, the Commissioner agreed with the firm that 40 per cent or $40 000 could be discounted or deducted from the $100 000. So, the firm did not have to pay stamp duty on $40 000: it pays the 1.8 per cent stamp duty on the difference, which in this case is $60 000.

As I said, that 40 per cent figure is not constant and it varies. I am advised by the Commissioner and his officers that it is negotiated on a case-by-case basis with firms and it is generally agreed as to what that percentage figure is for each firm and then the individual firm lodges statements and forms and pays the 1.8 per cent stamp duty on that figure. That is what is understood in the current legislation as rent: it is not the total $100 000 but the $100 000 figure discounted by $40 000—in this case to $60 000—which is understood as rent, under terms of section 31f (1) *(a)* of the Act.

I am advised by the Commissioner and his officers that the problem concerning the recent court case was not in relation to the 40 per cent discount figure, or whatever the figure was. The problem related to firms coming to the Commissioner and saying what their original rental figure might have been. In the hypothetical example I quoted it was $100 000 and there was a strong difference of opinion between the Commissioner and some firms as to the accuracy of the $100 000 that I have used in the example that the firms were presenting to the Commissioner for discounting.

In a hypothetical example given to me, for example, with a video hire business, a person pays $6 rental/hire for a video for overnight or weekly use, or whatever, and the firm describes the $6 not as $6 rental but, say, maybe $3 rental and $3 for handing the video over the counter to the hirer. In that way a firm could avoid the provision of the current legislation.

As I said, on the surface, as a non-lawyer, it was hard for me to grasp, but finer legal minds than mine have obviously argued this and the Commissioner of Stamps, based on the Crown Solicitor's advice, settled out of court because of Supreme Court cases in Western Australia and in Queensland where, to use a colloquial and not a legal phrase, they did not have a leg to stand on. It was decided to settle out of court and seek to amend the legislation in the light of the Western Australian and Queensland precedents, and in the light of the advice that the Crown Solicitor gave.

They settled out of court with this prominent hiring firm here in South Australia. For anyone who hires videos—and

this is a hypothetical example, because it was not a video firm that went to court—at least to the layperson it is readily apparent that if one pays $6 to hire a video, whether they describe it as $3 rent and $3 service charge, or whatever, it is really a contrivance to avoid the intention of the current stamp duty legislation to ensure that people who conduct rental business pay the appropriate level of stamp duty on that business.

As I said, I am not entering into the argument of whether the 1.8 per cent is right or wrong or whether the rental business should or should not be included, but the fact is that the legislation says that the rental business is part of the Stamp Duties Act and the rate is 1.8 per cent. On the surface of it, I can appreciate the views of the Commissioner and the Government about what I would say is a contrivance to avoid the proper payment of stamp duty in relation to rental business. The problem that the Liberal Party has is that in the attempt to draft a clause to close the loophole we have had some advice, which I will read into *Hansard* in a minute, that not only has the Government closed the loophole but also possibly has extended the provisions beyond what we believe was intended or certainly beyond what we believe should have been intended. It is most certainly beyond what we would be prepared to support.

As in the case of most other taxation Bills before the Council, and I think the Attorney who is handling this Bill will be aware, the Liberal Party has received well analysed advice on taxation matters and Bills from someone associated with the taxation industry. Whilst that person does not want to have his name publicly known, his name is certainly well-known to the Commissioner of Stamps and to Government advisers. I want to read into the public record about 1¼ pages of that advice provided to us, advice about which I have had significant discussions with Parliamentary Counsel and the Commissioner of Stamps and his officers. I quote from the advice that we have received under the heading, 'Memorandum in respect of a Bill for an Act to be cited as the Stamp Duties (Assement and Forms) Amendment Act 1991', as follows:

Clauses 4 and 5:

The justification for these amendments is described in the report as certain practices of netting down rental charges. The report further suggests that by amending the definitional clause of the Act to make it completely clear that the total amount charged in relation to the hire of goods is dutiable these practices will cease.

Unfortunately, the definitional clause has gone much further than simply making it clear that the total amount charged in relation to the hire of goods is dutiable but has extended the operation of the provisions to all amounts that the registered business receives in respect of his or her rental business. This appears to be going very much further than the report suggests.

If this amendment proceeds as currently drawn there will be significant unintended consequences. As drawn the following is but a simple example of how far it goes.

A person operates a business primarily of hiring out paddle boats. His receipts from this business exceed the threshold so he is obliged to file and pay rental duty. His business is conducted from a small shop premises. In those premises he also sells confectionery, icecreams and soft drinks. He has found from the operation of his business that many people having exercised on a paddle boat require refreshment. He is a prudent operator and requires the person hiring the boat to pay a small fee on account of insurance. He does have a specific insurance policy that involves a premium per use and the fee he collects is remitted monthly to his insurer. On the basis of this amendment:

(a) All amounts received by him in respect of the sale of soft drinks, icecreams and confectionery will be required to be included in his return and duty paid thereon.

These amounts are received by the person in respect of his rental business because that is what is his business, notwithstanding these proceeds arise from an incidental or ancillary activity.

(b) The amounts received by him from each of the hirers to cover insurance will also be dutiable. This will be the case notwithstanding that those amounts may be passed on without deduction to the insurers.

(c) If one of the paddle-boats sinks and a claim is made by the operator on his insurer, then the proceeds of his claim, which would usually be capital, will also be required to be included in the return and bear tax.

(d) Finally, if the operator receives a refund from the Commissioner in respect of the former year, because he paid too much by way of duty, then that refund would, of course, be an amount received in respect of the operator's rental business and itself dutiable.

Surely the foregoing is not intended. The problem arises from the use of very broad and general language. If there are practices which have been adopted which lessen the amount of duty that is properly attributable to the use of the goods, then that should be specifically dealt with.

That is indeed the position that the Liberal Party puts to this Chamber this evening and the position that it put on the pay-roll tax Bill.

I have read that into the *Hansard* record, I have had a lengthy debate with Parliamentary Counsel and the Commissioner of Stamps and his officers, and I have this evening circulated an amendment to seek to meet the position that I have just explained. I advise the Attorney-General—his advisers do know—that this amendment is in a different form from the amendment that the Liberal Party moved in another place. We accept, as does our legal advice from Parliamentary Counsel, that our first attempt at trying to resolve this dilemma was unsuccessful. That was certainly the view of the Commissioner of Stamps, and the legal advice available to us indicates that our original amendment would not have successfully achieved what we wished to do.

However, again speaking as a non-lawyer, relying on legal advice, and having had some discussions with the Commissioner of Stamps, we believe that the amendment that has now been circulated will achieve a reconciliation of that dilemma that I explained earlier; that is, that proper duty ought to be paid, but it ought not to be extended into all these other areas that nobody would believe to be part of a rental business of a particular firm. If a video shop hires out videos, that ought to be rental business; but selling iced vovos, Maltesers, Jaffas, lollies and sweets, as many of them do, clearly, from my viewpoint, that is not part of the rental income or business of the firm, whether it be Focus Video, or whatever the firm's name is, and ought not to be construed as such.

I accept the view of the Commissioner of Stamps that he does not intend that to be the case, but the view that I put to the Commissioner and to Parliamentary Counsel is that, whilst that might be the view of the present Commissioner of Stamps, we are setting down in legislation the law for lots of other Commissioners of Stamps potentially, although I am sure that the Bill will be amended a dozen times in the interim. We are setting down the law for the future, and I do not want to call into question the intention of the Commissioner of Stamps. Rather, it is a question of establishing what the situation ought to be, and the law ought to be as precise as it can be.

As we saw with the previous argument in relation to the use of the words 'as rent', although we may understand that to be fairly clear cut, when one gets in front of learned justices with learned counsel arguing both sides of the case, it is possible that all sorts of interpretations may eventuate from what I as a lay person may have originally intended. That is the key part of the Bill. We will certainly debate that in the Committee stage. I have not yet been advised what the Commissioner's attitude is to this second attempt at amending this clause.

The other issues will not take me as long to address. We have a series of amendments which relate to an attempt in

this Bill to allow the Commissioner of Stamps to approve various forms that must be completed by businesses. The Liberal Party would prefer a continuation of the current law; that is, that that be done by way of regulation. I accept and acknowledge that in the past two years there have been a number of amending Bills to the Stamp Duties Act where this change from regulation to giving power to the Commissioner has gone through this Parliament without very vocal opposition from the Liberal Party, as far as I can see.

However, the position that has been adopted in the Parliamentary Liberal Party room on this occasion is that, to put it bluntly, enough is enough. The Liberal Party believes that it ought to make a statement of principle in relation to the continuing control of the Parliament in some way over these important issues by way of regulation so that the Parliament at least has some option of being able to reject or disallow the regulation should it so choose.

In relation to rental business, the only distinction I can draw between this provision and some of the other clauses, such as clauses 34, 71 and 94, which the Government is seeking to amend, is that in the rental business section of the Stamp Duties Act there does not appear to be any section which lays out specifically what must be included in the particular form. The Stamp Duties Act is difficult to track down. The Commissioner of Stamps has promised me a consolidated version of the Act, but it has not yet arrived. Such a provison may be there, but I have not been able to track down what ought to be in the forms. Concern has been expressed within the Liberal Party that if it is not set out in the Act, and if we give the power to the Commissioner, the Commissioner may be able to amend the form to seek a whole range of information that he does not currently collect.

Again, the Commissioner of Stamps has indicated to me that that is not his intention, and I accept that as being the view of the present Commissioner. There is a series of amendments on that issue to establish that principle. If the principle is won or lost, the others will be consequential.

I have one question to put to the Attorney-General and his advisers. In relation to clause 5, I seek a statement from the Commissioner of Stamps, through the Attorney-General, that the amendment is not intended to change the current arrangements with respect to deductions. I understand that is the case in the example that I quoted originally of the firm that had an agreed position of 40 per cent worth of deductions. I understand, too, that the Commisioner of Stamps has no intention of changing the arrangements that he has with individual firms—40 per cent, 25 per cent or whatever it is.

However, I would ask the Commissioner of Stamps, through the Attorney-General, whether the Government is prepared to place on record that statement of intent that they have no intention of changing that arrangement at which they have arrived with the hiring firms in South Australia at the moment.

In relation to clause 6, again I want to refer to advice which we have received and which states:

> The drafting of the penalty provision also suffers from a yet further difficulty. The penalty is $2 000 plus twice the amount specified in the notice. It would be preferable if it made it quite clear that the amount involved is $2 000 plus twice the amount of the 'duty payable', as currently used, otherwise it is possible that, as the notice may specify the penalty amount described in subsection 4 as well as the amount of tax, the penalty that can be imposed for late payment is $2 000 plus double the primary tax assessed and the penalty of tax double the primary tax. This leaves the possible imposition of a penalty of $2 000 plus six times the tax, resulting in the possible payment of, in all, a possible $2 000 plus nine times the tax involved.

In the discussions that I have had with the Commissioner of Stamps, he has indicated that that certainly was not the intention of the Government, and I think there is certainly an acceptance that that interpretation is probably accurate. I think there is some prospect that the Government may well (one never knows) support at least part of the potential amendment that I have moved to clause 6.

I indicate to the Attorney-General and the Australian Democrats that the amendment that I have moved to clause 6, page 2, line 31, actually covers two matters, one which I think has a reasonable prospect of support from the Government, namely, this matter which I have just read into the record. It unintentionally multiplies by six times the penalty of the tax.

I have also included in that amendment a second matter of principle, namely, that we believe the penalties ought to be an amount equal to the amount of duty, that is, 100 per cent rather than a 200 per cent increase. In some places the Government Bill states that the penalty shall be twice the amount specified in the notice. In other places the penalty is just the amount specified in the notice and, with our series of amendments, we are seeking to make the penalty at least consistent in this Bill: that it be just the amount specified in the notice, not twice that amount.

Therefore, it is possible, and I place on the record for the Australian Democrats and for the Government, that the Government may well agree to the second part of that amendment but not be happy about the first section. Obviously, if the Democrats agree with both principles, as outlined in this amendment, that will be the will of this Council, and it will go through. If the Democrats are not interested in our position in relation to reducing the amount of the penalty, or in taking away the doubling of the penalty provision, I would recommend that we move the amendment in a different form, whereby the Government will still maintain its position of double the amount of the penalty, but we make that second amendment to the amount of the Commissioner's assessment under subsection (1).

The last issue that I want to address relates to clause 13, which is the provision which is called the 'Claytons contracts' provision of the principal Act. As I understand this 'Claytons contract' provision, it is quite clear that, if there is a written agreement between parties or if an instrument is executed, stamp duty is payable. I understood that, until 1988, there was an avoidance mechanism whereby one party would write to the other a letter indicating that if they paid a certain amount—$10 000—that would seal the deal, and the sealing of the deal was, in effect, the delivery of the $10 000 cheque. There was never any written agreement signed by both parties, so no stamp duty was able to be paid.

That loophole was closed off in 1988, in what was called the 'Claytons contract provision'. I am advised that this section 71e of the Act allows the Commissioner of Stamps to insist on the payment of the appropriate level of stamp duty if there are problems. As I understand it, if someone has not done that, it also allows for that person to be pursued and prosecuted in the courts, but it does not allow the imposition of a penalty whereas, with respect to the equivalent section in the Stamp Duties Act relating to written agreements, all those options are available. Obviously, they can be required to pay the duty; they can be prosecuted through the court; but they can also have the imposition of a penalty, and this particular provision seeks to introduce that.

I have raised with the Commissioner of Stamps and Parliamentary Counsel some concerns about the potential retrospectivity of this provision and the need perhaps to

introduce a transitional provision. I will read a final comment from our taxation adviser regarding this matter, as follows:

> There is no adequate transitional provisions in this Act. It is therefore unclear whether the Commissioner can and will attempt to rely on section 71e (4a) in respect of transactions occurring prior to the commencement of the Act. There should be a clear transitional provision to the effect that these provisions only apply in respect of transactions or instruments brought into existence (to the extent that they apply to instruments) on or after the commencement of the operation of the Act.

I had drafted an amendment which I was going to circulate but, at the eleventh hour, so to speak, the Commissioner of Stamps has raised with me a potential concern with the drafted amendment that I was about to place on file. I have indicated that I will consider it overnight and, before we debate the Committee stages tomorrow, I will decide whether we intend to pursue that amendment. However, the Commissioner of Stamps has a copy of that draft amendment, so the Attorney-General's staff will be in a position to advise him on it if we choose to pursue it tomorrow in the Committee stages.

I have indicated in some detail the amendments that I will move in Committee. I certainly will not go over that detail again unless I have to do so in Committee. I have done so during the second reading debate to enable consideration of the amendments by both the Democrats and the Government, because we are in the dying days of this part of the session. I support the second reading.

The Hon. M.J. ELLIOTT: The Democrats support the second reading of the Bill, the main thrust of which is to incorporate into the Stamp Duties Act 1923 measures to counter potential tax avoidance and to introduce penalties to ensure payment of duty in relation to the transfer and registration of a motor vehicle. All other tax heads attract penalties if duty is not paid, and I am advised that greater incentive is required to ensure that motor vehicle dealers are not tempted to undervalue vehicles sold, in an effort to avoid duty. The amendments clarify a definition in the Act in relation to duty payable on the rental of goods and closes what the Crown Solicitor has described as a potentially serious loophole.

I am advised that a court decision handed down in early 1980 provided an interpretation of what was and was not dutiable in relation to rental business. By agreement between the State Taxation Office and each business, an appropriate level of service costs was agreed upon and these costs were not dutiable. I understand that one taxpayer has recently objected and appealed to the Supreme Court. On advice, the Taxation Office settled out of court. I am told that the result of that case was that the longstanding interpretation of the Act in relation to the rental head of duty was no longer tenable, and that this amendment is an attempt to restore it.

I am assured by officers of the Taxation Office that the majority of taxpayers will notice no change and that the office is not seeking to expand the taxation base in relation to rental goods but to preserve it by closing a potential loophole. The Bill reduces or modifies the default assessment provisions within the Stamp Duties Act relating to both the motor vehicle and rental head of duty. It introduces penalties for failure to lodge a statement about a property or business transaction for which there is no official documentation. In relation to duty payable on general insurance business, the amendment to the definition of 'premium' makes clear that all amounts paid to the insurer as a premium, except some listed exclusions, are dutiable.

The Bill also has several purposes not relating to minimising tax avoidance. It exempts from duty compensation payments made to children under 18 years via the Public Trustee under the Criminal Injuries Compensation Act. It also changes the Act from operating with 'prescribed forms' to 'approved forms'. This move is consistent with other taxation legislation of recent years, and I am told that it provides to the Taxation Office greater flexibility in altering forms which may have become unsuitable by removing the need to report on the changes to the Minister, Cabinet etc. This change does not affect a person's right or obligations under the Act but merely the administration of the provisions of the Act.

The Democrats support the measures as we understand them. We have rather belatedly had an approach about one particular clause, which relates to the impact on rental charges. I would like to give that matter a little consideration and, as it appears that we will not be proceeding to the Committee stage tonight, that will give me ample opportunity to look at the matter. As I said, the Democrats support the second reading and the thrust of the Bill.

The Hon. C.J. SUMNER (Attorney-General): I thank members for their consideration and support of the second reading. I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

FISHERIES (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 26 November. Page 2290.)

The Hon. PETER DUNN: This is an interesting Bill in that it has the longest second reading explanation I have seen for a long time. It is certainly the longest explanation that I have handled. I guess that that is brought about by the fact that a paper was circulated to interested parties—in particular to fishermen—12 months ago or more, and there was a lot of public debate about this Bill long before it came into this Parliament. As a result, fishermen have had their say. I will call them fishermen rather than fishers, because I do not have a mental picture of a fisher. I like the term fisherman or fisherwoman, but I will refer to fishermen and it can be construed also to include fisherwomen.

The Bill obviously has been the subject of a lot of consultation. As a result, there does not appear to be much need for amendment. However, it is extremely difficult to prepare a Bill such as this and to achieve an end result that is suitable to everyone in the field—and this is as difficult a field as anything that I have had to deal with. One has only to look at the psyche of fishermen—they really are still hunters. They are like farmers: when one turns a sod on a farm, something happens to one's psyche and it is very difficult to move away from farming afterwards.

The Hon. M.J. Elliott: You get buried under a sod.

The Hon. PETER DUNN: Yes. I think I will be sprinkled over a sod; that would be more useful. Something happens to the psyche of fishermen. They become hunters and, because of that, they become individualist and are very difficult to deal with. If there are 10 fishermen, there are at least nine different ideas. I am not saying that there is anything wrong with that. I support their cause and I support them to the end, because I think they provide us with a very reliable product that, to a man and woman in this Chamber, everyone enjoys.

I admire fishermen who go out and work in conditions that none of us would be prepared to work in. I presume

the Bill will lead to the more efficient running of the department and of the fishing industry. The principle body in the State—SAFIC—has been consulted at some length and initially indicated that it was not happy with one section in the Bill, section 37 of the principal Act. In fact, the Council has received many petitions indicating concern about that section. Fundamentally, that section empowers the Director of Fisheries to reduce fishing effort. In effect, the end result of that measure is to reduce the catch by one method or another, whether it be by targeting a species or by stipulating the method by which fishermen catch or haul fish.

That was the case under the old Act until Lukin, a fisherman from Port Lincoln, challenged it over the fact that he had a licence that indicated to him that he could fish both tuna and salmon. When the salmon component of his licence was refused, he challenged it and, as a result, we now have in this Bill a form of words that makes it quite clear that the Director at the Minister's discretion may alter a licence, and that it should be legal even if challenged. The Crown Solicitor suggested that amendments be made to make it clear that the Director or Minister can alter those conditions.

I intend to move an amendment to that clause, but will talk about that when we reach the Committee stage. I know that that clause was amended in another place, but part of the amendment proposed by the Liberal Party was knocked out, and I will be reintroducing the amendment for the Parliament to have a say as to whether those changes to a licence should be looked at by the Parliament through subordinate legislation or whether they should be investigated by the 67 members of this Parliament. That is reasonably fair.

This Bill, which does a number of things, was debated extensively in the other place. There is not much contention, so I will quickly go through some of the things it does. The Bill alters the definition, and section 5 of the old Act is changed quite dramatically. There has been legal argument to the effect that, if you took dead fish, they did not become part of the quota. Quite often, dead fish are pulled out of a net. However, that has been changed, and the quota will include those dead fish.

There now needs to be a licence to take fish from inland waters, which is fair and reasonable, and I do not see anything wrong with it. If we are to license people to take fish from sea waters, it is reasonable to license them if they are to fish from inland waters. I distinctly recall being at Innamincka in about 1989 and seeing two ute load of fish being removed from Coopers Creek.

I presume that it had been removed by net, as there were too many fish to be caught by hand. I was informed that those fish were being sent to Melbourne. These were people who had realised that there were fish in Coopers Creek. I do not know what those fish were used for, whether they were for cray bait or pet food, but in my opinion they were taken illegally from that river. I was back there about a fortnight later, and I understood that the local people were unable to catch fish from that waterhole after those others had been there.

The fishing was done at night and illegally, in my opinion. If those people had been caught, I believe there was every right for the department—whether in South Australia, Victoria or New South Wales—to stop those people from taking fish and being silly about what they were doing to the people who lived there and who had a right to fish some of that stock. The definition also incorporates the ban on the introduction of exotic fish into Crown land. I will deal with that matter later in my contribution. Under section 25 of the principal Act we are falling into line with the other States by saying that our fisheries officers may be used to continue to pursue what may be illegal fishing or fish selling. I presume that South Australia can now fall into line with New South Wales, Victoria and Western Australia to pursue the illegal fishing or selling of fish, whether they be high priced fish such as abalone or fish of lesser value. It allows the exchange of those people from one State to another.

I presume also only that Victorian officers would be able to pursue a load of fish, a fish or a per cent of fish, if I can put it that way, in that State without our officers needing to go there. As I understand it, there is no compensation for that; it merely involves an exchange of officers between States. That is fair and reasonable. Section 28 of the principal Act deals with compensation if a car is commandeered—although I do not think that is the term used in the Bill. If a car is used or sought to be used, a form of compensation can be paid for its use. That is common practice in the country.

The police, CFS and so on use vehciles in the remote areas and sometimes it is necessary for vehicles to be commandeered for use and I see nothing untoward about that. Sections 30, 38, 61 and 65 of the Act are rather interesting. They provide for lender information to be given to a lender of money where a licence has been used as collateral, where it becomes a property and, before that licence can change hands, information should be sought by the Minister or Director that the licence is encumbered. That information should be provided to the person purchasing it if it is to be transferred to that person. He ought to know if there is an encumbrance on the licence, so there is some security in that. It is fair and reasonable and applies to any other licence, whether one buys a patch of land or a farm. If there are encumbrances owed to the Government, it is important to know. I can remember fighting hard for encumbrances to be disclosed to the purchaser. In one Bill that came before this place that was not the case with the transfer of land with rental outstanding. That has been done and such information is now given.

Section 43 of the Act introduces or speeds up the method of controlling an activity within the fishery. For example, it makes it instantaneous for the taking of fish or controlling of an industry, and I refer particularly to the prawn industry. Spencer Gulf is a good example of where a few people go out and determine the size of the prawns, the amount they are catching and so on and the industry is told that an area will be open for fishing. Under the old system, the Minister or Director would have had to gazette such information. Under the new Bill that will be done by electronic media as they all use the radio. It speeds up the process as is necessary in this modern age. It may put more responsibility onto the Minister, the Director or the officer who determines it. The department is probably aware of that, as it should be.

Section 45 of the Act is changed slightly, whereby it will be legal now to have undersized fish in a pub or retail place, as in the past one could say that the fish came from interstate or elsewhere or that they did not know from where it came. It was difficult for the department to prosecute, but under the present system it will be illegal to have undersized fish on your property, place of residence or in your pub. That is fair and reasonable and will stop the taking of undersized fish. A licensing system was introduced for hotels and fish shops. I am not sure whether that licensing system still applies. Section 48 of the Act now changes the name of 'aquatic reserves' to 'marine parks' and sets them up to allow fishing under regulation in such areas.

It is not of great moment, but it brings more modern language and understanding into the Act. There are times

when fish, particularly those in inland waters, reproduce and build up quite markedly—and I can think of places such as Coopers Creek where this has recently occurred—and it may be prudent to harvest those fish. Where those fish are in a park you may be able to fish—

The Hon. T.G. Roberts: A caravan park?

The Hon. PETER DUNN: It depends; I think you can catch those fish with silverbait (I think that is the term that is used). In the marine park at the head of the Bight which is used to protect the southern white whale there may be a case, if somebody wishes, to take a big school of tuna, and regulations could allow fishing boats into that marine park.

New section 51 introduces regulations for the introduction and prohibition of exotic fish, the setting up of fish farming licences and the regulation of that industry. One wonders whether this new section will cover the regulations that two or three years ago were deemed not to be necessary by the Parliament. In Committee I will ask the Minister to seek advice on whether this new section will cover exotic fish sold in pet shops, because I have a funny feeling that this provision might be a way around the regulation that was deemed not necessary by this Parliament about two years ago and again more recently.

Sections 54 and 55 deal with the shark industry and the transfer of flake (or whatever you like to call it), after it has been processed, into Victoria. I understand that Victoria requires adherence to a certain mercury content for flake, thereby keeping the South Australian product out of that State. Shark have always been caught in South Australia off Kangaroo Island and Port Lincoln using relatively long-line fishing. When I have been in Ceduna I have watched on a number of occasions the talented processors quickly and swiftly take the flesh off a shark; it is a most interesting process. I understand that there is now cooperation between Victoria and South Australia to allow this State's shark meat into Victoria.

The Hon. T.G. Roberts: As whiting!

The Hon. PETER DUNN: Never let it be said, but I guess it is *caveat emptor* if you are eating whiting in Victoria. I think it is a good move to allow shark meat to go to Victoria. A reciprocal agreement between the States is sensible so that we can trade with Victoria. However, we should ensure this reciprocal arrangement is in place before we start beating the pants off them in football, because they might reintroduce the mercury content provision! If we can establish that in legislation now, we might avoid that problem.

Section 56 of the Act, which deals with the suspension of licences, is amended in this Bill. If I receive a 14-day suspension, it relates to 14 fishing days, not 14 days in a row. It is fair and reasonable to require a fisherman to withdraw from fishing for 14 fishing days. I will use the prawning industry as an example, because it has a season which opens and closes for specific periods. If a fisherman is suspended for 14 days and only five days remain in the season, the remaining nine days of the suspension must be served when the season reopens. It would not be fair if the remainder of the suspension were served when he could not fish, anyway, because the season had closed. There is nothing wrong with that.

The Hon. T.G. Roberts interjecting:

The Hon. PETER DUNN: As the honourable member said, in our case the suspension would last a long time. I certainly do not fish very often, although I enjoy it. I do not catch too much, either. A new section provides for the collection of data to assist in the analysis of the fishing industry. I agree with that because every other industry today must provide data. Traditionally, fishermen have played with the figures a little to suit themselves. If that was legitimate, fair enough, I do not knock them one bit. However, if we are to run this industry so that it will continue for years to come, it is necessary to get a good handle on how much stock is taken and what the effect is on the fishery. I have no problem with that provision.

I have not dealt with all the measures in the Bill, but the second reading explanation is extensive. However, I will ask a few questions during Committee. I will also move an amendment, which uses the existing regulatory process set up by Parliament with respect to licence changes. The Liberal Party supports the Bill.

Bill read a second time.

In Committee.

Clauses 1 to 11 passed.

Clause 12—'Conditions of licences.'

The Hon. PETER DUNN: I move:

Page 3, lines 36 and 37— Leave out paragraph *(a)* and substitute paragraph as follows:

(a) by inserting in subsection (1) 'with the approval of the Minister, by order published in the *Gazette*,' after 'time';.

The amendment will ensure that the Director can only impose the condition that has the effect described in subclause (1) *(a)* and that such a condition will also be imposed by order published in the *Gazette*. In other words, it has to come back through the regulatory process for scrutiny by this Parliament.

The argument was well explained in the other place. It is easy to understand why the conditions should come back to Parliament. A licence could be changed dramatically, and the Minister and the Director have significant powers in the Bill to change a person's ability to earn a living. It is possible that the Director may take a dislike to someone and take away that person's living or his right to earn a living by withdrawing from him a type or amount of fish or a device or method by which he can catch fish. I am not saying that the Director would do that, but it could happen and the safeguard is provided if the matter comes back to Parliament. It gives members an opportunity to talk to and perhaps move a motion against that regulation. There are advantages in the regulation coming back through this system where it can be examined and the opinion of other people can be sought.

I am not denying that the Director has the right to control an industry where something can suddenly happen. As a primary producer, I am aware of how quickly things can change. Although they are not so obvious in the fishing industry, I am sure the department through its observations would know if a fishery was collapsing and there was a need to stop fishing a particular species or to use a different fishing method. In the snapper industry in northern Spencer Gulf we had a situation where, because of net fishing, there was a rapid depletion of large spawning snapper and it was deemed to be necessary to cut that back. I can understand why this provision is included in the Bill, because it is necessary to protect people's livelihoods.

Sometimes people go to great lengths to borrow money from their friends, relatives, banks, and so on, and put themselves into hock a long way, making it necessary for them to work very hard to maintain a living and get on top of it. Any industry that deals with nature is not an easy one. It is more difficult than going to the Casino in many cases. I do not go to the Casino, because I am always having a bet on my farm—and I am not very often right. Fishing is similar to that. It is an industry with many ups and downs.

The amendment would allow a perusal of a change, which might be quite dramatic to a fisher, of those fishing rights

which were issued with the licence initially. Lukin, for example, was prevented from fishing salmon, but it was proved later in the High Court that he had the right to fish what was on his licence. This allows for a change, but it means that the Parliament would peruse the change before it was made.

The Hon. M.J. ELLIOTT: I chose not to speak during the second reading debate because the session is rather crowded and there is not a great deal of time left. It is apparent from discussions that I have had with various parts of the fishing industry that the Bill as a whole is acceptable to the industry. The fact there has been so little friction about all but one clause demonstrates that a great deal of consultation has been going on.

This clause has raised a great deal of interest among the fishing community. There seem to be three schools of thought or three schools of fishers in relation to this clause. One school says that there should be no change to section 37 of the principal Act. A second says that we need a change to give greater protection to our fisheries on a biological basis but we would like to see regulation used, as the Liberal Party is proposing. A third school of thought says, 'We need greater protection on a biological basis, but for God's sake keep Parliament out of it.' Some of the fishers were not too sure whether it was better to have judges or parliamentarians making decisions about the biological decisions being made by the Fisheries Department. I am not sure whether judges or parliamentarians are really any better than each other at making such decisions.

I have given great consideration to the use of the regulation clauses. That decision was made more difficult because SAFIC, the official representative of the fishing industry, was saying that it preferred the third option—greater protection on a biological basis. However, whilst it would like to see protection in there, it is not keen on everything going through the regulatory process. There was never any real question in my mind about insisting that section 37 remain as it is, because I believe that the greater protection of the fisheries which is being sought is in itself a good thing, and I support that.

There is a clear need for powers of the kind which are being sought here. The obvious example is in the marine scale fishery where a licence is for all marine scale species to begin with. Clearly, when these licences were first granted, the fishers were after just a small number of target species.

Since then interest has evolved into other species, and the ocean leather jacket is one example which we never contemplated being caught when the initial licences were granted. If all our marine scale fishers turned their attention to that one species, it could be in a great deal of trouble very quickly. I do not believe that it would be unjust really to deny them access to the species on two grounds. First, it was not something that any of them were fishing to any significant extent to start off with. Secondly, on the biological basis, if they all did turn their attention to that species, the fishery would be destroyed. There are too many cases around the world of fisheries that have been destroyed that do not recover. That is not the sort of risk that any of us would want to take.

The great reservation that people had about clause 12 is the fact that all power could reside with one person, and there were no lines of appeal. As long as this clause is properly structured, there is still the appeal to the courts. When I look at the sorts of problems that have occurred in the past on the few occasions that attempts were made to change the terms of the licence, the one concern that I had—and I think it is the major concern in the minds of some of the people who were perhaps thinking that regulation would be useful—was that the Department of Fisheries in the past had tried to minimise fishing effort, not on biological grounds but on economic grounds. That is certainly the case in the southern zone rock lobster fishery. Frankly, I do not believe that it is the Government's business to decide what is or is not economic for a particular person in the fishery. The important role it has is managing the fishery itself and not managing the fishers. It can allow all sorts of transferability so that one can buy out another's fishing effort and those sorts of things, which they do with the pots, but it is not the right of the department or the Government to decide to force a number of fishers out of the industry one way or another.

As I understand clause 12 as it is presently drafted, whether the conditions on the licence relate to the species fished or to the equipment used, they can be imposed only on biological grounds and not on economic grounds. I seek confirmation from the Minister that that is both the legal intent and the Government's intent.

The Hon. BARBARA WIESE: First, I indicate that the Government opposes the amendments moved by the Hon. Mr Dunn. As he has indicated, these amendments were debated quite extensively in another place, and the Government believes very strongly that the proposed changes would restrict and impede the ability of the Government and industry working together in addressing the need for rapid change to access arrangements under licences, etc., for biological and stock maintenance purposes. In all fisheries, already adequate consultation arrangements exist with industry, and this Bill formalises those arrangements.

Sometimes speed is of the essence to achieve change in the interests of the industry and of the fishery. Therefore, to require scrutiny by Parliament of these arrangements is considered by the industry and the Government to be totally redundant and counter to the timely consultation arrangements that have already been set in place. It is believed also that this would unduly burden the administrative arrangements established with industry on a real time management basis.

I welcome the support given by the Hon. Mr Elliott to the Government's position on this matter. In response to his question, I indicate that, in short, the answer is 'Yes'. It was agreed with industry in the earliest days of negotiation on this section of the Bill that these powers would relate to biological stock maintenance purposes. Proposed section 37 (1a) honours this agreement and the undertaking sought by the honourable member. The wording of section 37 (1a) is 'directed towards conserving, enhancing or managing the living resources to which the fishery relates'. There is a natural link through the legislation from section 20 of the principal Act which provides:

> The Minister and the Director shall have as their principal objectives:
>
> *(a)* ensuring, through proper conservation and management measures, that the living resources of the waters to which this Act applies are not endangered or overexploited.

That link flows through to section 46 of the principal Act, which outlines the regulation-making provisions, as follows:

> The Governor may make regulations for the conservation, enhancement and management of the living resources of the waters to which this Act applies, the regulation of fishing and the protection of certain fish . . .

It is also linked to the proposed amendment to section 37 which we are now debating.

The Department of Fisheries, in consultation with Parliamentary Counsel on the drafting of this Bill, specifically gave instructions along the lines on which the Hon. Mr Elliott is seeking assurances, and I hope that this explanation satisfies his query on this matter.

The Hon. M.J. ELLIOTT: I indicated before that of the three possible options in relation to this clause I dismissed retaining the old section 37. I was really left with the choice of whether or not to opt for the use of regulation. I do not have a powerful feeling either way in relation to that question, and I rather suspect that the Opposition is in something of a similar position but has fallen on the other side of the line. Without a powerful feeling either way, one is left with the advice of a group such as SAFIC. I know that many fishermen feel from time to time that SAFIC does not always represent their views. However, in terms of overall lobbying, that is the position that has been most strongly represented to me by fishermen. On that basis I support the clause as it stands, but I do not support the amendment, although, as I said before, I did have some sympathy with it in this case.

The Hon. PETER DUNN: That is slightly disappointing. The point is that it does not stop the regulation from working. I understand why that has been introduced. I have two or three theories, but I will not go through them now. One has to remember that the Director has enormous power; he can make or break a fisherman without the fisherman having an appeal mechanism. The fisherman's only appeal is probably through common law. I find it very difficult to understand that the Director—and it may not be this Director: it could be one further down the track—can single-handedly decide that someone should not be fishing certain stock, for biological reasons, without having to consult. The Director can single-handedly say, 'Bang; that is the end of it.' That person is then out of the fishing industry. I would have thought that the introduction of regulations would be a reasonable method of check and balance.

The Hon. BARBARA WIESE: Regarding appeal mechanisms, I draw to the attention of the Hon. Mr Dunn that the rights of fishers are protected within the terms of the legislation in that clause 58 provides for an appeal mechanism to the District Court. So, an appeal mechanism is available and the powers of the Director and the Minister with respect to the provisions contained in the Bill are not limitless in that sense.

The Hon. PETER DUNN: That is a fair explanation, but it does not alter the fact that fishing is seasonal. It might be the middle of a season and there might be fish to take. By the time people go through that process in the District Court, they could be broke because they have missed out on their harvest.

The Hon. M.J. Elliott interjecting:

The Hon. PETER DUNN: The honourable member refers to the regulation process. The regulation takes effect from the date of gazettal. The Parliament can either reject the regulation, hold it or we can look at it. The requirement is that it be laid before both Houses of Parliament for comment and it can be subject to disallowance. If it is disallowed, there is a time factor before it can be re-introduced.

An honourable member interjecting:

The Hon. PETER DUNN: It could be 120 days I am quite sure that, if the Director—

Members interjecting:

The Hon. PETER DUNN: It allows the Director, the Minister and the department to put their case, and it allows the person affected to put his case via this place. I just point that out. It is a method that is used frequently in this Parliament. I think it is effective and, where a person's livelihood could be demolished by one stroke of the pen—and I am not saying that it will be, but it could be—there should be a rapid method of appeal.

The Committee divided on the amendment:

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

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

Majority of 1 for the Noes.

Amendment thus negatived; clause passed.

Clauses 13 to 17 passed.

Clause 18—'Substitution of s. 51.'

The Hon. BARBARA WIESE: During the second reading debate the Hon. Mr Dunn asked two questions that relate to this clause, and I should like to provide the answers now. First, he asked whether there was still a licensing system in place for hotels, fish shops, etc. The answer is 'Yes'. Provisions are in place whereby all premises and dealers in fish are required to be registered with the Department of Fisheries as processors.

The second question related to exotic fish. The honourable member asked whether this clause related to exotic fish sold in pet shops, and that sort of thing. The answer to that is 'No'. This section deals with only fish farming and the growing of exotic and native fish under controlled conditions for aquaculture purposes, not the ornamental retail fish trade.

Clause passed.

Remaining clauses (19 to 26), schedule and title passed.

Bill read a third time and passed.

JUSTICES OF THE PEACE BILL

Returned from the House of Assembly without amendment.

STRATA TITLES (RESOLUTION OF DISPUTES) AMENDMENT BILL

Returned from the House of Assembly without amendment.

SHERIFF'S AMENDMENT BILL

Returned from the House of Assembly without amendment.

EAST TIMOR

Adjourned debate on motion of Hon. Bernice Pfitzner (resumed on motion).

(Continued from page 2356).

The Hon. BERNICE PFITZNER: I will quickly close the debate on the motion, the spirit of which we all agree with in principle. However, I regret that I am unable to support the amendments moved by the Hons Mr Gilfillan and Ms Pickles. This is not because I do not believe in the amendments but because I believe they will hinder and compromise the optimum potential for the East Timorese.

Although I would dearly love to support the amendments, I will not be able to do so. If the amendments are supported by the majority in this Council and become the motion, I will support it because I feel that we should send a message to the Federal Government, and a message of substance is

better than no message at all. My colleague the Hon. Mr Lucas said that we could get into many of these situations and not be able to adjust them, but I think that each situation should be addressed and assessed individually. I think that two wrongs do not make a right.

In assessing the East Timor situation, let us go back in history. In 1975 a group of indigenous East Timorese who had a language and religion that was quite different from the Indonesians and who were not under Dutch rule but Portugese rule were invaded and taken over by the Indonesians. In today's newspaper it is rather sad and disconserting to note that a former member of the Whitlam Cabinet, Mr John Wheeldon, claims that this takeover was backed by Australia. He says:

> Australians need to 'make up our minds whether we want to be a country which can moralise about Cambodia and South Africa and the Soviet Union and Kuwait—where we talk about how small countries are entitled to their independence—yet when it's close to us and of financial interest to us then we don't do anything'.

I think we should consider that more fully. It is reported that in 15 years of this imposed occupation 200 000 East Timorese were killed leading up to the massacre of 12 November; and, further, more killings have been alleged after the massacre. A report in the *Advertiser* of 25 November states:

> Mr Alfreda Ferreira, an organiser of the Fretilin independence movement, said in Darwin yesterday that seven people were shot last Monday because they could bear witness to the executions of another 10 people just hours before. Mr Ferreira's informants told him the dead included a one-year-old boy, and a four-year-old boy and a woman believed to be his mother.
>
> The Indonesian Governor of East Timor, Mr Mario Carrascalao, told the Lisbon newspaper *Publico* that he had personally seen 91 wounded in Dili hospitals, but he did not know how many had died.
>
> 'I saw with my own eyes 91 wounded in the military hospital and eight seriously wounded in the civilian hospital, and a pick-up truck full of corpses. I can't say how many', Mr Carrascalao said.

With all these allegations we must be very concerned about the situation in East Timor, and that is why I am unhappy about striking out paragraph 3 of the motion which concerns the establishment of a United Nations presence in East Timor.

As the proposed amendment says, an act of self-determination for East Timor might include the presence of the United Nations in East Timor to monitor the current situation, but that is not definite. If there is not an immediate monitoring of the situation there may not be any East Timorese left to have self-determination. I am told that, if the killing goes on at this rate, in two years there will not be any indigenes of East Timor.

Recently I attended a photographic exhibition of East Timor and I was very taken by the photographs of that very beautiful island, with its high mountains. From a tape that was distributed at the exhibition, I will read to the Council the lyrics of a song which Fretilin uses to try to rally its friends and colleagues. Entitled 'I'm Still Fighting', it reads:

> Many years passed by
> Many more to come;
> Surrender? No! Never!
> Two hundred thousand
> Timorese have died
> Yet, Ramelau [the highest mountain] is strong as ever.
> I'm still fighting
> In my mountains, in my jungle,
> In my villages, in the prisons;
> I'm still fighting for my country.
> Do you know why?
> If you don't I shall explain.
> This country is mine;
> Everyone may go but I'll always stay
> This is my life
> This is my soul
> Souls never die.
> I'm still fighting . . .
> In my mountains I feel free
> In my mountains I can dream
> That is, in my mountains
> I can be me.
> That's all I want
> I want to be free
> That's all I want
> I want to be me.

The beautiful mountain mentioned in the song is being bombed by the troops from Java to try to flush out the natives of East Timor. That is what is happening to this very brave nation and I call it a nation because it has an identity. In the book by Smith, *Ethnic Revival* (1981), 'nation' is defined as:

> A nation is a self-aware ethnic group. Until the members are themselves aware of the group's uniqueness, it is merely a group and not a nation.

This group is unique. The people are quite different from the Indonesians. They are Melanesians and Papuans. They are Roman Catholic, not Muslims. They speak the Tetum language, not the Indonesian language. They are a nation struggling for self-determination.

I urge this Council and the people of Australia get away from our tainted aspect. We should stop dragging our feet and stop sharing the oil and coffee with Indonesia. We should support this little nation if it wants self-determination and independence. In closing, I will read another of the poems that the East Timorese have written in their anguish, asking us for help as they helped us during the war with Japan, as follows:

> Silence my reason
> In the reason of your laws
> Suffocate my culture
> In the culture of your culture
> Smother my revolts
> With the point of your bayonet
> Torture my body with the chains of your empire
> Subjugate my soul
> With the faith of your religion.
> I'm still fighting.

The Hon. Carolyn Pickles' amendment carried; the Hon. Ian Gilfillan's amendment negatived; motion as amended carried.

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 20 November. Page 2090.)

The Hon. R.I. LUCAS (Leader of the Opposition): On 30 October this year the Hon. Mr Elliott moved this motion which dealt with, among other things, the independent licensing of the pathology laboratories in South Australia and other related matters. When one looks at the terms of the motion, one acknowledges that there probably would have been strong majority opposition in the end to the motion, but its terms are appropriate for debate and could have been discussed and debated in a proper and rational way as most motions are debated during private members' business.

However, in moving and speaking to the motion the Hon. Mr Elliott obviously had other intentions in mind. He had a series of unsubstantiated allegations about a major pathology laboratory in Adelaide. As most members know, when they have received on various occasions in their political careers a series of unsubstantiated allegations, they have a series of options confronting them.

Clearly, in this case, the first involves trying to validate or substantiate those allegations by research or investigation of the laboratory or, at the very least, if not of that laboratory, other laboratories and perhaps by further discussion with people who may have had past experience or perhaps, even more importantly, present experience working in that pathology laboratory.

Having done that, members then have a choice. If they feel confident that they have proved to their satisfaction the allegations to a level whereby they should be raised publicly, members still have two principal options remaining. They can raise the allegations and outline them in detail in the Chamber but not name the laboratory or firm, which is the subject of the allegations, as the offender.

It is possible afterwards, if need be, to pursue with the Minister or the various regulatory authorities those allegations and provide the name of the firm so that the Government cannot sling mud at a member and say, 'You are making unsubstantiated allegations and you are not prepared to front up and provide the detail of the name of the firm involved.' That is one option. The other option is to outline the allegations in the Chamber and to name the firm or company that might be involved. That is the option that the Hon. Mr Elliott chose on this occasion.

Whatever one might think of the Australian Democrats—and as we get tetchy towards the end of the session our opinions might vary—they know the value of the media. They are not backwards in coming forwards in relation to getting column centimetres in newspapers, getting their faces on television and having their voices heard on radio programs. They know the value of good publicity and they are well staffed by the Bannon Government with two press secretaries between the two of them to service their media requirements. Those two staff persons have considerable experience in the media and in getting their masters' views published in various sections of the media.

One of my colleagues was spot on, to use that colloquial expression, when he indicated that the choice made by the Hon. Mr Elliott on this occasion was to maximise the publicity value of this attack on the pathology laboratory. There is no doubt that it was a deliberate and calculated act to do irreparable damage to the firm that was named—Gribbles Pathology. Clearly the Hon. Mr Elliott had the option of making his allegations—not naming Gribbles—without being specific, and then privately, to the Minister responsible and to the other regulatory authorities, outlining the further details of his allegations and naming the firm so that the regulatory authorities and the responsible Minister could investigate the allegations and claims and come back with some form of response.

I will quote three or four sections from the Hon. Mr Elliott's contribution, which make it evident that it was a deliberate and calculated act in relation to the naming of Gribbles and doing what has been described by the staff and by others who are knowledgeable in the industry as irreparable damage to the public reputation of Gribbles Pathology. The Hon. Mr Elliott said:

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

Later he talks about the difference between life and death in relation to some of the allegations he was making with regard to mistakes in tests and the mixing up of test results. He says:

> An early diagnosis of cancer can mean the difference between life and death, so an incorrect test result can spell a death sentence for the patient.

Again, that was a deliberate and calculated statement to get maximum publicity and cause maximum damage to Gribbles Pathology. It was calculated not only to cause damage to that firm but to cause concern to the many hundreds or thousands of patients of doctors and others who have tests conducted by Gribbles Pathology in any one year. The Hon. Mr Elliott went through a whole series of allegations. He said:

> Allegations have been made about Gribbles laboratories, including the fact that there are no special procedures for the disposal of blood or urine or glass or sharp instruments and that trimmed human body tissue has been put into ordinary waste baskets while larger samples (including breasts and uteri which had been tested for cancer) were placed in large green council bins in an area accessed by the public.

Then, just to put the final nail in the coffin of the public reputation of Gribbles, the Hon. Mr Elliott says:

> 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.

The Hon. L.H. Davis: A pretty factual statement!

The Hon. R.I. LUCAS: I would not agree that it is a factual statement. It is an actual statement by the Hon. Mr Elliott, but it is certainly not factual. Quite clearly, in a deliberate and calculated fashion, Gribbles Pathology is the only firm mentioned in the whole of the diatribe poured forth by the Hon. Mr Elliott, and he wraps it up with the final nail in the coffin with this 'shoddy pathology laboratory operators in South Australia who do not deserve the trust placed in them by health professionals and the general community.'

My colleagues the Hon. Bernice Pfitzner and the Hon. Bob Ritson have very assiduously addressed themselves to the detail of the allegations made by the Hon. Mr Elliott. I think it is fair to describe the fact that the Hon. Bob Ritson kicked the Hon. Mr Elliott to death with his Doc Marten boots, and the Hon. Bernice Pfitzner assiduously carved up the Hon. Mr Elliott—

The Hon. L.H. Davis: Dissected him!

The Hon. R.I. LUCAS: Yes, and dissected all his arguments and criticisms into very small pieces. I think it was a very effective demolition job done on the Hon. Mr Elliott and his flimsy arguments by my colleagues the Hon. Bob Ritson and the Hon. Bernice Pfitzner. I congratulate both of them on their contributions to this debate earlier. In particular, the Hon. Bernice Pfitzner went through in detail each and every one of the allegations made by the Hon. Michael Elliott and rebutted them in clear and precise detail.

The Hon. L.H. Davis: Demolished them.

The Hon. R.I. LUCAS: Demolished them, as my colleague the Hon. Mr Davis very helpfully indicates to me at this very late hour. So, the arguments have been very effectively demolished. I do not intend to go through the individual detail of the allegations again. One only has to go back to those earlier contributions. As Leader of the Liberal Party in the Council, I have received a considerable amount of correspondence expressing concern, disgust, dismay, alarm—any other word that you might like to think of in that vein—about the performance of the Hon. Mr Elliott in relation to this motion. From that very large selection—and I do not want to take hours reading all of it—I will quote briefly from two of the letters. I think the Hon. Carolyn Pickles referred to part of this first letter in her contribution. It is from the Australian Medical Association

Inc. signed by Mark Coleman, Craft Group of Pathologists, SA Branch Council, Australian Medical Association, and Dr Philip Harding, President, SA Branch of Australian Medical Association. In fact, this is a copy of a letter to the Editor, dated 7 November. It states:

> Dear Sir,
> Mr Elliott, MLC misuses parliamentary privilege in making unsubstantiated allegations about services offered by pathology laboratories in South Australia, as reported in the *Advertiser* (31.10.91). He is reported as making a number of serious allegations about the quality of services offered by a private laboratory based, apparently, on hearsay evidence alone. There is no indication that he has in any way attempted to establish the veracity of these statements. This is an abuse of the parliamentary process. His reported refusal to elaborate on his comments outside the House is disgraceful . . .
> Mr Elliott's allegations are based on misinformation and ignorance of the facts. He now has a duty to present a balanced view of the situation both in and outside Parliament.

I do not know Mr Mark Coleman, but those members who know Dr Philip Harding will agree that he is not prone to extravagant comment. It is unlike Dr Philip Harding or, I am advised, Mr Mark Coleman to be strident or angry about a particular person—in this case, the Hon. Mr Elliott—as is clearly evidenced by this letter. Nevertheless, it is a fair indication of how much bitterness has been caused by the Hon. Mr Elliott in his reckless use of the forums of the Parliament.

The second letter to which I refer is addressed to me. It encloses a good deal of information and is signed by Dr Rodney Carter, the Medical Director and Chief Executive Officer of Gribbles Pathology. The final paragraph of that letter states:

> The unsubstantiated allegations made by those who have sought to damage Gribbles Pathology have impugned the fine reputation of our employees. We have had reports from doctors on the anxiety expressed by some of their patients. Such allegations have the potential to not only harm our reputation but also our livelihood and so we ask you to use your best efforts to have the situation rectified when the matter is debated.

Clearly, all members will realise that the fine reputation of Gribbles Pathology has been impugned and maligned by the Hon. Mr Elliott. The point made by Dr Rodney Carter, to which I referred earlier, is that doctors are saying that their patients are expressing anxiety, concern and alarm at the statements made by the Hon. Mr Elliott. They are concerned about the accuracy and validity of test results on what, as the Hon. Mr Elliott has indicated, are, in some cases, life and death matters.

It is clear that the allegations that have been made by Mr Elliott have done inestimable damage to Gribbles and its staff. His accusations were highlighted in prominent fashion in the press and on the electronic media. I am sure that when this particular motion is comprehensibly defeated, as I am sure it will be, it will attract considerably less publicity compared with the original allegations made by the Hon. Mr Elliott. All members are aware that the final results of these sorts of motions are likely to be buried on about page 64 of the second section of the *Advertiser*. At least, they might be run in the *Advertiser*, but they are unlikely to be run at all on television or on radio news bulletins because of the media's view that the defeat of a motion does not carry as much newsworthy appeal as the sensational nature of the original allegations.

Quite clearly, as my colleagues have said, Mr Elliott has indulged himself in gross abuse of parliamentary privilege in the way in which he has approached this motion. Parliamentary privilege is a precious right of members of this Chamber, but it carries with it onerous responsibilities. On this occasion, the Hon. Mr Elliott has abused that precious right of parliamentary privilege. It is quite clear that his allegations were based on inadequate and inaccurate research. He has acknowledged that he has never visited Gribbles Pathology, that, at the time of making the allegations he had never visited any other pathology laboratory in Adelaide or elsewhere. He has acknowledged that he got his information from a series of disgruntled former employees, that he did not raise those allegations with any other regulatory authority or lay complaint or seek resolution of those matters through any of the possible channels that he might have used before taking the serious step of raising these allegations in the Parliament and the even more serious step of naming a particular firm.

In conclusion, I challenge the Hon. Mr Elliott to admit that he was wrong. I challenge him in the last two days of this parliamentary session to be big enough to stand up and admit that he made a mistake, that he did the wrong thing and that he has done irreparable damage to the public reputation of Gribbles and to the public reputation of all its staff. Let him admit that and put it on the public record. I challenge him to issue a public apology to Gribbles and its staff and to issue a press release not only including that public apology but also indicating to the many hundreds and thousands of patients involved with doctors and Gribbles Pathology that they ought not have any concern in relation to the accuracy and validity of the test results coming from Gribbles Pathology. I note that the Hon. Mr Elliott hangs his head in shame as I issue this challenge. I know that he will respond. He owes it to this Chamber, to Gribbles and to the thousands of patients of Gribbles to stand up in this Chamber, take his medicine, admit that he is wrong and issue that public apology.

The Hon. M.J. ELLIOTT: Following discussions I have had with many people in recent weeks—

Members interjecting:

The ACTING PRESIDENT: Order! The Hon. Mr Elliott has the floor.

The Hon. M.J. ELLIOTT: —I believe that my perceived need for change in accreditation and licensing procedures for pathology laboratories is still valid.

Members interjecting:

The ACTING PRESIDENT: Order!

The Hon. M.J. ELLIOTT: Whilst there may be some argument about what needs to be tackled—

Members interjecting:

The ACTING PRESIDENT: Order! Members will refrain from making remarks across the Chamber. The Hon. Mr Elliott has the floor.

Members interjecting:

The Hon. M.J. ELLIOTT: Throw them out.

The ACTING PRESIDENT: Order!

The Hon. M.J. ELLIOTT: Whilst there might be some argument about whether that needs to be tackled on a State or national level, or in relation to who is responsible, I believe there is a necessity for some intervention in the procedures. In the absence of moves at a national level, we should be doing something at a State level.

The National Association of Testing Authorities and the Royal College of Pathologists are the two major bodies overseeing what is happening now. I have been told that NATA is well behind schedule in its regular inspections of laboratories. A spokesman from NATA has told me that it is still in the phase-in period of full compliance with its inspection regime, which was applied to all laboratories for Medicare purposes in 1987. That is a very generous phase-in period indeed. I must pose the question: why are standards set? Obviously, they are set because it is felt that that is what the public deserves. However, this long phase-in

period implies that that is what the public deserves in the long run.

Assessments are carried out according to the NATA and the Royal College of Pathologists of Australasia medical testing requirements for registration at a mutually convenient time. The same NATA-RCPA document states:

> Registered laboratories will receive routine assessments at intervals of approximately two years. However, the association reserves the right to reassess any laboratory at any time.

Some laboratories have had four years pass between two inspections, while others have been inspected for the first time only very recently. We not only need to know what the laboratories are capable of doing while inspectors are on the premises during pre-arranged visits but what they are actually doing all the time.

The Hon. R.I. Lucas: What did you see on your surprise visit on Monday?

The Hon. M.J. ELLIOTT: Why don't you wait until I get to that.

The ACTING PRESIDENT: Order! The Chair is taking particular notice of this debate. The Hon. Mr Elliott has suffered a fair amount of condemnation and has not interjected. He has copped the flak, and he deserves the same right of reply. The Chair will be taking particular notice.

The Hon. M.J. ELLIOTT: I think that all matters that need to be covered will be during this speech. By analogy, the fact that a person can pass a test for a driver's licence does not always mean that he will obey all the road rules and, as a driver, he will be subject to various spot checks such as speed detection and blood alcohol level testing. Similarly, the External Quality Assurance Program carried out by the Royal College of Pathologists, among others, is a test of a laboratory's capabilities, but perhaps not always of what actually happens.

The college supplies specimens to be tested by the laboratory and the results are sent back to the college for verification. Laboratory staff are always aware which specimens they are processing are college specimens. Once again, this process tells us of the laboratory's abilities as distinct from its ongoing performance. NATA, having had other specialists inspect the laboratory, collects the reports for the examiners. These are confidential and are incorporated into a major report on the laboratory.

A section on confidentiality in NATA's Guide to Assessment of Laboratories document says:

> Under normal circumstances there is little need for an assessor to retain a copy of the briefing notes provided for assessment or a copy of his or her report.

If matters of concern are found by inspectors, it is NATA that notifies the laboratory of specific required changes to practices or conditions, etc., and other recommendations. There are three classifications of what NATA uses as guides for accreditation: requirements, things that are strongly recommended and things that are general observations. Matters that are classed as strongly recommended are not compulsory, but things that are classed as required do need to be rectified.

There is a great deal of grey within this grading. If something is strongly recommended and not required, what is it that makes it less important? Failure to comply with the requirements theoretically leads to loss of accreditation. There have been cases of laboratories failing to meet NATA requirements and, upon being reinspected, have been found to have failed to undertake action on NATA's recommendations and they have not lost accreditation. A particular example brought to my attention was not here in South Australia.

I can but question the integrity of a system that allows such laboratories to continue operating. I do not know who it is who should act, whether NATA or the Federal Government's health administration but, clearly, such a system is not working, I should have thought, to anyone's satisfaction. The time given for compliance with requirements is variable, NATA tells me that up to three months can be allowed for something like equipment calibration, during which time the laboratory continues to operate. I am calling in this motion for a system of checking, which may involve NATA and the Royal College and/or another body, whereby ongoing performance is monitored and not just the laboratory's capabilities. That system must try to be more absolute in terms of what is acceptable, and compliance with those absolutes must be achieved for operation of the laboratory to be legal.

I believe that service user groups—both doctors and their patients—are entitled to some input in the process, perhaps through the form of written submissions and some information, and this is particularly relevant for the medical profession, on the performance of the laboratory in the examination process. I will take this opportunity to make some observations about the evolution of specialist medical practices, such as radiology and pathology, and why I believe this sort of monitoring is necessary. Increasing amounts of work carried out by these practices are done not by the specialist but under the direction of the specialist. In most cases, the number of non-specialists is greater—in fact, often far greater—than the specialists themselves. This need not be a problem as long as the tasks allocated are appropriate to the qualifications of the person asked to perform them. For the public's well-being, appropriate levels of supervision must be assured.

For a category 1 classification under data, tests must be performed, and NATA's requirement registration booklet states, 'under a direct full-time supervision of a pathologist'. This requirement is not clarified. Does it mean that a pathologist must be present and involved at all times that the laboratory is operating. This is where the role of bodies such as NATA and the Royal College become important, for it is their duty to ensure that appropriate task allocation and supervision are occurring. This leads me to a discussion relating to Gribbles Pathology Service, which was mentioned when I moved the motion. When I originally prepared the motion, matters of serious concern were raised with me about a particular pathology practice. Those concerns in turn highlighted the wider issues. It was my initial intention not to name the practice involved, and with hindsight I regret so doing.

The Hon. L.H. Davis: Will you apologise?

The Hon. M.J. ELLIOTT: Will you let me? Before I take this matter further, I would like to say that no doubt some members of the Liberal Party have had a great deal of delight in making allegations about seeking publicity, and that is a fair one to make. But, frankly—

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

The Hon. M.J. ELLIOTT: Frankly, if I was wanting publicity, I would have made sure that the television stations were in the gallery. I made no attempt whatsoever to bring them in. The suggestion was also made that the move was deliberate and calculated. I am willing to admit (and I will admit other mistakes later) that in the circumstances I should not have used the name. In fact, when the speech was prepared I had left out the name of the laboratory from the text, and as such probably the language used in those circumstances was much stronger than I would otherwise have used. It was a last minute decision to include the name and, of course, having prepared a text that was fairly strong,

and not intending to use the name, by then using it I can see the great difficulties that it created.

Clearly, a number of matters raised with me were demonstrably wrong. Some were correct but were out of date. Some were a case of differing perceptions, and some were a matter of one person's word—

Members interjecting:

The PRESIDENT: Order! Honourable members will stop talking to one another across the Chamber.

The Hon. M.J. ELLIOTT: I find it interesting that they suggest that I should be big enough to admit a mistake and as I am doing so, they cannot shut up; they are an amazing bunch. Clearly, a number of matters raised with me were demonstrably wrong. Some were correct but out of date. Some were a case of differing perceptions, and some got down to being a matter of one person's word against another.

Members interjecting:

The PRESIDENT: Order! Honourable members will cease interjecting to one another across the Chamber. The Hon. Mr Elliott has the floor.

The Hon. M.J. ELLIOTT: Contrary to claims made by other members in this debate, my sources were not just disgruntled employees but other sources who were not in a position to be identified. I would not have raised matters of such significance on the basis of reports from a single group. Having been in the Parliament for six years, one is aware that one often gets visits from disgruntled people. It is not an unusual occurrence but, when one has not one but a number of different sources giving essentially the same story, one tends to take more note. There are always two sides to any argument, so I should have visited Gribbles beforehand. Once again, I failed to do so because I had not initially intended to use its name. That is a mistake, which I am freely admitting. There are two sides, and the position now is such that we will never be able to establish fact in a number of the cases that have been raised.

As an illustration, when one staff member says that supervision is inadequate another staff member will feel quite comfortable about it. If two people are given the same task one will say, 'Yes I am competent to do this,' and the other will say, 'I am not.' One will say, 'I am being supervised adequately,' and the other will say, 'I am not.'

Among the allegations made to me there are things that could forever be disputed, for example, the case of rubber bands being used to repair machines. We have a person insisting that that has occurred, and Gribbles insisting that it never did. How does one prove such a case when the machine does not now have the rubber bands on it. In relation to waste disposal, I know that the things I was told are now not the case. There is not a great deal of point in pursuing the question of if and when the practices changed.

In relation to body organs and council bins, that is a matter I made clear to inquirers the next day. The next morning I had a couple of phone calls about that, and there had been a very clear misunderstanding—one which I clarified immediately. I explained that when I had used the term 'council bin' I had been using it in the generic sense to describe the type of bin. When you talk about a council bin everyone knows you mean those big plastic bins on wheels. The next day when I had phone calls asking whether the council was picking these up and I realised that it had been taken in a specific sense, in every case I immediately said that I did not believe the councils had been picking it up.

The Hon. L.H. Davis: How else would anyone interpret that?

The Hon. M.J. ELLIOTT: The fact is that as soon as the media rang me and said, 'Do you believe that to be the case?', I said, 'No.'

The Hon. L.H. Davis: Why did you say it?

The Hon. M.J. ELLIOTT: Because, as I said, I had used it in a generic sense and I had not realised at the time that it was going to be picked up in a specific sense. In relation to the other issues, the arguments could go backwards and forwards *ad infinitum*, but that will probably help nobody at the end of the day and is a distraction from the key arguments. I have no reason to believe Gribbles to be a better or worse pathology laboratory than any other pathology laboratory in South Australia. Personally, I would have no hesitation in having a sample that needs testing sent to Gribbles as against any other laboratory.

The Hon. T. Crothers: It would like to get a hold of your tongue.

The PRESIDENT: Order!

The Hon. M.J. ELLIOTT: Yes. Having made those comments, I will report to the Council that over the past couple of weeks a number of reports have come to me about other laboratories. Having just been through—

Members interjecting:

The PRESIDENT: Order!

The Hon. M.J. ELLIOTT: The sorts of concerns raised were the sorts of concerns in a more general sense that I had raised in the debate before, but I will not explore those further. Gribbles was concerned that I clarify one matter in relation to NATA registration, and I will do that. The comments that I made in relation to NATA registration were in response to on-air comments that Gribbles made that it had gone through the test with flying colours. The comment I made last time was that that was a claim Gribbles was not in a position to make because NATA had not at that stage responded back to it: it was not to imply that Gribbles was likely to be denied registration, but simply that it was making a claim it was not in a position to make.

Having visited Gribbles now on two occasions, I believe that the staff are committed and professional. Ultimately, it is not for me to judge whether or not any laboratory is good or bad. As was pointed out at great length during the debate in this place, I do not have the qualifications to do so. Nor should employees past or present or the laboratory itself be the final judge, and that is the ultimate point of my motion. There needs to be an external system, which will work as well as we can possibly make it work, so that such judgments can be made.

Pathology practice generally must be congratulated on its early attempts regarding the setting of standards. In 1983 a voluntary system was established under NATA. It encouraged that regulation process via NATA before Governments made it mandatory in 1987 for accreditation to be introduced. However, having come so far, I suggest that further improvements are necessary to the monitoring system. There is a very clear need for changes, and that is what the motion is all about. I urge members to support the motion.

Motion negatived.

ADJOURNMENT

At 12.2 a.m. the Council adjourned until Thursday 28 November at 11 a.m.